

**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,**

Plaintiffs,

- against -

**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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DOCUMENT	
ELECTRONICALLY FILED	
DOC #:	
DATE FILED:	10/28/11

ORDER

10 Civ. 3488 (SAS)

SHIRA A. SCHEINDLIN, U.S.D.J.:

On October 24, 2011, in an Opinion and Order granting plaintiffs' motion for summary judgment and denying defendants' motion for summary judgment, I ordered the United States Immigration and Customs Enforcement Agency ("ICE") to release a memorandum dated October 2, 2010. Plaintiffs sought production of that document under the Freedom of Information Act ("FOIA") and I held that defendants had failed to establish that the memorandum

was exempt from disclosure. I ordered defendants to release it, with some redactions, by November 1, 2011.

Defendants have sixty days from the date of entry of the order to file a notice of appeal.¹ Defendants have requested that I stay the disclosure order until November 23, 2011 in order to give the Solicitor General's office time to decide whether to appeal, and they explain that the November 1 date coincides with argument preparation and arguments before the Supreme Court involving that office. The government points out in its letter dated October 27, 2011 that its institutional decision-making practices necessitate additional time to decide whether or not to file an appeal, and that this necessity is reflected in the federal rules and the Advisory Committee Notes that accompany them.

Plaintiffs propose an interim stay until November 4, 2011, and oppose defendants' request for a stay until November 23, 2011. They argue that the public urgently needs the legal memorandum to inform ongoing and time-sensitive state-federal disputes and that a one month stay in order to decide whether to appeal an order to disclose one document is unjustified. Plaintiffs point out that the parties have engaged in letter briefing and two rounds of full summary judgment briefing about this precise document, and that the Solicitor General's office has had ample

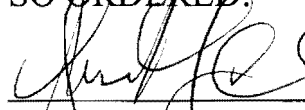
¹ See Fed. R. App. P. 4(a)(1)(B).

opportunity to review the document at issue and the legal questions presented.

Plaintiffs also point out that this document should have been released to the public in January, 2011.

Balancing the defendants' need for sufficient time to make a decision with the public's right to the document and this Court's interest in moving litigation forward expeditiously, I will stay my order until November 14, 2011. This provides defendants with three weeks from the date of the order to decide whether or not to appeal. If defendants decide to appeal, then any motion they wish to file requesting a stay pending that appeal shall also be due by November 14, 2011. Plaintiffs' opposition shall be due by November 18, 2011 and defendants' reply shall be due by November 21, 2011.

SO ORDERED:



Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
October 28, 2011

- Appearances -

For Plaintiffs:

Sonia R. Lin, Esq.
Peter L. Markowitz, Esq.
Immigration Justice Clinic
Benjamin N. Cardozo School of Law
55 Fifth Ave., Rm 1154
New York, New York 10003
(212) 790-0213

Anthony J. Diana, Esq.
Jeremy D. Schildcrout, Esq.
Mayer Brown LLP
1675 Broadway
New York, New York 10019
(212) 506-2500

Sunita Patel, Esq.
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, New York 10012
(212) 614-6439

For Defendants:

Joseph N. Cordaro
Christopher Connolly
Christopher B. Harwood
Assistant U.S. Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10004
(212) 637-2745/2761