

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

DETENTION WATCH NETWORK and CENTER FOR
CONSTITUTIONAL RIGHTS,

Plaintiffs,

- against -

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

Defendants.

No. 14 Civ. 583 (LGS)

ECF Case

DECLARATION OF CATRINA PAVLIK-KEENAN

I. INTRODUCTION

1. I am the FOIA Officer of the Freedom of Information Act Office (the “ICE FOIA Office”) at United States Immigration and Customs Enforcement (“ICE”). I have been the Director of the ICE FOIA Office since that office was created on December 18, 2006. Prior to holding this position, I worked for approximately four years in the FOIA office at the Transportation Security Administration – first as a Supervisory FOIA Analyst, then as Deputy Director for two years, and finally as Director. In total, I have 20 years of experience processing FOIA requests. The ICE FOIA Office is located at 500 12th Street, S.W., Washington, D.C. 20536-5009.

2. The ICE FOIA Office has been responsible for processing and responding to all Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, requests received by ICE since January 17, 2010.

3. My official duties and responsibilities include the general management, oversight, and supervision of the ICE FOIA Office, which is responsible for the receipt, processing, and response to all

FOIA, 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, requests received at ICE. In that capacity, I manage and supervise a staff of ICE FOIA Paralegal Specialists, who report to me regarding the processing of FOIA and Privacy Act requests received by ICE. Due to my experience and the nature of my official duties, I am familiar with ICE's procedures for responding to requests for information pursuant to provisions of FOIA and the Privacy Act. In particular, I am familiar with ICE's processing of the FOIA request, dated November 25, 2013, that Sunita Patel submitted on behalf of plaintiffs in the above-captioned action, submitted to ICE (the "FOIA request"). The ICE FOIA Office assigned FOIA case number 2014FOIA3585 to this request.

4. The statements contained in this declaration are based upon my personal knowledge, my review of documents kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

5. This declaration provides a description of how ICE received and responded to plaintiffs' November 25, 2013 FOIA request to ICE FOIA.

II. RECEIPT AND RESPONSE TO PLAINTIFFS' NOVEMBER 25, 2013 FOIA REQUEST

6. In a letter dated November 25, 2013, that was received on November 27, 2013, Plaintiffs' submitted a FOIA and Privacy Act request to ICE FOIA. **A true and complete copy of Plaintiffs' FOIA request is attached to this declaration as Exhibit 1.**

7. In a letter to the Plaintiffs dated November 27, 2013, the ICE FOIA Office acknowledged receipt of the FOIA request and assigned it ICE FOIA case number 2013FOIA3585. **A true and complete copy of the November 27, 2013 acknowledgment letter is attached as Exhibit 2.**

8. By another letter dated November 27, 2013, the ICE FOIA Office explained to Plaintiffs that their request was too broad in scope or did not specifically identify the records

Plaintiffs were seeking. ICE FOIA asked the Plaintiffs to resubmit their request containing a reasonable description of the records they were seeking. ICE FOIA gave the Plaintiffs 10 days from the date of the letter to respond or their case would be administratively closed. **A true and complete copy of the November 27, 2013 letter is attached as Exhibit 3.**

9. By an email dated December 10, 2013, Plaintiffs explained that the two letters dated November 27, 2013, sent by ICE FOIA to Plaintiffs, were not postmarked for delivery until December 4, 2013. Plaintiffs requested that their FOIA request not be administratively closed by ICE FOIA. **A true and complete copy of the December 10, 2013 email and attachments are attached as Exhibit 4.**

10. On December 13, 2013, the ICE FOIA Office administratively closed Plaintiffs' FOIA request due to Plaintiffs' failure to submit an amended request.

11. ICE FOIA has no record of any phone communication between the Plaintiffs and ICE FOIA. While the office does not utilize a standardized tracking method, it is ICE FOIA's usual business practice to log phone calls when received by FOIA requesters. Further, it is this office's common practice to note any interaction with a requester in ICE FOIA's case tracker system known as the FOIA Request Tracking System (FOIA RTS) under the FOIA request number. In this case, ICE FOIA checked the FileMaker and verified that it has no record of any phone communication between Plaintiff's and ICE FOIA regarding this FOIA request.

12. By a letter dated December 19, 2013, the Plaintiffs responded to ICE FOIA's letters dated November 27, 2013. This letter was received by the ICE FOIA Office on December 23, 2013. ICE FOIA treated this letter as an appeal because it challenged ICE FOIA's finding that Plaintiff's FOIA request was too broad in scope. **A true and complete copy of the December 19, 2013 letter is attached as Exhibit 5.**

13. Because of the Federal holiday on Wednesday, December 25, 2013, and low staffing while employees were on annual leave, Plaintiffs' appeal was not forwarded to the Office of the Principal Legal Advisor (OPLA) until Friday, December 27, 2013.

14. In a letter to the Plaintiffs dated December 27, 2013, the ICE Office of the Principal Legal Advisor (OPLA) acknowledged receipt of the Plaintiffs' appeal request of 2014FOIA3585 and assigned the appeal the following tracking number: OPLA14-1042. **A true and complete copy of the December 27, 2013 letter is attached as Exhibit 6.**

15. By a letter dated and signed on January 24, 2014, OPLA responded to Plaintiffs' appeal affirming the decision by ICE FOIA to deem the request overbroad in that it did not describe the records that Plaintiffs were seeking in enough detail to enable ICE personnel to locate them with a reasonable amount of effort as required under 6 C.F.R. § 5.3(b); and reversing the decision of the ICE FOIA Office to administratively close the case. OPLA instructed ICE FOIA to reopen the case and contact the requester as soon as practicable regarding clarifying the scope of Plaintiffs' request.

16. During the same week in which ICE responded to Plaintiffs' appeal, there were several days in which Federal Offices in the National Capital Region were either closed or had delayed opening which inevitably affected the pending workload across all offices.

17. The Federal Government was closed on Monday, January 20, 2014, for a Federal Holiday observing the Birthday of Martin Luther King, Jr.¹ On Tuesday, January 21, 2014, the U.S. Office of Personnel Management (OPM) closed all Federal Offices in the Washington, DC

¹ See <http://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/federal-holidays/#url=2014>

area due to inclement weather². And, on Wednesday, January 22, 2014, OPM delayed by 2 hours the opening of all Federal Offices in Washington, DC area due to inclement weather.³

18. Although days in which the government is shuttered, including those for inclement weather, do not toll the clock for the purpose of processing FOIA requests or appeals, there is an inevitable impact on the agency's processing times as can be seen in the instant case.

19. On the afternoon of Friday, January 24, 2014, OPLA placed the appeal response letter in the agency's outgoing mail. Outgoing mail is picked-up from the ICE headquarters building at or around 9:00 AM each business day; there is no outgoing mail pick-up over the weekend. Therefore, despite ICE's best efforts, the appeal response letter was not postmarked until Monday, January 27, 2014. **A true and complete copy of the January 24, 2014 letter is attached as Exhibit 7.**

20. Upon the partial remand of 2014FOIA3585, the ICE FOIA Office assigned a new FOIA tracking number 2014FOIA8842 to Plaintiffs' request.

21. On January 30, 2014, Plaintiffs filed a Complaint in the United States District Court for the Southern District of New York for declaratory and injunctive relief. Plaintiffs allege that the U.S. Immigration and Customs Enforcement and U.S. Department of Homeland Security improperly withheld agency records from Plaintiff's. As a result of the intervening litigation, the ICE FOIA Office administratively closed Plaintiffs' open request, in accordance with the ICE FOIA Office's standard operating procedures.

² See http://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/status-archives/14/1/21/Federal-Offices-are-Closed---Emergency-and-Telework-ready-Employees-Must-Follow-Their-Agency-Policies_577/

³ See http://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/status-archives/14/1/21/Open---2-hours-Delayed-Arrival---With-Option-for-Unscheduled-Leave-or-Unscheduled-Telework_581/

III. THE ICE FOIA OFFICE WORKLOAD

22. The ICE FOIA Office has an increasingly heavy workload. The ICE FOIA Office receives requests for ICE records directly from myriad requesters including, but not limited to, individuals, media outlets, nonprofit organizations, researchers, etc. The ICE FOIA Office also receives a high volume of FOIA requests referred to ICE by U.S. Citizenship and Immigration Services (USCIS) FOIA Office. The ICE FOIA Office is responsible for processing these referred requests, which typically consist of ICE documents from an individual's Alien File (A-file), and then responding directly to the requester.

23. The ICE FOIA Office tracks the all of the requests it receives, both directly and through referral, through FOIA Request Tracking System (FOIA RTS).

24. To date, in Fiscal Year (FY) 2014, the ICE FOIA Office has received 10,421 direct FOIA requests. The ICE FOIA Office has a backlog of approximately 520 direct FOIA requests which have been pending for more than 20 business days, as tracked in FOIA RTS. 3,503 of these requests were received prior to Plaintiffs' request. Of those requests, 209 are still open and considered backlogged.

25. To date, in FY 2014, the ICE FOIA Office has had 42,029 requests referred to ICE by USCIS that have not been included in ICE's backlog calculations. Because of the sheer volume of referrals from USCIS, these requests have not yet been entered in FOIA RTS nor processed.

26. These numbers represent a substantial increase in the number of FOIA requests received by ICE in previous years. In FY 2013, ICE FOIA received 34,171 FOIA requests, and had a backlog of 2,860 FOIA requests at the close of the fiscal year. In FY 2012, ICE FOIA received only 24,073 FOIA requests, and had a backlog of 2,903 FOIA requests pending at the

end of the fiscal year. To date, 14 cases remain from the FY 2012 backlog. In FY 2011, ICE FOIA received 16,502 FOIA requests, and had just 50 FOIA requests pending at the end of the fiscal year.

27. The three-fold increase in the ICE FOIA Office's workload over the course of three years is mainly due to an increase in the number of referrals received from USCIS. Prior to FY 2012, USCIS had an agreement with ICE, whereby USCIS agreed to process certain types of non-investigatory ICE records located within an A-File pursuant to a FOIA request for A-File records. During the course of FY 2012, that agreement was changed, and USCIS began referring the majority of ICE records contained in the A-File to ICE for processing and direct response to the requestor.

28. In addition to the increase in USCIS referrals of A-File documents, ICE has also experienced an increase in the number and complexity of FOIA requests such as Plaintiffs' request that seek documents other than those typically found in an A-File. These FOIA requests take considerably longer to process, due to the extensive search that is usually required and the intricacies of the documents or data produced. In FY 2013, one FOIA requestor alone, a data clearing house, filed more than 70 FOIA requests seeking extensive data extracts. To date in FY 2014, that same requestor has already filed more than 25 similar FOIA requests.

29. ICE FOIA receives a number of requests for expedited treatment. A FOIA request will be expedited if the lack of expedited treatment could reasonably be expected to pose an imminent threat to someone's life or physical safety or if there exists urgency to inform the public about an actual or alleged federal government activity and the request is made by a person primarily engaged in dissemination information to the public. In FY 2013, ICE FOIA received

52 requests for expedited treatment and granted 17. In FY 2014, ICE FOIA has so far received 53 requests for expedited treatment and granted 16.

30. A consequence of the increasing complexity and volume of ICE's FOIA workload is that more of those FOIA requests become subject to FOIA litigation. As of this date, ICE is involved in approximately 22 active FOIA lawsuits. Many of those cases require ICE to process voluminous records, including one case where ICE has approximately 200,000 pages of potentially responsive records to process, and several others where the page count runs in the tens of thousands.

IV. GENERAL INFORMATION REGARDING ICE'S STANDARD PROCEDURE FOR INITIATING SEARCHES IN RESPONSE TO FOIA REQUESTS

31. Each program office within ICE has a designated point of contact ("POC") who is the primary person responsible for communications between that program office and the ICE FOIA Office. When the ICE FOIA Office receives a FOIA request, its first step is to identify which program offices within ICE are most likely to possess records responsive to that request and to initiate searches within those program offices. Once the ICE FOIA Office determines the appropriate program offices for a given request, it provides the POCs within each of those program offices with a copy of the FOIA request and specific instructions for conducting a search for responsive records. The POCs then review the FOIA request and instructions, and forward the request and instructions to the individual employee(s) or component office(s) within the program office that they believe are most likely to have responsive records. The individuals and component offices are instructed to conduct searches of their file systems, including both paper files and electronic files, which in their judgment, based on their knowledge of the manner in which they routinely keep records, would most likely be the files to contain responsive documents. Once those searches are completed, the individuals and component offices provide any potentially responsive records to their program office's POC, who in turn provides the

records to the ICE FOIA Office. The ICE FOIA Office then reviews the collected records for responsiveness.

32. ICE employees maintain records in several ways. ICE program offices use various systems to maintain records, such as investigative files, records regarding the operation of ICE programs, and administrative records. ICE employees may store electronic records on their individual computer hard drives, their program office's shared drive (if the office uses one), DVDs, CDs, or USB storage devices. A search of electronic files would necessarily include a search of these locations. The determination to search these electronic locations is solely within the employee's judgment regarding whether such a search is necessary. This determination is necessarily based on the manner in which the employee maintains his/her files. ICE does not have a policy guiding how employees are to maintain their individual working files.

33. Additionally, all ICE employees have access to email. ICE uses the Microsoft Outlook email system. Each ICE employee stores their files in the way that works best for that particular employee; ICE has no agency-wide policy or regulation that mandates how employees retain and store their emails, other electronic files, or paper files. ICE employees use various methods to store their Microsoft Outlook email files: some archive their files monthly, without separating by subject; others archive their email by topic or by program; still others may create PST files of their emails and store them on their hard drive or on a shared drive.

V. SEQUENCING SEARCHES FOR RESPONSIVE RECORDS BY PRIORITIZING ONE TIME PERIOD OVER ANOTHER IS UNWORKABLE

34. Through ongoing negotiations with the U.S. Attorney's Office in the instant case, Plaintiffs are requesting that the ICE FOIA Office search for records by prioritizing one time period over another. This prioritizing method is unworkable and overly burdensome.

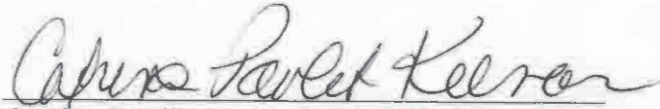
35. The Plaintiffs seek for ICE to have its program offices search for responsive records for one period of time in satisfaction of this preliminary injunction, and then to search for the exact same records at a later date, but this time within the original enlarged timeframe. In effect, the Plaintiffs are demanding that agency task out multiple times the very same section of Plaintiffs' FOIA request to the same ICE program offices. This suggested method risks confusion from the employees tasked with the search which could lead to quality control issues on subsequent searches. Additionally, plaintiffs' suggested method is a needless expense of employee time and agency resources on what will amount to duplicative efforts.

VI. SEQUENCING SEARCHES FOR RESPONSIVE RECORDS BY GEOGRAPHIC REGION IS UNWORKABLE

36. The Plaintiffs seek for ICE to have its program offices search for responsive records for certain geographic regions in satisfaction of this preliminary injunction, and then to search for the exact same records at a later date, but using a different geographic region. ICE tasks the FOIA point of contact (POC) for each program office based on the information provided in the request. The FOIA POC will then task the individual program offices in the specified geographic region. By tasking one geographic region at a time the program offices are conducting a duplicate search. Instead of sending the request out to all the geographic regions at one time, they are forced to make duplicate requests. This type of the search could lead to confusion, and would create additional work for an already overburdened program office.

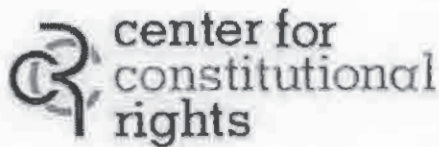
VII. JURAT CLAUSE

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 5 day of March 2014, in Washington, D.C.



Catrina Pavlik-Keenan, FOIA Officer
Freedom of Information Act Office
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Stop 5009
Washington, DC 20536-5009

EXHIBIT 1



DETENTION
WATCH NETWORK

November 25, 2013

Freedom of Information Act Request
U.S. Immigration and Customs Enforcement
500 12th Street SW, Stop 5009
Washington, DC 20536-5009
Attn: Catrina Pavlik-Keenan, FOIA Director

Freedom of Information Act Request
U.S. Department of Homeland Security
245 Murray Drive SW
STOP-0655
Washington, D.C. 20528-0655

Re: Freedom of Information Act Request

To Whom It May Concern:

This is a request under the Freedom of Information Act, 5 U.S.C. Sec. 552 ("FOIA"), on behalf of the Center for Constitutional Rights ("CCR") and the Detention Watch Network ("DWN") (collectively "the Requesters") for information regarding U.S. Immigration and Customs Enforcement agency ("ICE") and Department of Homeland Security ("DHS") Detention Bed Mandate, also known as the Immigration Detention Quota or the Detention Mandate. We ask that you please direct this request to all appropriate offices and components and/or departments within ICE and DHS, including, but not limited to the following offices or components within DHS: Office of Operations Coordination and Planning; Office of Policy; Office of Legislative Affairs; Office of Intergovernmental Affairs; and Office of General Counsel; and the following offices within ICE: Office of the Director and Deputy Director; Office of Detention Policy and Planning; State and Local Coordination; Office of Detention Oversight; Congressional Relations; Office of Acquisition Management; Enforcement and Removal Operations; Office of Detention Management, Enforcement and Removal Operations; and Office of the Principal Legal Advisor.

A. Purpose of Request

The purpose of this request is to obtain information for the Requesters and the public on the Detention Bed Mandate, Bed Mandate and/or Detention Quota, decision-making surrounding the mandate, and its impact on detention policy and detention contracting decisions nation-wide from June

2006 to the present. This information will enable the public to engage in an important on-going policy debate¹ and the upcoming Congressional appropriations debate (likely to begin as early as February 2014).

The use of local jails and correctional facilities, as well as private correctional facilities, to detain non-citizens in civil immigration detention is a matter of concern to the Requestors and the general public. The suggestion in recent news articles that the mandate is not welcomed by high-level Department of Homeland Security ("DHS") officials such as former DHS Secretary Janet Napolitano,² but is the result of private prison corporations lobbying certain members of the Senate and House DHS appropriations subcommittees, raises questions regarding fiscal responsibility and appropriations priorities.³ The public has a right to understand the motives of government officials and agencies on this important policy issue, especially in light of the upcoming appropriations and continued Comprehensive Immigration Reform debate.

