W.D. CADMAN

[redacted]

Monday, May 09, 2011

The Honorable Zoe Lofgren
Member of Congress
635 North 1st Street
Suite B
San Jose, CA 95112

RE: Letter dated April 29, 2011 from ICE Director John Morton regarding confusion over the Secure Communities program.

Dear Congresswoman Lofgren:

(I am sending this letter, with enclosure, to your district office address because I attempted to relay them via email without success, and because sending them to your Washington, DC office would lead to significant delays in receipt as indicated on your website.)

I have recently been made aware of the referenced letter from John Morton to you, regarding confusion over "opting out" of the Secure Communities program.

I believe key elements in the ICE correspondence are inaccurate and misleading. For this reason, I am sharing with you, as an enclosure, a letter that I wrote to Marc Rapp, the acting assistant director in charge of Secure Communities, on April 12, to state the facts for the record, which are at significant variance with what you have been told.[1]

In his letter to you, Mr. Morton suggests the confusion over opting out program was because of "unauthorized" statements made by the "terminated contractor" mentioned in the letter (me). Mr. Morton would have you believe that the government never indicated that the program was voluntary, and this impression only gained currency because of me. That is ironic and untrue.

---

[1] You will note that the letter from me to Mr. Rapp refers to, and contains in the original, a number of attachments. I have not provided you with those because of a confidentiality agreement I signed with the prime contractor when beginning work as a subcontract employee for Secure Communities. While I am not persuaded that those attachments are subject to the agreement – particularly when communicating with a member of congress – I am exercising caution in trying to balance what I perceive of as my legal and ethical obligations to all parties. But, as you will see in my letter to Mr. Rapp, those key attachments are saved and memorialized in a Secure Communities shared intranet site. I trust that you will be able to obtain them directly from ICE should you wish.

For instance, I was interested to read Mr. Morton's assertion that federal law authorizes and directs sharing of information from the FBI database for immigration enforcement purposes. You will see in my letter that I proposed that ICE take that position in 2009 and was soundly rebuffed. Because I was a contractor and the government rightly had the final word on the position of the agency, I advocated their position even though I didn't agree with it. Now that their position has changed, I find myself castigated publicly and privately by ICE at every opportunity.

It comes down to this: ICE painted itself into a corner and needed someone to blame. While my views over the nature of voluntary participation in the program may not accord with yours, I think you will agree after reading my letter that confusion over opting out of Secure Communities has arisen not because of me, but because of the government's own vacillation, policy shifts and inconsistent public stances.

Sincerely
Dan Cadman

Enclosure

April 12, 2011

Mr. Marc Rapp
Acting Assistant Director
Secure Communities Program Management Office
Immigration & Customs Enforcement
5th Floor, 500 12th Street, SW
Washington, DC 20036

Marc,

It has taken me several days to regain my equilibrium after the abrupt termination of my contract with Secure Communities (SC) in the late afternoon of Friday, March 25 and the subsequent New York Times article on the following Sunday.

When the contract project leader and his deputy called to give me the news at about 330 pm on that Friday, they told me [redacted] wanted them to relay the message that it was "nothing personal, we still love you; it's just business."

I appreciate the sentiment, but what happened *was* personal and it was intended to be so -- DHS and ICE chose to play hardball with my job and my reputation because they felt politically exposed and embarrassed by the questions that arose about Rahm Emmanuel's involvement (or lack thereof) in attempting to persuade Chicago and Cook County to participate in interoperability. They wanted to distance themselves from me. The clear implication made by Brian Hale on behalf of the government in the article was that I was some kind of rogue contractor. That is far from the truth, as you well know.

I've given some thought to all that has happened, and am unwilling to leave that impression uncorrected. For much of the time that I was employed under subcontract, I was not in fact a regional coordinator; I will speak to my accomplishments as a regional coordinator later. But regarding my role as the contract employee who drafted certain documents which later became controversial as the result of release in response to a Freedom of Information Act (FOIA) suit, here are the facts.

1. <u>Pre-Coordinator Contract Work, Secure Communities.</u>

My contract work with Secure Communities began in late December 2008, as a subject matter expert providing advice to contract staff on ICE matters as they related to Secure Communities. During the preliminary months, I assisted them with generally becoming knowledgeable on removals, detention, the interface of immigration enforcement with the criminal justice system, etc., so that they could better serve you, their client. In addition, I drafted a number of white papers on matters that I believed would have an impact on the long-term success of SC: at-large criminal aliens; illegal aliens who would be no-matches in the IDENT system, etc.

