

BY UPS OVERNIGHT MAIL

August 17, 2011

Department of Justice
Attn: Office of Inspector General
Cynthia A. Schnedar, Acting Inspector General
950 Pennsylvania Avenue, N.W., Suite 4706
Washington, D.C. 20530-0001

Re: Request for Investigation of FBI's Role in Secure Communities

Dear Acting Inspector General Schnedar:

We write on behalf of the National Day Laborer Organizing Network (NDLON), the Center for Constitutional Rights (CCR) and the Benjamin N. Cardozo Law School Immigration Justice Clinic (the Clinic) to request that your office conduct an investigation into the role of the Federal Bureau of Investigation (FBI) in the Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) Secure Communities program. As described below, such an investigation is urgently needed to provide transparency and oversight of the FBI's role in this controversial program. A DOJ OIG investigation would complement the audit currently being conducted by the DHS Office of Inspector General.

NDLON, CCR and the Clinic are Plaintiffs in a Freedom of Information Act (FOIA) lawsuit in the Southern District of New York.¹ Our lawsuit has led to the disclosure of over 40,000 pages of documents about Secure Communities from five defendant agencies,² including the FBI. In part as a result of documents that revealed misrepresentations by ICE and DHS in their communications regarding the policy on whether states and localities can opt-out or limit participation in Secure Communities, Representative Zoe Lofgren requested that the DHS Office of Inspector General (OIG) conduct an audit of the program. Although DHS OIG originally planned to begin its audit in 2012, the office ultimately began on July 11, 2011 due to the urgency and seriousness of the issues involved. The scope of the audit extends beyond the issue of

¹ *NDLON et al. v. ICE et al.*, 10-cv-3488 (SAS).

² Defendants include: DHS, ICE, FBI, Executive Office of Immigration Review, and Office of Legal Counsel.

misleading communications on the opt-out policy, to include the costs of and legal authority for the program, as well as whether it is meeting its stated goals.³

Since Secure Communities was first introduced in 2008, it has become the subject of widespread controversy. Secure Communities harnesses—and subverts—existing information sharing agreements between the FBI's Criminal Justice Information Services (CJIS) and the states. These agreements allow the fingerprints of some or all arrestees in a state to be submitted to the FBI for a criminal background check. Secure Communities takes the prints sent by states to the FBI for the purposes of checking an individual's criminal background and uses them to query DHS immigration databases. Interoperability between the FBI, DHS and the Department of State facilitates the transfer and "linking" of fingerprints between FBI and DHS databases.⁴ Based on the information in the databases, ICE conducts an immigration status determination. If ICE determines that the individual is suspected of immigration violations, it issues an immigration hold (detainer), which is a request that the local law enforcement agency facilitate an individual's transfer to ICE by notifying ICE of any scheduled release and detaining the individual for an additional 48 hours beyond the time he or she would otherwise be released. ICE holds are not the equivalent of criminal arrest warrants: neither probable cause nor other level of proof, nor review by a neutral magistrate is required to justify their issuance.⁵

As a result of ICE's rapid deployment of Secure Communities, state and local jails have become a primary gateway to deportation proceedings. But many states, cities, and counties have objected to this role. State and local officials across the country have asked to opt out of Secure Communities due to concerns about its effect on community policing and the burden it places on limited state and local resources.⁶ Many officials are also concerned that ICE misrepresented Secure Communities.⁷ Although ICE presented the program as one that would target serious convicted criminals, ICE's own data show that almost 60% of those deported through Secure

³ Letter from Inspector General Edwards to Congresswoman Lofgren, May 10, 2011, *available at* <http://ndlon.org/pdf/2011-05cadman.pdf>.

⁴ See DHS-FBI-DOS Memorandum of Agreement on Interoperability (2008), TAB A.

⁵ In fact, ICE holds are currently the subject of a federal lawsuit which alleges that detention pursuant to ICE holds violates the Fourth Amendment. See NIJC Sues Department of Homeland Security Over Key Component of Secure Communities Program (Aug. 12, 2011), *at* http://www.immigrantjustice.org/press_releases/detainers-lawsuit.

