UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JASON MOUNT, Plaintiff, v. UNITED STATES DEPARTMENT OF HOMELAND SECURITY and JOHN F. KELLY, Secretary of Homeland Security, Defendants.	)	Civil Action No. 16-2532 (CRC)

PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiff, Jason Mount, by and through his undersigned counsel, hereby respectfully responds to Defendants' Motion for Summary Judgment and cross-moves for Summary Judgment. As set forth in Plaintiff's accompanying Memorandum of Points and Authorities, the Defendants' memorandum and affidavit are conclusory and fail to establish that specific records fall within the "Glomar" doctrine. In addition, because of DHS-OIG's inadequate responses and lack of supporting reasons in its memorandum, the Court may grant summary judgment for Mr. Mount in this case, after determining that material facts may not be genuinely in dispute. Federal Rule of Civil Procedure 56(f)(3). Nevertheless, Plaintiff submits the attached Counter Statement of Facts and Memorandum of Points and Authorities, setting forth the reasons to deny Defendant's Motion for Summary Judgment.

Dated: April 28, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Morris E. Fischer, hereby certify that, on April 28, 2017, I electronically filed Plaintiff's Opposition to Defendants' Motion for Summary Judgment and Cross-Motion for Summary Judgment, Memorandum of Points and Authorities in support thereof, Statement of Facts in Dispute, and a Proposed Order using the CM/ECF system, which will then send notification of such filing (NEF) to the following:

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JASON MOUNT, Plaintiff, v. UNITED STATES DEPARTMENT OF HOMELAND SECURITY and JOHN F. KELLY, Secretary of Homeland Security, Defendants.	)	Civil Action No. 16-2532 (CRC)

PLAINTIFF'S STATEMENT OF MATERIAL FACTS
FOR WHICH THERE IS A GENUINE DISPUTE

Plaintiff, Jason Mount, by and through his undersigned counsel, hereby respectfully submit this Statement pursuant to Local Rule 7(h) and Rule 56 of the Federal Rules of Civil Procedure in support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment.

Plaintiff also respectfully refers to the Court to the factual statements in Plaintiff's Memorandum of Points and Authorities to Defendants' Motion for Summary Judgment, which sets forth a detailed accounting of the facts in this case, disputed or otherwise. Notwithstanding the proceeding statement, Plaintiff further reserves the right to challenge Defendants' contentions concerning the undisputed facts in this case.

As set forth in Plaintiff's accompanying Memorandum of Points and Authorities, there are material facts in dispute. Plaintiff submits this statement responding to Defendants' statement by correspondingly numbered paragraphs.

1. No dispute

2. No dispute

3. No dispute

4. No dispute

5. No dispute

6. Plaintiff disputes that the information sought could reasonably be expected to invade the personal privacy of the third party subject of the request. As detailed in Plaintiff's opposition memorandum, the Defendants' have not met their burden to avoid, at the minimum, an *In Camera* review of the documents requested. Their affidavits are conclusory and they have not submitted so much as a *Vaughn* index so the Court can make such a determination.

7. Plaintiff disputes that disclosing the requested information would shed little to no light on the agency's performance of its mission or statutory duties and would be far outweighed by the third party's privacy rights. As detailed in Plaintiff's opposition memorandum, the requested documents would shed light on how the agency handles the alleged misconduct of its employees.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JASON MOUNT, Plaintiff, v. UNITED STATES DEPARTMENT OF HOMELAND SECURITY and JOHN F. KELLY, Secretary of Homeland Security, Defendants.	)	Civil Action No. 16-2532 (CRC)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiff, Mr. Jason Mount (hereinafter "Mr. Mount" or "Plaintiff), submits this Memorandum of Points and Authorities in support of his opposition to the Motion for Summary Judgment filed by the U.S. Department of Homeland Security Office of General Counsel (hereinafter "Defendants" or "DHS-OIG").