Opting Out. In August of 2009, I was asked by [redacted] (Deployment Team contract manager) and [redacted] (then a regional coordinator but also my subcontract boss) to look into the issue of whether a jurisdiction could opt out. Pursuant to their request, I drafted and submitted a white paper indicating my belief that, as a legal proposition, they could not. That paper was provided to other members of SC, both government and contract, as the issue had become volatile in light of events in San Francisco and in Chicago / Cook County ***[Exhibit "A"].*** I was later advised that the recommendations and views it contained would not be adopted, because ICE had already provided a formal response to a Congressional Question for the Record (QFR) prepared by then-SC Chief of Staff Rachel Canty, indicating that participation was voluntary ***[Exhibit"B"].***[1]

As an outcome of that meeting , however, I was asked to prepare for you alternative recommendations as to how to address the question of opting out in politically sensitive locations. In September 2009, I prepared a generic document to that effect, suggesting that a possible reconciliation existed between the QFR and the need to preclude a jurisdiction from opting out: that reconciliation was to adopt the stance that "opting out" did not mean refusing to participate in interoperability; it meant only that an LEA could choose not to receive the IDENT "second message" via the SIB ***[Exhibit "C"].***[2] That same month I traveled to ICE HQ and met with you and the contract project manager. During the meeting I again stated my belief that the law was on the federal government's side, and that jurisdictions could be prevented from opting out. You indicated that view was not on the table. I then presented my alternative

---

[1] It seems clear, at least to me, that the primary reason ICE was unwilling to "walk back" this response was political in nature (like so much that has afflicted this program): it had been made to David Price, then-Chairman of a powerful Congressional committee with DHS oversight responsibilities. Of course, with the change of majority parties in the House and Mr. Price's replacement as chairman, at least some of those political considerations have changed, as is evident by what followed. See the next paragraph in the body of this paper.

[2] I have provided only a few exhibits as attachments (which nonetheless have made it lengthy). However everything I assert is documented as a part of the comprehensive response I provided to the FOIA Office search request of some months ago. They can be found on the SC Sharepoint site / FOIA subsection. Parenthetically, although my knowledge is imperfect, I will admit to being puzzled as to which items of mine the FOIA Office elected to provide versus those they withheld; and, additionally, to the fact that some were provided in a redacted fashion that makes the author unclear, whereas in other instances, ICE has chosen to identify me as the author. In some articles, journalists quote redacted emails and documents of mine in which I am not identified, against documents in which I am identified, as if to illustrate how in error I was. This would be downright amusing, if the subject matter were not so serious. The difference of course is between positions I took internally when providing my views, and those I put forward for the program consistent with its public posture. But a cynic might conclude that the intent was to deliberately obfuscate what positions I took, when, and for what purpose. For instance, nowhere do I find myself credited for suggesting that "opting out" might be construed only to mean not receiving a second message. The only things ICE is apparently willing to credit to me at this point are those which they wish to use to imply I was a rogue without adequate supervision.

suggestion that ICE adopt a narrow definition of opting out. That too was rejected.[3] I left the meeting with a request to prepare site-specific mitigation strategies for the following specific locations:

- San Francisco
- Chicago
- New York City

Faced with rejection of my initial two suggestions – first, to exercise the prerogatives of the law; or, second, to narrowly construe the meaning of "opting out," I was left with only one possibility that I could see, to offer political solutions to what were fundamentally political problems posed by the elected leaders in the jurisdictions mentioned above. In the end, though, I took two tacks in the documents which I submitted to the government: on the strategic level, I suggested that ICE and DHS acknowledge the fundamental problem as being political in nature, and ask select members of the Administration or Congress to meet with local political leaders who appeared to be spearheading the impediments to activation in order to arrive at resolution; on the tactical level, I suggested that SC move forward aggressively with activation in the states where these jurisdictions existed so that the effects of their non-participation could be mitigated and perhaps overcome.

In the following months, I prepared several draft versions which went back-and-forth among contract and government staff for review and consideration. I provided my final-drafts through the SC contract project managers in December 2009. When it appeared that these products had not reached the client, I retransmitted them directly to government staff in late January / early February 2010.

