

# EXHIBIT 1

## Ghita Schwarz

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**From:** Kuehler, Natalie (USANYS) <Natalie.Kuehler@usdoj.gov>  
**Sent:** Tuesday, March 04, 2014 8:20 PM  
**To:** Ghita Schwarz; Ian Head  
**Cc:** Feldman, David (USANYS)  
**Subject:** RE: DWN et al v. ICE et al, 14-cv-0583

Ghita,

I also wanted to give you a heads up that we will be filing a motion to dismiss for lack of administrative exhaustion on behalf of DHS only tomorrow. This motion is based on DHS having no record of any communication from you following its December 6, 2013, letter acknowledging receipt of your FOIA request. That letter noted that the FOIA request as written was too broad to be processed and therefore would be administratively closed if no clarification was received within 30 days. The request was then closed on January 8, and no administrative appeal or other communication was received.

We got confirmation that the declarants will be back in the office tomorrow, so we will also be filing our opposition to your motion for a preliminary injunction and an answer on behalf of ICE tomorrow. Would you like us to serve you with paper copies of these documents, or will email service be fine?

Natalie

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**From:** Ghita Schwarz [<mailto:gschwarz@ccrjustice.org>]  
**Sent:** Tuesday, March 04, 2014 4:26 PM  
**To:** Kuehler, Natalie (USANYS); Ian Head  
**Cc:** Feldman, David (USANYS)  
**Subject:** RE: DWN et al v. ICE et al, 14-cv-0583

That is not a problem.

---

**From:** Kuehler, Natalie (USANYS) [<mailto:Natalie.Kuehler@usdoj.gov>]  
**Sent:** Tuesday, March 04, 2014 4:09 PM  
**To:** Ghita Schwarz; Ian Head  
**Cc:** Feldman, David (USANYS)  
**Subject:** RE: DWN et al v. ICE et al, 14-cv-0583

Thank you for the update. Also, it looks as though we will have to file our preliminary injunction response tomorrow; we are trying to get in touch with folks in D.C. to make it happen today but so far have been unsuccessful.

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**From:** Ghita Schwarz [<mailto:gschwarz@ccrjustice.org>]  
**Sent:** Tuesday, March 04, 2014 2:46 PM  
**To:** Kuehler, Natalie (USANYS); Ian Head  
**Cc:** Feldman, David (USANYS)  
**Subject:** RE: DWN et al v. ICE et al, 14-cv-0583

Natalie,  
Apologies – we'll have the letter for you by tomorrow.  
Thanks,

Ghita

---

**From:** Ghita Schwarz  
**Sent:** Monday, March 03, 2014 10:34 AM  
**To:** 'Kuehler, Natalie (USANYS)'; Ian Head  
**Cc:** Feldman, David (USANYS)  
**Subject:** RE: DWN et al v. ICE et al, 14-cv-0583

Yes, I apologize for the delay. You'll have a letter from us by the time your clients return. Thanks.

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**From:** Kuehler, Natalie (USANYS) [<mailto:Natalie.Kuehler@usdoj.gov>]  
**Sent:** Monday, March 03, 2014 9:31 AM  
**To:** Ghita Schwarz; Ian Head  
**Cc:** Feldman, David (USANYS)  
**Subject:** DWN et al v. ICE et al, 14-cv-0583

Ghita,

I wanted to briefly follow up on our conversation Friday afternoon – you had agreed to send us the proposed new language for various FOIA sub-requests after our call, so that we can run the same language by our clients. Do you know when we can expect to get the new language? Since my clients aren't reachable today – and probably for at least half the day tomorrow – we have some leeway; I just didn't want to this to get lost in the shuffle.