I. INTRODUCTION

The only question before the Court is whether Defendants' *Glomar* response, which allows the Federal Government to avoid the statutorily mandated FOIA process, is adequate as a matter of law. Defendants' motion and supporting affidavit fail to establish that its refusal to respond to Plaintiff's FOIA request was justified in the face of important public interest in disclosing the

records and a yet to be determined privacy interest of the government official that Defendants assert the need to protected. As such, the Court should deny the Defendants' Motion.[1]

II. PLAINTIFF'S STATEMENT OF FACTS

Plaintiff, Jason Mount, is a Supervisory Special Agent employed by the Immigration and Customs Enforcement (ICE), Homeland Security Investigations. *See* ECF Doc. No. 1 ("Complaint") at ¶ 3. On November 18, 2012 Mr. Mount made a Freedom of Information Act request, pursuant to 5 U.S.C. § 552, to order the production of agency records, concerning:

> All DHS OIG records and/or reports from January 1, 2002 through November 17, 2012 that contain inofmration regarding an allegation that U.S. Immigration and Customs Enforcement, Homeland Security Investigations, Supervisory Special Agent Peter Edge lost his official credentials to a prostitute and the credentials had to be retrieved by local police. *See Id.* at ¶ 1.

On November 27, 2012, the OIG responded to Plaintiff's request. *See* ECF Doc. No. 7-2; Exhibit B. In their response, Defendants refused to confirm or deny the existence of records responsive to Plaintiff's request because "even to acknowledge the existence of records pertaining to this individual, could reasonably be expected to constitute an unwarranted invasion of their personal privacy." *Id.*

On January 24, 2013, the Plaintiff filed an appeal to the Freedom of Information Privacy Act Appeals Unit. *See* ECF Doc. No. 7-2; Exhibit C. In the appeal, the Plaintiff clearly stated that the reasons for the request were to obtain documents regarding allegations that the third party engaged in criminal conduct and any documents regarding an alleged investigation. *Id.* Further, the Plaintiff clearly stated that disclosing the documents is warranted due to an overriding public

[1] A Court may grant summary judgment, even for the Plaintiff, on its own after identifying for the parties material facts that may not be genuinely in dispute. Federal Rule of Civil Procedure 56(f)(3). Here, the Court, on its own, may grant summary judgment to the Plaintiff's because of the inadequate justifications used by Defendants in withholding the requested documents.

interest and that privacy concerns could be minimalized with redactions. *See* ECF Doc. No. 7-2; Exhibit C.

On June 30, 2014 Jennifer Ashworth Kendrick from the OIG's office responded and affirmed the OIG's action "in refusing to confirm or deny the existence of any records pertaining to a third party." *See* ECF Doc. No. 7-2; Exhibit D.

No discovery took place in this case. Plaintiff now responds to Defendants' Motion for Summary Judgment.

III. STANDARDS OF REVIEW

In ruling on a motion for summary judgment, the Court must view the facts, and the inferences to be drawn therefrom, in the light most favorable to the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "The Court must therefore draw 'all justifiable inferences' in favor of the non-moving party and accept the non-moving party's evidence as true." *Cuban v. Sec. and Exchange Comm.*, 744 F.Supp.2d 60, 69 (D.D.C. 2010) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). "The moving party bears the burden of demonstrating the absence of a genuine issue of material fact." *Nat'l Whistleblower Ctr. V. Dep't of Health & Human Servs.*, 849 F.Supp.2d 13, 21 (D.D.C., 2012) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322).

Further, "FOIA cases are typically and appropriately decided on motions for summary judgment." *Competetive Enter. Institute v. U.S. Envtl. Prot. Agency*, 12 F.Supp.3d 100, 108 (D.D.C., 2014). In these cases, the agency bears the ultimate burden of proof. *Competetive Enter. Institute*, 12 F.Supp.3d at 108. "Ultimately, an agency's justification for invoking a FOIA

exemption is sufficient if it appears 'logical' or 'plausible." *Wolf v. CIA*, 473 F.3d 370, 375 (D.C. Cir. 2007).