⁶ See, e.g., Letter from Mass. Gov. Patrick to Secure Communities Acting Assistant Director Marc Rapp, June 3 2011, *available at* <http://altopolimigra.com/2011/06/06/massachusetts-gov-patrick-letter-to-marc-rapp-icedhs-regarding-opt-out-of-s-comm/>; Letter from Illinois Gov. Quinn to Secure Communities Acting Assistant Director Marc Rapp, May 4, 2011, *available at* <http://crocodoc.com/JedzqSN>; Press Statement from New York Gov. Cuomo, Governor Cuomo Suspends Participation in Federal Secure Communities Program, June 1, 2011, *at* <http://www.governor.ny.gov/press/06012011FederalSecureCommunitiesProgram>.

⁷ See e.g., Letter from Congresswoman Zoe Lofgren to Inspector General Edwards, April 28, 2011, *at* <http://www.docstoc.com/docs/78191508/Lofgren-letter-to-DHS-IG>; Press Statement, Sen. Menendez in Support of Rep. Lofgren's Call for an Investigation into DHS's Implementation of Secure Communities Program, April 28, 2011, *at* <http://menendez.senate.gov/newsroom/press/release/?id=7948683e-ad67-4141-9d4b-e0fa98af4456>

Communities have never been convicted of a crime or have been convicted only of minor offenses, like traffic violations or shoplifting.⁸

A central concern about Secure Communities has been ICE's lack of transparency in its administration and deployment. As a result of the FOIA litigation, the public now has access to better documentation about ICE's role in developing Secure Communities. The FBI's role, however, has been subject to less scrutiny. The FOIA documents show that the FBI, as the essential intermediary between the states and ICE, played an integral role in Secure Communities in general, and in the controversial opt out issue in particular. The documents also shed light on following specific issues related to the FBI, which are important topics for a DOJ OIG review: (1) the FBI's role in the opt-out controversy, including failures in interagency communication and coordination that led to the confusion and the FBI's role in any misrepresentations or miscommunications to federal, state or local officials (2) the purported legal authority for the mandatory imposition of Secure Communities; (3) the relationship between Secure Communities and the FBI's "Next Generation Identification initiative;" (4) the privacy implications of Secure Communities; (5) Secure Communities' impact on racial profiling and community policing.

In the following sections, we address each of these issues, highlighting related key FOIA documents. The cited FOIA disclosures are enclosed in hard copy at tabs A-N. In addition, the *NDLON v. ICE* FOIA productions are enclosed on three DVDs for your consideration.

A. The Opt Out Controversy

A federal judge recently found that there is "ample evidence that ICE and DHS have gone out of their way to mislead the public about Secure Communities."⁹ A key point of deception concerned the ability of states and localities to "opt out" of Secure Communities. It is evident from the FOIA disclosures that the FBI may have participated in and, at minimum, was aware of this deception.¹⁰ The extent of the FBI's role in the deception is an urgent question for investigation.

Initially, ICE unambiguously presented Secure Communities as a voluntary program. In response to a Question on the Record from Congressman David Price, for example, an ICE official stated:

"ICE does not require any entity to participate in the information sharing technology at the state or local level."¹¹

That was consistent with what ICE told state and local officials. In a January 2009 letter to California officials about Secure Communities, then-Secure Communities Director David Venturella explained:

⁸ See Secure Communities Nationwide Interoperability Statistics through June 30, 2011, at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2011-to-date.pdf.

⁹ *NDLON et al. v. ICE et al.*, 10-cv-3488 (SAS), Opinion and Order, Jul. 11, 2011 at 32.

¹⁰ See FBI-SC-1311-1313 (discussing different meanings of opt-out and adopting misleading definition later used by ICE), **TAB B**; FBI SC 1726-27 ("[I]t amazes me that we were all in the same room and he thinks this message [about opt-out] is consistent"), **TAB C**.

¹¹ ICE FOIA 10-2674.0001832, **TAB D**.

Access to the Secure Communities program is predicated at the state level on a signed MOA between ICE and the State Identification Bureau (SIB) executive. Deployment at the county and local level requires a signed Statement of Intent (SOD) by participating agencies that oversee booking locations to ensure those agencies understand and adhere to the principles set forth in the MOA and a set of Standard Operation Procedures.

