

13vWndlC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 NATIONAL DAY LABORER ORGANIZING
4 NETWORK, CENTER FOR CONSTITUTIONAL
5 RIGHTS, and IMMIGRATION JUSTICE
6 CLINIC OF THE BENJAMIN N. CARDOZO
7 SCHOOL OF LAW,

8 Plaintiffs,

9 v.

10 CV 3488 (SAS)

11 UNITED STATES IMMIGRATION AND
12 CUSTOMS ENFORCEMENT AGENCY,
13 UNITED STATES DEPARTMENT OF
14 HOMELAND SECURITY, EXECUTIVE
15 OFFICE FOR IMMIGRATION REVIEW,
16 FEDERAL BUREAU OF
17 INVESTIGATION, and OFFICE OF
18 LEGAL COUNSEL,

19 Defendants.

20 New York, N.Y.
21 March 31, 2011
22 2:45 p.m.

23 Before:

24 HON. SHIRA A. SCHEINDLIN,

25 District Judge

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APPEARANCES

MAYER BROWN LLP
Attorneys for Plaintiffs
BY: ANTHONY J. DIANA
LISA R. PLUSH
-and-
CARDOZO IMMIGRATION JUSTICE CLINIC
BY: BRIDGET KESSLER
PETER MARKOWITZ

U.S. DEPARTMENT OF JUSTICE
U.S. ATTORNEY'S OFFICE
SOUTHERN DISTRICT OF NEW YORK
Attorneys for Defendants
BY: JOSEPH N. CORDARO
CHRISTOPHER CONNOLLY
CHRISTOPHER B. HARWOOD

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1 (Case called)

2 THE COURT: Please be seated. Good afternoon,
3 Ms. Kessler.

4 Are you Mr. Markowitz?

5 MR. MARKOWITZ: I am.

6 THE COURT: Mr. Diana, Ms. Plush, good afternoon.
7 Mr. Cordaro.

8 MR. CORDARO: Good afternoon, your Honor.

9 THE COURT: Mr. Connolly, Mr. Harwood, good afternoon.
10 Are we here for a report, an update?

11 MS. KESSLER: Yes, your Honor.

12 THE COURT: Okay.

13 MS. KESSLER: So we're happy to report that the
14 parties have agreed on all essential terms to the stipulation
15 about the sampling of individual records. We're still working
16 out some details. In the last few days, one significant issue
17 arose, and we've been able to resolve that issue with respect
18 to one of the agencies and are still working it out and hope to
19 come to a similar resolution with the other three agencies.
20 But we'd ask the Court today to order a date for submission of
21 the stipulation sometime next week, probably Thursday. And we
22 apologize for coming here today, taking the Court's time, but
23 we are assured that this resolution might not have happened
24 were we not to have this court date on the calendar.

25 THE COURT: Actually, you didn't take my time. I took

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1 yours. I'm at least 20 minutes late for this conference. But,
2 in any event, what's the government's view on that request?

3 MR. CORDARO: Your Honor, Joseph Cordaro for the
4 government.

5 We obviously agree with that request. We think that's
6 a good idea, and I just want to say from the government's
7 standpoint, we're hopeful that the negotiations that have led
8 us to at least this point today are the first step in a larger
9 process that hopefully will reach some global settlement of
10 this case down the road. We understand there's still a
11 significant issue hanging out there that's now with the Court
12 of Appeals. But putting that aside, there's still a lot of
13 FOIA requests. These negotiations pertain to one section of
14 that request.

15 There are still several other sections with a lot of
16 material out there. We're just hoping this is one step within
17 a bigger process, and I know your Honor has suggested in the
18 past that perhaps if we needed to request either your Honor or
19 a magistrate judge to help us out with that process, you would
20 be willing to entertain that request, and I just want to say
21 that from the government's standpoint, that is something we
22 definitely would be interested in, too. But that having been
23 said, we agree with plaintiffs' request that we set a date next
24 week.

25 THE COURT: All right.

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1 MS. KESSLER: And, your Honor, if you don't mind, I'd
2 also just like to put on the record the general terms of the
3 stipulation.

4 Essentially, the plaintiffs have agreed in principle
5 to relieve I.C.E. of all obligation to produce records in
6 response to Section 3 of the second revised FOIA request. In
7 exchange, the defendants have agreed to produce spread sheets
8 containing data for a national sample of individuals, subject
9 to secure communities and the criminal alien program, CAP, and
10 they will produce that national sample by April 30.

11 They will also for that sample produce accompanying
12 form I213s, and the date for the production of those I213s is
13 still being worked out.

