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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

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 DETENTION WATCH NETWORK and  
 CENTER FOR CONSTITUTIONAL RIGHTS

Plaintiffs,

v.

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

Defendants.  
 ----- X

14 Civ. 583 (LGS)

ANSWER

ECF Case

Defendant United States Immigration and Customs Enforcement (“ICE”), by its attorney Preet Bharara, United States Attorney for the Southern District of New York, answers the Complaint on information and belief as follows:

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. Paragraph 1 consists of Plaintiffs’ characterization of this action, to which no response is required. To the extent a response is required, Defendant admits that Plaintiffs bring this action against ICE and DHS pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, but otherwise denies the allegations contained in this paragraph and denies that Plaintiffs are entitled to the relief they seek.

2. Defendant denies the allegations in paragraph 2, except admits that they received a letter from Plaintiffs dated November 25, 2013, and titled “Freedom of Information Act (FOIA) Request,” and respectfully refer the Court to that letter for its content.

3. Defendant denies the allegations in paragraph 3, except admits that the letter they received from Plaintiffs requested expedited processing, and respectfully refer the Court to that letter for its content.

4. Paragraph 4 consists of Plaintiffs’ characterizations of the Detention Bed Quota, to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 4 and respectfully refer the Court to the referenced legislation and unspecified ‘debate’ for a true statement of their content.

5. Paragraph 5 consists of Plaintiffs’ characterizations of the Detention Bed Quota, to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 5 and respectfully refer the Court to the referenced governing law for a true statement of its contents.

6. Paragraph 6 consists of Plaintiffs’ characterizations of multiple persons’ interpretations of the Detention Bed Quota, to which no response is required. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6, and respectfully refer the Court to the articles cited in paragraph 6 for a true and complete statement of their content.

7. Paragraph 7 consists of Plaintiffs’ characterizations of the Detention Bed Quota, to which no response is required. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in

paragraph 7, and respectfully refer the Court to the article cited in paragraph 7 for a true and complete statement of its content.

8. Paragraph 8 consists of Plaintiffs' characterizations of the Detention Bed Quota, to which no response is required. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8, and respectfully refer the Court to the article cited in paragraph 8 for a true and complete statement of its content.

9. Paragraph 9 consists of Plaintiffs' inferences about and characterization of the Detention Bed Quota, to which no response is required. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9, and respectfully refer the Court to the unspecified reports referenced in paragraph 9 for a true and complete statement of their content.

10. Paragraph 10 consists of Plaintiffs' characterization of the Detention Bed Quota, to which no response is required. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10.

11. Paragraph 11 consists of Plaintiffs' characterization of immigration detainee populations and the Detention Bed Quota, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 11.

12. Defendant denies the allegations in paragraph 12 that they have failed to respond to Plaintiffs' Request. The remainder of paragraph 12 consists of Plaintiffs' characterization of the relief they seek, to which no response is required. To the extent a response is required, Defendant denies the remaining allegations contained in paragraph 12.

13. Paragraph 13 consists of Plaintiffs' characterization of the relief they seek, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in this paragraph and denies that Plaintiffs are entitled to the relief they seek.

**JURISDICTION AND VENUE**

14. The allegations contained in paragraph 14 are statements of jurisdiction and conclusions of law to which no response is required.

15. The allegations contained in paragraph 15 are statements of jurisdiction and conclusions of law to which no response is required.

**PARTIES**

16. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16.

17. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17.

18. Defendant admits that DHS is a department of the Executive Branch of the United States. The remainder of paragraph 18 contains legal conclusions and Plaintiffs' characterization of DHS's mandate to which no response is required.

19. Defendant admits that ICE is a component of DHS and has offices in all 50 states. The remainder of paragraph 19 contains legal conclusions and Plaintiffs' characterization of ICE's mandate to which no response is required.

20. Defendant admits that DHS and ICE are federal agencies. The remainder of paragraph 20 contains legal conclusions which no response is required.

**STATEMENT OF FACTS**

21. Paragraph 21 consists of Plaintiffs' characterization of ICE and DHS's operations, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in this paragraph.

22. Paragraph 22 consists of Plaintiffs' characterization of the impact of changes to immigration law, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in this paragraph.