As early as mid-2009, ICE considered taking a somewhat different position internally. In an email, a Secure Communities official suggested that ICE's position would fluctuate according to the political climate: "The SC initiative will remain voluntary at both the State and Local level. Once activated, 30-days written notice will be required in order to suspend or terminate the information-sharing. *Until such time as localities begin to push back on participation, we will continue with this current line of thinking.*"¹²

However, publicly, ICE continued to represent Secure Communities as a voluntary program through the summer and fall 2010. As late as July 2010, a Secure Communities regional coordinator told officials in New York: "No jurisdiction will be activated if they oppose [Secure Communities.] There is no ambiguity on that point. We get it."¹³ And in September 2010, DHS Secretary Napolitano described to Congresswoman Lofgren the procedure for opting out.¹⁴

Shortly after Secretary Napolitano's letter to Congresswoman Lofgren, however, ICE reversed its position. ICE now claims that "Secure Communities is not voluntary and never has been."¹⁵ In response, Congresswoman Lofgren has accused ICE of lying to members of Congress as well as state and local officials.

More recently, following the decisions by Massachusetts, Illinois and New York to terminate participation in Secure Communities, ICE has taken the position that Secure Communities is not voluntary even on the state level.

FOIA documents obtained from the FBI have revealed for the first time that the *FBI* was deeply involved in the decision-making surrounding the opt-out issue. More investigation is needed to determine the full extent of the FBI's role. But we now know that in June 2009, the FBI CJIS Advisory Policy Board voted to recommend that the FBI change Secure Communities from a voluntary to a mandatory program at the local level by making the immigration checks automatic, regardless of the preference of the local law enforcement agency submitting the fingerprints.¹⁶ At this time, and over one year later, however, ICE was still representing the

¹² ICE FOIA 10-2674.001831, **TAB E**.

¹³ ICE FOIA 10-2674.0004685-0004689, **TAB F**.

¹⁴ See Letter from DHS Secretary Napolitano to Congresswoman Lofgren, Sept. 7, 2010, available at <http://crocodoc.com/yzmmKP>.

¹⁵ See Lee Romney and Paloma Esquivel, *Noncriminals swept up in federal deportation program*, L.A. Times, April 25, 2011.

¹⁶ FBI-SC-1312-1313, **TAB B**; FBI-SC-1336, **TAB G**. In supporting mandatory imposition of Secure Communities, the FBI was not driven by any legal mandate. In fact, the FBI considered making Secure Communities voluntary, showing that it viewed opt out as both a technologically possible and lawful option. FBI SC-1313, **TAB B**. The FBI chose to go the mandatory route not because of a statutory requirement, but for "record linking/maintenance purposes." *Id.* In making this key decision, the agency failed to weigh any of the considerations that have driven states and localities across the country to

program as voluntary. It is also clear that the FBI had a role in, knowingly or recklessly, adopting what later became ICE's misleading definition of opt-out.¹⁷ According to that definition, opting out means ceasing to receive information from ICE, while continuing to participate in the vastly more significant aspect of Secure Communities: sending fingerprints to DHS and then ICE and allowing ICE to follow-up with an enforcement action. Finally, the documents show that the FBI worked with ICE to develop aggressive strategies to force reluctant localities to participate in Secure Communities.¹⁸

We respectfully request that the OIG investigate whether, and to what extent, the FBI was complicit in making misleading and deceptive statements to local, state, and federal officials regarding the ability to opt out of Secure Communities. In order to understand the FBI's role, we suggest that the OIG examine the communications between FBI, ICE, and DHS officials in formulating Secure Communities' policies, with a particular focus on disagreements or miscommunications among the agencies. We also recommend that the OIG examine the FBI's communications with state and local law enforcement agencies, to determine whether the FBI's representations deviate from the agencies' internally agreed-upon policy.

B. Legal Authority to Mandate Participation in Secure Communities

The FBI has taken inconsistent positions on the question whether states have the authority to control the use of their own fingerprint data once they provide that data to the FBI. Questions regarding the source of the FBI's authority, if any, to impose Secure Communities on states and localities that do not want to participate require immediate investigation.

