

EXHIBIT 3

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF ARIZONA, et al.,

Defendants.

Civil Action No.

DECLARATION OF DAVID C. PALMATIER

Pursuant to 28 U.S.C. § 1746, I, David C. Palmatier, declare and state as follows:

1. I am the Unit Chief for the Law Enforcement Support Center (LESC) within U.S. Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS). I have served in this position since March 16, 2008. Prior to my current position, I served as the Assistant Special Agent in Charge in Boston, Massachusetts, from December 2005 to March 2008. Prior to that, I served as the Director of the Office of Investigations Training Division from November 2000 to December 2005. I make this declaration based on personal knowledge of the subject matter acquired by me in the course of the performance of my official duties. I am aware that the State of Arizona has enacted new immigration legislation, known as Senate Bill 1070 (SB 1070), and I have read and reviewed SB 1070 as amended.

2. The purpose of my declaration is to describe the adverse effects of Arizona SB 1070 on the LESC's ability to respond, supervise, and monitor requests from law enforcement

partners in an effort to provide accurate and timely alien status determinations for subjects arrested or under investigation.

3. As the LESC Unit Chief, I have direct managerial and supervisory authority over all sections that comprise the LESC, including three Operations Sections, the National Crime Information Center (NCIC) Section, the Communications Center Section, the Tip-line Section, the Training Section, and the Administration Section. The Operations Sections respond to requests for alien status determinations sent to the LESC via computer. The NCIC Section enters and validates all ICE lookout records in the NCIC computer system for immigration absconders (those who have been ordered removed but have absconded), previously deported aggravated felons, and fugitives sought for criminal violations of customs and immigration laws investigated by ICE. The Communications Center Section responds to phone requests for information and assistance by our state, local, and federal law enforcement partners. The Tip-line Section handles phone tips from the public relating to the full range of crimes enforced by DHS. The Training Section provides basic and advanced training to LESC employees. The Administration Section provides personnel, budget, and logistical support for the LESC.

4. The LESC also responds to FBI requests for alien status determinations on non-U.S. citizens seeking to purchase firearms; responds to U.S. Secret Service alien status determinations for aliens seeking access to a protected area (*e.g.*, the White House Complex); and responds to alien status determinations related to employment issues at national security related locations that could be vulnerable to sabotage, attack, or exploitation.

5. Congress established the LESC to provide alien status determination support to federal, state, and local law enforcement on a 24-hours-a-day, seven-days-a-week basis. The enabling legislation is codified in 8 U.S.C. §§ 1226(d)(1)(A) & 1252 Note.

6. The core mission of the LESC is to receive and respond to Immigration Alien Queries (IAQ) from law enforcement partners in an effort to provide accurate and timely alien status determinations for subjects arrested or under investigation. Biographic queries are routed to the LESC via the International Justice and Public Safety Information Sharing Network (NLETS). Biometric queries are routed to the LESC via state information bureaus and the FBI Criminal Justice Information Services (CJIS). Both biographic and biometric queries are sent and received via computer systems. Queries contain basic information such as name, date of birth, place of birth, sex, and other identifying information. LESC Law Enforcement Specialists query as many as ten DHS, FBI, and Interpol databases in order to produce a written alien status determination for the requesting agency.

7. Like other components within DHS, the LESC prioritizes its efforts in order to focus on criminal aliens and those most likely to pose a potential threat to their communities. For example, criminal violations of the Immigration and Nationality Act (INA) are given priority over administrative violations. The goal is to invest our finite resources on the criminals who pose the largest threat to public safety or national security risks. In addition, LESC supervisors monitor incoming requests for information and prioritize those that are time sensitive, such as roadside traffic stops and subjects that are about to be released from police custody. The LESC also conducts “enhanced responses” for IAQs that are associated with crimes such as murder, sexual assault, terrorism, gang-related crimes, and other serious crimes. As a general practice, IAQs are processed in the order they are received at the LESC. Older queries are generally completed before work is completed on new queries. However, there are exceptions made in an effort to respond to time-sensitive queries and those queries that involve serious offenders; one example, listed above, would be traffic stops, where a highway patrolman has a limited amount