Further, the Requesters and the public have an interest in understanding how the Detention Bed Mandate impacts enforcement operations, including the Quota and/or Mandate's relationship with how Immigrations Customs Enforcement ("ICE") determines how many and whom to detain. The extent to which decisions regarding lucrative intergovernmental service agreements ("IGSAs") with ICE and DHS are determined on the basis of local law enforcement cooperation with ICE enforcement programs such as 287(g), the Criminal Alien Program or Secure Communities is unknown to the public at this time. In addition, the Requesters and the public have an interest in understanding the costs of the Detention Bed Mandate as well as the decision-making to use detention in lieu of cost-effective alternatives.

B. Definitions

- 1) **Record(s).** In this request the term "Record(s)" includes, but is not limited to, all Records or communications preserved in electronic (including metadata) or written form, such as correspondences, emails, documents, data, videotapes, audio tapes, faxes, files, guidance,

¹ See e.g., Stephen Dinan, *Obama's Budget a Blow to Immigrant Enforcers; Funding Cut for Detentions, States*, Washington Times (Apr. 11, 2013), <http://www.washingtontimes.com/news/2013/apr/11/obamas-budget-a-blow-to-immigrant-enforcers/?page=all>; Editorial, *The Madness of U.S. Immigration Policy, Continued*, Bloomberg View (Sept 26, 2013), <http://www.bloomberg.com/news/2013-09-26/the-madness-of-u-s-immigration-policy-continued.html>; Human Rights First, *Growing Bipartisan Support in Congress on Eliminating Detention Bed Mandate* (June 5, 2013), <http://www.humanrightsfirst.org/2013/06/05/growing-bipartisan-support-in-congress-on-eliminating-immigration-detention-bed-mandate-2/>.

² William Selway & Margaret Newkirk, *Congress Mandates Jail Beds for 34,000 Immigrants as Private Prisons Profit*, Bloomberg (Sept. 24, 2013), <http://www.bloomberg.com/news/2013-09-24/congress-fuels-private-jails-detaining-34-000-immigrants.html> ("At an April hearing, then-Homeland Security Secretary Janet Napolitano, whose department includes ICE, called the mandate 'artificial' and said reducing the required number of detainees would let the agency free low-risk offenders who could be on supervised release.")

³ *Id.*

- guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, technical manuals, technical specifications, training manuals, studies, or any other Record of any kind.
- 2) **Agreements.** In this request the term "Agreement(s)" refers to any agreement, written or otherwise; communications; contracts and/or supplements, modifications or addendums to contracts or agreements.
 - 3) **Detention and/or Detain.** In this request the term "Detention" or "Detain" refers to the placement in custody of a non-citizen or individual suspected to be a non-citizen, based on purported violations of the Immigration and Nationality Act, into a local or state jail or prison, not limited to Intergovernmental Service Agreement facilities. The term further refers to private contractual facilities, run or managed by private prison companies or corporations.
 - 4) **Bed Mandate and/or Detention Bed Mandate and/or Detention Quota:** In this request the terms "Bed Mandate", "Detention Bed Mandate" and/or "Detention Quota" refer to the concept and practice, since 2007, that the Immigration and Customs Enforcement agency, including its regional and field offices and various local law enforcement agency partners and private contractors, to maintain a certain numerical level of detention.
 - 5) **Communication(s).** In this request the term "communication" means the transmittal of information (in the forms of facts, ideas, inquiries or otherwise).
 - 6) **Local Governments.** In this request the term "local" government includes state/local government, municipal corporations, tribal governments, tribal business entities, and Alaska Native Corporations.

C. Request for Information

- a. Most Recent Copies of Executed Agreements Related to Detention Facilities or Detention Beds
 - i. Executed Agreements between Private Prison Corporations (such as Corrections Corporation of America and the Geo Group) and ICE, DHS and/or the Federal Bureau of Prisons;
 - ii. Executed Agreements between DHS/ICE and local, state, city or municipal governments, including all Intergovernmental Service Agreements.
 - iii. Executed contract renewal, supplemental agreements, addendums, riders, etc. of the agreements in (i) and (ii).
- b. Communications regarding contract renewal, supplemental agreements, addendums, riders, etc. of the aforementioned agreements listed in Part C(a).
- c. Agreements (formal and informal) regarding detention space, financing of detention beds, and the allocation of beds limited to the following ICE jurisdictions: the Atlanta Field Office; the Dallas, El Paso, Houston and San Antonio Field Offices; the New Jersey Field Office and the Philadelphia Field Office.
- d. Data and Statistics from 2007 to present:
 - i. Copies of all regularly generated statistical reports on detention; enforcement prioritization and detained population; detention occupancy by geographic location (i.e. ICE field office, state or county).

- ii. Copies of any cumulative data or information on numerical payouts to private prison corporations by ICE or DHS.
 - iii. Financial records of actual payments to private prison companies or contractors, including the "guaranteed minimums," "guaranteed minimum" prices and "variable" prices under contracts with private prison corporations.⁴
- e. Records Related to the Creation or Revision (including drafts, memoranda, correspondence and communications) of Specific Media-Related and Public Relations Documents such as Press Releases, Talking Points, emails with press quotes, etc.:
- i. William Selway & Margaret Newkirk, *Congress Mandates Jail Beds for 34,000 Immigrants as Private Prisons Profit*, Bloomberg (Sept. 24, 2013), <http://www.bloomberg.com/news/2013-09-24/congress-fuels-private-jails-detaining-34-000-immigrants.html>;
 - ii. Stephen Dinan, *Obama's Budget a Blow to Immigrant Enforcers; Funding Cut for Detentions, States*, Washington Times (Apr. 11, 2013), <http://www.washingtontimes.com/news/2013/apr/11/obamas-budget-a-blow-to-immigrant-enforcers/?page=all>; and
 - iii. Spencer S. Hsu and Andrew Becker, *ICE officials set quotas to Deport More Illegal Immigrants*, Washington Post (Mar. 27, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/26/AR2010032604891.html>.
- f. All Reports and Memoranda Reporting on the Detention Bed Mandate and Detention-related Appropriations Decisions to/from the Secretary of Homeland Security, Assistant Secretary of Homeland Security in Charge of Immigration and Customs Enforcement, Members of Congress and/or the White House.
- g. Records, including communications, about releases from detention due to budget constraints or loss of funding, including but not limited to the following:
- i. Effects of the 2013 Budget Sequestration and the government shutdown in the fall of 2013;⁵ and
 - ii. Testimony of John Morton before the Judiciary Committee of the U.S. House of Representatives in March 19, 2013.⁶

⁴ E.g., Department of Homeland Security, Contract ACD-3-C-0015, at 3 (Oct. 1, 2003), available at <http://www.ice.gov/doclib/foia/contracts/ccaacd3c0015asofp00023.pdf>.

⁵ E.g. *Release of Criminal Detainees by U.S. Immigration and Customs Enforcement: Policy or Politics? Before the H. Comm. on the Judiciary*, 113th Cong. (Mar. 19, 2013); See 159 Cong. Rec. 1973 (2013) ("My amendment would hold the Obama administration accountable for its recent decision to release more than 2,000 undocumented immigrants from detention centers across the country in the past month.") (Grassley, Mar. 20, 2013).

⁶ Testimony of John Morton, Director of ICE, "The Release of Criminal Detainees by U.S. Immigration and Customs Enforcement: Policy or Politics," March 19, 2013,

- iii. Communications with or about John Morton's decisions on or about December 2009 and Spring 2010 to release ICE detainees from detention.⁷
- h. Records of ICE or DHS communications with local, state or Congressional officials or law enforcement agencies related to costs, reimbursements, profits, or monetary agreements for detention; monetary or contractual incentives related to immigration detention or detention contracting; or the need for additional detainees or possible sources of additional detainees to fulfill contractual obligations with ICE.
- i. Records related to the relationship between ICE and private prison corporations including email communications, letters, memoranda, policy memos for contract bidding processes or Requests for Proposals.

D. Format of Production

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records. Please provide the requested documents in the following format:

- Saved on a CD, CD-ROM or DVD;
- In PDF or TIF format wherever possible;
- Electronically searchable wherever possible;
- Each paper record in a separately saved file;
- "Parent-child" relationships maintained, meaning that the requester must be able to identify the attachments with emails;
- Any data records in native format (i.e. Excel spreadsheets in Excel);
- Emails should include BCC and any other hidden fields;
- With any other metadata preserved.

E. The Requesters

The Center for Constitutional Rights ("CCR") is a non-profit, public interest, legal, and public education organization that engages in litigation, public advocacy, and the production of publications in the fields of civil and international human rights. CCR's diverse dockets include litigation and advocacy around immigration detention, post-9/11 immigration enforcement policies, policing, and racial and ethnic profiling. CCR is a member of immigrant rights networks nationally and provides legal support to immigrant rights movements. One of CCR's primary activities is the publication of newsletters, know-you-rights handbooks, legal analysis of current immigration law issues, and other similar materials for public dissemination. These and other materials are available through CCR's

<http://www.dhs.gov/news/2013/03/19/written-testimony-us-immigration-and-customs-enforcement-director-john-morton-house>

⁷ See 159 Cong. Rec. 973 (2013) ("My amendment would hold the Obama administration accountable for its recent decision to release more than 2,000 undocumented immigrants from detention centers across the country in the past month.") (Grassley, Mar. 20, 2013).

Development, Communications, and Education & Outreach Departments. CCR operates a website, www.ccrjustice.org, which addresses the issues on which the Center works. The website includes material on topical civil and immigrant rights issues and material concerning CCR's work. All of this material is freely available to the public. In addition, CCR regularly issues press releases and operates a listserv of over 50,000 members and issues "action alerts" that notify supporters and the general public about developments and operations pertaining to CCR's work. CCR staff members often serve as sources for journalist and media outlets, including on immigrant rights.

Detention Watch Network is a national coalition of organizations and individuals working to expose and challenge the injustices of the U.S. immigration detention and deportation system and advocate for profound change that promotes the rights and dignity of all persons. DWN was founded in 1997 in response to the explosive growth of the immigration detention and deportation system in the United States. Today, DWN is the only national network that focuses exclusively on immigration detention and deportation issues. The Network is recognized as the "go-to" resource on detention issues by media and policymakers and known as a critical national advocate for just policies that promote an eventual end to immigration detention. As a member-led network, we unite diverse constituencies to advance the civil and human rights of those impacted by the immigration detention and deportation system through collective advocacy, public education, communications, and field-and-network-building. DWN has a well-known website featuring the latest news, information and developments on detention policy.

F. Fee Waiver

The Requesters are entitled to a fee waiver pursuant to 5 U.S.C.(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k) on the grounds that "disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of institution). *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987). Requesters meet the requirements of 6 C.F.R. § 5.11(k) because the subject of the request concerns the operations or activities of the government; the disclosure of the information is likely to contribute to a significant public understanding of government operations or activities due to the requesters' expertise in the subject area and ability to convey the information; the Requesters' primary interest is in disclosure; and they have no commercial interest in the information. In addition, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), the Requesters qualify as a "representatives of the news media," defined as "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii).

As described in Part D above, the Requesters are non-profit organizations dedicated to civil rights, human rights, and immigrant rights, and have a proven track-record of compiling and disseminating information and reports to the public about government functions and activities, including the government's record and position on immigrants' rights, detention and policy matters. The Requesters have undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public's understanding of federal immigration enforcement actions and policies. Access to this information is

crucial for the Requesters and the communities they serve to evaluate immigration enforcement actions and their potential detrimental efforts.

As stated above, the Requesters have no commercial interest in this matter. The Requesters will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. See *Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters.'").

In the alternative, we request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II). ("[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media."). See also 6 C.F.R. § 5.11(d). If no fee waiver is granted and the fees exceed \$250.00, please contact the Requesters' undersigned counsel to obtain consent to incur additional fees.

G. Expedited Processing

The Requesters are entitled to expedited processing of this request because there is a "compelling need" for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" is established when there exists an "urgency to inform the public concerning actual or alleged Federal Government activity," when the requester is a "person primarily engaged in disseminating information," 6 C.F.R. § 5.5(d)(ii).

There is an urgent need to inform the public of the policies and decision-making regarding the ICE detention bed quotas or detention bed mandate. The appropriations debate will begin in a matter of months and it is paramount that the public have the requested information to meaningfully engage in the public debate surrounding the cost of detention; decisions regarding the number of beds ICE is required to occupy; and incentives by local governments to arrest and fill ICE detention beds. Politicians on both sides of the aisle have also called attention to excessive use of immigration detention, which is directly tied to the mandate. For example, during a March 2013, House Judiciary Committee Hearing, Representative Spencer Bachus (R-Ala.) warned of an "overuse of detention by this administration," and was among 190 House members who voted for the amendment to eliminate the detention bed mandate.⁸

Given the bipartisan critique of the Detention Bed Mandate, the public has an urgent need to know why it is still in place. Congress debates the appropriations for the Department of Homeland Security as early as February of each calendar year.⁹ It is necessary for the requested information to be made available in advance of Congressional discussions of the appropriations debate, so that the public can engage meaningfully with the political issues surrounding the Detention Bed Mandate.

⁸ Jude Joffe-Block, *Ice Head Answers More Questions on Detainee Release*, KPBS, March 19, 2013, <http://www.kpbs.org/news/2013/mar/19/icc-head-answers-more-questions-detainee-release/>.

⁹ See Senate Appropriations, Homeland Security Subcommittee Hearing Dates, <http://www.appropriations.senate.gov/ht-homeland-security.cfm?method=hearings.default&subcommitteeid=7a93b400-6178-4c04-9711-094f5d87a0c4> (indicating DHS budget was brought before Senate in February or March for Fiscal Years 2010-2014).

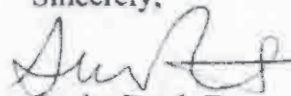
H. Certification & Conclusion

The Requesters certify that the above information is true and correct to the best of the Requesters' knowledge. *See* 6 C.F.R. § 5.5(d)(3). If this Request is denied in whole or in part, the Requesters ask that the Department of Homeland Security and ICE justify all deletions by reference to specific exemptions of FOIA. The Requester expects DHS and ICE to release all segregable portions of otherwise exempt material, and reserves the right to appeal a decision to withhold any records or to deny the within application for expedited processing and waiver of fees.

Please furnish all applicable Records in electronic format as specified above to: Sunita Patel, Center for Constitutional Rights, 666 Broadway, 7th Floor, New York, NY 10012.

If you have any questions regarding the processing of this request, please contact Sunita Patel at (212) 614-6439, or Ian Head at (212) 614-6470. Thank you for your consideration.

Sincerely,



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

On Behalf of the Requesters

TUE - 26 NOV AA
STANDARD OVERNIGHT
DSR
20528
DC-US
IAD

8990 8848 5583
0215

EP RDVA



397199 25NOV13 NTCA 51AC1/0616/8500

FedEx

For FedEx Express®

FedEx NEW Package
Express **US Airbill**

8996 8848 5583

8996 8848 5583

Date 11/25/13
Tracking Number

Sender's Name
IAN HEAD

Phone 212 614-6434

Company
CENTER FOR CONSTITUTIONAL RIGH

Address
666 BROADWAY

City
NEW YORK

State
NY

Zip
10012-2317

Your Internal Billing Reference
Imm RTS

To Recipient's Name
FOIA REQUEST

Phone

Company
U.S. DEPT. OF HOMELAND SECURITY

Address
245 MURPHY DR. SW

Address
STOP-0655

City
WASHINGTON DC

Phone
202 278

04481622



8996 8848 5583

Form No. 0215

4 Express Package Service
*By your location
*RTM: Service under last changed. Please contact us for details.

5 Packaging *Indicate when this box:
 FedEx Envelope* FedEx Puff* FedEx Tube Other
 FedEx First Overnight
 FedEx Priority Overnight
 FedEx Standard Overnight
 FedEx Express Saver

6 Special Handling and Delivery Signature Options
 No Signature Required
 Direct Signature
 Signature Required (Signature of business addressee)
 Signature Required (Signature of business addressee)
 Signature Required (Signature of business addressee)

7 Payment ZIP in
 Service
 Recipient
 Third Party
 Credit L
 Other Card

607 4 J 5118

692

5583
11.28

621

fedex.com 1800.fedex 1800.463.3339

Insert
airbill
here

EXHIBIT 2

U.S. Department of Homeland Security
Washington, DC 20536-5009



**U.S. Immigration
and Customs
Enforcement**

November 27, 2013

IAN HEAD
CENTER FOR CONSTITUTIONAL RIGHTS
666 BROADWAY, 7TH FL
NEW YORK CITY, NY 10012

Re: 2014FOIA3585

Dear Mr. Head:

This acknowledges receipt of your November 25, 2013, Freedom of Information Act (FOIA) request to the Immigration and Customs Enforcement (ICE), for information on the Detention Bed Mandate and/or Detention Quota and its impact on detention policy and detention contracting decisions nation-wide from June 2006 to present. Including copies of executed agreements related to detention facilities or detention beds, between ICE and private prison corporations, local, state, city or municipal governments. Communications regarding contract renewal, supplemental agreements, addendums and riders. Copies of all regularly generated statistical reports on detention; enforcement prioritization and detained population; detention by geographic location. Copies of cumulative data on numerical payouts to private prison corporations by ICE or DHS. Reports and memoranda reporting on the Detention Bed Mandate and Detention-related Appropriations Decisions to/from the Secretary of Homeland Security. Records about releases from detention due to budget constraints or loss of funding. Your request was received in this office on November 27, 2013.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner; however, there are currently 1072 open requests ahead of yours.

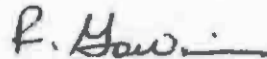
Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester you will be charged 10-cents a page for duplication, although the first 100 pages are

free, as are the first two hours of search time, after which you will pay the quarter-hour rate (\$4.00, \$7.00, \$10.25) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number 2014FOIA3585. Please refer to this identifier in any future correspondence. You may contact this office at (866) 633-1182. Our mailing address is 500 12th Street, S.W., Stop 5009, Washington, D.C. 20536-5009.