23. Paragraph 23 consists of Plaintiffs' characterization of the impact of immigration law, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in this paragraph and respectfully refer the Court to the article cited in paragraph 23 for a true and correct complete statement of its content.

24. Paragraph 24 consists of Plaintiffs' characterization of DHS data and conclusions Plaintiffs draw therefrom, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in this paragraph and respectfully refer the Court to the data cited in paragraph 24 for a true and correct complete statement of its content.

25. Paragraph 25 consists of Plaintiffs' characterization of statements made by a former Director of the Office of Detention Policy and Planning and conclusions Plaintiffs draw therefrom, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in this paragraph and respectfully refer the Court to the statement cited in paragraph 25 for a true and correct complete statement of its content.

26. Paragraph 26 consists of Plaintiffs' characterization of ICE data and conclusions Plaintiffs draw therefrom, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in this paragraph and respectfully refer the Court to the data cited in paragraph 26 for a true and correct complete statement of its content.

27. Paragraph 27 consists of Plaintiffs' characterization of immigration data and conclusions Plaintiffs draw therefrom, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in this paragraph.

28. Paragraph 28 consists of Plaintiffs' characterization of reports released by plaintiff Detention Watch Network, the Center for American Progress, and the Center for Victims of Torture, and conclusions Plaintiffs draw therefrom, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in this paragraph and respectfully refer the Court to the reports cited in paragraph 28 for a true and correct complete statement of their content.

29. Paragraph 29 consists of Plaintiffs' characterization of ICE and DHS's operations and the Detention Bed Quota, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in this paragraph.

30. Paragraph 30 consists of Plaintiffs' characterization of the Detention Bed Quota, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 30.

31. Paragraph 31 consists of Plaintiffs' characterization of the Detention Bed Quota, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 31.

32. Paragraph 32 consists of Plaintiffs' characterization of the Detention Bed Quota, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 32 and respectfully refer the Court to the article cited in paragraph 32 for a true and complete statement of its content.

33. Paragraph 33 consists of Plaintiffs' characterization of the Detention Bed Quota, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 33 and respectfully refer the Court to the news coverage cited in paragraph 33 for a true and complete statement of its content.

34. Denies the allegations in paragraph 34 of the Complaint.

35. Denies the allegations in paragraph 35 of the Complaint.

36. Paragraph 36 consists of Plaintiffs' characterization of the Detention Bed Quota, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 36, except respectfully refer the Court to the article cited in paragraph 36 for a true and complete statement of its content.

37. Paragraph 37 consists of Plaintiffs' characterization of unspecified information that the Government has or has not made publicly available, to which no response is required. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 of the Complaint.

38. Paragraph 38 consists of Plaintiffs' characterization of the subject matter of an omnibus bill, to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the omnibus bill cited in paragraph 38 for a true and complete statement of its content.

39. Paragraph 39 consists of Plaintiffs' characterization of the Congressional Record, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 39, except respectfully refer the Court to the portion of Congressional Record cited in paragraph 39 for a true and complete statement of its content.

40. Paragraph 40 consists of Plaintiffs' characterization of remarks by Janet Napolitano as quoted in a newspaper article, to which no response is required. To the extent a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40, except respectfully refer the Court to the article cited in paragraph 40 for a true and complete statement of its content.

41. Paragraph 41 consists of Plaintiffs' characterization of the Detention Bed Quota and legal conclusions, to which no response is required. To the extent a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41, except respectfully refer the Court to the article quoting comments by Janet Napolitano characterized in paragraph 41 for a true and complete statement of its content.

42. Defendant lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 42 of the Complaint.

43. Paragraph 43 consists of Plaintiffs' characterization of the Detention Bed Quota, to which no response is required. To the extent a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43.

44. Paragraph 44 consists of Plaintiffs' characterization of various press coverage, to which no response is required. To the extent a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44, and respectfully refer the Court to the press coverage described in paragraph 44 for a true and complete statement of its content.



45. Paragraph 45 consists of a characterization of ICE and DHS's operations, to which no response is required. To the extent a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the allegations in paragraph 45 of the Complaint.

46. Defendant lacks knowledge or information sufficient to form a belief as to the allegations in paragraph 46 of the Complaint.