of time to detain a suspected illegal alien. Likewise, illegal aliens arrested for serious crimes such as homicide are made a priority in the queue if the subject will be released on bail or bond. This prioritization ensures that aliens arrested for particularly serious or violent crimes are not released into the general public if LESC's verification allows for the further detention of the alien. But the two priorities (responding on illegal aliens arrested for particularly serious crimes and responding to time sensitive inquiries, such as traffic stops) compete with each other, meaning that a surge in time-sensitive inquiries from the enforcement of the Arizona law will adversely affect responses regarding aliens arrested for particularly serious crimes. Additionally, the LESC has several queues that allow for the prioritization of queries based upon originating agency. Examples of unique queues include interoperability queries based upon fingerprints, biographical queries sent via NLETS, and Brady Act queries for firearms purchasers. The LESC does not currently have the ability to separate queries from Arizona as they arrive. Furthermore, creating an Arizona queue would not prioritize queries based upon the risk posed by the violator or the seriousness of the charge. Separating data in that manner is not currently possible using the data fields provided in the current IAQ formatted messages

8. Currently, the average query waits for approximately 70 minutes before a Law Enforcement Specialist is available to work on the request. On average, it takes an additional 11 minutes per query to research DHS data systems and to provide the written alien status determination.

9. Over the years, the LESC has experienced continuous and dramatic increases in alien status determination queries. IAQs from fiscal year (FY) 2007 to date were:

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|---------|--------------------------------|
| FY 2007 | 727,903 |
| FY 2008 | 807,106 |
| FY 2009 | 1,064,261 |
| FY 2010 | 726,275 (through May 31, 2010) |

10. From FY 08 to FY 09, the LESC had a 20% increase in the number of IAQs. Although FY 10 is not over yet, LESC personnel project there will be at least a 10% increase in IAQs from FY 09 to FY 10.

11. The internal LESC computer system (ACRIME) is dynamically updated as records are added or deleted. ACRIME alien status determination records are retained for 75 years. Law Enforcement Specialists also access approximately six to ten other federal databases, depending on the circumstances regarding the subject, in order to determine alien status. The ACRIME computer system randomly selects approximately 5% of all alien status determination responses for quality assurance. Quality assurance reviews determine if the search protocols were followed and if the correct status determination was made. LESC employees do not typically review alien files in order to provide alien status determinations. If an alien file review is required, that review will have to be completed by the ICE field office, and depending on the physical location of the alien file, the review may take two days or more.

12. Many U.S. citizens, if queried through the LESC, result in a “no match” response to the requesting agency, meaning that the Law Enforcement Specialist was unable to locate any records or prior encounters in the DHS databases queried. However, to arrive at the no match response for U.S. citizens requires the same level of investment in staffing resources to determine the subject is a no match. And, notably, a “no match” response would not guarantee that the subject of the search was an American citizen—it would simply reflect an absence of records in the LESC system.

13. The LESC has 153 Law Enforcement Specialists (LES) assigned to respond to IAQs from all partner agencies. If queries come to the LESC in a consistent and steady manner,

a fully trained and experienced LES can process approximately 10,000 IAQs per year. Based on current LES staffing, the LESC theoretically has the capacity to handle approximately 1.5 million IAQs per year. However, the number of queries that come to the LESC at any given time is not consistent. This makes it difficult to predict and staff in a manner that accounts for temporary spikes in activity. On a weekly basis, the LESC experiences activity spikes that require the use of overtime in order to handle the incoming IAQs from LESC partners. In addition, personnel from other LESC sections are routinely diverted from other critical missions to deal with IAQ activity spikes.