Thanks,  
Natalie

Natalie N. Kuehler  
Assistant U.S. Attorney  
Southern District of New York  
86 Chambers Street, Third Floor  
New York, NY 10007  
Tel.: (212) 637-2741  
Fax: (212) 637-2750

# EXHIBIT 2

## Ghita Schwarz

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**From:** Ghita Schwarz  
**Sent:** Wednesday, March 05, 2014 10:21 AM  
**To:** Kuehler, Natalie (USANYS); Ian Head  
**Cc:** Feldman, David (USANYS)  
**Subject:** RE: DWN et al v. ICE et al, 14-cv-0583

Natalie,  
I am not aware of any correspondence from DHS dated 12/6/2013, or of any correspondence from DHS stating our request was too broad. Would you please forward the letter to me? Thank you.

Best,  
Ghita

---

**From:** Kuehler, Natalie (USANYS) [[Natalie.Kuehler@usdoj.gov](mailto:Natalie.Kuehler@usdoj.gov)]  
**Sent:** Tuesday, March 04, 2014 8:19 PM  
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**Cc:** Feldman, David (USANYS)  
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Thanks,  
Natalie

Natalie N. Kuehler  
Assistant U.S. Attorney  
Southern District of New York  
86 Chambers Street, Third Floor  
New York, NY 10007  
Tel.: (212) 637-2741  
Fax: (212) 637-2750

# EXHIBIT 3

## Ghita Schwarz

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**From:** Kuehler, Natalie (USANYS) <Natalie.Kuehler@usdoj.gov>  
**Sent:** Wednesday, March 05, 2014 10:42 AM  
**To:** Ghita Schwarz; Ian Head  
**Cc:** Feldman, David (USANYS)  
**Subject:** RE: DWN et al v. ICE et al, 14-cv-0583  
**Attachments:** DHS Letter.PDF

Hi Ghita,

The letter is attached.

Best,  
Natalie

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**From:** Ghita Schwarz [<mailto:gschwarz@ccrjustice.org>]  
**Sent:** Wednesday, March 05, 2014 10:21 AM  
**To:** Kuehler, Natalie (USANYS); Ian Head  
**Cc:** Feldman, David (USANYS)  
**Subject:** RE: DWN et al v. ICE et al, 14-cv-0583

Natalie,  
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Thanks,  
Natalie

Natalie N. Kuehler  
Assistant U.S. Attorney

Southern District of New York  
86 Chambers Street, Third Floor  
New York, NY 10007  
Tel.: (212) 637-2741  
Fax: (212) 637-2750



**Homeland  
Security**

*Privacy Office, Mail Stop 0655*

December 6, 2013

Sunita Patel, Esq.  
Center for Constitutional Rights  
666 Broadway, 7th Floor  
New York, NY 10012

Re: **2014-HQFO-00186**

Dear Ms. Patel:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated November 25, 2013, and seeking records relating to the Detention Bed Mandate. You also submitted this request to U.S. Immigration and Customs Enforcement (ICE). Your request was received in this office on December 2, 2013.

After careful review of your FOIA request, we determined that your request is too broad in scope or did not specifically identify the records which you are seeking. Records must be described in reasonably sufficient detail to enable government employees who are familiar with the subject area to locate records without placing an unreasonable burden upon the agency. For this reason, §5.3(b) of the DHS regulations, 6 C.F.R. Part 5, require that you describe the records you are seeking with as much information as possible to ensure that our search can locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipients, and subject matter of the records, if known, or the DHS component or office you believe created and/or controls the record. The FOIA does not require an agency to create new records, answer questions posed by requesters, or attempt to interpret a request that does not identify specific records.

Please resubmit your request containing a reasonable description of the records you are seeking. Upon receipt of a perfected request, you will be advised as to the status of your request.

**If we do not hear from you within 30 days from the date of this letter, we will assume you are no longer interested in this FOIA request, and the case will be administratively closed.** Please be advised that this action is not a denial of your request and will not preclude you from filing other requests in the future.

Your request has been assigned reference number **2014-HQFO-00186**. Please refer to this identifier in any future correspondence. You may contact this office at 1-866-431-0486 or at 202-343-1743 or the undersigned at [maura.busch@hq.dhs.gov](mailto:maura.busch@hq.dhs.gov).