As FBI Assistant Director Dan Roberts recently explained:

My database is very rich with 70 million bad guys[.] . . . But we don't own those records. They're owned by the states, by the 18,000 law enforcement agencies across this country. They submit them to us and allow us to use them, we hold them and distribute them per their agreements with each of the states. And every state has a different law governing what records can be distributed and what they can be used for. The challenge is walking that line and making sure we're not violating any of the states' rights in addition [to] the federal laws that we have.¹⁹

Assistant Director Roberts' statement is consistent with the contractual nature of the relationship between states and CJIS, through which states generally agree to make their

withdraw from Secure Communities, including the program's impact on community policing, its association with an increased risk of racial profiling, and its failure to comply with its announced purpose of targeting dangerous criminals.

¹⁷ FBI-SC-1313 (providing that "the state can opt out of receiving the response"), **TAB B**.

¹⁸ FBI-SC-2258, **TAB H**; ICE FOIA 10-2674.0007590 (notes from a meeting reflecting FBI's role in strategy to address Cook County's request to opt-out), **TAB I**.

¹⁹ See DHS develops shared biometrics database with DOD, Homeland Security Newswire, March 8, 2011, available at <http://www.homelandsecuritynewswire.com/dhs-develops-shared-biometrics-database-dod>.

information available *except as restricted by state law*.²⁰ With respect to Secure Communities, however, the FBI has implied that it considers itself to be the sole owner and controller of fingerprint data submitted to it by the states. DHS has publicly taken the position that a state's termination of its participation in Secure Communities is ineffective, because once the FBI has the state's fingerprints, it will use them to query DHS databases without the states' consent.²¹ In acquiescing to this policy, the FBI is taking a position fundamentally at odds with the position that "we don't own those records. They're owned by the states[.]" Indeed, the FBI's own employees have expressed concern that users of the FBI databases would be surprised to learn that the FBI was using their data to perform searches that the users had neither requested nor authorized.²²

We request that the OIG investigate whether the FBI has exceeded the scope of its legal authority in using state-provided prints to run immigration background checks without the consent, and over the objection, of the state. We also request that the OIG investigate whether the FBI is authorized to maintain fingerprint data associated with minor misdemeanor arrests and use that data to perform immigration queries.²³

C. Privacy Concerns and the Next Generation Identification Initiative

The FOIA documents reveal that the FBI views Secure Communities as a key first step in the Next Generation Identification (NGI) Initiative.²⁴ The NGI Initiative aims to accumulate a massive database on biometric information to be used for both criminal and civil purposes. But the FOIA documents raise concerns that NGI in general, and Secure Communities in particular, may interfere with privacy rights. These concerns demand investigation.

The use of data provided for one purposes to serve another purpose raises serious privacy issues. The FBI itself has recognized these issues. In an October 2009 email, for example, a CJIS analyst expressed concern that, through Secure Communities, CJIS was running searches that had not been requested by the user, and that the user had received no notification or warning that such searches could be performed.²⁵ This situation appears to be fundamentally incompatible with the respect for local privacy regulations mandated by Homeland Security Directive 24 and the FBI's

²⁰ The CJIS Agreements, which were obtained through the FOIA litigation, are available online at <http://uncoverthetruth.org/wp-content/uploads/ICE-FOIA-Productions-State-Agreements.zip> and are also included on the enclosed DVD.

²¹ Elise Foley, *DHS Overrides State, Says Illinois Must Share Fingerprint Data for Deportations*, Huffington Post, May 6, 2011, available at http://www.huffingtonpost.com/2011/05/06/dhs-secure-communities-illinois_n_858528.html

²² See FBI-SC-1311-14 at 1312 (noting "concern . . . [that] the descriptions [of FBI databases] do not clarify that there are instances in which the FBI will search a repository not specifically requested by the end-user . . ."), TAB B.

²³ See 28 C.F.R. § 20.32 ("Criminal history record information maintained in the III System and the FIRS shall include serious and/or significant adult and juvenile offenses"); *id.* (providing that the FIRS specifically exclude information about "arrests and court actions concerning nonserious offenses, e.g., drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, non-specific charges of suspicion or investigation, and traffic violations . . .").

²⁴ See FBI-SC 2246-61, TAB J.