IV. ARGUMENT

A. DEFENDANTS' CANNOT JUSTIFY THEIR GLOMAR RESPONSE UNDER FOIA EXEMPTION 7(C)

"The FOIA mandates broad disclosure of government records to the public." *Wolf v. C.I.A.*, 473 F.3d 370, 374 (D.C. Cir. 2007) (citing *CIA v. Sims*, 471 U.S. 159, 166). Upon request, federal agency's FOIA responses should promptly make available any records so long as the request reasonably describes such records. *Assassination Archives and Research Ctr. v. CIA*, 334 F.3d 55, 67 (D.C. Cir. 2003). In addition, "Agencies have a 'duty to construe FOIA requests liberally." *People for Ethical Treatment Animals v. Nat'l Inst. of Health*, 745 F.3d 535, 540 (D.C. Cir. 2014) (citing *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d. 885, 890 (D.C. Cir. 1995)). If an agency denies a FOIA request with a Glomar response, it bears the burden of establishing the applicability of one or more of the nine FOIA exemptions. *See Assassination Archives*, 334 F.3d at 58. An agency may meet this burden without providing documents to a court to review *In Camera*, by providing affidavits and other evidence. *See Hayden v. Nat'l sec. Agency/Central Sec. Service.*, 608 F.2d 1381, 1386-1387 (D.C. Cir. 1979). A *Glomar* response is only permitted when confirming or denying the existence of records would cause harm cognizable under a FOIA exemption. *Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Justice*, 746 F.3d 1082, 1091 (D.C. Cir. 2014). If the agency establishes an exemption, it must still disclose all reasonably segregable, nonexempt portions of the requested record. *Roth v. United States Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011) (citing Assassination *Archives*, 334 F.3d at 58).

Finally, "In determining whether the existence of agency records vel non fits a FOIA exemption, courts apply the general exemption review standards established in non-Glomar cases." Wolf, 473 F.3d at 374. The Defendants invoke FOIA exemption 7(C), therefore an analysis of non-*Glomar* case law analyzing FOIA exemption 7(C) is appropriate.

I. The Public Interests of Mr. Mount's FOIA Requests Outweigh the Privacy Concerns of the Third Party Under Exemption 7(C)

"Exemption 7(C) is designed to protect the personal privacy interests of individuals named or identified in 'records or information compiled for law enforcement purposes,' to the extent that their disclosure 'could reasonably be expected to constitute an unwarranted invasion of personal privacy." *Cuban v. Sec. and Exchange Comm.*, 744 F.Supp.2d 60, 87 (D.D.C. 2010) (citing 5 U.S.C. § 552(b)(7)(C)). A reviewing court must balance the privacy interests that disclosure would compromise against the public interest in the release of the requested information. *Nat'l Whistleblower Ctr. v. Dep't of Health & Human Servs.*, 849 F.Supp.2d 13, 26 (D.D.C. 2012). Further, the "only relevant public, interest in the FOIA balancing analysis [is] the extent to which disclosure of the information sought would 'she[d] light on an agency's performance of its statutory duties' or otherwise let citizens know 'what their government is up to." *Citizens for Responsibility*, 746 F.3d at 1093 (citing *Dep't of Def. v. FLRA*, 510 U.S. 487, 497 (1994)).

a. Law Enforcement Purposes

The applicable portion of exemption 7 of the FOIA statute reads, "records or information compiled for law enforcement purposes." 5 U.S.C. § 552 (a)(8)(B)(7)(C). In determining whether records are compiled for "law enforcement proceedings" the D.C. Circuit looks to "how and under what circumstances the requested files were compiled, … and 'whether the files sought relate to anything that can fairly be characterized as an enforcement proceeding." *Nat'l Whistleblower Ctr. v. Dep't of Health & Human Servs.*, 849 F.Supp.2d at 27.

Plaintiff does not contend that the records requested in the November 18, 2012 FOIA request were compiled for law enforcement purposes. *See* ECF Doc. No. 1 ("Complaint") at ¶ 1.

b. Privacy Interests of the Third Party

"Individuals involved in law-enforcement investigations-including targets, witnesses, complainants, and investigators – have a privacy interest in the non-disclosure of their names and identifying information." *Nat'l Whistleblower Ctr.*, 849 F.Supp.2d at 28. This protection applies to third persons that are not the subjects of the investigation, but may still have their privacy invaded by having their identities revealed in connection with an investigation. *See Id.* at 28. (quoting *Burge v. Eastburn*, 934 F.2d 577, 579 (5th Cir. 1991). Further, "Exemption 7(c) thus 'affords broad[ ] privacy rights to suspects, witnesses, and investigators." *Nat'l Whistleblower Ctr.*, 849 F.Supp.2d at 28 (quoting *Bast v. U.S. Dep't of Justice*, 665 F.2d 1251, 1254 (D.D.Cir. 1981)). Additionally, an agency does not have to provide documents to a court for *In Camera* review if, by supporting affidavits and other evidence, it shows that the documents are properly classified and therefore exempt from disclosure. *See Hayden*, 608 F.2d at 1386-1387.