Sincerely,



Catrina M. Pavlik-Keenan
FOIA Officer



EXHIBIT 3

U.S. Department of Homeland Security
Washington, DC 20536-5009



**U.S. Immigration
and Customs
Enforcement**

November 27, 2013

IAN HEAD
CENTER FOR CONSTITUTIONAL RIGHTS
666 BROADWAY, 7TH FL
NEW YORK CITY, NY 10012

Re: 2014FOIA3585

Dear Mr. Head:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the U.S. Immigration and Customs Enforcement (ICE), dated November 25, 2013, seeking information on the Detention Bed Mandate and/or Detention Quota and its impact on detention policy and detention contracting decisions nation-wide from June 2006 to present. Including copies of executed agreements related to detention facilities or detention beds, between ICE and private prison corporations, local, state, city or municipal governments. Communications regarding contract renewal, supplemental agreements, addendums and riders. Copies of all regularly generated statistical reports on detention; enforcement prioritization and detained population; detention by geographic location. Copies of cumulative data on numerical payouts to private prison corporations by ICE or DHS. Reports and memoranda reporting on the Detention Bed Mandate and Detention-related Appropriations Decisions to/from the Secretary of Homeland Security. Records about releases from detention due to budget constraints or loss of funding. Your request was received in this office on November 27, 2013.

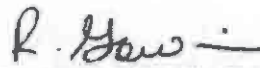
After careful review of your FOIA request, we determined that your request is too broad in scope or did not specifically identify the records which you are seeking. Records must be described in reasonably sufficient detail to enable government employees who are familiar with the subject area to locate 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 10 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 **2014FOIA3585**. Please refer to this identifier in any future correspondence. You may contact this office at (866) 633-1182. Our mailing address is 500 12th Street, S.W., Stop 5009, Washington, D.C. 20536-5009.

Sincerely,



Catrina M. Pavlik-Keenan

FOIA Officer



EXHIBIT 4

Gowins, Ruthlee

From: Ian Head <IHead@ccrjustice.org>
Sent: Tuesday, December 10, 2013 6:43 PM
To: 'ice-foia@dhs.gov'
Cc: Sunita Patel
Subject: ICE FOIA Request #2014FOIA3585
Attachments: Letters Responding to FOIA Req from ICE 12 4 13.pdf

Importance: High

To Whom it May Concern:

My name is Ian Head of the Center for Constitutional Rights and I am following up on a voicemail I left with your office earlier today (December 10) regarding the letter we received from ICE's FOIA Office postmarked December 4, 2013 responding to our November 25, 2013 FOIA Request. A scanned copy of this letter is attached to this email.

We do not want this FOIA request (#2014FOIA3585) administratively closed. Please contact staff attorney Sunita Patel at 212-614-6439 or myself at 212-614-6470 as soon as possible to acknowledge receipt of this message, and ensure that our request has not been closed.

Thank you,

Ian Head
Legal Worker
Center for Constitutional Rights
(212) 614-6470
ihead@ccrjustice.org

EXHIBIT 5



December 19, 2013

Freedom of Information Act Office
U.S. Immigration and Customs Enforcement
500 12th Street SW, Stop 5009
Washington, DC 20536-5009
Attn: Catrina Pavlik-Keenan, FOIA Director

RE: 2014FOIA3585

Dear Ms. Pavlik-Keenan:

I am writing in response to your two letters addressed to Ian Head at Center for Constitutional Rights, postmarked December 4th (but dated November 27th) and received in my office on December 9th. The letters regard a Freedom of Information Act request submitted by the Center for Constitutional Rights (CCR) and Detention Watch Network ("DWN") to Immigration Customs Enforcement (ICE) ("the FOIA Request"). After continued unsuccessful attempts to discuss our request with the ICE FOIA office, we are seeking confirmation that ICE will respond immediately to this time-sensitive matter of public concern.

BACKGROUND

We filed the FOIA Request to obtain important information regarding the Detention Bed Mandate, Bed Mandate and/or Detention Quota, decision-making surrounding the mandate, and the impact the Mandate has had on detention policy and detention contracting decisions nationwide from June 2006 to the present.¹ There is an increasingly urgent need for the public to be better informed on these issues, especially with the upcoming Congressional appropriations debate likely to take place early next year, with hearings beginning as early as February 2014.

In response to the FOIA Request, in an envelope postmarked December 4, 2013, you sent two responses, somewhat inconsistent, to the FOIA Request. The first letter acknowledged receipt of our request by your office on November 27, 2013 and invoked a "10 day extension" in responding to our request, but "assured" us that ICE will be responding to our request "as expeditiously as possible." (*See* Ex. A, "Letter 1"). The second letter also acknowledges receipt of our request on November 27, 2013, but states that the FOIA Request is "too broad" and asks us to resubmit the request. (*See* Ex. B, "Letter 2"). Without citing a specific authority, Letter 2 mandates a response within 10 days ICE, without which your office will administratively close our case.

On several occasions during the week of December 9th, immediately upon receiving your letters, our office attempted to confirm that we do not want this request administratively closed, as well as obtain further clarification as the issues outlined in Letter 2. We did so by phone and

¹ Please review our November 25, 2013 FOIA Request, Section A ("Purpose of the Request"), for full description.

email. On December 13th, a representative of the ICE FOIA office informed us that a supervisor would call us back, presumably immediately, to address our concerns and work with us to process the request. As of the date of this letter, we have not received any further communication from your office.

LETTER 2

First, you state the request was “too broad in scope or did not specifically identify the records” we are seeking. (*See* Ex. B, Letter 2, at 1). The 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 ICE 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. The FOIA Request is in no way “too broad” or unspecific to justify ICE’s evading its FOIA obligations, and we have sought --for over a week -- further clarification by your office. As you are aware, FOIA requires your agency to “liberally construe” the request, and must search field offices where the requestor has indicated they would have responsive records. *See Kowalczyk v. DOJ*, 73 F.3d 386 (D.C. Cir. 1996); *Kidder v. FBI*, 517 F.Supp. 2d 17 (D.D.C. 2007).

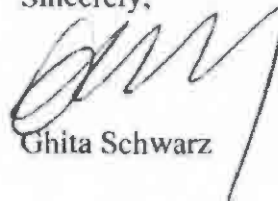
Second, the issues with the FOIA Request raised in Letter 2 are all contained in our original FOIA request: We have named the offices and components within ICE which we are asking to be searched for records, and we have identified, defined and given a “reasonable description” specifying the records sought.

Third, your letter suggests CCR has a deadline of 10 days to respond, after which time if we did not respond, the case would be administratively closed. You cited no authority for this deadline and therefore we dispute any such 10-day requirement. Moreover, even if one existed, it would surely not begin to run on November 27th when the letter is postmarked 9 days later. .

We ask for a response from your office no later than December 30, 2013. As we have indicated in prior communications, we would like to answer any questions regarding #2014FOIA3585 to aid the agency in its searching and processing of for responsive records immediately. Please contact me, Ghita Schwarz, at (212) 614-6445 or gschwarz@ccrjustice.org if you have urgent questions or concerns.

Thank you for your attention to this matter.

Sincerely,



Ghita Schwarz

Encl/

Exhibit A

U.S. Department of Homeland Security
Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

November 27, 2013

IAN HEAD
CENTER FOR CONSTITUTIONAL RIGHTS
666 BROADWAY, 7TH FL
NEW YORK CITY, NY 10012

Re: 2014FOIA3585

Dear Mr. Head:

This acknowledges receipt of your November 25, 2013, Freedom of Information Act (FOIA) request to the Immigration and Customs Enforcement (ICE), for information on the Detention Bed Mandate and/or Detention Quota and its impact on detention policy and detention contracting decisions nation-wide from June 2006 to present. Including copies of executed agreements related to detention facilities or detention beds, between ICE and private prison corporations, local, state, city or municipal governments. Communications regarding contract renewal, supplemental agreements, addendums and riders. Copies of all regularly generated statistical reports on detention; enforcement prioritization and detained population; detention by geographic location. Copies of cumulative data on numerical payouts to private prison corporations by ICE or DHS. Reports and memoranda reporting on the Detention Bed Mandate and Detention-related Appropriations Decisions to/from the Secretary of Homeland Security. Records about releases from detention due to budget constraints or loss of funding. Your request was received in this office on November 27, 2013.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner; however, there are currently 1072 open requests ahead of yours.

Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester you will be charged 10-cents a page for duplication, although the first 100 pages are

free, as are the first two hours of search time, after which you will pay the quarter-hour rate (\$4.00, \$7.00, \$10.25) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number 2014FOIA3585. Please refer to this identifier in any future correspondence. You may contact this office at (866) 633-1182. Our mailing address is 500 12th Street, S.W., Stop 5009, Washington, D.C. 20536-5009.

Sincerely,



Catrina M. Pavlik-Keenan

FOIA Officer





**U.S. Immigration
and Customs
Enforcement**
Freedom of Information Act Office
800 12th St., S.W., MS 5009
Washington, D.C. 20536-5009

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300



U.S. OFFICIAL MAIL
\$300 Penalty
For Private Use

U.S. POSTAGE
\$00.469
12/04/2013
Issued From: 20743
Hester



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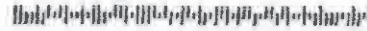


Exhibit B

U.S. Department of Homeland Security
Washington, DC 20536-5009



**U.S. Immigration
and Customs
Enforcement**

November 27, 2013

IAN HEAD
CENTER FOR CONSTITUTIONAL RIGHTS
666 BROADWAY, 7TH FL
NEW YORK CITY, NY 10012

Re: 2014FOIA3585

Dear Mr. Head:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the U.S. Immigration and Customs Enforcement (ICE), dated November 25, 2013, seeking information on the Detention Bed Mandate and/or Detention Quota and its impact on detention policy and detention contracting decisions nation-wide from June 2006 to present. Including copies of executed agreements related to detention facilities or detention beds, between ICE and private prison corporations, local, state, city or municipal governments. Communications regarding contract renewal, supplemental agreements, addendums and riders. Copies of all regularly generated statistical reports on detention; enforcement prioritization and detained population; detention by geographic location. Copies of cumulative data on numerical payouts to private prison corporations by ICE or DHS. Reports and memoranda reporting on the Detention Bed Mandate and Detention-related Appropriations Decisions to/from the Secretary of Homeland Security. Records about releases from detention due to budget constraints or loss of funding. Your request was received in this office on November 27, 2013.

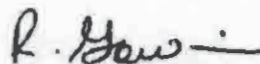
After careful review of your FOIA request, we determined that your request is too broad in scope or did not specifically identify the records which you are seeking. Records must be described in reasonably sufficient detail to enable government employees who are familiar with the subject area to locate 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 10 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 **2014FOIA3585**. Please refer to this identifier in any future correspondence. You may contact this office at (866) 633-1182. Our mailing address is 500 12th Street, S.W., Stop 5009, Washington, D.C. 20536-5009.

Sincerely,



Catrina M. Pavlik-Keenan
FOIA Officer





**U.S. Immigration
and Customs
Enforcement**

Freedom of Information Act Office

500 12th St., S.W., MS 5009
Washington, D.C. 20536-5009

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300



U.S. OFFICIAL MAIL
\$300 Penalty
For Private Use

U.S. POSTAGE
\$00.460
12/04/2013
Marked From 20743
Master



1001282399 0017



IAD

DEC 20 2013

8996 8848 6443
0215

EP RDVA

807

A-3a

5009
Delivery Point
5009
catrina pavlik

Processed By: DSS-990M-022
12/23/2013 9:55:17 AM

899688486443

PEEL FROM

Form ID No. 0215

4 Express Package Service
NOTE: Service order has changed. Please adjust.

Next Business Day
 FedEx First Over
 FedEx Priority Over
 FedEx Standard Over

5 Env

6 SA

Does this No

7 Payment

Total Packages

00174
00252
FedEx NEW Package Express US Airbill

1 From This portion can be removed for Recipient's records.
Date 12/19/13 Tracking Number 899688486443

Sender's Name WASH HEAD Phone 212 614-6434

Company CENTER FOR CONSTITUTIONAL RIGH

Address 666 BROADWAY

City NEW YORK State NY ZIP 10012-2317

2 Your Internal Billing Reference BE WASH R5

3 To Recipient's Name CATRINA PAVLIK - KENNEDY - FOIA OFC

Company US INSTITUTE FOR CONSTITUTIONAL RIGHTS

Address 500 12th St. SW
We cannot deliver to PO, boxes or ZIP codes.

Address 5009
Use this line for the HOLD location address or the continuation of your shipping address.

City WASHINGTON State DC ZIP 20536

0448162256



8996 8848 6443

Insert airbill here

fedex.com 1800.GoFedEx 1800.463.3339

EXHIBIT 6

U.S. Department of Homeland Security
500 12th ST. SW; STOP 5009
Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

December 27, 2013

Ghita Schwarz
Center for Constitutional Rights
666 Broadway, 7th Floor
New York City, NY 10012

Dear Sir or Madam:

The Department of Homeland Security has received your letter appealing the adverse determination of your Freedom of Information Act/Privacy Act (FOIA/PA) request by U.S. Immigration and Customs Enforcement seeking all information on the Detention Bed Mandate and/or Detention Quota and its impact on detention policy and detention contracting decisions nation-wide from June 2006 to present. Including copies of executed agreements related to detention facilities or detention beds, between ICE and private prison corporations, local, state, city or municipal governments. Communications regarding contract renewal, supplemental agreements, addendums and riders. Copies of all regularly generated statistical reports on detention; enforcement prioritization and detained population; detention by geographic location. Copies of cumulative data on numerical payouts to private prison corporations by ICE or DHS. Reports and memoranda reporting on the Detention Bed Mandate and Detention-related Appropriations Decisions to/from the Secretary of Homeland Security. Records about releases from detention due to budget constraints or loss of funding. Your appeal, dated December 19, 2013 was received on December 23, 2013.

On behalf of the Chief for the Government Information Law Division, we acknowledge your appeal request of **2014FOIA3585** and are assigning it number **OPLA14-1042** for tracking purposes. Please reference this number in any future communications about your appeal.

A high number of FOIA/PA requests have been received by the Department. Accordingly, we have adopted the court-sanctioned practice of generally handling backlogged appeals on a first-in, first-out basis.¹ While we will make every effort to process your appeal on a timely basis, there may be some delay in resolving this matter. Should you have any questions concerning the processing of your appeal, please contact ICE FOIA at (866) 633-1182, or by email at ice-foia@dhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Meltzer", written over a horizontal line.

Abby Meltzer
Acting Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
Department of Homeland Security

¹ Appeals of expedited treatment denials will be handled on an expedited basis.

EXHIBIT 7

U.S. Department of Homeland Security
500 12th St. SW; STOP 5009
Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

January 24, 2014

VIA E-MAIL AND REGULAR U.S. POSTAL SERVICE

Ghita Schwarz
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

RE: OPLA14-1042, 2014FOIA3585

Dear Ms. Schwarz:

This is in response to your letter dated December 19, 2013, appealing the adverse determination by the U.S. Immigration and Customs Enforcement (ICE), Freedom of Information Act (FOIA) Office in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request. The initial request, dated November 25, 2013, asked for information regarding the Detention Bed Mandate and/or Detention Quota and its impact on detention policy and detention contracting decisions nation-wide from June 2006 through present, including: (1) copies of executed agreements related to detention facilities or detention beds between ICE and private prison corporations as well as local/state/city/municipal governments; (2) communications regarding contract renewal, supplemental agreements, addenda and riders; (3) copies of all regularly generated statistical reports on detention, enforcement prioritization, detained population and detention by geographic location; (4) copies of cumulative data on numerical payouts to private prison corporations by ICE or DHS; (5) reports and memoranda reporting on the Detention Bed Mandate and Detention-related Appropriations decisions to/from Secretary of Homeland Security; (6) records about releases from detention due to budget constraints or loss of funding; and (7) records related to three specific media releases.

ICE FOIA Office mailed you two acknowledgement letters which were both dated November 27, 2013. The first letter invoked a 10-day extension under 5 U.S.C. section 552(a)(6)(B) with respect to the processing of your request. The second letter informed you that your request was "too broad in scope or did not specifically identify the records [sought]," invited you to resubmit a perfected request, and informed you that your case would be administratively closed within 10 days from the date of the letter if ICE FOIA did not hear from you in the interim. Within your appeal you have enclosed: (1) evidence that both letters from ICE FOIA, dated November 27, 2013, were postmarked December 4, 2013; and (2) a copy of the December 10, 2013, email you sent to ICE FOIA inbox, requesting that your case not be administratively closed. In your appeal, you also state that you have had a telephonic conversation regarding your FOIA request on December 13, 2013, with an unnamed person from the ICE FOIA Office who stated that a supervisor was going to call you back, but that you never received the call-back. It appears that ICE FOIA Office

Ghita Schwarz
OPLA14-1042, 2014FOIA3585
Page 2 of 2

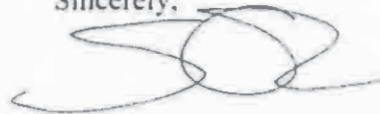
administratively closed your case on December 13, 2013. Finally, you argue both that your request was not too broad in scope and that your description of the documents/records requested was specific enough.

Upon review of the entire administrative record and your appeal letter dated December 19, 2013, we are denying in part and remanding in part the aforementioned appeal. Specifically, we are affirming the decision by ICE FOIA to deem your request overbroad in that it did not describe the records that you seek in enough detail to enable ICE personnel to locate them with a reasonable amount of effort, as required under 6 C.F.R. § 5.3(b). We are also reversing the decision of the ICE FOIA Office to administratively close your case.

This appeal will thus be remanded for ICE FOIA Office to reopen your case and contact you as soon as practicable regarding clarifying the scope of your request, consistent with this opinion.

Should you have any questions regarding this appeal remand, please contact ICE at ice-foia@dhs.gov. In the subject line of the email please include the word "appeal", your appeal number, which is **OPLA14-1042** and the FOIA case number, which is **2014FOIA3585**.

Sincerely,



Debbie Seguin
Chief, Government Information Law Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

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

DETENTION WATCH NETWORK and CENTER FOR
CONSTITUTIONAL RIGHTS,

Plaintiffs,

- against -

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

Defendants.