²⁵ FBI-SC-1311-14 at 1312, TAB B.

own regulations.²⁶ It is also incompatible with the original vision for NGI, since amended by the Advisory Policy Board, in which states would control which databases they queried.²⁷

Moreover, previous reports by your Office regarding the DHS databases involved in Secure Communities found that they are plagued with errors.²⁸ In fact, according to DHS officials, DHS's immigration "databases cannot be relied upon to accurately determine immigration status because immigration status is dynamic," and database entries may be outdated.²⁹ This raises concerns that citizens and lawful permanent residents may be wrongfully swept up into Secure Communities. It also raises concerns that errors in the DHS databases will be replicated in the FBI databases, undermining the accuracy and integrity of the FBI's information systems.

Finally, the process by which state and local agencies are approved to participate in Secure Communities raises concerns about whether unauthorized users may be accessing FBI and DHS data. Originally, ICE itself verified Originating Agency Identifiers ("ORIs") for each new jurisdiction enrolled in Secure Communities.³⁰ But in August 2010, the FBI appears to have changed its previous position, and agreed to rely on the already-existing CJIS ORI validation process as sufficient to validate ORIs for Secure Communities.³¹ More recently, ICE provided states with an even more drastically different ORI validation policy. It stated, "The federal government is changing the manner in which it activates Secure Communities. As a result of these changes, your state will eventually not need to validate an ORI number immediately prior to Secure Communities activation."³² It is unclear why the FBI changed its position, or what implication this change has for the security of the FBI and DHS databases involved in Secure Communities

²⁶ See DHS develops shared biometrics database with DOD, *supra* note 6 ("Homeland Security Presidential Directive 24 . . . mandates that all biometric data shared between government agencies must conform to local privacy laws"); 28 C.F.R. § 20.32 ("States and local governments will determine the purposes for which dissemination of criminal history record information is authorized by State law, executive order, local ordinance, court rule, decision or order.").

²⁷ FBI-SC-15143-15151, at FBI-SC-15144, **TAB K**.

²⁸ DOJ OIG, Follow-up Review of the Status of IDENT/IAFIS Integration, Report # 1-2005-001 at 41 (Dec. 2004).

²⁹ *Id.* The DOJ OIG has produced several reports on IDENT/IAFIS interoperability. However, the most recent such report was published over six years ago, in December 2004. A follow-up report assessing the accuracy and security of the databases involved in IDENT/IAFIS interoperability is urgently needed. Such a report would complement the Secure Communities investigation requested herein.

³⁰ See FBI-SC-1213-1222 at 1213, **TAB L** (providing that "FBI/CJIS will provide the ORIs to ICE for initial outreach")

³¹ See ICE FOIA 10-2674.0007537-0007541, **TAB M**.

³² Secure Communities, Frequently Asked Questions, Addendum to Governor Notifications, at 8, available at <http://uncoverthetruth.org/resources/government/ice-announces-it-will-cancel-agreements-with-states/>.

An immediate investigation of these privacy concerns is essential. As part of this investigation, the DOJ OIG should also investigate the controversy surrounding Secure Communities' role in the broader NGI Initiative.³³

D. Racial Profiling

Questions about racial profiling have been raised and investigated in jurisdictions with the Criminal Alien Program (CAP) and 287(g) agreements. CAP and 287(g) are similar in design to Secure Communities in that they also rely on encounters with local law enforcement officials to identify individuals to target for immigration enforcement.³⁴ The risk raised by CAP and 287g—and shared by Secure Communities—is that local law enforcement officers, aware that any arrest leads to an immigration background check, may engage in pre-textual encounters or arrests (where race, ethnicity, and national origin are the true reason for the stop or arrests but another reason is cited to justify stop or arrest) in order to verify their immigration status. In addition, concerns have been raised that Secure Communities exacerbates violations of the Fourteenth Amendments and Fourth Amendments by encouraging police to stop people of color without reasonable suspicion that a crime has been committed.