47. Defendant denies the allegations in paragraph 47 of the Complaint.

48. Paragraph 48 consists of Plaintiffs' characterization of the Detention Bed Quota, an omnibus bill and remarks made by House Appropriations Committee Chairman Hal Rogers, to which no response is required. To the extent a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48, and respectfully refer the Court to the omnibus bill and the portion of the Congressional Record described in paragraph 48 for a true and complete statement of their content.

49. Paragraph 49 consists of Plaintiffs' characterization of the subject matter of an appropriations debate, to which no response is required. To the extent a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49, and respectfully refer the Court to the appropriations debate described in paragraph 49 for a true and complete statement of its content.

50. Paragraph 50 consists of Plaintiffs' characterization of the subject matter of an alleged debate, to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 50 of the Complaint, except respectfully refer the Court to the article cited in paragraph 50 for a true and complete statement of its content.

51. Paragraph 51 consists of Plaintiffs' characterization of the Detention Bed Quota, to which no response is required. To the extent a response is required, Defendant lacks knowledge

or information sufficient to form a belief as to the truth of the allegations in paragraph 51 of the Complaint, except respectfully refer the Court to the article cited in paragraph 51 for a true and complete statement of its content.

52. Paragraph 52 consists of Plaintiffs' characterization of a budget debate and legal argument, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in this paragraph and denies that Plaintiffs are entitled to the relief they seek.

53. Paragraph 53 consists of Plaintiffs' characterization of the Detention Bed Quota, to which no response is required. To the extent a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

54. Paragraph 54 consists of Plaintiffs' characterization of press articles, to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the articles cited in paragraph 54 for a true and complete statement of their content.

55. Defendant denies the allegations in paragraph 55 of the complaint.

56. Defendant admits that they received Plaintiffs' letter dated November 25, 2013, and denies that ICE received a copy of that letter by email.

57. Paragraph 57 contains a characterization of the information sought by Plaintiffs' letter November 25, 2013, to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the letter cited in paragraph 57 for a true and complete statement of its content.

58. Defendant admits the allegation in paragraph 58 of the complaint that Plaintiffs' November 25, 2013, letter sought expedited processing, and denies that Plaintiffs are entitled to the relief they seek.

59. Paragraph 59 contains conclusions of law to which no response is required. To the extent a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59, except admits the allegation in paragraph 59 that Plaintiffs' November 25, 2013, letter sought a waiver of fees.

60. Paragraph 60 contains conclusions of law to which no response is required. To the extent a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60, except denies that Defendant did not timely respond to Plaintiffs' November 25, 2013, letter, denies that Defendant have constructively denied Plaintiffs' request for expedited processing, and denies that Plaintiffs are entitled to the relief they seek.

61. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61 of the complaint, except admits the allegations that ICE acknowledged receipt of Plaintiffs' FOIA request in two letters dated November 27, 2013, and postmarked on December 4, 2013, and respectfully refer to the Court to those letters for a true and complete statement of their content.

62. Defendant admits the allegations in paragraph 62 of the complaint that ICE acknowledged receipt of Plaintiffs' FOIA request in a letter dated November 27, 2013, which invoked a 10-day extension, and respectfully refer the Court to that letter for a true and complete statement of its content.

63. Defendant denies the allegations in paragraph 63 of the complaint, except admits that ICE acknowledged receipt of Plaintiffs' FOIA request in a further letter dated November 27, 2013, which stated that the request was too broad in scope or did not specifically identify the records sought, and which gave to Plaintiffs 10 business days from the date of the letter to resubmit their request, and respectfully refer the Court to that letter for a true and complete statement of its content.

64. Defendant denies the allegations in paragraph 64, except admits that ICE received an email from Plaintiffs dated December 10, 2013, stating that Plaintiffs did not want the case administratively closed, and that ICE did not respond to Plaintiffs' December 10, 2013, email communication. On December 13, 2013, ICE administratively closed Plaintiffs' request as unperfected.

65. Defendant denies the allegations in paragraph 65 of the complaint, except admits that ICE received a letter dated December 19, 2013, from Plaintiffs challenging the information provided in ICE's response letters dated November 27, 2013. Defendants respectfully refer the Court to Plaintiffs' letter dated December 19, 2013, for a true and complete statement of its content.

