

Center for Constitutional Rights

Discrimination, Detention, and Deportation: Immigration & Refugees

<https://ccrjustice.org/home/what-we-do/our-cases/national-day-laborer-organizing-network-ndlon-v-us-immigration-and-customs>

Policy Issue Resources

On July 3, 2013, the parties reached settlement and the Judge issued a Stipulation and Order regarding all outstanding issues concerning attorneys' fees.

Cardozo Law School Immigration Justice Clinic, Mayer Brown LLP

National Day Laborer Organizing Network

National Day Laborer Organizing Network (NDLON) v. U.S. Immigration and Customs Enforcement Agency (ICE) was a Freedom of Information (FOIA) lawsuit that forced the U.S. government to release documents about the origins and implementation of the controversial Secure Communities (SCOMM) deportation and fingerprinting program. The disclosed information was used to support NDLON's campaign to stop the expansion of the program and lobby for its termination as part of comprehensive immigration reform. The case is part of CCR's long-held commitment to use litigation to support, publicize, and advance struggles for human rights and social justice.

SCOMM began as a pilot program under President George W. Bush, but was vastly expanded by President Obama, over the protests of local and state leaders, contributing to his administration's record-setting deportation numbers. The program instituted a mechanism to run fingerprints through various databases so that anyone booked into a local jail, regardless of how minor the charges or even if no charges were pressed at all, had their immigration status checked. These checks were performed on presumptively innocent arrestees prior to any conviction. Although Immigration and Customs Enforcement (ICE) presented SCOMM as an innocuous information sharing program, documents uncovered over the course of the litigation revealed the program's true objectives: to funnel even more people into a quota-driven immigration detention and removal system, and center local law enforcement in the government's dragnet deportation scheme. Disclosed documents also showed that SCOMM was a key component of the FBI's ever-expanding Next Generation Identification (NGI) system, which collects and stores personal biometric information on citizens and non-citizens alike. This bio-data includes fingerprints, DNA, a person's gait and iris scans, facial measurements, and voice recognition.

Revelations from the litigation combined with NDLON's grassroots organizing galvanized local communities and prompted several governors to publicly seek to opt their states out of the program. In response, the Obama administration reversed its original position that SCOMM was voluntary, and announced that the program was mandatory for all jurisdictions as part of the FBI's broader "Next Generation Identification" data-sharing program.

While President Obama insisted that SCOMM targeted "criminals," internal government records showed otherwise.

The case was settled on July 3, 2013, with the U.S. government agreeing to disclose new data about ICE's use of immigration detainees. Also known as ICE holds, these detainees seek to hold an individual detained after they are eligible for release, in order to provide immigration agents with time to decide whether to begin a deportation proceeding. Under the agreement, the government was also required to provide records on the contemplated expansion of local law enforcement officials' power to access federal immigration databases through mobile devices. The case also marked a major victory for open government, setting important precedent on the government's obligations under the Freedom of Information Act (FOIA) to provide electronic records.

On November 21, 2014, after six years in operation and in response to mounting public pressure, the Obama administration ended SCOMM.

Selected FBI-related FOIA documents released.

On October 24, 2011, the Judge granted summary judgment for Plaintiffs and ordered the Government to release the majority of an ICE October 2, 2010 legal memorandum to plaintiffs unredacted by November 1, 2011.

On October 28, 2011, the Judge issued an additional order granting the government a Stay on releasing the October 2nd memorandum until November 14, 2011.

Defendants' Motion for Summary Judgment on Exemption (b)(5) and Plaintiffs' Cross-motion for Summary Judgment

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After Defendants filed their motion for summary judgment, Plaintiffs filed a cross-motion for summary judgment regarding the

inapplicability of exemption (b)(5) to withheld information in the ICE October 2nd Memorandum.

Plaintiffs requested the Court change its factual finding of the date Defendants stated the Secure Communities program was "voluntary," and asked the Court to order the release of any additional documents if Plaintiffs motion was granted.

On July 12, 2011, the Judge issued a stipulation and order regarding the "Final Production List," as agreed to by parties, which sets up where and which custodians the defendant agencies will search for the remaining documents in the FOIA request. On July 29, 2011, the Judge issued a scheduling order for the "Final Production List."

On July 11, 2011, the Judge issued an opinion and order regarding the "opt-out" documents and the exemptions claimed by the government, and specifically focused on those documents she reviewed in-camera. She ordered the government to reproduce certain documents unredacted, while upholding the government's redactions in others.

District Court Order and Supplemental Order regarding "metadata" and format of production by defendants.

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District Court Judge Shira Scheindlin issued an Order and Supplemental Order regarding "metadata" and format of production by defendants.

Defendants' file partial motion for summary judgment on the issue of exemptions

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The government filed for Partial Summary Judgment on the issue of exemptions taken in the January production of opt-out records. The plaintiffs filed a cross-motion opposing the government, and additionally asked for Partial Summary Judgment against the government, on February 9, 2011.

On January 26, 2011, the government filed for Partial Summary Judgment on the issue of "search cut-off dates" in regards to the FOIA request. The plaintiffs filed a cross-motion opposing the government, and additionally asking for Partial Summary Judgment against the government, on February 9, 2011.

The government produced over 15,000 opt-out related documents on January 17, 2011.

On February 17, 2011 Plaintiffs released a selection of the documents along with a briefing guide describing the deception and confusion from ICE concerning whether local jurisdictions could opt out of Secure Communities.

Additional documents were produced by the agencies on February 25, 2011.

In a hearing on December 9, 2010, Judge Schiendlin set January 17, 2011 as the new date for defendants to release the documents or explain why they must be withheld. She also set February 25, 2011 as the deadline for ICE to release a second set of documents related to other topics in the records request, noting several times that if defendants fail to produce documents they may face sanctions.

On December 17, 2010 the Judge issued a scheduling Order regarding the productions.

The complaint named federal agencies Department of Homeland Security, Immigration Enforcement and Customs, Federal Bureau of Investigations, Executive Office for Immigration Review and Office of Legal Counsel as defendants.

The date of the filing also marked the beginning of a nationwide week of actions coordinated by NDLOJ to begin their "Uncover the Truth" campaign, and the launch of a national website, <http://uncoverthetruth.org>.

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