Jurisdictional data released as a result of the FOIA litigation has heightened concerns that that Secure Communities may be associated with racial profiling. The data show unexplained disparities in the rates of non-criminal deportations from jurisdiction to jurisdiction. Nationwide, 28% of all Secure Communities deportations involve non-criminals.³⁵ But in some jurisdictions, the rate of noncriminal deportations is much higher. For example, Jefferson Parish in Louisiana has a non-criminal deportation rate of 71%; Suffolk County in Massachusetts, and Miami-Dade County in Florida have non-criminal deportation rates of over 50%; and Wake County has a non-

³³ See Sunita Patel, Gitanjali Gutierrez, Travis Hall, "The FBI Gets 'Bigger, Better, Faster'—But Who Gets to Use It?," July 6, 2011, available at <http://my.firedoglake.com/sunitapatel/2011/07/06/the-fbi-gets-a-%E2%80%9Cbigger-better-faster%E2%80%9D-database-but-who-gets-to-use-it/>; Jennifer Lynch, Electronic Frontier Foundation, *The FBI's Next Generation Identification: Bigger and Faster but Much Worse for Privacy* (July 8, 2011), at <http://www.eff.org/deeplinks/2011/07/fbis-next-generation-identification-database>.

³⁴ The 287(g) program, which allows state and local agencies to enter into agreements with ICE to deputize their agents to enforce federal immigration law, has been the subject of scrutiny for lacking in controls and oversight to prevent civil rights violations by local officers. See e.g., DHS, OIG, *The Performance of 287(g) Agreements*, Mar. 2010; Government Accountability Office, *Better Controls Needed Over Program Authorizing State and Local Enforcement of Federal Immigration Laws*, Jan. 2009; ACLU of Georgia, *Terror and Isolation in Cobb County: How Unchecked Police Power under 287(g) has Torn Families Apart and Threatened Public Safety* (Oct. 2009). The Department of Justice Civil Rights Division is conducting an investigation of Sheriff Joe Arpaio of Maricopa County, Arizona for civil rights violations and abuse of power granted through a 287(g) agreement. ICE announced changes in an attempt to address the concerns in summer of 2009. See Migration Policy Institute, *Delegation and Divergence: A Study of 287(g) State and Local Enforcement*, 11, Jan. 2011. Advocates have dismissed the reforms as token and failing to address the underlying concerns. *Id.* at 32. Like 287(g), the Criminal Alien Program (CAP), another precursor jail enforcement program in which ICE CAP agents identify individuals suspected of being subject to deportation in local jails that often works in tandem with Secure Communities, has also been subject to criticism for causing racial profiling in the communities where it operates. Trevor Gardner II and Aarti Kohli, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program*, Warren Institute, Berkeley Law, Sept. 2009; Andrea Guttin, Esq., *The Criminal Alien Program: Immigration Enforcement in Travis County, Texas*, Immigration Policy Center, Feb. 2010.

³⁵ See Secure Communities Nationwide Interoperability Statistics through June 30, 2011, *supra* note 8.

criminal deportation rate of 38%.³⁶ These disparities raise serious concerns that local law enforcement in jurisdictions with high rates of non-criminal deportations may be engaging in pretextual arrests.³⁷

DOJ OIG should investigate the extent to which Secure Communities may be associated with racial profiling and other constitutional violations. DOJ OIG has a particular obligation to ensure that localities receiving federal funds, including Byrne Grants and Joint Terrorism Task Force Funding, are not engaging in race or national-origin discrimination in violation of Title VI, 42 U.S.C. § 2000d et seq, which prohibits programs and activities receiving federal financial assistance from engaging in discrimination on the basis of race, color, and national origin.

DOJ OIG should also investigate the extent to which the activation of Secure Communities in jurisdictions in which local law enforcement is under investigation by the DOJ for civil rights violations—including Maricopa County, Arizona, and New Orleans, Louisiana—may be exacerbating the civil rights violations DOJ seeks to prevent, and may be injecting local racial bias into federal immigration enforcement efforts. Other jurisdictions, such as New York and Philadelphia are subject to active class action litigation.³⁸ DOJ OIG should consider whether Secure Communities will have unwanted consequences in those jurisdictions as well.