Sincerely,

A handwritten signature in cursive script that reads "Maura Busch".

Maura Busch  
Government Information Specialist

# EXHIBIT 4

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
DETENTION WATCH NETWORK  
and CENTER FOR CONSTITUTIONAL  
RIGHTS,

*Plaintiffs,*

**DECLARATION OF  
IAN HEAD**

v.

UNITED STATES IMMIGRATION  
AND CUSTOMS ENFORCEMENT AGENCY,  
UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY,

*Defendants.*

-----X

I, IAN HEAD, declare pursuant to 28 U.S.C. § 1746 and subject to the penalties of perjury, that the following is true and correct:

1. I am currently a Legal Worker at the Center for Constitutional Rights (CCR), a Plaintiff in the above-captioned matter. I make this statement in support of Plaintiffs' Opposition to Defendants' Motion to Dismiss.
2. As a Legal Worker, my responsibilities include working closely with CCR staff attorneys to provide paralegal, technical and advocacy support on a number of our current cases, including the above-captioned matter. This includes being copied on case-related emails and other legal and administrative communications.
3. Additionally, I am responsible for keeping track of all CCR's correspondence with the Defendant agencies during the administrative FOIA process. The majority of such correspondence from agencies has been received via United

States Postal Service (USPS) and Federal Express, and to a far lesser extent via email.

4. Additionally, I am listed as a contact, along with CCR attorney Sunita Patel, on the original November 25, 2013 FOIA request at issue in this matter.
5. The initial administrative response from the Immigration Enforcement Agency (ICE) to this FOIA request, which arrived via USPS in as two letters in one envelope post-marked December 4, 2013, was addressed to me. It arrived on December 9, 2013. One of these two letters from ICE was dated November 27, 2013 and advised us to contact ICE within 10 days of the date of the letter, stating that ICE would administratively close our request if we did not. (See Compl. Ex. J.), I immediately emailed ICE and left a voice mail with the FOIA Office on December 10, 2013. Although ICE has admitted in its answer filed in the instant case that it received these communications, ICE nonetheless proceeded to administratively close our FOIA request on December 13, 2013. (See Answer of Defendant ICE, Dkt # 16, ¶ 64). Prior to ICE filing its answer in the instant case, CCR was not informed of ICE's December 13, 2013 action to administratively close the Request.
6. On December 19, 2013, CCR submitted a detailed response to ICE regarding the substance of its December 4, 2013 mailing – an allegation by ICE that the Request was “too broad in scope or did not specifically identify the records which [we] were seeking.” (See Compl. Ex. J). The letter explicitly stated that it was “not a denial” of the Request. *Id.*

7. On December 4, 2013, CCR received a letter via USPS from the DHS Office of Operations Coordination and Planning (“OPS”), one component of DHS, addressed to CCR attorney Sunita Patel, acknowledging receipt of CCR’s FOIA request. On December 16, 2013, OPS sent a second letter addressed to Ms. Patel saying OPS had conducted searches and found no responsive records. The letter specifically stated that “This ‘no records’ response only pertains to DHS OPS. Other DHS components tasked with this FOIA request, will contact you separately with their search results.” No other notices arrived by postal service or any other mail service from DHS.
8. In an email dated March 4, 2014, sent at 8:19 p.m. by U.S. Attorney Natalie Kuehler to myself and CCR attorney Ghita Schwarz, (“Email 1”) Ms. Kuehler stated that the next day, Defendant Department of Homeland Security (“DHS”) would be filing a Motion to Dismiss for lack of administrative exhaustion. Ms. Kuehler’s email further stated that the motion was based on “DHS having no record of any communication from you following its December 6, 2013 letter acknowledging receipt of your FOIA request. “ Ms. Kuehler’s email summarized the December 6 letter as follows: “The letter noted that the FOIA request as written was too broad to be processed and therefore would be administratively closed if no clarification was received within 30 days.”
9. Ms. Kuehler’s email also stated that “the request was then closed on January 8, and no administrative appeal or other communication was received.” Nowhere in Ms. Kuehler’s email does she claim that DHS sent a notification of any administrative closure, nor does Defendant DHS claim to have done so in its



papers. I did not receive such a notification, and to my knowledge, no other staff at CCR received such a notification either.