For example, in *Nat'l Whistleblower Ctr.*, the OIG withheld documents that were put into three categories. The first category consisted of "documents-such as emails or exhibit logs- on which OIG has excised personally identifiable information through the use of discrete redactions." *Nat'l Whistleblower Ctr.*, 849 F.Supp.2d at 29. The Court held that there was no reason to go to prong two, "public interest" of the 7(C) analysis, because both parties agreed that redactions of private information adequately protected the privacy interests at stake. *Id*. at 29. The Court essentially reasoned that any privacy interests in this scenario were completely mitigated with appropriate redactions.

Here, the Defendants have not provided any documentation whatsoever, not even a *Vaughn* index so that this Court could review the documents *In Camera* and determine whether redactions may appropriately erase any privacy concerns. *See* ECF Doc. No. 7-2 ("Declaration of Jonathan Parnes (Office of Inspector General)").

More to the point, the DHS-OIG has not sufficiently supported its *Glomar* response because Defendants' reasons for invoking *Glomar* and their affidavit are very vague and sweeping. *See* ECF Doc. No. 7-2 ("Parnes Decl."). In paragraph 14, Mr. Parnes seemingly recites portions of case law without stating why Mr. Mount's request would apply to that case law. *See* ECF Doc. No. 7-2 ("Parnes Decl.") at ¶ 14. Paragraphs 15 and 16, which supposedly constitute the application of the law to the FOIA request at hand, are simply a conclusory reiteration of the law and an attack on Mr. Mount's appeal. *Id.* at ¶ 15-16. The affidavit is conclusory and simply recites statutory standards and portions of case law with minimal application to the case at hand which does not meet the standards set forth in *Hayden*. *See Hayden*, 608 F.2d at 1387.

Therefore, the DHS has not met its burden on this prong. At a minimum, the DHS-OIG should be required to submit documents to be reviewed *In Camera* because they have not met their burden to avoid *In Camera* review and the Court could find, as the District Court for the District of Columbia did in *Nat'l Whistleblower*, that the privacy concerns could be mitigated through redactions.

c. Overriding Public Interest

"Where a legitimate privacy interest is implicated, the requester must '[(1)] show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake, and [(2)] show the information is likely to advance that interest." *Cuban*, 744 F.Supp.2d at 87 (quoting *Archives & Records Admin. v. Favish*, 541 U.S.

157, 158 (2004)). Further, the citizens' right to be informed about what their government is up to is the only relevant public interest under 7(C) and therefore the request's objective must be to shed light on the conduct of a Government agency or official. *See Nat'l Whistleblower Ctr.*, 849 F.Supp.2d at 32 (quoting *Davis v. U.S. Dept. of Justice*, 986 F.2d 1276 (D.C. Cir. 1992) (also quoting *Cuban*, 744 F.Supp.2d at 87).

For example, in *Nat'l Whistleblower Ctr.*, the plaintiffs were looking for documents related to whether or not the HHS OIG properly investigated allegations of misconduct. Specifically, the plaintiffs asked for documents containing "memoranda from OIG seeking information from potential witnesses about a personnel matter involving one FDA employee." *Nat'l Whistleblower Ctr.*, 849 F.Supp.2d at 34. The plaintiffs also asked for documents containing accusations and derogatory statements against the subjects of the OIG's investigation. *Id.* at 34. The Court held that "the public no doubt has an interest in knowing whether the HHS OIG properly investigates allegations of misconduct by agency officials and whether this was done during investigations." *Id.* at 32. The Court reasoned that there was a substantial public interest because the plaintiffs' reasons for seeking the information was to shed light on how the agency handles alleged misconduct of its employees. *Id.* at 33. The Court then balanced the public interest against the privacy interests and ultimately ruled that documents "from OIG seeking information from potential witnesses about a personnel matter" should be released with redactions. *Id.* at 34. A few pages of these same documents contained witness responses that were not withheld whatsoever and the court ordered their release in their entirety. *Id.* at 34. Additionally, the Court found that the "OIG may withhold only enough information as is necessary to protect the privacy and identities of the individuals mentioned." *Nat'l Whistleblower Ctr.*, 849 F.Supp.2d at 35. Consequently, the Court ordered the release, with

redactions, of statements and derogatory accusations against specific individuals. *Id.* at 36. The Court again reasoned that the public interest in releasing these documents would override any privacy concerns because the documents may be probative of the soundness of the steps taken in the OIG's investigation and therefore would shed light on whether or not the OIG properly conducted the investigation. *Nat'l Whistleblower Ctr.*, 849 F.Supp.2d at 35-36.