E. Community Policing

Local law enforcement officials across the country have raised concerns that Secure Communities harms public safety.³⁹ By associating local police with immigration enforcement, Secure Communities may reduce trust between police and immigrant communities, making immigrants reluctant to report crimes or cooperate in investigations. Interference with the ability of local police to carry out their primary functions of fighting crime and preserving public safety is a serious matter. As courts have recognized, “the FBI’s function of maintaining and disseminating criminal identification records and files carries with it as a corollary the responsibility to discharge this function reliably and responsibly and without unnecessary harm to individuals whose rights have been invaded.”⁴⁰ DOJ OIG should investigate the extent to which Secure Communities is interfering with the FBI’s ability to reliably and responsibly discharge its information disseminating functions in a way that promotes, rather than interferes with, state and local crime fighting.

³⁶

Id.

³⁷

NDLON, CCR, Cardozo, *Briefing Guide to “Secure Communities” ICE’s Controversial Immigration Enforcement Program- New Statistics and Information Reveal Disturbing Trends and Leave Crucial Questions Unanswered*, Aug. 10, 2010, TAB N.

³⁸

See, e.g., Floyd v. City of New York, 10-cv-1034 (SAS), *Bailey v. City of Philadelphia*, 10-cv-5952 (SD).

³⁹

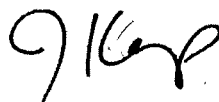
See, e.g., Sheriff Hennessey, Secure Communities Destroys Public Trust, San Francisco Chronicle, May 1 2011; Press Release: *Governor Cuomo Suspends Participation in Federal Secure Communities Program* (June 1, 2011) (quoting law enforcement officials concerned about Secure Communities’ impact).

⁴⁰

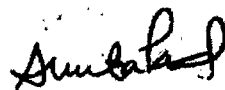
Menard v. Saxbe, 498 F.2d 1017 (D.C. Cir. 1974).

We hope that this letter and the enclosed information will prove useful. The FOIA lawsuit is ongoing and the agencies continue to produce records.⁴¹ Accordingly, we will continue to share potentially relevant documents as we receive them. In addition, we respectfully request a meeting with you to further discuss the information contained in the FOIA documents, the questions they raise about Secure Communities, and the urgent need for a DOJ OIG investigation into this controversial program. Please contact Jessica Karp of NDLO at jkarp@ndlon.org or (213) 380-2785 to arrange the meeting. We also encourage you to contact Ms. Karp at any time with questions or concerns about the records.

Sincerely,



Jessica Karp
Staff Attorney, NDLO



Sunita Patel
Staff Attorney, CCR



Bridget P. Kessler
Immigration Justice Clinic

Encl. TAB A-N – Select Key FOIA Disclosures (hard copy)

NDLO v. ICE FOIA Disclosures (3 Disks):

***NDLO v. ICE* FOIA Disclosures - Disk 1**

- ICE Bates #s ICE-FOIA-2674.0000001-ICE FOIA 2674.0014124
- DHS Bates #s DHS.000001-DHS.000195
- FBI Bates #s SC.51- SC.2966

⁴¹ For example, on July 11, 2011, the court ordered re-production of certain previously redacted documents or portions of documents. *NDLO et al. v. ICE et al.*, 10-cv-3488 (SAS), Opinion and Order, Jul. 11, 2011 (granting partial summary judgment to plaintiffs and ordering defendants to release redacted portions of certain documents from the opt-out production by August 1, 2011).

- EOIR Bates #s EOIR.00001-EOIR.00027
- DHS-DOS-DOJ Interoperability Agreement ICE-FOIA-2674.0001718-ICE FOIA 2674.0001736

NDLON v. ICE FOIA Disclosures – Disk 2

- ICE Bates #s ICE FOIA 2674.0014124- ICE FOIA 2674.0016138
- DHS Bates #s DHS.000318-DHS.000648
- FBI Bates #s 03320-252316; FPL-1-FPL-47

NDLON v. ICE FOIA Disclosures – Disk 3⁴²

- Opt-Out Production by State: Colorado, Florida, Illinois, Maryland, Massachusetts, Minnesota, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Texas, Virginia, Washington, Washington D.C., Wisconsin.
- Next Generation Identification (NGI) Documents
- FBI CJIS Agreements with all states and territories

⁴² Note that the documents on Disk 3 are the same as those included on Disk 1 and Disk 2, but organized by topic to facilitate review.