10. Ms. Kuehler's email was the first communication I saw indicating that DHS had sent a purportedly substantive response to our FOIA Request. The email itself did not attach the letter in question.
11. In response to CCR attorney Ghita Schwarz's request for a copy of the letter, Ms. Kuehler sent a second email dated March 5, 2014, to Ms. Schwarz and myself. The email attached a Portable Document Format (PDF) file titled "DHS Letter.PDF." The attachment contained a letter from DHS dated December 6, 2013. The attachment was almost identical in substance to the letter received from ICE on December 9, 2013 (see ¶ 5 above), except that it stated gave requesters thirty days from the date of the letter to respond. The letter stated that it was "not a denial" of the Request.
12. In neither email did Kuehler indicate the means by which the DHS Letter was sent or confirmation of service. Nor did the December 6 Letter contain any indication of how it was served.

*Searches for the December 6, 2013 Letter*

13. In order to confirm I had not overlooked receipt by mail of the DHS Letter, on March 5, 2014 I reviewed my hard-copy files. I did not find it or any other communication from DHS dated December 6, 2013. Nor were any scanned copies available in our electronic files.

14. CCR staff use the Microsoft Outlook software to send, receive and store email. I reviewed my CCR Microsoft Outlook email account “Inbox,” “Deleted Items” and “Junk E-mail” folders for any emails containing the DHS Letter or from DHS indicating the letter had been sent. I searched by date as well as using the search terms “FOIA,” “bed mandate” and “dhs.” I did not find any copy of the DHS Letter or email referencing the DHS Letter.
15. In order to conduct a thorough search of the email accounts of those CCR staff members who may have been recipients of the DHS Letter, it was necessary to do a search the email account of Sunita Patel as well. Ms. Patel is currently on leave from work with limited access to her CCR email account. On March 5, 2014, Patel gave me permission to access her CCR email account in order to conduct a search for the DHS Letter.
16. On March 5, 2014 I searched Sunita Patel’s CCR email account “Inbox,” “Junk E-Mail” and “Deleted Items” folders for any emails containing the DHS Letter or from DHS indicating the letter had been sent. I began my search reviewing all emails in each folder by date, specifically looking for emails dated December 6, 2013 with any indication of FOIA, the “bed mandate” or DHS, or containing an attachment.
17. After extensive searching of Sunita Patel’s CCR email account, I found an email dated December 6, 2013 from “Bosch, Maura” with the subject header “NMI Not Reasonably Described” and containing an attachment. The email was located in Ms. Patel’s “Deleted Items” folder and marked by Microsoft Outlook as un-opened. This email was one of the few un-opened emails also containing an


attachment. I would not have opened this email if I had not been specifically looking for emails dated December 6, 2013 containing attachments.

18. The PDF attachment's filename was displayed as "NMI Not Reasonably Described.pdf." I did not know what this phrase referred to. The body of the email was completely blank, containing no text indicating what the attachment was or even a signature block identifying the sender. The sender of the email, visible only when the full email was opened, was "maura.busch@hq.dhs.gov".
19. Because I recognized the domain name associated with the sender's email address ("hq.dhs.gov") as a domain name associated with the Department of Homeland Security, and because the email contained an attached PDF document, I opened the attached PDF file ("NMI Not Reasonably Described.pdf").
20. Upon opening the attached PDF file, I recognized the substance of the document to be identical to the PDF which Ms. Kuehler had emailed earlier on March 5, 2014. However, the filename, "NMI-Not Reasonably Described," was different from the filename of the document Ms. Kuehler had sent.
21. Additionally, I searched Sunita Patel's "Inbox," "Deleted Items" and "Junk E-Mail" folders using the search terms "FOIA," and "bed mandate" and "acknowledgment" and "dhs" and "detention." Because the Microsoft Outlook program is unable to search for terms that appear only in a PDF attachment, any word or phrase used in the PDF attachment "NMI-Not Reasonably Described.pdf" attached to the email from Ms. Bosch did not appear as a result of this search. Ms. Patel's email contained no other copy of the DHS Letter or email referencing the DHS Letter.