14 Defendants have also agreed to produce aggregate
15 national data related to secure communities and CAP by April
16 30, and defendants have also agreed to produce five local
17 samples for individuals --

18 THE COURT: You mean five localities? When you say
19 local, you don't mean New York. You mean five chosen
20 localities.

21 MS. KESSLER: Five chosen localities, samples of
22 individuals identified by S Com and CAP in five localities and
23 those spread sheets are set to be produced by June 15. There
24 will be I213s, accompanying I213s produced for those samples
25 and the date for the production of those forms is still yet to

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1 be determined.

2 Finally, I.C.E. has agreed not to seek fees for any
3 searches or productions related to the stipulation or any
4 searches or productions occurring prior to the date of the
5 signing of the stipulation.

6 THE COURT: Okay.

7 MS. KESSLER: Thank you.

8 THE COURT: Anything you want to add?

9 MR. CORDARO: May I have one second, your Honor.

10 THE COURT: Sure.

11 MR. CORDARO: I'm sorry. Thank you, your Honor.

12 I just want to emphasize at this point obviously this
13 is not final. We're coming back to the Court next week.

14 THE COURT: I didn't appreciate that. What
15 Ms. Kessler said is she wanted me to set a date by which the
16 stipulation had to be submitted. I can't actually set a date
17 for coming back because I'm going to be out of town Wednesday,
18 Thursday, and Friday, so if you want to see the Court, either
19 it would have to be Monday or Tuesday or the week after.

20 MR. CORDARO: I'm sorry. That was some careless
21 wording on my part. I think the idea was we would have a date
22 certain where we would submit a final stipulation to the Court.

23 THE COURT: Thursday was suggested, Thursday it is, by
24 April 7 to submit something to the Court. But if you want a
25 court date, as I said, it has to be the next week. We have no

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1 court date set now for anything else. Okay? That's fine?

2 Nobody needs a court date set.

3 MR. CORDARO: Thank you, your Honor.

4 THE COURT: When is the briefing going to wrap up on
5 the stay application?

6 MR. CORDARO: The government's reply brief is due on
7 April 11. The plaintiff submitted their opposition yesterday.

8 THE COURT: Then is there any need for a hearing?
9 There was talk about experts.

10 MR. DIANA: We submitted --

11 THE COURT: I haven't looked.

12 MR. DIANA: We have two whether you call them experts
13 or not, but one from Strauss Friedberg, which is an e-discovery
14 firm, as well as Patrick Garby, an e-discovery specialist.

15 THE COURT: Who? I'm sorry?

16 MR. DIANA: Patrick Garby. He's an e-discovery
17 specialist at Mayer Brown.

18 Both of them submitted declarations detailing
19 different aspects of the briefing. So I think as we discussed
20 before, I think it would be helpful to have an evidentiary
21 hearing, if you have any questions that you can direct
22 specifically to them. Obviously there's a lot of information
23 put in their declarations and the briefs, so I think we would
24 prefer to have an evidentiary hearing.

25 THE COURT: Or at least an oral argument.

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1 MR. DIANA: Or at least an oral argument. We would
2 prefer that, but obviously we defer to the Court.

3 THE COURT: I don't think anybody has standing to
4 oppose an oral argument. A hearing is different. But an
5 argument, if a judge wants oral argument, we have oral
6 argument.

7 Your papers come in April 11?

8 MR. CORDARO: Yes, your Honor.

9 THE COURT: An argument might be helpful.

10 What's your view on an evidentiary hearing,
11 Mr. Cordaro?

12 MR. CORDARO: The government thinks that it's not
13 necessary for the context of a motion to stay pending appeal.
14 Obviously if the Court orders oral argument --

15 THE COURT: Oral argument is obviously a different
16 thing. I'm thinking Thursday, April 21, I could have an oral
17 argument at 11. Is that all right?

18 MR. DIANA: Fine for plaintiffs.

19 THE COURT: I'm sorry. I would do it earlier, but the
20 week is cut up with holidays. Somebody's are at the beginning.
21 Somebody's are at the end. Everybody's got a holiday that
22 week. That's sort of a day when nobody does, April 21.

23 MR. CORDARO: That date and time is fine for the
24 government.

25 THE COURT: I'll call it an oral argument. If after I

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1 review the submissions I think there's a need for an
2 evidentiary hearing so I can pose questions of consultants or
3 experts, I'll order it. But right now it's just an argument.
4 11 a.m.

5 Thank you. Anything further from the lawyers?

6 MS. KESSLER: No. Thank you, your Honor.

7 THE COURT: Thank you.

8 (Proceedings adjourned)

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