The final drafts were clearly endorsed by me as both "Draft" and "Pre-Decisional-Deliberative / FOIA Exempt." I did this because, contrary to the depiction of me as a rogue or out-of-control, I recognized the sensitivity of the materials, and the fact that the final decisions were not mine or any contractor's to make – they were solely and entirely in the purview of the government to make, and that because the documents were not final, they needed to be debated and deliberated with the freedom of expression they deserved.

Once they reached your good offices, I cannot say what happened, or whether they in fact ever received consideration, dialogue or debate as to the strategic political suggestions. I know that the tactical recommendations were adopted, because as a regional coordinator, I participated in putting them into play.

I still cannot for the life of me determine why – somewhere between a year and fifteen months after they had been prepared and submitted as draft documents – the ICE FOIA Office decided

[3] It is ironic that this alternative has since become the public stance of ICE and DHS, both having realized that no other proposition would further their interest in ensuring implementation of interoperability, but recognizing too late that they were boxed in by the previously-submitted QFR.

that they did not merit protection from disclosure, given the chilling effect that such a disclosure would (and did) have. If government officers do not feel the freedom to explore all options in an atmosphere of open dialogue, then their decisions will inevitably be made not on the basis of what is best, but only what is expedient or safe for their careers. But we are clearly well past that point to the detriment, I think, of your program.

Now I wish to speak for a moment to my work as a contract regional coordinator.

2. <u>Regional Coordinator, Secure Communities.</u>

When in late March / early April of 2010 [redacted], one of the four regional coordinators, provided notice that he intended to take another position, I was approached by [redacted] on behalf of the contractor and the government, and asked if I would step into his role. I agreed. A few weeks later [redacted], another coordinator, served notice of his departure and I was asked to additionally take on [redacted]'s area of control. I expressed concern over the geographic span but was assured that if I found it burdensome, the work would be redistributed.

At that point I found myself responsible for 30 of the 50 states, plus Puerto Rico and the U.S. Virgin Islands – *more than double the area of control of the remaining two coordinators combined.* What is more, I assumed responsibility for many troubling (not to say troublesome) states, including Illinois, Massachusetts, Pennsylvania and New York.

In late September I received modest relief from the burden of my load: at that point, [redacted] agreed to take responsibility for the New Orleans Field Office AOR, thus reducing my responsibility from 30 states, down to 25 plus P.R. and U.S.V.I., still double that of the other two regional coordinators. It was only in mid-January of 2011, after 10 months of extraordinary work and efforts, when [redacted] was hired as a fourth contract regional coordinator, that my workload was reduced to normal.

During the many months I carried a double workload I did not complain, but stepped into the task determined to try and make a difference on behalf of the program, and over the course of time I believe that I did. Here are some of my accomplishments:

<u>State Signatures on Memoranda of Agreement</u>. By way of example, I personally negotiated with the state identification bureaus of three states which had previously steadfastly declined to sign the Memorandum of Agreement -- Indiana, Kansas and Wisconsin[4] -- and did ultimately obtain their signatures on the MOA. I was successful through perseverance, a substantial investment of time, and a willingness to listen to and work through their questions, difficulties and objections. All during these discussions and negotiations, I don't recall anyone from the government or the contract team expressing concern that I was overstepping my bounds. But those weren't my only achievements.

[4] The MOA with Rhode Island was also signed during my tenure as regional coordinator, but I cannot in good conscience, and do not, claim credit for that success as it belongs to Mr. Archibeque and others.

Statewide Activations. During my tenure as a regional coordinator *carrying a double load*, I also accomplished several statewide activations: West Virginia, Wisconsin, and Rhode Island. What is more, I was the individual who wrote the plans which Secure Communities adopted, and the other regional (and field) coordinators used, to achieve statewide activations in Texas and North Carolina.

Politically Sensitive States. All while I was undertaking the above tasks, I was also working as best I could on behalf of the government and the contractor to try to keep forward momentum in difficult states, primarily but not exclusively Illinois and New York.