No. 14 Civ. 583 (LGS)

ECF Case

DECLARATION

I, James V.M.L. Holzer, I, declare and state as follows:

1. I am the Senior Director of FOIA Operations for the Department of Homeland Security (DHS or Department) Privacy Office. In this capacity, I am the Department official immediately responsible for responding to requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (the FOIA), the Privacy Act, 5 U.S.C. § 552a (the Privacy Act), and other applicable records access provisions. I have been employed by the DHS Privacy Office (DHS Privacy) in this capacity since November 2012. Prior to that, I held the position of Director of Disclosure and FOIA Operations. I have been with the Department since 2009.

2. I make the following statements based upon my personal knowledge, which in turn, is based on a personal review of the records in the case files established for processing the subject request and upon information furnished to me in the course of my official duties.

3. Through the exercise of my official duties, I have become familiar with the background of this case and have read a copy of the Complaint filed by plaintiffs (Requesters or Plaintiffs).

4. The purpose of this declaration is to provide the Court with an overview of the FOIA process at DHS, and to explain the particular process employed in this matter. DHS is submitting this declaration in support of its' Motion to Dismiss Plaintiffs' complaint.

THE DHS PRIVACY OFFICE FOIA PROCESS

5. DHS Privacy is the Department of Homeland Security's Privacy Office. DHS Privacy partners with privacy staff in every DHS component to assess all new or proposed programs, systems, technologies or rule-makings for privacy risks, and recommend privacy protections and alternative methods for handling personal information to mitigate privacy risks. DHS Privacy also centralizes FOIA and Privacy Act operations to provide policy and programmatic oversight, and support implementation across the Department.

6. The mission of DHS Privacy is to preserve and enhance privacy protections for all individuals, to promote transparency of Department operations, and to serve as a leader in the privacy community. DHS Privacy (1) evaluates Department legislative and regulatory proposals involving collection, use, and disclosure of personally identifiable information (PII); (2) centralizes FOIA and Privacy Act operations to provide policy and programmatic oversight, and support implementation across the Department; (3) operates a Department-wide Privacy Incident Response Program to ensure that incidents involving PII are properly reported, investigated and mitigated, as appropriate; (4) responds to complaints of privacy violations and provides redress, as appropriate; and (5) provides training, education and outreach to build a culture of privacy across the Department and transparency to the public.

7. Each Component maintains its own automated case tracking system which assigns case control numbers to, and tracks the status of, all FOIA and Privacy Act requests received by that Component. Components log all incoming FOIA and Privacy Act requests into their automated case tracking system, and input information about each request into the system (including, but not limited to, the requester's name and/or organization and, in the case of FOIA requests, the request's topic). All requesters are then notified of the case control numbers assigned to their requests. It is the custom of all Components to refer to the case control numbers in all correspondence with requesters. The automated case tracking systems are text searchable on a field-by-field basis.

8. When any DHS Component receives a referral or tasking from DHS Privacy, it mirrors the actions of DHS Privacy. Component FOIA personnel make a determination regarding which subcomponent or program office may have responsive documents, and then task that office with a search.

THE FOIA REQUEST

9. DHS Privacy received a FOIA Request dated November 25, 2013, from the Requesters on December 2, 2013. DHS Privacy assigned the matter file number 2014-HQFO-00186. Attached as Exhibit A is a true and correct copy of the Requesters' FOIA Request.

10. DHS Privacy sent an acknowledgement to the Requesters on December 6, 2013. DHS Privacy indicated in its acknowledgement that request was "too broad in scope or did not specifically identify the records which you are seeking." The acknowledgement included an explanation that the description of the records sought in the request was not sufficiently detailed to enable government employees to locate the records. The acknowledgement letter also explained that § 5.3(b) of the DHS FOIA regulations, 6 C.F.R. Part 5, require that a requester

describe the records sought with as much information as possible to ensure that the agency's search of appropriate systems of records could locate records with a reasonable amount of effort. Attached as Exhibit B is a true and correct copy of DHS Privacy's December 6, 2013, acknowledgment letter to the Requesters.

11. The December 6, 2013, letter stated that if no response was received in 30 days, the request would be administratively closed, and that the request could be reinstated if the Requesters provided additional information, thereby perfecting the request.

12. The acknowledgement letter made clear that no denial was issued. Instead, the requesters were provided 30 days within which to provide further information such as the type of record(s) sought, the DHS component believed to have created and/or controlled the records, the precipitating event believed to warrant creation of records and the time period relevant to the records or files being created and compiled.

13. DHS Privacy did not receive any further communication from the requesters, either in written form or telephonically after the December 6, 2014 acknowledgment letter was sent.

14. In accordance with DHS's acknowledgment letter, DHS Privacy administratively closed the request on January 8, 2014.

15. DHS Privacy has no record of the filing of any administrative appeal or other communication from the Requesters.

16. Despite the Requester's failure to adhere to DHS administrative regulations, DHS has, in its discretion, been processing the request.

17. DHS has commenced searching for records that may be potentially responsive to those portions of Plaintiff's request that DHS has been able to give a reasonable interpretation that allows DHS employees to search for records.

18. The search, processing, and production of potentially responsive records will take place in accordance with DHS's normal procedures of processing requests on a first-in-first-out basis.

19. As of the date of this declaration, DHS Privacy has 141 open FOIA requests. Fifty (50) of these requests were received prior to the Requesters' request on December 2, 2014.

I declare under the penalty of perjury that the above is true, correct, and complete to the best of my knowledge and belief.

Dated: March 4, 2014



JAMES V.M.L. HOLZER

EXHIBIT A



November 25, 2013

Freedom of Information Act Request
U.S. Immigration and Customs Enforcement
500 12th Street SW, Stop 5009
Washington, DC 20536-5009
Attn: Catrina Pavlik-Keenan, FOIA Director

Freedom of Information Act Request
U.S. Department of Homeland Security
245 Murray Drive SW
STOP-0655
Washington, D.C. 20528-0655

RECEIVED

DEC - 9 2013

PRIVACY OFFICE

Re: Freedom of Information Act Request

To Whom It May Concern:

This is a request under the Freedom of Information Act, 5 U.S.C. Sec. 552 ("FOIA"), on behalf of the Center for Constitutional Rights ("CCR") and the Detention Watch Network ("DWN") (collectively "the Requesters") for information regarding U.S. Immigration and Customs Enforcement agency ("ICE") and Department of Homeland Security ("DHS") Detention Bed Mandate, also known as the Immigration Detention Quota or the Detention Mandate. We ask that you please direct this request to all appropriate offices and components and/or departments within ICE and DHS, including, but not limited to the following offices or components within DHS: Office of Operations Coordination and Planning; Office of Policy; Office of Legislative Affairs; Office of Intergovernmental Affairs; and Office of General Counsel; and the following offices within ICE: Office of the Director and Deputy Director; Office of Detention Policy and Planning; State and Local Coordination; Office of Detention Oversight; Congressional Relations; Office of Acquisition Management; Enforcement and Removal Operations; Office of Detention Management, Enforcement and Removal Operations; and Office of the Principal Legal Advisor.

A. Purpose of Request

The purpose of this request is to obtain information for the Requestors and the public on the Detention Bed Mandate, Bed Mandate and/or Detention Quota, decision-making surrounding the mandate, and its impact on detention policy and detention contracting decisions nation-wide from June

2006 to the present. This information will enable the public to engage in an important on-going policy debate¹ and the upcoming Congressional appropriations debate (likely to begin as early as February 2014).

The use of local jails and correctional facilities, as well as private correctional facilities, to detain non-citizens in civil immigration detention is a matter of concern to the Requestors and the general public. The suggestion in recent news articles that the mandate is not welcomed by high-level Department of Homeland Security ("DHS") officials such as former DHS Secretary Janet Napolitano,² but is the result of private prison corporations lobbying certain members of the Senate and House DHS appropriations subcommittees, raises questions regarding fiscal responsibility and appropriations priorities.³ The public has a right to understand the motives of government officials and agencies on this important policy issue, especially in light of the upcoming appropriations and continued Comprehensive Immigration Reform debate.

Further, the Requesters and the public have an interest in understanding how the Detention Bed Mandate impacts enforcement operations, including the Quota and/or Mandate's relationship with how Immigrations Customs Enforcement ("ICE") determines how many and whom to detain. The extent to which decisions regarding lucrative intergovernmental service agreements ("IGSAs") with ICE and DHS are determined on the basis of local law enforcement cooperation with ICE enforcement programs such as 287(g), the Criminal Alien Program or Secure Communities is unknown to the public at this time. In addition, the Requesters and the public have an interest in understanding the costs of the Detention Bed Mandate as well as the decision-making to use detention in lieu of cost-effective alternatives.

B. Definitions

- 1) **Record(s)**. In this request the term "Record(s)" includes, but is not limited to, all Records or communications preserved in electronic (including metadata) or written form, such as correspondences, emails, documents, data, videotapes, audio tapes, faxes, files, guidance,

¹ See e.g., Stephen Dinan, *Obama's Budget a Blow to Immigrant Enforcers: Funding Cut for Detentions*, *States*, Washington Times (Apr. 11, 2013), <http://www.washingtontimes.com/news/2013/apr/11/obamas-budget-a-blow-to-immigrant-enforcers/?page=all>; Editorial, *The Madness of U.S. Immigration Policy, Continued*, Bloomberg View (Sept. 26, 2013), <http://www.bloomberg.com/news/2013-09-26/the-madness-of-u-s-immigration-policy-continued.html>; Human Rights First, *Growing Bipartisan Support in Congress on Eliminating Detention Bed Mandate* (June 5, 2013), <http://www.humanrightsfirst.org/2013/06/05/growing-bipartisan-support-in-congress-on-eliminating-immigration-detention-bed-mandate-2/>.

² William Selway & Margaret Newkirk, *Congress Mandates Jail Beds for 34,000 Immigrants as Private Prisons Profit*, Bloomberg (Sept. 24, 2013), <http://www.bloomberg.com/news/2013-09-24/congress-fuels-private-jails-detaining-34-000-immigrants.html> ("At an April hearing, then-Homeland Security Secretary Janet Napolitano, whose department includes ICE, called the mandate 'artificial' and said reducing the required number of detainees would let the agency free low-risk offenders who could be on supervised release.")

³ *Id.*

- guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, technical manuals, technical specifications, training manuals, studies, or any other Record of any kind.
- 2) **Agreements.** In this request the term "Agreement(s)" refers to any agreement, written or otherwise; communications; contracts and/or supplements, modifications or addendums to contracts or agreements.
 - 3) **Detention and/or Detain.** In this request the term "Detention" or "Detain" refers to the placement in custody of a non-citizen or individual suspected to be a non-citizen, based on purported violations of the Immigration and Nationality Act, into a local or state jail or prison, not limited to Intergovernmental Service Agreement facilities. The term further refers to private contractual facilities, run or managed by private prison companies or corporations.
 - 4) **Bed Mandate and/or Detention Bed Mandate and/or Detention Quota:** In this request the terms "Bed Mandate", "Detention Bed Mandate" and/or "Detention Quota" refer to the concept and practice, since 2007, that the Immigration and Customs Enforcement agency, including its regional and field offices and various local law enforcement agency partners and private contractors, to maintain a certain numerical level of detention.
 - 5) **Communication(s).** In this request the term "communication" means the transmittal of information (in the forms of facts, ideas, inquiries or otherwise).
 - 6) **Local Governments.** In this request the term "local" government includes state/local government, municipal corporations, tribal governments, tribal business entities, and Alaska Native Corporations.

C. Request for Information

- a. Most Recent Copies of Executed Agreements Related to Detention Facilities or Detention Beds
 - i. Executed Agreements between Private Prison Corporations (such as Corrections Corporation of America and the Geo Group) and ICE, DHS and/or the Federal Bureau of Prisons;
 - ii. Executed Agreements between DHS/ICE and local, state, city or municipal governments, including all Intergovernmental Service Agreements.
 - iii. Executed contract renewal, supplemental agreements, addendums, riders, etc. of the agreements in (i) and (ii).
- b. Communications regarding contract renewal, supplemental agreements, addendums, riders, etc. of the aforementioned agreements listed in Part C(a).
- c. Agreements (formal and informal) regarding detention space, financing of detention beds, and the allocation of beds limited to the following ICE jurisdictions: the Atlanta Field Office; the Dallas, El Paso, Houston and San Antonio Field Offices; the New Jersey Field Office and the Philadelphia Field Office.
- d. Data and Statistics from 2007 to present:
 - i. Copies of all regularly generated statistical reports on detention; enforcement prioritization and detained population; detention occupancy by geographic location (i.e. ICE field office, state or county).

- ii. Copies of any cumulative data or information on numerical payouts to private prison corporations by ICE or DHS.
 - iii. Financial records of actual payments to private prison companies or contractors, including the "guaranteed minimums," "guaranteed minimum" prices and "variable" prices under contracts with private prison corporations.⁴
- e. Records Related to the Creation or Revision (including drafts, memoranda, correspondence and communications) of Specific Media-Related and Public Relations Documents such as Press Releases, Talking Points, emails with press quotes, etc.:
- i. William Selway & Margaret Newkirk, *Congress Mandates Jail Beds for 34,000 Immigrants as Private Prisons Profit*, Bloomberg (Sept. 24, 2013), <http://www.bloomberg.com/news/2013-09-24/congress-fuels-private-jails-detaining-34-000-immigrants.html>;
 - ii. Stephen Dinan, *Obama's Budget a Blow to Immigrant Enforcers; Funding Cut for Detentions, States*, Washington Times (Apr. 11, 2013), <http://www.washingtontimes.com/news/2013/apr/11/obamas-budget-a-blow-to-immigrant-enforcers/?page=all>; and
 - iii. Spencer S. Hsu and Andrew Becker, *ICE officials set quotas to Deport More Illegal Immigrants*, Washington Post (Mar. 27, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/26/AR2010032604891.html>.
- f. All Reports and Memoranda Reporting on the Detention Bed Mandate and Detention-related Appropriations Decisions to/from the Secretary of Homeland Security, Assistant Secretary of Homeland Security in Charge of Immigration and Customs Enforcement, Members of Congress and/or the White House.
- g. Records, including communications, about releases from detention due to budget constraints or loss of funding, including but not limited to the following:
- i. Effects of the 2013 Budget Sequestration and the government shutdown in the fall of 2013;⁵ and
 - ii. Testimony of John Morton before the Judiciary Committee of the U.S. House of Representatives in March 19, 2013.⁶

⁴ E.g., Department of Homeland Security, Contract ACD-3-C-0015, at 3 (Oct. 1, 2003), available at <http://www.ice.gov/doclib/foia/contracts/acaacd3c0015asoip00023.pdf>.

⁵ E.g. *Release of Criminal Detainees by U.S. Immigration and Customs Enforcement: Policy or Politics? Before the H. Comm. on the Judiciary*, 113th Cong. (Mar. 19, 2013); See 159 Cong. Rec. 1973 (2013) ("My amendment would hold the Obama administration accountable for its recent decision to release more than 2,000 undocumented immigrants from detention centers across the country in the past month.") (Grassley, Mar. 20, 2013).

⁶ Testimony of John Morton, Director of ICE, "The Release of Criminal Detainees by U.S. Immigration and Customs Enforcement: Policy or Politics," March 19, 2013.

- iii. Communications with or about John Morton's decisions on or about December 2009 and Spring 2010 to release ICE detainees from detention.⁷
- ii. Records of ICE or DHS communications with local, state or Congressional officials or law enforcement agencies related to costs, reimbursements, profits, or monetary agreements for detention; monetary or contractual incentives related to immigration detention or detention contracting; or the need for additional detainees or possible sources of additional detainees to fulfill contractual obligations with ICE.
- i. Records related to the relationship between ICE and private prison corporations including email communications, letters, memoranda, policy memos for contract bidding processes or Requests for Proposals.

D. Format of Production

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records. Please provide the requested documents in the following format:

- Saved on a CD, CD-ROM or DVD;
- In PDF or TIF format wherever possible;
- Electronically searchable wherever possible;
- Each paper record in a separately saved file;
- "Parent-child" relationships maintained, meaning that the requester must be able to identify the attachments with emails;
- Any data records in native format (i.e. Excel spreadsheets in Excel);
- Emails should include BCC and any other hidden fields;
- With any other metadata preserved.

E. The Requesters

The Center for Constitutional Rights ("CCR") is a non-profit, public interest, legal, and public education organization that engages in litigation, public advocacy, and the production of publications in the fields of civil and international human rights. CCR's diverse dockets include litigation and advocacy around immigration detention, post-9/11 immigration enforcement policies, policing, and racial and ethnic profiling. CCR is a member of immigrant rights networks nationally and provides legal support to immigrant rights movements. One of CCR's primary activities is the publication of newsletters, know-you-rights handbooks, legal analysis of current immigration law issues, and other similar materials for public dissemination. These and other materials are available through CCR's

<http://www.dhs.gov/news/2013/03/19/written-testimony-is-immigration-and-customs-enforcement-director-john-morton-house>

⁷ See 159 Cong. Rec. 1973 (2013) ("My amendment would hold the Obama administration accountable for its recent decision to release more than 2,000 undocumented immigrants from detention centers across the country in the past month.") (Grassley, Mar. 20, 2013).

Development, Communications, and Education & Outreach Departments. CCR operates a website, www.ccrjustice.org, which addresses the issues on which the Center works. The website includes material on topical civil and immigrant rights issues and material concerning CCR's work. All of this material is freely available to the public. In addition, CCR regularly issues press releases and operates a listserv of over 50,000 members and issues "action alerts" that notify supporters and the general public about developments and operations pertaining to CCR's work. CCR staff members often serve as sources for journalist and media outlets, including on immigrant rights.

Detention Watch Network is a national coalition of organizations and individuals working to expose and challenge the injustices of the U.S. immigration detention and deportation system and advocate for profound change that promotes the rights and dignity of all persons. DWN was founded in 1997 in response to the explosive growth of the immigration detention and deportation system in the United States. Today, DWN is the only national network that focuses exclusively on immigration detention and deportation issues. The Network is recognized as the "go-to" resource on detention issues by media and policymakers and known as a critical national advocate for just policies that promote an eventual end to immigration detention. As a member-led network, we unite diverse constituencies to advance the civil and human rights of those impacted by the immigration detention and deportation system through collective advocacy, public education, communications, and field-and-network-building. DWN has a well-known website featuring the latest news, information and developments on detention policy.