Additionally, in *Cuban,* the plaintiffs requested documents consisting of "e-mails authored by employees of the defendant concerning employment leave requests, an internal agency investigation, and a recommendation for employee discipline." *Cuban*, 744 F.Supp.2d at 88. Importantly, the request involved one individual seeking records regarding another individual and the information sought was regarding a public official who allegedly committed improper acts while performing his official duties. *Id.* at 88. The Court accordingly held that the information sought was "unquestionably" of public interest because it could provide insight into how the defendant addressed allegations of employee misconduct. *Id.* at 88-89. Additionally, the Court ruled that the "issue of whether Exemption 7(C) has been properly relied upon can not yet be resolved on the existing record." *Id.* at 89. The Court reasoned that the defendants had not justified "withholding the remainder of the information likely contained in the records" because the declarations and reasons provided in the *Vaughn* index were "nothing more than conclusory." *Id.* at 89. Therefore the Court granted the plaintiffs cross-motion for summary judgment in part because the defendant had not "sufficiently substantiated" its burden to withhold the records under Exemption 7(C). *Id.* at 92.

Here, similar to *Cuban,* where the Court found that the defendants had not provided sufficient information to justify withholding documents in their entirety, the DHS-OIG has not provided sufficient information to justify its *Glomar* response. *See* ECF Doc. No. 7-2 ("Parnes

Decl.") ¶ 13-17; *see also Cuban*, 744 F.Supp.2d at 92. Paragraph 15 of Defendants' response states nothing more than the statutory language and that the agency complied with the statute. *See* ECF Doc. No. 7-2 ("Parnes Decl.") at ¶ 15. Paragraph 16 simply states that Mr. Mount failed to articulate a public interest. *See* ECF Doc. No. 7-2 ("Parnes Decl.") at ¶ 16. This is inaccurate. In the original November 18, 2012 request, Mr. Mount requested information regarding allegations that an ICE agent had broken the law. *See* ECF Doc. No. 7-2; Exhibit A. In Mr. Mount's appeal to the DHS-OIG, he specifically states, "Therefore I believe there is a strong overriding public interest that the documents be disclosed." *Id*.; Exhibit C. He also states that the purpose of the request is to discover whether the DHS-OIG properly investigated alleged criminal conduct by one of its employees, exactly the type of public interest described in *Cuban* and *Nat'l Whistleblower*. *Id.*; Exhibit C; *see also Cuban*, 744 F.Supp.2d at 88-89; *see also Nat'l Whistleblower Ctr.*, 849 F.Supp.2d 32-33. Continuing with the Defendants' declaration, the only paragraph that even references the facts of this case is paragraph 16, and as just stated, that paragraph is inaccurate. *See* ECF Doc. No. 7-2 ("Parnes Decl.") at ¶¶ 13-17. Therefore, similar to *Cuban*, the Defendants' have not met their burden to justify their *Glomar* response because their reasons stated are conclusory and merely recite the statutory language and case law. In addition, Mr. Mount has stated a public interest that overrides any privacy interests of the third party in this case. *Id.* at Exhibit C. Therefore, the DHS-OIG's *Glomar* response does not fit into Exemption 7(C), and accordingly their motion for summary judgment should be denied and they should be compelled to produce the documents, if not in their entirety, then at least redacted.

Moreover, in the alternative, the Defendants in *Cuban* had at least submitted a *Vaughn* index to the court. *Cuban*, 744 F.Supp.2d at 89. That is not the case here. Therefore, the Defendants' summary judgment motion should be denied and they should be ordered to submit, at the least, a

Vaughn index to the court with justifications for withholding the documents or documents themselves for an *In Camera* review.

In addition, this case is similar to *Nat'l Whistleblowers*, where the Court held that "the public no doubt has an interest in knowing whether the HHS OIG properly investigates allegations of misconduct by agency officials and whether this was done during investigations." *Nat'l Whistleblower Ctr.*, 849 F.Supp.2d at 32. There, the Court compelled the production of "memoranda from OIG seeking information from potential witnesses about a personnel matter involving one FDA employee", *Id.* at 34, and documents containing accusations and derogatory statements against the subjects of the OIG's investigation. *Id.* at 34. Here, Mr. Mount is asking for the exact same type of information that the plaintiffs asked for in *Nat'l Whistleblower*, information regarding allegations that an employee of the DHS ICE engaged in criminal activity and whether it was properly investigated. *See* ECF Doc. No. 7-2; Exhibit C. The public interest here is the same as it was in *Nat'l Whistleblower* and *Cuban*. Therefore, the Defendants' *Glomar* response based upon Exemption 7(C) is not appropriate because there is an overriding public interest that should compel disclosure.