66. Defendant denies the allegations of paragraph 66 of the complaint, except admits that ICE, by letters dated November 27, 2013, acknowledged receipt of Plaintiff's letter dated November 25, 2013, and admits that ICE, by letter dated December 27, 2013, construed Plaintiffs' December 19, 2013, letter as an appeal, and respectfully refers the Court to its November 27, 2013, and December 27, 2013, letters for a true and complete statement of their content.

67. Paragraph 67 contains conclusions of law as two which no response is required. To the extent a response is required, denies the allegations of paragraph 67 of the complaint, except admits that ICE acknowledged receipt of Plaintiffs' Reply Letter by letter dated Friday, January 24, 2013, which was placed in ICE's internal mail that same day and which affirmed the decision of the ICE FOIA Office to deem the request overbroad while remanding in part the ICE FOIA Office's decision to administratively close Plaintiffs' request, and respectfully refers the Court to ICE's January 24, 2013, letter for a true and complete statement of its content.

68. Defendant admits that Plaintiffs have constructively exhausted their administrative remedies against ICE, but aver that ICE was making a good faith attempt to engage with Plaintiffs to sufficiently narrow the scope of the request to enable the agency to locate the records Plaintiffs seek.

69. Paragraph 69 consists of legal arguments to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 69.

70. Paragraph 70 consists of legal arguments, to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 70.

71. Paragraph 71 consists of legal arguments to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 71.

72. Paragraph 72 consists of legal arguments to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 72.

### **FIRST CLAIM FOR RELIEF**

73. Defendants repeat and reincorporate herein their answers to paragraphs 1 through 72 of the Complaint.

74. Paragraph 74 contains conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph and respectfully refer the Court to the statutory provision cited in paragraph 74 for a true and complete statement of its contents.

**SECOND CLAIM FOR RELIEF**

75. Defendants repeat and reincorporate herein their answers to paragraphs 1 through 74 of the Complaint.

76. Paragraph 76 contains conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph and respectfully refer the Court to the statutory and regulatory provisions cited in paragraph 76 for a true and complete statement of their contents.

**THIRD CLAIM FOR RELIEF**

77. Defendants repeat and reincorporate herein their answers to paragraphs 1 through 76 of the Complaint.

78. Paragraph 78 contains conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph and respectfully refer the Court to the statutory and regulatory provisions cited in paragraph 78 for a true and complete statement of their contents.

The remainder of the Complaint contains Plaintiffs' Prayer for Relief, to which no response is required. To the extent a response is required, Defendant denies that Plaintiffs are entitled to the relief they seek.

**AFFIRMATIVE DEFENSES**

**FIRST DEFENSE**

The Complaint should be dismissed in whole or in part for failure to state a claim upon which relief could be granted.

**SECOND DEFENSE**

The Complaint should be dismissed to the extent that a search for responsive agency records would significantly interfere with the operation of Defendants' automated systems. *See* 5 U.S.C. § 552(a)(3)(C).

**THIRD DEFENSE**

Defendants have exercised due diligence in processing Plaintiffs' FOIA requests and exceptional circumstances exist that necessitate additional time for Defendants to continue their processing of the FOIA requests. *See* 5 U.S.C. § 552(a)(6)(C).

**FOURTH DEFENSE**

Some or all of the requested documents are exempt from disclosure. *See* 5 U.S.C. § 552(b).

**FIFTH DEFENSE**

Plaintiffs are not entitled to a full waiver of fees under 5 U.S.C. § 552(a)(4)(A)(iii).

**SIXTH DEFENSE**

The Court lacks subject matter jurisdiction over Plaintiffs' requests for relief that exceeds the relief authorized by statute under FOIA, 5 U.S.C. § 552.

SEVENTH DEFENSE

The Complaint should be dismissed in whole or in part for failure to state a claim upon which relief can be granted or lack of subject matter jurisdiction because Plaintiffs' have failed to exhaust their administrative remedies.

WHEREFORE, Defendants respectfully request that this Court enter judgment dismissing the Complaint in its entirety, and for such other relief as the Court deems proper, including costs and disbursements.

Dated: New York, New York  
March 5, 2014

Respectfully submitted,

PREET BHARARA  
United States Attorney for the  
Southern District of New York  
*Attorney for Defendants*

By: /s/ Natalie N. Kuehler

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