F. Fee Waiver

The Requesters are entitled to a fee waiver pursuant to 5 U.S.C.(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k) on the grounds that "disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of institution). *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987). Requesters meet the requirements of 6 C.F.R. § 5.11(k) because the subject of the request concerns the operations or activities of the government; the disclosure of the information is likely to contribute to a significant public understanding of government operations or activities due to the requesters' expertise in the subject area and ability to convey the information; the Requesters' primary interest is in disclosure; and they have no commercial interest in the information. In addition, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), the Requesters qualify as a "representatives of the news media," defined as "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii).

As described in Part D above, the Requesters are non-profit organizations dedicated to civil rights, human rights, and immigrant rights, and have a proven track-record of compiling and disseminating information and reports to the public about government functions and activities, including the government's record and position on immigrants' rights, detention and policy matters. The Requesters have undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public's understanding of federal immigration enforcement actions and policies. Access to this information is

crucial for the Requesters and the communities they serve to evaluate immigration enforcement actions and their potential detrimental efforts.

As stated above, the Requesters have no commercial interest in this matter. The Requesters will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters.'").

In the alternative, we request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II). ("[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media."). See also 6 C.F.R. § 5.11(d). If no fee waiver is granted and the fees exceed \$250.00, please contact the Requesters' undersigned counsel to obtain consent to incur additional fees.

G. Expedited Processing

The Requesters are entitled to expedited processing of this request because there is a "compelling need" for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" is established when there exists an "urgency to inform the public concerning actual or alleged Federal Government activity," when the requester is a "person primarily engaged in disseminating information," 6 C.F.R. § 5.5(d)(ii).

There is an urgent need to inform the public of the policies and decision-making regarding the ICE detention bed quotas or detention bed mandate. The appropriations debate will begin in a matter of months and it is paramount that the public have the requested information to meaningfully engage in the public debate surrounding the cost of detention; decisions regarding the number of beds ICE is required to occupy; and incentives by local governments to arrest and fill ICE detention beds. Politicians on both sides of the aisle have also called attention to excessive use of immigration detention, which is directly tied to the mandate. For example, during a March 2013, House Judiciary Committee Hearing, Representative Spencer Bachus (R-Ala.) warned of an "overuse of detention by this administration," and was among 190 House members who voted for the amendment to eliminate the detention bed mandate.⁸

Given the bipartisan critique of the Detention Bed Mandate, the public has an urgent need to know why it is still in place. Congress debates the appropriations for the Department of Homeland Security as early as February of each calendar year.⁹ It is necessary for the requested information to be made available in advance of Congressional discussions of the appropriations debate, so that the public can engage meaningfully with the political issues surrounding the Detention Bed Mandate.

⁸ Jude Joffe-Block, *Ice Head Answers More Questions on Detainee Release*, KPBS, March 19, 2013, <http://www.kpbs.org/news/2013/mar/19/ice-head-answers-more-questions-detainee-release/>.

⁹ See Senate Appropriations, Homeland Security Subcommittee Hearing Dates, <http://www.appropriations.senate.gov/ht-homeland-security.cfm?method=hearings.default&subcommitteeId=7a93b400-6178-4e04-9711-094f5d87a0c4> (indicating DHS budget was brought before Senate in February or March for Fiscal Years 2010-2014).

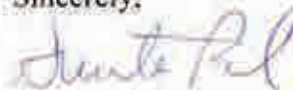
H. Certification & Conclusion

The Requesters certify that the above information is true and correct to the best of the Requesters' knowledge. *See* 6 C.F.R. § 5.5(d)(3). If this Request is denied in whole or in part, the Requesters ask that the Department of Homeland Security and ICE justify all deletions by reference to specific exemptions of FOIA. The Requester expects DHS and ICE to release all segregable portions of otherwise exempt material, and reserves the right to appeal a decision to withhold any records or to deny the within application for expedited processing and waiver of fees.

Please furnish all applicable Records in electronic format as specified above to: Sunita Patel, Center for Constitutional Rights, 666 Broadway, 7th Floor, New York, NY 10012.

If you have any questions regarding the processing of this request, please contact Sunita Patel at (212) 614-6439, or Ian Head at (212) 614-6470. Thank you for your consideration.

Sincerely,



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

On Behalf of the Requesters

TUE - 26 NOV AM
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EP: 397158 258013 WCA 5141/0616/6900

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2 Your Internal Billing Reference **1000 R15**

3 To Recipient's Name **FONA PATRIST** Phone

Company **U.S. DEPT. OF HOMELAND SECURITY**

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Address **STOP - DUES**

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EXHIBIT B



**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.

Sincerely,

A handwritten signature in cursive script that reads "Maura Busch". The signature is written in black ink and is centered below the word "Sincerely,".

Maura Busch
Government Information Specialist



Joint Statement for the Record

Rafael Borrás
Under Secretary for Management
Management Directorate

And

Thomas S. Winkowski
Deputy Commissioner
Performing the Duties of the Commissioner
U.S. Customs and Border Protection

And

John Halinski
Deputy Administrator
Transportation Security Administration

And

Daniel H. Ragsdale
Deputy Director
U.S. Immigration and Customs Enforcement

U.S. Department of Homeland Security

Before the
United States House of Representatives
Committee on Homeland Security

April 12, 2013

Mr. Chairman, Ranking Member, and Members of the Committee:

We are pleased to appear before you to discuss sequestration and the important planning that has been undertaken to date by the Department of Homeland Security (DHS). We will also discuss issues surrounding the Budget Control Act (BCA) and our preparations for potential budget reductions and the impacts of sequestration.

The sequestration order that the President was required by law to issue on March 1 requires the Department to achieve \$3.2 billion in budget reductions over the remaining seven months of the fiscal year (FY). Sequestration consists of mandatory, automatic and indiscriminate across-the-board budget cuts of approximately \$85 billion throughout the Federal Government, which must be applied to nearly every program, project, and activity (PPA) within an account for the remainder of FY 2013. Like other agencies, DHS has engaged in ongoing planning activities in consultation with the Office of Management and Budget (OMB) over the past several months to determine how to operate under sequestration, keeping in mind our primary responsibility to execute our core mission areas on behalf of the American people. As required by law, our execution of sequestration is applied as a uniform percentage reduction to all non-exempt budgetary accounts; the reductions will be implemented equally across all PPAs within each account.

As it became more clear that Congress was not going to take action to address the sequester, on February 26 and 27, leadership from DHS's Management Directorate provided notifications to all DHS employees that the Federal Government faced the possibility of sequestration, and that both employees and operations could be impacted by these mandated cuts. Following the issuance of the sequestration order on March 1, Departmental Components began prudent steps to reduce spending for every account. These included the issuance of furlough notifications, reduction of overtime, hiring freezes and postponed contract actions throughout the Department.

Since then, the Department has continued its sequestration planning. The FY 2013 Consolidated and Further Continuing Appropriations Act, enacted on March 26, changed our funding levels once again, requiring additional adjustments to our planning. Some Components received additional funds which have provided more leeway in achieving the required reductions, while others were appropriated less funding which has required those Components to identify additional actions that can be taken.

While our recently enacted appropriations will help DHS to mitigate – to some degree – the impacts of sequestration on our operations and workforce that were originally projected under the FY 2013 Continuing Resolution (CR) enacted on September 28, 2012, there is no doubt that these cuts will affect operations in the short- and long-term. Lines and wait times at our ports of entry (POEs) are longer, affecting travel and trade; the take home pay of the men and women on the frontlines will be reduced; and employees across the Department as well as the public we serve face uncertainty based on sudden budgetary reductions that must be met by the end of the year. The long-term effects of sustained cuts at these levels will result in reduced operational capacity, breached staffing floors, and economic impacts to the private sector through reduced and cancelled contracts. In spite of the substantial and far reaching cuts mandated by

sequestration, we will continue to do everything we can to minimize impacts on our core mission and employees, consistent with the operational priorities in our 2014 budget.

DHS Fiscal Stewardship

Through administrative efficiencies, cost avoidances, and our internal budgeting processes, we have been working proactively to reduce the Department's resource requirements wherever possible. In fact the Department's FY 2014 Budget, submitted to Congress on April 10, reflects the third consecutive year in which the Department's overall topline has been reduced.

Through the Department-wide, employee-driven Efficiency Review, which began in 2009, as well as other cost-saving initiatives, DHS has identified over \$4 billion in cost avoidances and reductions, and redeployed those funds to mission-critical initiatives across the Department. For example, in the past, offices at DHS purchased new computers and servers while excess equipment remained unused in other areas of the Department. Through Component-level efforts to better re-utilize excess IT equipment, DHS has saved \$24 million in taxpayer money. In addition, DHS previously spent millions of dollars each year by paying for cell phones and air cards that were not in use. The Department now conducts annual audits of usage and has saved \$23 million to date. Also, DHS has encouraged Components to use government office space and online tools for meetings and conferences instead of renting private facilities, a change that has saved \$11.7 million to date.

We have used strategic sourcing initiatives to leverage the purchasing power of the entire Department for items such as language services, tactical communications services and devices, intelligence analysis services, and vehicle maintenance services. In FY 2012, we achieved \$368 million in savings, and we project \$250 million in savings for FY 2013, subject to sequestration.

In support of the Administration's Campaign to Cut Waste, DHS strengthened conference and travel policies and controls to reduce travel expenses and ensure conferences are cost-effective and that both travel and conference attendance is driven by critical mission requirements. In 2012, DHS issued a new directive that establishes additional standards for conferences and requires regular reporting on conference spending, further increasing transparency and accountability.

In our FY 2014 Budget, we identified initiatives that will result in \$1.3 billion in savings from administrative and mission support areas, including contracts, information technology, travel, personnel moves, overtime, directed purchasing, professional services, and vehicle management.

In effect, with declining resources, the Department has worked proactively to eliminate inefficiencies wherever possible and to focus available resources on supporting frontline mission requirements. We have a proven, established process to plan and budget; however recent fiscal uncertainties and the across-the-board nature of sequestration have affected the Department's ability to plan beyond recent, immediate budget crises that have occurred.

Initial Sequestration Planning

As you are aware, the BCA was signed into law on August 2, 2011. The BCA established caps on discretionary spending for FY 2012 through FY 2021. Since enactment of the BCA, the Department has been planning for the possibility of sequestration. In August 2011, our Office of General Counsel and the Office of the Chief Financial Officer (OCFO) provided an initial review of the new statute to become familiar with its provisions and impacts to the Department.

On September 12, 2011, the Congressional Budget Office released its report entitled, "Estimated Impact of Automatic Budget Enforcement Procedures Specified in the Budget Control Act." On the basis of that analysis, OCFO commenced work with Departmental Components to identify which accounts are included in the Security and Non-Security Categories, since they would be subject to differing sequester amounts.

On July 31, 2012, OMB provided guidance to federal agencies that discussions would commence over the coming months on issues associated with sequestration. It was recognized then that undertaking sequestration planning and implementation activities would divert resources from other important activities and priorities. It was our hope and expectation that, rather than force the Department to pursue a course of action that would be disruptive to mission-related activities, Congress would reach agreement on a deficit reduction package as an alternative to sequestration.

On September 17, 2012, OMB provided Congress with its Sequestration Transparency Act report, which identified agency-by-agency the estimated funding amounts that could be sequestered based on appropriations enacted for FY 2012, not FY 2013. The OMB report estimated that DHS would be subject to a five percent sequester and required to absorb approximately \$3.2 billion in reductions to its total budget authority beginning January 2, 2013.

The Department thus began comprehensive planning efforts, consistent with OMB guidance. A significant challenge remained, however, in that amounts subject to sequestration could only be calculated once final FY 2013 funding levels were known. The FY 2013 Continuing Appropriations Act enacted on September 28, 2012, left the Department operating under a CR until March 27, 2013 – a point beyond the date sequestration was mandated to begin.

For the remainder of 2012, the Department's leadership continued to examine what courses of action might be necessary to implement sequestration, including the establishment of uniform procedures for taking personnel actions such as furloughs, reductions in force (RIFs), and voluntary early retirements and separations, as well as identifying contracts which could be re-scoped. The Department's chief financial, human capital, and procurement officers worked closely together during this time to ensure proper coordination in developing our sequestration implementation plans.

In our planning efforts, we were careful to strike a balance to take prudent, responsible steps toward across-the-board budget reductions. Our guiding principles have been as follows:

- First, we focus on preserving the Department's frontline operations and other mission-critical activities to the maximum extent possible.
- Second, understanding that DHS is a labor-driven organization, we strive to avoid and if required, minimize furloughs to the greatest extent possible. Hiring freezes and potential furloughs not only have operational impacts on our core missions but adversely affect employee morale and well-being.

Unfortunately sequestration in and of itself provides very little flexibility in how the across-the-board cuts must be applied. Several types of personnel actions that agencies regularly use to manage their workforce over the long term are not useful to address the short-term requirements of sequestration. Implementing DHS-wide voluntary early retirements and separations entails up-front funding which is not available under a sequestered budget. The notification and bargaining processes required for RIFs could not be completed until FY 2014, well after our FY 2013 funding is sequestered.

Implementation Plan Changes

Following the passage of the American Taxpayer Relief Act of 2012 on January 2, 2013, several additional challenges arose for our sequestration planning.

This legislation postponed sequestration by two months, until March 1, and provided a \$24 billion down payment that reduced the amount of sequestration for Fiscal Year 2013 from \$109 billion to \$85 billion. Additionally, in late January, Congress passed the FY 2013 Disaster Relief Appropriations Act (P.L. 113-2) which provides \$60.4 billion in supplemental appropriations to assist victims of Hurricane Sandy, including \$12.1 billion for DHS. These actions changed the sequester amount for all federal agencies months after our planning activities had begun. The FY 2013 Consolidated and Further Continuing Appropriations Act also provided DHS with a new baseline for FY 2013.

Accordingly, even as our planning for sequestration progressed throughout 2013, given the actions described above, the amount of the sequester changed numerous times, creating difficulties in developing detailed implementation strategies for each of our Components.

Impacts of the Sequestration Order on the Department

Following are the impacts of sequestration to several of the Department's frontline Components: U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and the Transportation Security Administration (TSA).

Impacts on U.S. Customs and Border Protection

CBP is America's frontline border security agency, the guardians of our borders, responsible for protecting the United States and the American people from the entry of dangerous goods and people. With more than 60,000 employees, CBP has the largest number of uniformed officers of any federal law enforcement agency. Its primary mission is keeping terrorists and their weapons out of the United States. CBP is also responsible for securing the border and facilitating lawful international trade and travel while enforcing hundreds of U.S. laws and regulations. This includes ensuring that all persons and cargo enter the United States legally and safely through official POEs, preventing the illegal entry of persons and contraband into the U.S. at and between POEs, promoting the safe and efficient flow of commerce into our country, and enforcing trade and tariff laws and regulations.

CBP protects approximately 7,000 miles of land borders and 95,000 miles of coastal shoreline. Operating at 329 POEs across the United States, CBP welcomes almost one million travelers by land, sea, and air, facilitating the flow of goods essential to our economy. In FY 2012, CBP facilitated more than \$2.3 trillion in trade and welcomed a record 98 million air travelers, a 12-percent increase since FY 2009. CBP also collected \$39.4 billion in revenue, a six-percent increase over the previous year – illustrating the critical role of CBP not only with border security, but with economic security and continued growth. Trade and travel are absolutely vital to our economy, and according to the U.S. Travel Association, one new American job is created for every 33 travelers arriving from overseas.

Removing the planned transfer of US-VISIT, CBP's FY 2013 direct appropriation budget request was \$10.083 billion, \$72 million less than its FY 2012 appropriation. In order to fund rising personnel costs within a slightly declining overall budget, CBP proposed a variety of efficiencies and program reductions and deferred a number of major acquisitions. At the FY 2013 enacted level with nearly \$600 million in sequestration reductions, CBP's FY 2013 funding level is \$309 million less than FY 2012, or about three percent less than the previous fiscal year. As a result, CBP has made further reductions to non-pay costs and discretionary pay costs, such as awards, overtime and mission support hiring.

Although the FY 2013 Consolidated and Further Continuing Appropriations Act provides additional funding for CBP and enables it to mitigate to some degree the impacts to its workforce, sequestration still requires more than \$600 million in cuts across CBP, affecting operations in the short- and long-term. While CBP remains committed to doing everything it can to minimize risks and mitigate the impact of sequestration, we have already experienced significant impacts to cross-border activities.

Reduced CBP Officer (CBPO) overtime availability at our Nation's ports has resulted in increased wait times for travelers across the country. International travelers have experienced wait times of up to several hours to process through Customs and a number of locations have reported wait times averaging between 120 to 240 minutes, and some as long as four to 4.5 hours. These automatic cuts have occurred against a backdrop of significant growth in travel and trade in all POE environments. Air travel at the major gateway airports is up by four percent, on top of a three-year increase of over 12 percent. Land border travel is up

3.6 percent through the fiscal year to date. Additionally, cargo volumes have increased in all environments over the past three years.

Delays affect the air travel environment, causing missed passenger connections for both domestic and international flights. Reduced CBPO overtime availability at our Nation's ports also slows the movement of goods across the border. Even the smallest increase in wait times at the borders directly affects our economy. Reduced CBPO overtime availability will continue to impede CBP's capacity to facilitate and expedite cargo, adding costs to the supply chain and diminishing our global competitiveness that is so critical to our economy.

Between the POEs, sequestration has led to significant reductions in areas like CBP's detainee transportation support contract, which increases non-law enforcement requirements for frontline Border Patrol agents. CBP has also cut operating expenses, including vehicle usage, affecting Border Patrol's ability to respond to requests from other law enforcement entities for assistance.

Additionally, reductions in relocation expenses will necessitate that the Border Patrol postpone promotions to leadership and managerial positions, requiring less experienced staff to perform the functions of these critical jobs.

Based on CPB's funding levels as of March 1, the sequester also necessitated CBP to take steps to achieve a reduction of 21,000 flight hours for CBP's fleet of 269 aircraft from a level of 69,000 hours to 48,000 hours, impacting CBP's ability to provide critical aerial surveillance and operational assistance to law enforcement personnel on the ground. Based on funding provided in the FY 2013 Consolidated and Further Continuing Appropriations Act, CBP will work to restore flight hours to pre-sequestration levels.