*Searches for January 8, 2014 Notification of Administrative Closure*

22. Ms. Kuehler indicated in her email on March 4, 2014 that Defendant DHS had administratively closed CCR and DWN's Detention Bed Quota FOIA request on January 8, 2014.
23. On March 19, I searched my CCR Microsoft Outlook "Inbox," "Deleted Items" and "Junk E-Mail" folders using the search terms "FOIA," "acknowledgment," and "bed mandate" and "detention" and "dhs" for emails dated January 8, 2014 indicating any notice to Requestors that this FOIA request had been administratively closed. I found no emails related to DHS administratively closing the FOIA request in question in this case.
24. On March 19, I searched CCR staff attorney Sunita Patel's CCR Microsoft Outlook "Inbox," "Deleted Items" and "Junk E-Mail" folders using the search terms "FOIA," and "dhs" and "acknowledgment," and "bed mandate" and "detention" for emails dated January 8, 2014 indicating any notice to Requestors that this FOIA request had been administratively closed. I found no emails related to DHS administratively closing the FOIA request in question in this case.

DATE: March 28, 2014



---

Ian Head

# EXHIBIT A

## NMI Not Reasonably Described

Busch, Maura [maura.busch@hq.dhs.gov]

**Sent:** Friday, December 06, 2013 9:10 AM

**To:** Sunita Patel

**Attachments:** NMI Not Reasonably Described.pdf (90 KB)



**Homeland  
Security**

*Privacy Office, Mail Stop 0655*

December 6, 2013

Sunita Patel, Esq.  
Center for Constitutional Rights  
666 Broadway, 7th Floor  
New York, NY 10012

Re: **2014-HQFO-00186**

Dear Ms. Patel:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated November 25, 2013, and seeking records relating to the Detention Bed Mandate. You also submitted this request to U.S. Immigration and Customs Enforcement (ICE). Your request was received in this office on December 2, 2013.

After careful review of your FOIA request, we determined that your request is too broad in scope or did not specifically identify the records which you are seeking. Records must be described in reasonably sufficient detail to enable government employees who are familiar with the subject area to locate records without placing an unreasonable burden upon the agency. For this reason, §5.3(b) of the DHS regulations, 6 C.F.R. Part 5, require that you describe the records you are seeking with as much information as possible to ensure that our search can locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipients, and subject matter of the records, if known, or the DHS component or office you believe created and/or controls the record. The FOIA does not require an agency to create new records, answer questions posed by requesters, or attempt to interpret a request that does not identify specific records.

Please resubmit your request containing a reasonable description of the records you are seeking. Upon receipt of a perfected request, you will be advised as to the status of your request.

**If we do not hear from you within 30 days from the date of this letter, we will assume you are no longer interested in this FOIA request, and the case will be administratively closed.** Please be advised that this action is not a denial of your request and will not preclude you from filing other requests in the future.

Your request has been assigned reference number **2014-HQFO-00186**. Please refer to this identifier in any future correspondence. You may contact this office at 1-866-431-0486 or at 202-343-1743 or the undersigned at [maura.busch@hq.dhs.gov](mailto:maura.busch@hq.dhs.gov).

Sincerely,

A handwritten signature in cursive script that reads "Maura Busch".