- New York: In New York, as you will recall, after signing of the MOA in May 2010, the state came under pressure from special interest groups to withdraw. By July, former Governor Patterson was giving this serious consideration. I know this because one afternoon (ironically, while I was on travel in Illinois doing law enforcement outreaches) I received a panic call from Joe Morrissey, Deputy Commissioner of New York DCJS. Joe told me he had made several unreturned telephone calls to you, to Vince Archibeque, to Randi Greenberg and others at SC. He had wanted to impart the news that there was to be a meeting between his boss, the Governor, and other senior officials to discuss the MOA – they (he and Sean Byrne, his boss the Commissioner) were concerned that, absent something in writing they could carry to the governor documenting previous verbal assurances SC leaders had made to them that no jurisdiction in New York would be activated absent the approval of the involved LEAs, the Governor would in fact terminate the MOA.

  It was that circumstance which led me to send Joe the email which Byrne later provided in un-redacted form to NGOs and the media that got quoted in the New York Times months later. Unfortunately, by the time the email was made public, SC, ICE and the Department had started to shift their stance on what participation in SC meant, and so I drew heat then because of the release, even though what I articulated to the state in the email was perfectly accurate and reflective of the status quo. I am convinced that the email saved for SC New York State's participation in interoperability; that is why the only thing that the state ultimately demanded was a minor, face-saving rewrite of the MOA. And that is why the road was paved to activate so many New York jurisdictions – painstakingly, one LEA at a time, and at the expense of hundreds of hours of effort, as I and the field coordinators can attest – during my tenure as regional coordinator.

- Illinois: When I inherited this state from [redacted], Chicago and Cook County had already gone on record that they did not wish to participate. Repeated efforts by the Field Office Director, SC leaders, and even Mr. Morton, did not result in any change of that stance. In fact, it ultimately resulted (in late August / early September 2010) in a decision by the Illinois State Police, acting as the SIB, to take a stance similar to that which New York DCJS had taken and to require each sheriff to affirm his/her willingness to participate in interoperability before any county would be activated. (A short time later, even this stance was reversed to preclude any further activations in the state at all.) Fortunately for SC,

because of my perseverance and that of the field coordinator, by the time the program was halted, nearly every one of the 102 counties in the state had received outreach, and 26 had been activated. In fact, due to my efforts a number of the sheriffs in still-unactivated counties have gone on the record and indicated their willingness to see interoperability activated; it is only the "stop order" of the ISP that impedes going forward, something that cannot be laid at my doorstep.

My Activations This Fiscal Year. The number of activations set as a 2011 FY goal for SC was extremely high – over 900, if my memory serves me correctly. In the six months of this FY during which I was employed as a regional coordinator (October 2010 – March 2011), I was personally responsible for 316 activations – over 1/3 of the program's total yearly goal, done in half of a year by one person – and that is a conservative tally, because many of the jurisdictions activated in states which AI took over had been taken care of and already put onto the master dashboard by me prior to the turnover . (I do, however, lay claim to all 53 of the Indiana counties which continue to be activated whose schedules were established during my time as a regional coordinator.)

State	Number of Jurisdictions Activated During My Tenure, FY 2011
GA	7
IL	11
IN	53
KS	10
KY	1
MD	3
MO	26
NC	37
NY	14
OH	9
RI	5
SC	14
WI	72
WV	54
Total	316

In conclusion, Marc, I want to say that despite the public assertions and innuendos made by the agency and the department to the contrary, I worked tirelessly and am proud of my accomplishments on behalf of Secure Communities and the federal government. I took on much more than I had to, and perhaps more than I should have, believing it was the right thing to do.

And, contrary to the notion that I was somehow "off the reservation," the evidence of my commitment is that notwithstanding my firmly held view that interoperability cannot be lawfully considered optional, I recognized that as a contract employee, I did not have the last word. For

that reason, I faithfully put forward the government's often-shifting positions, as best I understood them, even when I did not personally agree with them and believed (as I still do) that in the end, the only rational position which the government can take is that it has both the right and the obligation to implement interoperability nationwide.

That I have been made a scapegoat for reasons of political expediency is more a reflection of the shifting sands of Secure Communities' ever changing opt-in / opt-out policies than any failings I brought to the job.

I wish you and the rest of the SC staff, both government and contractors, well and every success for the initiative itself.

Regards,
Dan Cadman

Attachments:

- Exhibit A – "NCIC GO-NO GO PAPER.doc" date / time created: 8/31/2009 10:14 AM (includes its own Appendices, 1 – 6)

- Exhibit B – "090325 WF826447 Price Q27 If a locality does not wish to participate in the Secure Communities.doc" date / time created: unknown

- Exhibit C – "ISSUE--OPT OUT.doc" date / time created: 9/1/2009 7:39 AM