Impacts on U.S. Immigration and Customs Enforcement

ICE serves as DHS's principal investigative arm and is the second largest investigative agency in the Federal Government.

ICE promotes homeland security and public safety through broad criminal and civil enforcement of approximately 400 federal laws governing border control, customs, trade, and immigration. In FY 2012, ICE's Homeland Security Investigations (HSI) initiated over 43,000 new investigations and made more than 32,000 criminal arrests around the world. During this same time period, we set a new agency record with the seizure of \$774 million in currency and negotiable instruments, more than double the amount seized during the previous year, as well as the seizure of 1.5 million pounds of narcotics and other dangerous drugs and \$175 million worth of counterfeit goods.

ICE's Enforcement and Removal Operations identifies, apprehends, and removes criminal and other removable aliens from the United States. Last year, ICE removed 409,849 illegal immigrants, including 225,000 individuals who had been convicted of felonies or misdemeanors.

ICE's FY 2013 budget request was \$218 million less than its FY 2012 appropriation, reflecting a variety of planned efficiencies. At the FY 2013 enacted level with sequestration applied, ICE's

FY 2013 funding level is \$417 million less than FY 2012, or about 7.1 percent less than the previous fiscal year. As a result, ICE has made adjustments to several program plans for FY 2013.

After the sequestration order was given, ICE leadership distributed guidance to all of its employees outlining post-sequestration plans, including spending controls during this period. Key aspects of ICE's post-sequestration plan include cuts in the areas of hiring, contracts, travel, training and conferences, compensatory time and overtime, vehicle usage, and permanent change of station moves, which will affect ICE's criminal and civil enforcement missions.

For instance, ICE continues to leave a number of positions unfilled by not backfilling for attrition.

We expect that that these workforce and operational reductions will result in fewer cases, arrests, and seizures, and could impact both interagency and international partnerships. A number of ICE criminal operations have already been slowed or deferred, and HSI offices are reducing operational activities within current investigations. For instance, ICE HSI Special Agents in Charge have had to curtail their use of informant payments as well as Title III wire intercepts, investigative tools that allow agents to gain critical information to dismantle transnational criminal organizations. Finally, HSI offices have discontinued the use of certain government-owned vehicles that require mandatory repairs. As a result, investigative field functions may be affected, including arrests and seizures of contraband goods and weapons.

Sequestration could also present significant challenges for ICE's civil immigration enforcement mission. ICE will continue to manage its detention population in order to ensure it can operate within the appropriations level provided by Congress in the FY 2013 Consolidated and Further Continuing Appropriations Act, and in consideration of reductions required by sequestration. To the extent that ICE is unable to maintain 34,000 detention beds with the funding provided, it will focus its detention capabilities on priority and mandatory detainees, including individuals who pose a danger to national security or a risk to public safety, including aliens convicted of crimes, with particular emphasis on violent criminals, felons, and repeat offenders. ICE will place low-risk, non-mandatory detainees in lower cost, parole-like alternatives to detention programs, which may include electronic monitoring and intensive supervision. In addition, ICE has postponed indefinitely its Advanced Tactical Training classes for Fugitive Operation Teams, which target fugitive aliens who have received a final order of removal from an immigration judge or who have been previously removed and have re-entered the United States unlawfully.

ICE will also delay a number of facilities projects. To support its operations, ICE has more than 600 leased locations throughout the United States, of which 161 leases are expiring between FYs 2013-2015. In many instances, the project delays will result in the untimely acquisition of new space, resulting in duplicative rent payments, delaying claim payments to contractors, and additional legal action from building owners.

ICE will continue to evaluate the recently enacted appropriations to determine how best to mitigate the impact of the reduced funding level on its workforce and operations.

Impacts on the Transportation Security Administration

TSA's FY 2013 budget request was \$200 million less than its FY 2012 appropriation, reflecting a variety of planned efficiencies. After applying the sequester to its final enacted FY 2013 appropriation, TSA's FY 2013 funding level is \$670 million less than FY 2012, or about 8.8 percent less than the previous fiscal year.

While the reductions required by sequestration will continue to have impacts on TSA, the FY 2013 Consolidated and Further Continuing Appropriations Act provides TSA with additional funding for Transportation Security Officers, which allows TSA to mitigate to some degree the impacts on their workforce and operations. TSA will use these additional funds to maintain its security screening workforce through prudent management of hiring and controlled overtime. Although initial projected impacts on wait times are largely mitigated through the additional funding provided for Transportation Security Officers by Congress, at reduced levels of personnel and restricted overtime, travelers may see lines and wait times increase during the busiest travel periods or required surge operations.

The Federal Air Marshal Service (FAMS) has had a hiring freeze in place for over a year to manage a planned program adjustment from \$965.8 million in FY 2012 to \$929.6 million in FY 2013. Congress further reduced that funding in the full FY 2013 appropriation to \$906.9 million, or \$858 million under sequestration, an 11.1 percent cut below FY 2012 levels. The FAMS mission funding is dominated by personnel, travel, and related costs. TSA continues to assess the personnel actions and mission adjustments that will be necessary at the decreased budget level.

Sequestration has also had significant impacts on TSA's information technology, checkpoint technology, security screening equipment and infrastructure accounts, totaling a \$288 million reduction from FY 2012 levels. In light of these cuts, information technology (IT) service level contracts, refreshment of IT equipment and maintenance schedules will be deferred or reduced through the end of the fiscal year. Furthermore, security equipment technology replacement and investment plans are being adjusted to reflect the reduced budget level. While TSA is working to minimize disruption to operational support and security services to the greatest extent possible, in many cases equipment also already reached or exceeded its planned service life.

Finally, TSA has taken action to establish additional controls across the agency. We have canceled previously approved conferences, meetings that require travel, and training activities. This includes management control training, field oversight and compliance audits, operational and support program coordination planning and preparedness training.

Conclusion

The FY 2013 Consolidated and Further Continuing Appropriations Act includes a requirement to prepare post-sequestration operating plans 30 days after enactment, by April 25. We are in the process of responding to this requirement.

As discussed earlier, the Department has already taken over \$4 billion in significant reductions and cost avoidances to administrative and mission support functions over the past several years in order to sustain frontline operations while planning for declining budgets. However, the statutory requirements for sequestration leave federal agencies with very little discretion on how to apply across-the-board funding cuts. With less than six months remaining in FY 2013, DHS simply cannot absorb the additional reductions mandated by sequestration without affecting frontline operations and the critical homeland security capabilities we have built over the past 10 years.

Hurricane Sandy, recent threats surrounding aviation and the continued threat of homegrown terrorism demonstrate how we must remain vigilant and prepared. Threats from terrorism and response and recovery efforts associated with natural disasters will not diminish because of budget cuts to DHS.

Even in this current fiscal climate, we do not have the luxury of making significant reductions to our capabilities without placing our Nation at risk. Rather, we must continue to prepare for, respond to, and recover from evolving threats and disasters – and we require sufficient resources to sustain and adapt our capabilities accordingly.

Thank you for inviting us to appear before you today. The Department appreciates the strong support it has received from the Committee over the past 10 years. We would be pleased to answer any questions you may have.

Congress enacts FY 2011 Year-Long Continuing Resolution (CR). Preliminary work begins on the FY 2013 Budget.		4/15/2011
DHS conducts FY 2011 Mid-Year Budget Reviews; DHS Components complete FYs 2013-2017 Resource Allocation Proposals (RAPs).		5/2011
OMB conducts mid-session review of the FY 2012 Budget Submission.		6/2011
OMB Guidance issued on FY 2013 Budget Formulation; DHS determines FYs 2013-2017 Resource Allocation Decisions.		7/2011
1 st potential default of U.S. debt obligations looms; Congress passes Budget Control Act		8/2/2011
Congressional Budget Office estimates FY 2013 sequester to be 7.8% for Non-Security and 10% for Security Category discretionary accounts.		9/12/2011
Congress passes 1 st FY 2012 CR (for DHS) through 10/4/2011; OMB provides apportionments.		9/30/2011
FY 2012 begins with federal agencies operating under a CR.		10/1/2011
Congress passes 2 nd FY 2012 CR (for DHS) through 11/18/2011; OMB provides apportionments.		10/5/2011
Congress passes 3 rd FY 2012 CR (for DHS) through 12/17/2011; OMB provides apportionments.		11/16/2011
Congress passes 4 th FY 2012 CR (for DHS) through 12/23/2011; OMB provides apportionments.		12/17/2011
Congress passes FY 2012 Consolidated Appropriations Act; OMB provides apportionments.		12/23/2011
Deadline passes for Congress to enact a deficit reduction package, triggering sequestration for FY 2013.		1/15/2012
President's FY 2013 Budget is submitted to Congress.		2/13/2012
DHS issues FYs 2014-2018 Guidance to Components.		3/2012
Preliminary work begins on the FY 2013 Budget.		4/2012
DHS conducts FY 2012 Mid-Year Budget Reviews; DHS Components complete FYs 2014-2018 Resource Allocation Proposals.		5/2012
OMB conducts mid-session review of the FY 2013 Budget Submission.		6/2012
OMB Guidance issues on FY 2014 Budget Formulation; DHS determines FYs 2014-2018 Resource Allocation Decisions.		7/2012
OMB issues preliminary guidance on sequestration.		7/31/2012
DHS Chief Financial Officer (CFO) conducts CFO Council Meeting on sequestration.		8/15/2012
OMB releases Sequestration Transparency Act report detailing for the first time account by account sequesters, based on FY 2012 funding levels; CFO conducts CFO Council Meeting.		9/14/2012
Congress passes FY 2013 CR through March 27, 2013; federal agency funding remains at FY 2012 funding levels; OMB issues apportionment guidance.		9/28/2012
FY 2013 begins with federal agencies operating under a CR.		10/1/2012
CFO conducts CFO Council Meeting on sequestration.		10/5/2012
CFO, Chief Human Capital Officer (CHCO), and Chief Procurement Officer (CPO) conduct joint meeting on possibility of sequestration.		10/19/2012
CHCO conducts Human Capital Leadership Council discussion on sequestration.		11/15/2012
CFO conducts CFO Council Meeting on sequestration.		12/7/2012
CHCO and CFO conduct joint planning session on sequestration.		12/11/2012
DHS Management leadership informs DHS employees about possibility about sequestration.		12/21/2012
Fiscal Cliff agreement enacted; Department of Homeland Security shifted into the Security Category; FY 2013 sequester reduced by \$24 billion.		1/2/2013
CFO conducts CFO Council Meeting on sequestration.		1/4/2013
OMB issues guidance on fiscal uncertainties and potential of sequestration.		1/14/2013
Congress passes FY 2013 Disaster Relief Appropriations Act, providing \$50.7 billion in new appropriations subject to sequestration.		1/29/2013
2 nd potential default on U.S. debt obligations looms; Congress suspends Debt Ceiling until 5/19/2013.		1/31/2013
DHS Management leadership informs DHS employees about possibility about sequestration.		2/6/2013
CPO notifies Component heads of contracting authorities of potential sequestration impacts.		2/25/2013
OMB issues guidance on sequestration planning; DHS Management leadership sends follow up communication to DHS employees.		2/27/2013
President orders FY 2013 sequester at 5.0% for Non-Security and 7.8% for Security Category accounts, based on CR funding levels; OMB issues sequestration and apportionment guidance.		3/1/2013
CPO notifies the DHS contracting community of potential for contract actions under sequestration.		3/5/2013
DHS issues FYs 2015-2019 Guidance to Components.		3/22/2013
Congress passes FY 2013 Consolidated and Further Continuing Appropriations Act, provides a new baseline for the remainder of FY 2013.		3/26/2013
OMB issues guidance on sequestration planning.		4/4/2013
Deadline for federal agencies to provide plans for operating under sequestration.		4/26/2013

FY 2013 Budget in Draft

FY 2013 Budget Request
Pending Congressional Action

FY 2013 CR
(Funding at FY12 Levels)

FINAL
FY 2013
Enacted

SEQUESTRATION TIMELINE



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Written testimony of DHS Management Directorate, U.S. Customs & Border Protection, U.S. Immigration & Customs Enforcement and the Transportation Security Administration for a House Committee on Homeland Security, Subcommittee on Oversight and Management Efficiency hearing titled "The Impact of Sequestration on Homeland Security: Scare Tactics or Possible Threat?"

Release Date: April 12, 2013

311 Cannon House Office Building

Mr. Chairman, Ranking Member, and Members of the Committee:

We are pleased to appear before you to discuss sequestration and the important planning that has been undertaken to date by the Department of Homeland Security (DHS). We will also discuss issues surrounding the Budget Control Act (BCA) and our preparations for potential budget reductions and the impacts of sequestration.

The sequestration order that the President was required by law to issue on March 1 requires the Department to achieve \$3.2 billion in budget reductions over the remaining seven months of the fiscal year (FY). Sequestration consists of mandatory, automatic and indiscriminate across-the-board budget cuts of approximately \$85 billion throughout the Federal Government, which must be applied to nearly every program, project, and activity (PPA) within an account for the remainder of FY 2013. Like other agencies, DHS has engaged in ongoing planning activities in consultation with the Office of Management and Budget (OMB) over the past several months to determine how to operate under sequestration, keeping in mind our primary responsibility to execute our core mission areas on behalf of the American people. As required by law, our execution of sequestration is applied as a uniform percentage reduction to all non-exempt budgetary accounts; the reductions will be implemented equally across all PPAs within each account.

As it became more clear that Congress was not going to take action to address the sequester, on February 26 and 27, leadership from DHS's Management Directorate provided notifications to all DHS employees that the Federal Government faced the possibility of sequestration, and that both employees and operations could be impacted by these mandated cuts. Following the issuance of the sequestration order on March 1, Departmental Components began prudent steps to reduce spending for every account. These included the issuance of furlough notifications, reduction of overtime, hiring freezes and postponed contract actions throughout the Department.

Since then, the Department has continued its sequestration planning. The FY 2013 Consolidated and Further Continuing Appropriations Act, enacted on March 26, changed our funding levels once again, requiring additional adjustments to our planning. Some Components received additional funds which have provided more leeway in achieving the required reductions, while others were appropriated less funding which has required those Components to identify additional actions that can be taken.

While our recently enacted appropriations will help DHS to mitigate – to some degree – the impacts of sequestration on our operations and workforce that were originally projected under the FY 2013 Continuing Resolution (CR) enacted on September 28, 2012, there is no doubt that these cuts will affect operations in the short- and long-term. Lines and wait times at our ports of entry (POEs) are longer, affecting travel and trade; the take home pay of the men and women on the frontlines will be reduced; and employees across the Department as well as the

public we serve face uncertainty based on sudden budgetary reductions that must be met by the end of the year. The long-term effects of sustained cuts at these levels will result in reduced operational capacity, breached staffing floors, and economic impacts to the private sector through reduced and cancelled contracts. In spite of the substantial and far reaching cuts mandated by sequestration, we will continue to do everything we can to minimize impacts on our core mission and employees, consistent with the operational priorities in our 2014 budget.

DHS Fiscal Stewardship

Through administrative efficiencies, cost avoidances, and our internal budgeting processes, we have been working proactively to reduce the Department's resource requirements wherever possible. In fact the Department's FY 2014 Budget, submitted to Congress on April 10, reflects the third consecutive year in which the Department's overall topline has been reduced.

Through the Department-wide, employee-driven Efficiency Review, which began in 2009, as well as other cost-saving initiatives, DHS has identified over \$4 billion in cost avoidances and reductions, and redeployed those funds to mission-critical initiatives across the Department. For example, in the past, offices at DHS purchased new computers and servers while excess equipment remained unused in other areas of the Department. Through Component-level efforts to better re-utilize excess IT equipment, DHS has saved \$24 million in taxpayer money. In addition, DHS previously spent millions of dollars each year by paying for cell phones and air cards that were not in use. The Department now conducts annual audits of usage and has saved \$23 million to date. Also, DHS has encouraged Components to use government office space and online tools for meetings and conferences instead of renting private facilities, a change that has saved \$11.7 million to date.

We have used strategic sourcing initiatives to leverage the purchasing power of the entire Department for items such as language services, tactical communications services and devices, intelligence analysis services, and vehicle maintenance services. In FY 2012, we achieved \$368 million in savings, and we project \$250 million in savings for FY 2013, subject to sequestration.

In support of the Administration's Campaign to Cut Waste, DHS strengthened conference and travel policies and controls to reduce travel expenses and ensure conferences are cost-effective and that both travel and conference attendance is driven by critical mission requirements. In 2012, DHS issued a new directive that establishes additional standards for conferences and requires regular reporting on conference spending, further increasing transparency and accountability.

In our FY 2014 Budget, we identified initiatives that will result in \$1.3 billion in savings from administrative and mission support areas, including contracts, information technology, travel, personnel moves, overtime, directed purchasing, professional services, and vehicle management.

In effect, with declining resources, the Department has worked proactively to eliminate inefficiencies wherever possible and to focus available resources on supporting frontline mission requirements. We have a proven, established process to plan and budget; however recent fiscal uncertainties and the across-the-board nature of sequestration have affected the Department's ability to plan beyond recent, immediate budget crises that have occurred.

Initial Sequestration Planning

As you are aware, the BCA was signed into law on August 2, 2011. The BCA established caps on discretionary spending for FY 2012 through FY 2021. Since enactment of the BCA, the Department has been planning for the possibility of sequestration. In August 2011, our Office of General Counsel and the Office of the Chief Financial Officer (OCFO) provided an initial review of the new statute to become familiar with its provisions and impacts to the Department.

On September 12, 2011, the Congressional Budget Office released its report entitled, "Estimated Impact of Automatic Budget Enforcement Procedures Specified in the Budget Control Act." On the basis of that analysis, OCFO commenced work with Departmental Components to identify which accounts are included in the Security and Non-Security Categories, since they would be subject to differing sequester amounts.

On July 31, 2012, OMB provided guidance to federal agencies that discussions would commence over the coming months on issues associated with sequestration. It was recognized then that undertaking sequestration planning and implementation activities would divert resources from other important activities and priorities. It was our hope and expectation that, rather than force the Department to pursue a course of action that would be disruptive to mission-related activities, Congress would reach agreement on a deficit reduction package as an alternative to sequestration.