Maura Busch  
Government Information Specialist



# EXHIBIT 5

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
DETENTION WATCH NETWORK  
and CENTER FOR CONSTITUTIONAL  
RIGHTS,

*Plaintiffs,*

**DECLARATION OF  
ORLANDO GUDINO**

v.

UNITED STATES IMMIGRATION  
AND CUSTOMS ENFORCEMENT AGENCY,  
UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY,

*Defendants.*  
-----X

I, ORLANDO GUDINO, declare pursuant to 28 U.S.C. § 1746 and subject to the penalties of perjury, that the following is true and correct:

1. I am currently the Information Technology (IT) Manager at the Center for Constitutional Rights (CCR), a Plaintiff in the above-captioned matter. I make this statement in support of Plaintiffs' Opposition to Defendants' Motion to Dismiss.
2. I currently serve as IT Manager at CCR since 2011, and Network Administrator since 2006. I am responsible for implementing and managing all existing systems technology infrastructure and components at CCR as well as delivering individual end-user support to 60 Windows XP workstations as well as printers, Blackberries and application software. I have expertise in the PC/Windows environment, specifically with Microsoft Exchange server and workstation software applications as well as Microsoft Office,

including Microsoft Outlook email software. I am responsible for training users in network, workstation and application usage.

*Examination of Email Sent by DHS on December 6, 2013*

3. On March 25, 2014, CCR Legal Worker Ian Head forwarded me a copy of an email dated December 6, 2013 sent from Maura Busch and addressed to CCR staff attorney Sunita Patel.
4. The email has the subject heading "NMI Not Reasonably Described" and contains no text in the body of the email. There is one PDF ("Portable Document Format") file attachment to the email with the filename "NMI Not Reasonably Described.pdf." Upon opening the PDF file attached to the December 6, 2013 email from Maura Busch to Sunita Patel, I found it to be a letter from Maura Busch to Sunita Patel regarding CCR's Freedom of Information Act (FOIA) request #2014-HQF0-00186 on Department of Homeland Security letterhead ("NMI Letter").
5. As CCR's IT Manager, I frequently advise all CCR staff to view an email as suspicious if it arrives from an unknown sender and contains an attachment without any description or explanation in subject or the body of the email of what that attachment contains. Dangerous computer viruses and "malware" often arrive via email attachments and links, and can potentially shut down an entire office network. As IT Manager, it is my responsibility to ensure that CCR staff are trained not to open emails they find suspicious. The subject-header to the email, as well as the attachment's similar file name, does not use the words "FOIA," "detention" "Bed Mandate," "Request," "acknowledgement," "Response," "DHS," "ICE" or any similar word or phrase. Furthermore, because there is

no text in the body of the email explaining what the attachment, as well as nothing explaining who Maura Busch is, I would advise against opening this attachment.

*Examination of PDF File "DHS Letter.PDF."*

6. I also viewed a PDF file titled "DHS Letter.PDF" which had been attached to a March 5, 2014 email from Assistant U.S. Attorney Natalie Kuehler to CCR attorney Ghita Schwarz ("DHS Letter").
7. The contents of the DHS Letter look to be identical to the contents of the document titled "NMI-Not Reasonably Described.pdf" discussed in Paragraph 4 above. The only difference between the two PDF files seems to be the filename.
8. I examined the metadata associated with both PDF files. Metadata is electronically-stored information that describes the history and management of an electronic document. The metadata associated with both files showed that both files had an identical creation date of December 6, 2013 at 9:10am.
9. However, the DHS Letter contained additional metadata which showed it had been modified on February 3, 2014 at 2:56pm.
10. As I can find no other discrepancies between the DHS Letter and document titled "NMI-Not Reasonably Described.pdf," I conclude that the February 3, 2014 modification was the change in filename, from "NMI- Not Reasonably Described" to "DHS Letter."