For the foregoing reasons, the Defendants' motion for summary judgment should be denied and the Defendants' should be compelled to release the documents, if not in full, then to the Court for *In Camera* review. In the alternative, and at the least, the Defendants' should be required to submit a *Vaughn* index to the court with explanations.

B. DEFENDANTS MISCHARACTERIZE THE PLAINTIFF'S COMPLAINT AND FOIA REQUESTS

The Defendants' misconstrue the Plaintiff's complaint. The Plaintiff does not rely solely on the exception in *Wolf* that "when information has been 'officially acknowledge,' its disclosure may be compelled even over an agency's otherwise valid exemption claim." *Wolf*, 473 F.3d at

378. The Plaintiff's argument primarily relies on the analysis above, that there is a strong overriding public interest, and therefore the Defendants' *Glomar* response under 7(C) is inapplicable. *Supra.*

Additionally, the Plaintiff, as stated in his November 18, 2012 request, and as reiterated in Mr. Mount's appeal to the DHS FOIA staff, requests documents surrounding "alleged improprieties" and "allegations" that an investigation occurred. *See* ECF Doc. No. 7-2; Exhibit A and C. This request is much broader than how the DHS-OIG construes it and agencies have a duty to "construe a FOIA request liberally." *Nation Magazine Washington Bureau v. U.S. Customs Service*, 71 F.3d 885, 890 (D.C. Cir. 1995).

C. DHS-OIG'S CASE LAW SAFECARD AND NATION MAGAZINE SUPPORT REDACTED DISCLOSURE

The Defendants' memorandum cites a portion of the *Nation Magazine* case that sites *SafeCard*. The Defendants' state, "the extend any information contained in 7(C) investigatory files would reveal the identities of individuals who are subjects, witnesses, or informants in law enforcement investigations, those portions of responsive records are categorically exempt from disclosure under *SafeCard*." *See* ECF Doc. No. 7 ("Defendants' Memo. in Supp. of Motion For Summary Judgment") at 5. The Defendants' use this to argue that the third party's name and information here should be categorically exempt from disclosure period and therefore the *Glomar* response is proper. However, the case law, as explained below, provides for and mandates the redaction of such information.

In *Nation Magazine*, the Court of Appeals for the D.C. Circuit held, "But we do not read SafeCard as permitting an agency to exempt from disclosure all of the material in an investigatory record solely on the grounds that the record includes some information which identifies a private citizen or provides that person's name and address." *Nation Magazine*

Washington Bureau, 71 F.3d at 896. The Court in *Nation Magazine* went on to explain that *SafeCard* "directs an agency to redact the names, addresses, or other identifiers of individuals mentioned in the investigatory files in order to protect the privacy of those persons." *Id.* at 896. The Court then reversed the grant of Summary Judgment to the Defendants.

Here, the DHS-OIG's *Glomar* response, much like the *Glomar* response in *Nation Magazine* is inappropriate because, at the least, redactions can protect the privacy of the third party in this case.

Therefore, the Plaintiff requests that the Court deny the Defendants' motion for summary judgment and at the least, order the documents to be released with redactions, if not in their entirety.

CONCLUSION

For the reasons set forth herein, Plaintiff requests that Defendants' motion for summary judgment be denied and the Court should order the DHS-OIG to perform a lawful search and disclose all responsive records, or in the alternative, order the Defendants to provide records to the Court for *In Camera* review with a *Vaughn* index. A proposed order is attached.

Dated: April 28, 2017

Respectfully submitted,

/s/

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PROPOSED ORDER

Upon Consideration of Defendants' Motion for Summary Judgment, Plaintiff's Opposition thereto, and the entire record herein, it is this _____ day of _____, hereby

ORDERED that the Defendants' Motion for Summary Judgment be **DENIED**. It is further **ORDERED** that Defendants' conduct a lawful search for the requested documents and produce them to the Court.

_____
UNITED STATES DISTRICT JUDGE