On September 17, 2012, OMB provided Congress with its Sequestration Transparency Act report, which identified agency-by-agency the estimated funding amounts that could be sequestered based on appropriations enacted for FY 2012, not FY 2013. The OMB report estimated that DHS would be subject to a five percent sequester and required to absorb approximately \$3.2 billion in reductions to its total budget authority beginning January 2, 2013.

The Department thus began comprehensive planning efforts, consistent with OMB guidance. A significant challenge remained, however, in that amounts subject to sequestration could only be calculated once final FY 2013 funding levels were known. The FY 2013 Continuing

Appropriations Act enacted on September 28, 2012, left the Department operating under a CR until March 27, 2013 – a point beyond the date sequestration was mandated to begin.

For the remainder of 2012, the Department's leadership continued to examine what courses of action might be necessary to implement sequestration, including the establishment of uniform procedures for taking personnel actions such as furloughs, reductions in force (RIFs), and voluntary early retirements and separations, as well as identifying contracts which could be re-scoped. The Department's chief financial, human capital, and procurement officers worked closely together during this time to ensure proper coordination in developing our sequestration implementation plans.

In our planning efforts, we were careful to strike a balance to take prudent, responsible steps toward across-the-board budget reductions. Our guiding principles have been as follows:

- First, we focus on preserving the Department's frontline operations and other mission-critical activities to the maximum extent possible.
- Second, understanding that DHS is a labor-driven organization, we strive to avoid and if required, minimize furloughs to the greatest extent possible. Hiring freezes and potential furloughs not only have operational impacts on our core missions but adversely affect employee morale and well-being.

Unfortunately sequestration in and of itself provides very little flexibility in how the across-the-board cuts must be applied. Several types of personnel actions that agencies regularly use to manage their workforce over the long term are not useful to address the short-term requirements of sequestration. Implementing DHS-wide voluntary early retirements and separations entails up-front funding which is not available under a sequestered budget. The notification and bargaining processes required for RIFs could not be completed until FY 2014, well after our FY 2013 funding is sequestered.

Implementation Plan Changes

Following the passage of the American Taxpayer Relief Act of 2012 on January 2, 2013, several additional challenges arose for our sequestration planning.

This legislation postponed sequestration by two months, until March 1, and provided a \$24 billion down payment that reduced the amount of sequestration for Fiscal Year 2013 from \$109 billion to \$85 billion. Additionally, in late January, Congress passed the FY 2013 Disaster Relief Appropriations Act (P.L. 113-2) which provides \$60.4 billion in supplemental appropriations to assist victims of Hurricane Sandy, including \$12.1 billion for DHS. These actions changed the sequester amount for all federal agencies months after our planning activities had begun. The FY 2013 Consolidated and Further Continuing Appropriations Act also provided DHS with a new baseline for FY 2013.

Accordingly, even as our planning for sequestration progressed throughout 2013, given the actions described above, the amount of the sequester changed numerous times, creating difficulties in developing detailed implementation strategies for each of our Components.

Impacts of the Sequestration Order on the Department

Following are the impacts of sequestration to several of the Department's frontline Components: U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and the Transportation Security Administration (TSA).

Impacts on U.S. Customs and Border Protection

CBP is America's frontline border security agency, the guardians of our borders, responsible for protecting the United States and the American people from the entry of dangerous goods and people. With more than 60,000 employees, CBP has the largest number of uniformed officers of any federal law enforcement agency. Its primary mission is keeping terrorists and their weapons out of the United States. CBP is also responsible for securing the border and facilitating lawful international trade and travel while enforcing hundreds of U.S. laws and regulations. This includes ensuring that all persons and cargo enter the United States legally and safely through official POEs, preventing the illegal entry of persons and contraband into the U.S. at and between POEs, promoting the safe and efficient flow of commerce into our country, and enforcing trade and tariff laws and regulations.

CBP protects approximately 7,000 miles of land borders and 95,000 miles of coastal shoreline. Operating at 329 POEs across the United States, CBP welcomes almost one million travelers by land, sea, and air, facilitating the flow of goods essential to our economy. In FY 2012, CBP facilitated more than \$2.3 trillion in trade and welcomed a record 98 million air travelers, a 12-percent increase since FY 2009. CBP also collected \$39.4 billion in revenue, a six-percent increase over the previous year – illustrating the critical role of CBP not only with border security, but with economic security and continued growth. Trade and travel are absolutely vital to our economy, and according to the U.S. Travel Association, one new American job is created for every 33 travelers arriving from overseas.

Removing the planned transfer of US-VISIT, CBP's FY 2013 direct appropriation budget request was \$10.083 billion, \$72 million less than its FY 2012 appropriation. In order to fund rising personnel costs within a slightly declining overall budget, CBP proposed a variety of efficiencies and program reductions and deferred a number of major acquisitions. At the FY 2013 enacted level with nearly \$600 million in

sequestration reductions, CBP's FY 2013 funding level is \$309 million less than FY 2012, or about three percent less than the previous fiscal year. As a result, CBP has made further reductions to non-pay costs and discretionary pay costs, such as awards, overtime and mission support hiring.

Although the FY 2013 Consolidated and Further Continuing Appropriations Act provides additional funding for CBP and enables it to mitigate to some degree the impacts to its workforce, sequestration still requires more than \$600 million in cuts across CBP, affecting operations in the short- and long-term. While CBP remains committed to doing everything it can to minimize risks and mitigate the impact of sequestration, we have already experienced significant impacts to cross-border activities.

Reduced CBP Officer (CBPO) overtime availability at our Nation's ports has resulted in increased wait times for travelers across the country. International travelers have experienced wait times of up to several hours to process through Customs and a number of locations have reported wait times averaging between 120 to 240 minutes, and some as long as four to 4.5 hours. These automatic cuts have occurred against a backdrop of significant growth in travel and trade in all POE environments. Air travel at the major gateway airports is up by four percent, on top of a three-year increase of over 12 percent. Land border travel is up 3.6 percent through the fiscal year to date. Additionally, cargo volumes have increased in all environments over the past three years.

Delays affect the air travel environment, causing missed passenger connections for both domestic and international flights. Reduced CBPO overtime availability at our Nation's ports also slows the movement of goods across the border. Even the smallest increase in wait times at the borders directly affects our economy. Reduced CBPO overtime availability will continue to impede CBP's capacity to facilitate and expedite cargo, adding costs to the supply chain and diminishing our global competitiveness that is so critical to our economy.

Between the POEs, sequestration has led to significant reductions in areas like CBP's detainee transportation support contract, which increases non-law enforcement requirements for frontline Border Patrol agents. CBP has also cut operating expenses, including vehicle usage, affecting Border Patrol's ability to respond to requests from other law enforcement entities for assistance.

Additionally, reductions in relocation expenses will necessitate that the Border Patrol postpone promotions to leadership and managerial positions, requiring less experienced staff to perform the functions of these critical jobs.

Based on CBP's funding levels as of March 1, the sequester also necessitated CBP to take steps to achieve a reduction of 21,000 flight hours for CBP's fleet of 269 aircraft from a level of 69,000 hours to 48,000 hours, impacting CBP's ability to provide critical aerial surveillance and operational assistance to law enforcement personnel on the ground. Based on funding provided in the FY 2013 Consolidated and Further Continuing Appropriations Act, CBP will work to restore flight hours to pre-sequestration levels.

Impacts on U.S. Immigration and Customs Enforcement

ICE serves as DHS's principal investigative arm and is the second largest investigative agency in the Federal Government.

ICE promotes homeland security and public safety through broad criminal and civil enforcement of approximately 400 federal laws governing border control, customs, trade, and immigration. In FY 2012, ICE's Homeland Security Investigations (HSI) initiated over 43,000 new investigations and made more than 32,000 criminal arrests around the world. During this same time period, we set a new agency record with the seizure of \$774 million in currency and negotiable instruments, more than double the amount seized during the previous year, as well as the seizure of 1.5 million pounds of narcotics and other dangerous drugs and \$175 million worth of counterfeit goods.

ICE's Enforcement and Removal Operations identifies, apprehends, and removes criminal and other removable aliens from the United States. Last year, ICE removed 409,849 illegal immigrants, including 225,000 individuals who had been convicted of felonies or misdemeanors.

ICE's FY 2013 budget request was \$218 million less than its FY 2012 appropriation, reflecting a variety of planned efficiencies. At the FY 2013 enacted level with sequestration applied, ICE's FY 2013 funding level is \$417 million less than FY 2012, or about 7.1 percent less than the previous fiscal year. As a result, ICE has made adjustments to several program plans for FY 2013.

After the sequestration order was given, ICE leadership distributed guidance to all of its employees outlining post-sequestration plans, including spending controls during this period. Key aspects of ICE's post-sequestration plan include cuts in the areas of hiring, contracts, travel, training and conferences, compensatory time and overtime, vehicle usage, and permanent change of station moves, which will affect ICE's criminal and civil enforcement missions.

For instance, ICE continues to leave a number of positions unfilled by not backfilling for attrition.

We expect that that these workforce and operational reductions will result in fewer cases, arrests, and seizures, and could impact both interagency and international partnerships. A number of ICE criminal operations have already been slowed or deferred, and HSI offices are reducing operational activities within current investigations. For instance, ICE HSI Special Agents in Charge have had to curtail their use of informant payments as well as Title III wire intercepts, investigative tools that allow agents to gain critical information to dismantle transnational criminal organizations. Finally, HSI offices have discontinued the use of certain government-owned vehicles that require mandatory repairs. As a result, investigative field functions may be affected, including arrests and seizures of contraband goods and

Sequestration could also present significant challenges for ICE's civil immigration enforcement mission. ICE will continue to manage its detention population in order to ensure it can operate within the appropriations level provided by Congress in the FY 2013 Consolidated and Further Continuing Appropriations Act, and in consideration of reductions required by sequestration. To the extent that ICE is unable to maintain 34,000 detention beds with the funding provided, it will focus its detention capabilities on priority and mandatory detainees, including individuals who pose a danger to national security or a risk to public safety, including aliens convicted of crimes, with particular emphasis on violent criminals, felons, and repeat offenders. ICE will place low-risk, non-mandatory detainees in lower cost, parole-like alternatives to detention programs, which may include electronic monitoring and intensive supervision. In addition, ICE has postponed indefinitely its Advanced Tactical Training classes for Fugitive Operation Teams, which target fugitive aliens who have received a final order of removal from an immigration judge or who have been previously removed and have re-entered the United States unlawfully.

ICE will also delay a number of facilities projects. To support its operations, ICE has more than 600 leased locations throughout the United States, of which 161 leases are expiring between FYs 2013-2015. In many instances, the project delays will result in the untimely acquisition of new space, resulting in duplicative rent payments, delaying claim payments to contractors, and additional legal action from building owners.

ICE will continue to evaluate the recently enacted appropriations to determine how best to mitigate the impact of the reduced funding level on its workforce and operations.

Impacts on the Transportation Security Administration

TSA's FY 2013 budget request was \$200 million less than its FY 2012 appropriation, reflecting a variety of planned efficiencies. After applying the sequester to its final enacted FY 2013 appropriation, TSA's FY 2013 funding level is \$670 million less than FY 2012, or about 8.8 percent less than the previous fiscal year.

While the reductions required by sequestration will continue to have impacts on TSA, the FY 2013 Consolidated and Further Continuing Appropriations Act provides TSA with additional funding for Transportation Security Officers, which allows TSA to mitigate to some degree the impacts on their workforce and operations. TSA will use these additional funds to maintain its security screening workforce through prudent management of hiring and controlled overtime. Although initial projected impacts on wait times are largely mitigated through the additional funding provided for Transportation Security Officers by Congress, at reduced levels of personnel and restricted overtime, travelers may see lines and wait times increase during the busiest travel periods or required surge operations.

The Federal Air Marshal Service (FAMS) has had a hiring freeze in place for over a year to manage a planned program adjustment from \$965.8 million in FY 2012 to \$929.6 million in FY 2013. Congress further reduced that funding in the full FY 2013 appropriation to \$906.9 million, or \$858 million under sequestration, an 11.1 percent cut below FY 2012 levels. The FAMS mission funding is dominated by personnel, travel, and related costs. TSA continues to assess the personnel actions and mission adjustments that will be necessary at the decreased budget level.

Sequestration has also had significant impacts on TSA's information technology, checkpoint technology, security screening equipment and infrastructure accounts, totaling a \$288 million reduction from FY 2012 levels. In light of these cuts, information technology (IT) service level contracts, refreshment of IT equipment and maintenance schedules will be deferred or reduced through the end of the fiscal year. Furthermore, security equipment technology replacement and investment plans are being adjusted to reflect the reduced budget level. While TSA is working to minimize disruption to operational support and security services to the greatest extent possible, in many cases equipment also already reached or exceeded its planned service life.

Finally, TSA has taken action to establish additional controls across the agency. We have canceled previously approved conferences, meetings that require travel, and training activities. This includes management control training, field oversight and compliance audits, operational and support program coordination planning and preparedness training.

Conclusion

The FY 2013 Consolidated and Further Continuing Appropriations Act includes a requirement to prepare post-sequestration operating plans 30 days after enactment, by April 25. We are in the process of responding to this requirement.

As discussed earlier, the Department has already taken over \$4 billion in significant reductions and cost avoidances to administrative and mission support functions over the past several years in order to sustain frontline operations while planning for declining budgets. However, the statutory requirements for sequestration leave federal agencies with very little discretion on how to apply across-the-board funding cuts. With less than six months remaining in FY 2013, DHS simply cannot absorb the additional reductions mandated by sequestration without affecting frontline operations and the critical homeland security capabilities we have built over the past 10 years.

Hurricane Sandy, recent threats surrounding aviation and the continued threat of homegrown terrorism demonstrate how we must remain vigilant and prepared. Threats from terrorism and response and recovery efforts associated with natural disasters will not diminish because of budget cuts to DHS.

Even in this current fiscal climate, we do not have the luxury of making significant reductions to our capabilities without placing our Nation at risk. Rather, we must continue to prepare for, respond to, and recover from evolving threats and disasters – and we require sufficient resources to sustain and adapt our capabilities accordingly.

Thank you for inviting us to appear before you today. The Department appreciates the strong support it has received from the Committee over the past 10 years. We would be pleased to answer any questions you may have.

Review Date: April 11, 2013

 U.S. DEPARTMENT OF HOMELAND SECURITY						
TOPICS	GET INVOLVED	HOW DO I?		NEWS	ABOUT DHS	SITE LINKS
Border Security	Blue Campaign	For the Public		Blog	The Secretary	Contact Us
Citizenship and Immigration Services	Citizen Corps	For Businesses		Comunicado de Prensa	Budget & Performance	DHS Component Websites
Civil Rights and Civil Liberties	If You See Something Say Something	For Travelers		Data	Careers	En Espanol
Cybersecurity	Ready.gov	At DHS		Events	Contact Us	Privacy Policy
Disasters	U.S. Coast Guard Auxiliary	By Alphabet		Fact Sheets	Doing Business with DHS	Notices
Economic Security				Media Contacts	History	Plug-in
Homeland Security Enterprise				Multimedia	Laws & Regulations	FOIA
Homeland Security Jobs				Press Releases	Mission	Inspector General
Human Trafficking				Publications	Organization	Site Map
Immigration and Enforcement				Social Media		GobiernoUSA.gov
International Engagement				Speeches		USA.gov
Law Enforcement Partnerships				Testimony		The White House
Preventing Terrorism						Site Map
Transportation Security						



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

February 18, 2014

BY EMAIL

Ghita Schwarz
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

Re: Detention Watch Network, et al. v. United States Immigration and Customs Enforcement, et al., (14 Civ. 583 (LGS))

Dear Ms. Schwarz:

I write on behalf of defendants United States Immigration and Customs Enforcement ("ICE") and United States Department of Homeland Security ("DHS," together with ICE the "Government") to summarize our telephone call on February 14, 2014, regarding the substance of the Center for Constitutional Rights, and the Detention Watch Network's FOIA request to the Government, dated November 25, 2013 (the "Request").

Request a. *Most Recent Copies of Executed Agreements Related to Detention Facilities or Detention Beds*

- i. *Executed Agreements between Private Prison Corporations (such as Corrections Corporation of America and the Geo Group) and ICE, DHS and/or the Federal Bureau of Prisons;*
- ii. *Executed Agreements between DHS/ICE and local, state, city or municipal governments, including all Intergovernmental Service Agreements.*
- iii. *Executed contract renewal, supplemental agreements, addendums, riders, etc. of the agreements in (i) and (ii).*

We requested confirmation that the terms "most recent" as used in Request (a) refers to currently active agreements, and that the agreements you are seeking relate solely to the number of detention beds, not to other matters such as utilities, food, or security services. You indicated that this was your understanding, but that you would confirm this with your client. We also noted that many of these agreements are already posted on the Government's publicly available online database, and that to the extent additional agreements were requested, given the large number of such agreements, any type of expedited processing would require the request to either be narrowed by agreement type (such as number of detainees covered or recurrent nature of the agreement) and geographic region, or limited to a sample size of 50 agreements or less. You agreed to discuss these proposed limitations with your client.

Ghita Schwarz, Esq.
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Request b. *Communications regarding contract renewal, supplemental agreements, addendums, riders, etc. of the aforementioned agreements listed in Part C(a).*

We noted that, as with Request (a), this request is overbroad because it does not define the nature of the agreements about which you are seeking communications or the applicable geographic region, if any, nor does it limit the communications sought to a reasonable time frame. You stated that this request was meant to refer to communications regarding the number of detainee beds that needed to be filled, and agreed to provide the Government with a more specifically formulated request.

Request c. *Agreements (formal and informal) regarding detention space, financing of detention beds, and the allocation of beds limited to the following ICE jurisdictions: the Atlanta Field Office; the Dallas, El Paso, Houston and San Antonio Field Offices; the New Jersey Field Office and the Philadelphia Field Office.*

As with Request (a), you agreed to confirm with your client that the agreements sought by this request are currently active agreements.

