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May 16, 2017

Ms. Molly C. Dwyer
Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
The Janes R. Browning Courthouse
95 7th Street
San Francisco, CA 94103

**Re: Tuffly v. U.S. Department of Homeland Security, Case No. 16-15342
(to be argued June 5, 2017)**

Dear Ms. Dwyer:

This is a response to the Fed. R. App. P. 28(j) letter submitted by the U.S. Department of Homeland Security on May 12, 2017.

The facts of *Cameranesi v. U.S. Department of Defense*, No. 14-16432 (9th Cir. May 8, 2017), are entirely and appropriately distinguishable from those in this case.

First, the FOIA requester in *Cameranesi* sought the names of foreign, military personnel receiving professional training from the U.S. government. In this case, Tuffly seeks the names of criminal aliens released from custody due to “fiscal uncertainty.”

Second, the foreign, military personnel could have reasonably concluded that their identities would not be disclosed without their permission in light of the U.S. government’s policy not to disclose such information. In this case, DHS has not provided any evidence that it maintains a similar policy with respect to criminal aliens or that criminal aliens rely on such a practice.

Third, the agency in *Cameranesi* that assessed the possible risks to the foreign, military personnel was the U.S. Department of Defense. Obviously, that agency has the requisite expertise and knowledge to determine whether such individuals

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could be subject to possible mistreatment or attack if their identity is known. DHS does not have similar expertise and knowledge when it comes to the possible effects of disclosing the identity of criminal aliens.

Fourth, the *Cameranesi* Court concluded that the disclosure of the names of the foreign, military personnel would not contribute significantly to public understanding because the government already had an investigative process in place to shed light on the issues addressed by the FOIA request. In this case, there is no such governmental investigative process in place. Only with the release of the names to Tuffly will the public be able to determine whether DHS made a reasonable assessment of the risks posed to the public by releasing criminal aliens under less strict supervision and whether DHS's continued supervision has adequately safeguarded the public from dangerous individuals who would otherwise have been subject to detention.

If anything, the *Cameranesi* Court's ruling reemphasizes that DHS is improperly withholding the names of the 149 criminal aliens.

Respectfully submitted,

/s/ Michael Bekesha
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CERTIFICATE OF COMPLIANCE

This letter complies with the type-volume limitation of Fed. R. App. P. 28(j) because the body of the letter does not exceed 350 words.

/s/ Michael Bekesha

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing letter with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 16, 2017.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Michael Bekesha