DATE: March 28, 2014



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Orlando Gudino

# EXHIBIT 6



March 6, 2014

**By Electronic Mail**

Assistant U.S. Attorney Natalie Kuehler  
U.S. Attorney's Office  
Southern District of New York  
86 Chambers Street  
New York, NY 10007

RE: *Detention Watch Network, et al., v. ICE, et al.*, 14-cv-0583

Dear Natalie:

We write to respond to the Department of Homeland Security's letter dated December 6, 2013. The letter was first brought to my attention on the evening of March 4, 2014, when you alerted us by email that you would be filing a motion to dismiss the next day. After I advised you on March 5 that I was not aware of any such letter and asked for a copy, you emailed to me a PDF document entitled "DHS Letter." I received it for the first time on the morning of March 5, 2014. Notably, neither the letter itself, nor your email, nor the declaration annexed to DHS' motion to dismiss describes the manner of DHS' purported service of the letter in December of 2013. While we will address the improper manner of purported service in our opposition to DHS' motion to dismiss, we write here to address the contents of the letter, which do not comport with DHS' FOIA obligations.

DHS is not permitted to administratively close requests arbitrarily. Agency denials must be based upon FOIA or the agency's "published rules stating the time, place, fees (if any), and procedures to be followed" within the Federal Register or Code of Federal Regulations. 5 U.S.C. § 552(a)(3)(A) (2012). DHS's regulations specifically allow for administrative closure of claims when fees are not paid, 6 C.F.R. § 5.3(c), but not when requests are considered overly broad. 6 C.F.R. § 5.3(b). In such cases, the regulations merely state that an overly broad request may result in the "agency's response to [the] request . . . be[ing] delayed." *Id.* Therefore, no authority existed for administrative closure of our FOIA request.

DHS regulations require the agency to tell a requester "either what additional information is needed or why [a] request is otherwise insufficient" before issuing a denial, as well as giving requesters "an opportunity to discuss [their] request so that [they] may modify it to meet the requirements of this section." 6 C.F.R. § 5.3(b). The letter does not constitute a proper request for clarification, as it did not provide any guidance as to how the request could be clarified. It merely restated DHS regulations which indicate that requests should generally contain "sufficient detail," "as much information as possible," and "specific information about each record sought." *See* 6 C.F.R. § 5.3(b). The letter gives no indication as to what specific aspects of the request were considered overly broad or how they could be narrowed. Mere recitations of



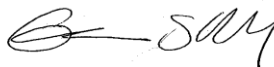
statutory standards give no real guidance, *cf. King v. U.S. Dep't of Justice*, 830 F.2d 210, 219 (D.C. Cir. 1987); they neither specify what “additional information” is needed nor explain why a request is “otherwise insufficient.”

In any case, our FOIA Request meets the requesters’ obligation to “reasonably describe” the materials sought, *see* 5 U.S.C. § 552(a)(3). The subject matter of the request—the detention bed quota and/or mandate—is well-known by DHS and has received considerable media attention. Additionally, we seek specific records, some of which are “agreements” of a specified nature, subject, parties and time period; data and statistics regularly held and produced within the agency; records related to three specific media stories; reports and memoranda between specific custodians and offices related to the detention bed mandate; and documents related to highly specific events such as the release of detainees due to budget constraints during specific time periods. In sum, our FOIA Request is in no way “too broad” or unspecific. Further, given our extensive discussions explaining various portions of the request, as well as the letter we sent to you earlier today regarding the scope of the request, we do not believe there should be any confusion on the part of DHS as to the records we seek. That said, as we have advised you previously, we would be happy to discuss our request with DHS directly.

Because DHS did not have authority to “administratively close[]” our request, and failed to properly notify us of its request for clarification, our request cannot legitimately be considered closed. Notwithstanding these arguments, we formally request that our FOIA request be administratively re-opened.

Please feel free to contact me with any questions at (212) 614-6445. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ghita Schwarz', written in a cursive style.

Ghita Schwarz