Request d. *Data and Statistics from 2007 to present:*

- i. *Copies of all regularly generated statistical reports on detention; enforcement prioritization and detained population; detention occupancy by geographic location (i.e. ICE field office, state or county).*
- ii. *Copies of any cumulative data or information on numerical payouts to private prison corporations by ICE or DHS.*
- iii. *Financial records of actual payments to private prison companies or contractors, including the "guaranteed minimums," "guaranteed minimum" prices and "variable" prices under contracts with private prison corporations.*

As a preliminary matter, the Government notes that a considerable amount of the information called for by this request is already publicly available at the following website: <https://www.ice.gov/foia/library>. We stated that this request's timeframe as written is overly broad as it would require an unreasonable search of agency records, and you agreed to consult with your client regarding narrowing this timeframe. You further confirmed that Request (d)(iii) seeks only summary or cumulative reports of payments actually made.

Request e. *Records Related to the Creation or Revision (including drafts, memoranda, correspondence and communications) of Specific Media-Related and Public Relations Documents such as Press Releases, Talking Points, emails with press quotes, etc.:*

- i. *William Selway & Margaret Newkirk, Congress Mandates Jail Beds for 34,000 Immigrants as Private Prisons Profit, Bloomberg (Sept. 24, 2013), <http://www.bloomberg.com/news/2013-09-24/congress-fuels-private-jailsdetaining-34-000-immigrants.html>;*
- ii. *Stephen Dinan, Obama's Budget a Blow to Immigrant Enforcers; Funding Cut for Detentions, States, Washington Times (Apr. II, 2013), <http://www.washingtontimes.com/news/2013/apr/II/obamas-budget-a-blow-to-immigrant-enforcers/?page=all>; and*

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- iii. *Spencer S. Hsu and Andrew Becker, ICE officials set quotas to Deport More Illegal Immigrants, Washington Post (Mar. 27, 2010), <http://www.washingtonpost.com/wpdyn/content/article/2010/03/26/AR2010032604891.html>.*

You stated that that you were seeking internal talking points, memoranda or communications regarding discussions with the press relating to the three identified articles, regardless of whether they were written before or after the articles were published. Although you would not agree to limit the Government's search for records responsive to this request to DHS and ICE's respective press offices, you did agree to discuss with your clients narrowing the search to a more limited set of agency components.

Request f. *All Reports and Memoranda Reporting on the Detention Bed Mandate and Detention related Appropriations Decisions to/from the Secretary of Homeland Security, Assistant Secretary of Homeland Security in Charge of Immigration and Customs Enforcement, Members of Congress and/or the White House.*

You clarified that this request seeks regularly generated summaries of appropriations decisions relating to or based on the detention bed mandate only. You stated that you were not willing to agree to a narrower timeframe for this request, but that for immediate purposes your clients are seeking the expedited production of records from the years 2010 and 2013.

Request g. *Records, including communications, about releases from detention due to budget constraints or loss of funding, including but not limited to the following:*

- i. *Effects of the 2013 Budget Sequestration and the government shutdown in the fall of 2013; and*
- ii. *Testimony of John Morton before the Judiciary Committee of the U.S. House of Representatives in March 19, 2013.*
- iii. *Communications with or about John Morton's decisions on or about December 2009 and Spring 2010 to release ICE detainees from detention.*

You clarified that this request seeks records relating to the release of detainees due to the Government's budget constraints during the time periods of late 2009 through the spring of 2010, and early 2013. You also agreed to discuss limiting the search for responsive records to certain DHS and ICE components, but noted that communications to and from John Morton would in any event be included.

Request h. *Records of ICE or DHS communications with local, state or Congressional officials or law enforcement agencies related to costs, reimbursements, profits, or monetary agreements for detention; monetary or contractual incentives related to immigration detention or detention contracting; or the need for additional detainees or possible sources of additional detainees to fulfill contractual obligations with ICE.*

You clarified that this request seeks records relating to the basis for DHS and ICE's understanding that the detention bed mandate requires a certain number of detainees to actually be housed in detention facilities, and how that understanding was transmitted to law enforcement agencies. Although you were unwilling to generally narrow the timeframe for this request, you

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indicated that your client is particularly interested in responsive records for the time period 2007 through 2009. To allow an efficient search and production, the Government also suggests that the search for records responsive to this request be limited to specific geographic regions and higher-level agency officials.

Request i. Records related to the relationship between ICE and private prison corporations including email communications, letters, memoranda, policy memos for contract bidding processes or Requests for Proposals.

We noted that this request is overbroad because it does not define the subject matter of the contract bidding processes or requests for proposals about which you are seeking communications, nor does it define the applicable geographic region or the communications sought to a reasonable time frame. You stated that you were not sure whether the subject matter of this request could be more appropriately limited. You agreed, however, to seek to specify the documents sought with more particularity and to discuss appropriate geographic and timeframe limitations with your clients.

The Government has considered your request to adopt a piece-meal approach to the agencies' FOIA records search and production related to specific timeframes for Requests (e), (f) and (h), and has determined that it is unable to do so efficiently. Any search and review of records responsive to those requests will need to be conducted for the full timeframe at issue in the request, as records relating to narrower periods of time within the overall applicable timeframe cannot be segregated. Any search for and review of records responsive to Requests (e), (f) and (h) will therefore necessarily be conducted by the same agency personnel at the same time. To the extent Plaintiffs are seeking the prompt production of certain records, the Government therefore strongly suggests that the overall period of time applicable to those requests be reasonably limited, such that a quick search, review and production of relevant non-privileged information can be undertaken.

The Government also agreed to determine which components of DHS and ICE are most likely to have records responsive to each of the specific requests so that more targeted searches to locate relevant information can be performed, and is currently engaged in that effort. To that end, it would be helpful to arrive at an agreement reasonably limiting the subject matter of your Request as discussed above.

Finally, the Government proposes the following additional search and production parameters, to allow an efficient processing of the Request: (i) an agreement that drafts of internal DHS or ICE memoranda and reports need not be produced as such materials are protected from disclosure by the deliberative process privilege; (ii) an agreement that the records of the DHS and ICE offices of general counsel need not be searched because their records can reasonably be expected to be protected from disclosure by the attorney client privilege and the work product doctrine; and (iii) confirmation that your clients are not seeking the production of privacy protected information relating to specific detainees.

Ghita Schwarz, Esq.
February 18, 2014

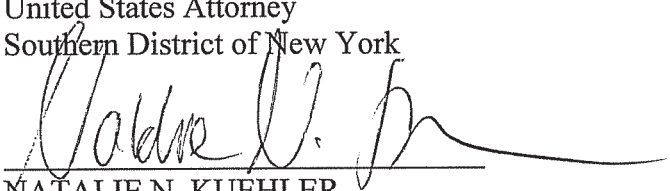
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We look forward to continuing these discussions during our phone call tomorrow.

Very truly yours,

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By:


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February 21, 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:

Thank you for your email. We appreciate your efforts to discuss and respond to our FOIA request. However, we are very concerned that three months after filing our FOIA request, three weeks after filing our complaint, and ten days after filing our motion for a preliminary injunction, DHS and ICE have failed even to begin searching for and processing records responsive to our request. As our complaint makes clear, in December, 2013, Plaintiffs repeatedly contacted the government to discuss the Request and received no substantive response. The government did not even attempt to discuss our request with us until two days after we filed our motion for a preliminary injunction, and after we made several calls to the U.S. Attorney's Office attempting to identify the attorney responsible for this case. Our request is highly specified, and Defendants should have been attempting to comply with their obligations under FOIA as soon as the request was received, on November 27, 2013.

Since our first discussion on February 12, 2014, we have repeatedly attempted to assist Defendants in moving quickly to respond by identifying priorities in our request and offering to limit time frames and geographic locations for the purpose addressing our preliminary injunction motion. At the close of business on Tuesday, February 18, 2014, you informed me by letter that Defendants were refusing to process limited time-frame portions of our requests for the purpose of the preliminary injunction unless we gave up enormous parts of our request altogether. During our conversation Wednesday, February 19, 2014, you confirmed this understanding. As we informed you by email yesterday, given Defendants' dilatory conduct and failure to produce a single record, we cannot give up portions of our request permanently, and certainly not before Defendants have disclosed any records at all, despite ample time to do so. Once we receive records, we will be in a far better position to assist ICE and DHS in targeting the searches. Thus, the sooner ICE and DHS begin to produce documents, the sooner we may be able to suggest ways to make searches more efficient and focused.

We are also alarmed that despite your clear statements on Wednesday that Requests (e) and (g) were tasked or about to be tasked, your February 21 letter indicates that no searches have begun. Portions (e) and (g) of the November 25, 2013 request articulated very narrow time

frames and should have resulted in disclosures long ago. Indeed, during our telephone call on February 14, 2014, you stated that Defendants had informed you that searches responsive to our request as a whole “had already started” before we filed the complaint. This clearly was not the case. In addition, on that same call, you stated on the telephone that a short turnaround on briefing would interfere with Defendants’ prompt production of documents. Yet the Court has given you a generous time to respond to our motion, and no searches have begun.

We have also not agreed to any “Revised” request, and object to any characterization of our discussions as proposed permanent revisions to the Request. As restated below, what we have done is offer to agree to time-limited searches and in some cases geographically-limited searches for the purpose of addressing the preliminary injunction motion.

Request (a): Most Recent Copies of Executed Agreements Related to Detention Facilities or Detention Beds

- i. Executed Agreements between Private Prison Corporations (such as Corrections Corporation of America and the Geo Group) and ICE, DHS or the Federal Bureau of Prisons;*
- ii. Executed Agreements between DHS/ICE and local, state, city or municipal governments, including all Intergovernmental Service Agreements.*
- iii. Executed contract renewal, supplemental agreements, addendums, riders, etc. of the agreements in (i) and (ii).*

We are willing to limit this request to currently active agreements for the purpose of the preliminary injunction, but we will not limit our request permanently given Defendants’ failure to disclose records thus far. As we informed you on during our call on February 19, 2014, our client is also willing to agree to limited geographic locations for the purpose of the preliminary injunction motion only. The priority locations we listed for you on the call were: Alabama, Alaska, California, Delaware, Georgia, Indiana, Iowa, Louisiana, Kansas, Kentucky, Maryland, Mississippi, Montana, New Jersey, New York, North Carolina, Pennsylvania, Texas, Vermont, and Washington, with a special focus on Alabama, Georgia Maryland, New Jersey, New York, Kentucky and Texas.

If ICE and DHS have not already done so, we expect them to begin searches by February 24, 2014, and for documents to begin to be disclosed by March 3, 2014.

Request (b): Communications regarding contract renewal, supplemental agreements, addendums, riders, etc. of the aforementioned agreements listed in Part C(a).

As we have already stated, we are unwilling to limit the time frames in our request permanently given Defendants’ failure to disclose records thus far. We advised you on our February 19, 2014 call that were willing to limit our request to the period during which the detention bed quota was first implemented (2006-2009) and to 2012 to the present (not “calendar year 2009” per your letter of February 20, 2014), for the purpose of addressing the preliminary injunction motion.

In addition, we disagree with the government's characterization of this request as overbroad in your letter of February 18, 2014; it is clear from every page of our request that the subject matter is the detention bed mandate or detention bed quota and that the nature of the information sought relates to the detention bed mandate or detention bed quota.

If ICE and DHS have not already done so, we expect them to begin searches by February 24, 2014, and for documents to begin to be disclosed by March 3, 2014.

Request (c): Agreements (formal and informal) regarding detention space, financing of detention beds, and the allocation of beds limited to the following ICE jurisdictions: the Atlanta Field Office; the Dallas, El Paso, Houston and San Antonio Field Offices; the New Jersey Field Office and the Philadelphia Field Office.

As we have already stated, we are unwilling to limit our request permanently given Defendants' failure to disclose records thus far. We advised you on our February 19, 2014 call that we were willing to limit our request to the period during which the detention bed quota was first implemented (2006-2009) and to 2012 to the present (not "calendar year 2009" per your letter of February 20, 2014), for the purpose of addressing the preliminary injunction motion.

Request (d): Data and Statistics from 2007 to present:

- i. Copies of all regularly generated statistical reports on detention; enforcement prioritization and detained population; detention occupancy by geographic location (i.e. ICE field office, state or county).*
- ii. Copies of any cumulative data or information on numerical payouts to private prison corporations by ICE or DHS.*
- iii. Financial records of actual payments to private prison companies or contractors, including the "guaranteed minimums," "guaranteed minimum" prices and "variable" prices under contracts with private prison corporations.*

Again, we are unwilling to limit the time frames in our request permanently given Defendants' failure to disclose records thus far. We do not believe that the cumulative data and regularly-generated statistical reports regarding detention and enforcement are difficult to gather, and, as we discussed on the phone and is clear from our request, our priority is information related to the detention bed mandate, bed quota, or bed guarantee.

If ICE and DHS have not already done so, we expect them to begin searches by February 24, 2014, and for documents to begin to be disclosed by March 3, 2014.

Request (e): Records Related to the Creation or Revision (including drafts, memoranda, correspondence and communications) of Specific Media-Related and Public Relations Documents such as Press Releases, Talking Points, emails with press quotes, etc.:

- i. William Selway & Margaret Newkirk, Congress Mandates Jail Beds for 34,000 Immigrants as Private Prisons Profit, Bloomberg (Sept. 24, 2013),*

<http://www.bloomberg.com/news/2013-09-24/congress-fuels-private-jails-detaining-34-000-immigrants.html>;

- ii. *Stephen Dinan, Obama's Budget a Blow to Immigrant Enforcers; Funding Cut for Detentions, States, Washington Times (Apr. 11, 2013),*
<http://www.washingtontimes.com/news/2013/apr/11/obamas-budget-a-blow-to-immigrant-enforcers/?page=all>; and
- iii. *Spencer S. Hsu and Andrew Becker, ICE officials set quotas to Deport More Illegal Immigrants, Washington Post (Mar. 27, 2010),*
<http://www.washingtonpost.com/wp-dyn/content/article/2010/03/26/AR2010032604891.html>.

This request was highly specified, and Defendants should have disclosed responsive records long ago. While we are glad that Defendants are finally conducting this search, we believe it should include anyone with whom the personnel quoted in these articles communicated with regarding talking points, post-publication analysis, and other press-related discussions. We expect that Defendants will produce these documents by February 28, 2014.

Request (f): All Reports and Memoranda Reporting on the Detention Bed Mandate and Detention-related Appropriations Decisions to/from the Secretary of Homeland Security, Assistant Secretary of Homeland Security in Charge of Immigration and Customs Enforcement, Members of Congress and/or the White House.

Again, we are unwilling to limit the time frames in our request permanently given Defendants' failure to disclose records thus far. However, as your letter of February 18, 2014 acknowledges, we agreed in our call of February 14, 2014 to prioritize records from 2010 through 2013 for the purpose of addressing the preliminary injunction motion. This request was highly specified, called for documents from a limited number of offices, and responsive records should have been disclosed long ago. We expect that Defendants will produce these documents by February 28, 2014.

Request (g): Records, including communications, about releases from detention due to budget constraints or loss of funding, including but not limited to the following:

- i. *Effects of the 2013 Budget Sequestration and the government shutdown in the fall of 2013; and*
- ii. *Testimony of John Morton before the Judiciary Committee of the U.S. House of Representatives in March 19, 2013.*
- iii. *Communications with or about John Morton's decisions on or about December 2009 and Spring 2010 to release ICE detainees from detention.*

Your letter of February 20, 2014, appears inadvertently to have omitted (g)(iii), which remains an important part of our request. This request was highly specified, did not need any clarification, and sought records within a limited time frame. DHS and ICE should therefore have been searching for and producing records long ago. As we discussed on February 19, 2014, we cannot limit our request to records originating from ICE or DHS headquarters. During our call, I used the example of local Field Office Directors as crucial individuals who would have

responsive information regarding this portion of the request, but this was an example only. On the local level, we are willing to limit our request, for the purposes of the preliminary injunction motion, to records from Field Office Directors, Assistant Field Office Directors, Supervisory Detention and Deportation Officers, and anyone responsible for detention-related decisions, or for reviewing detention-related decisions in accordance with ICE's Risk Clarification Assessment instrument. We expect that Defendants will produce these documents by February 28, 2014.

Request (h): Records of ICE or DHS communications with local, state or Congressional officials or law enforcement agencies related to costs, reimbursements, profits, or monetary agreements for detention; monetary or contractual incentives related to immigration detention or detention contracting; or the need for additional detainees or possible sources of additional detainees to fulfill contractual obligations with ICE.

At this time we cannot limit the time frames or geographic locations in our request, given Defendants' failure to disclose records thus far. However, as we discussed on February 19, 2014 and as is clear from our request, our priority is records that reflect an incentive or bed guarantee.

If ICE and DHS have not already done so, we expect them to begin searches by February 24, 2014, and for documents to begin to be disclosed by March 3, 2014.

Request (i): Records related to the relationship between ICE and private prison corporations including email communications, letters, memoranda, policy memos for contract bidding processes or Requests for Proposals.

As we discussed in our call of February 19, 2014, there are a limited number of private prison corporations, and communications about the contracting process and the relationship between ICE and these corporations should not be burdensome. We are willing to limit the time frame for searches beginning in January 1, 2012, but only for the purpose of addressing the preliminary injunction motion. Without any responsive documents from Defendants at this time, we cannot agree to limit the time frames of our request permanently.

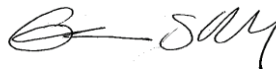
If ICE and DHS have not already done so, we expect them to begin searches by February 24, 2014, and documents to begin to be disclosed by March 3, 2014.

Finally, your letter of February 18, 2014 asked for general limitations on the entirety of the request. As we discussed on our call of February 19, 2014, we are not interested in the private information of specific detainees. However, we cannot accept your proposal to withhold "drafts of internal DHS or ICE memoranda and reports." That category is very broad, and it is highly unlikely that more than a very small minority of documents would be protected by the deliberative process privilege. If the government believes that any record should be redacted or withheld because of the privilege, it should justify its position through the production of a *Vaughn* index. In addition, your February 18 letter asked that we agree that DHS and ICE offices

of general counsel not be searched. During our call on February 19, 2014, you clarified that these offices would be searched, but that you proposed an agreement not to produce a *Vaughn* index for withheld or redacted documents. We cannot agree to this proposal at this time.

Please feel free to contact me with any questions. I look forward to hearing from you with responsive documents.

Sincerely,

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

Ghita Schwarz