14. The LESC also performs a significant role in supporting the ICE Secure Communities Program by producing alien status determinations based on biometric (fingerprint) booking information. Secure Communities was created to improve, modernize, and prioritize ICE's efforts to identify and remove criminal aliens from the United States. Secure Communities arranges for willing jurisdictions to access biometric technology so they can simultaneously check a person's criminal and immigration history when the person is charged criminally. Once illegal aliens are identified, ICE must then determine how to proceed and whether to lodge a detainer or otherwise pursue the alien's detention and removal from the United States upon the alien's release from criminal custody. ICE first deployed the technology in October of 2008, and as of June 8, 2010, has deployed it to 281 jurisdictions. ICE plans to deploy the technology nationwide to more than 3,000 jurisdictions by the end of FY 2013. The LESC has already experienced an increase in processing times since the establishment of the Secure Communities Program due to the receipt of extensive criminal records and previous DHS encounters with more serious criminal aliens. As our support for Secure Communities continues to grow, we anticipate an increased workload due to the need for more complex queries that will

further increase LESC response times. Thus, the expansion of the Secure Communities Program alone will likely utilize much of the capacity of the LESC.

15. In my professional judgment, Arizona SB 1070 will inevitably result in a significant increase in the number of IAQs. The LESC processed just over 1,000,000 IAQs in FY 09. According to the FBI Criminal Justice Information Services (CJIS), in FY 09 criminal justice agencies in Arizona submitted 563,474 arrest records to CJIS, but just over 80,000 IAQs originated from all agencies within the state of Arizona in FY 09. Thus, Arizona SB 1070's requirement that "[a]ny person who is arrested shall have the person's immigration status determined before the person is released" could, by itself, dramatically increase the LESC's workload. Moreover, because Arizona's law calls for status verifications for lawful stops—whether or not such stops result in an arrest—the number of IAQ's will increase dramatically. If even a small percentage of these stops, detentions, and arrests lead to new IAQs, the LESC will be forced to process thousands of additional IAQs annually. Moreover, Arizona's new law will result in an increase in the number of U.S. citizens and lawful permanent residents being queried through the LESC, reducing our ability to provide timely responses to law enforcement on serious criminal aliens.

16. This increase in queries from Arizona will delay response times for all IAQs and risks exceeding the capacity of the LESC to respond to higher priority requests for criminal alien status determinations from law enforcement partners nationwide. Furthermore, the potential increase in queries by Arizona along with the possibility of other states adopting similar legislation could overwhelm the system.

17. If the LESC's capacity to respond to requests for assistance is exceeded, the initial impact would be delays in responding to time-sensitive inquiries from state, local, and federal

law enforcement, meaning that very serious violators may well escape scrutiny and be released before the LESC can respond to police and inform them of the serious nature of the illegal alien they have encountered. If delays continue to increase at the LESC, ICE might have to divert personnel from other critical missions to serve the needs of our law enforcement partners. The LESC directly supports both the public safety and national security missions of DHS. These are critical missions which cannot be allowed to fail.

18. I expect no increase in LESC resources in terms of personnel. As such, I anticipate an increase in inquiries will slow response times for inquiries without respect to the priority level of the subject in question. Based on my professional experience, slower response times result in an increased likelihood that the subject of an inquiry, including subjects who are high-priority, will be released, potentially resulting in the commission of additional violent crimes, greater difficulty in locating the alien to initiate removal proceedings, and further impediments to ICE's ability to efficiently obtain removal orders and remove criminal aliens from the United States.

19. It is important to note that LESC's responses to IAQs do not always provide a definitive answer as to an alien's immigration status. Indeed, almost 10,000 of the 80,000 IAQs the LESC processed from Arizona in FY 2009 resulted in an indeterminate answer (for comparison, just over 15,000 of the IAQs from Arizona in FY 2009 resulted in a response of lawful presence). Moreover, a U.S. citizen, when queried through the LESC, would likely be returned with a "no match" response. Many—if not most—U.S. citizens have no records contained in the databases available to the LESC. Experience has demonstrated that some police officers are confused in these types of situations and sometimes want to detain the suspected

illegal alien (actually a U.S. citizen) until they can call the LESC or their local ICE field office to confirm the subject's immigration status.

20. This declaration has focused on the impact of SB 1070 on the LESC system. If other populous states adopted similar laws, the LESC would be unable to respond to inquiries in a time frame which would be useful to law enforcement needs.

21. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed the 28th day of June, 2010 in Williston, Vermont.


David C. Palmatier
Unit Chief
Law Enforcement Support Center