

LEAHY: Boy, ...

NIELSEN: Probable cause, though is -- let's just be clear ...

LEAHY: (Inaudible) (CROSSTALK) ...

NIELSEN: ... it has to be a -- there has to be a reason. There has to be a reasonable suspicion ...

LEAHY: Welcome to America.

NIELSEN: ... probable cause, then allows them to of course look into other things. But, again, we're talking about 1 100th of 1 percent.

LEAHY: I don't care what it is, welcome to America. Incidentally, and I will be asking this question when you come before the Appropriations Committee, I've been trying to get answers from DHS about the hiring and retention issues at the Law Enforcement Support Center in Williston, Vermont. Please have your staff give us some understanding of that. I want to know -- I realize I'm going slightly over my time here. I want to know where the Federal dollars that we have voted for, and being assigned where they're going, because we can't seem to find out.

And as your budget comes before my -- the committee where I'm Vice Chairman, I'm going to want to know the answers to that. And I want to know how quickly DHS and CBP will work with the Canadian government on preclearance.

NIELSEN: On the Williston, Vermont issue, I'd be happy to provide that. I'm actually going to Canada on Thursday, as my first international trip. We'll be talking about a variety of issues, but of course including preclearance.

So, I'm happy to get back to you after that meeting and let you know what the path forward is.

LEAHY: OK, well please -- please let me know. But on the Williston one, we have been trying, and trying, and trying to get an answer. Frankly, I've been trying to be very helpful, but I don't want to vote more money unless we know what to expect.

NIELSEN: We will follow up, sir.

LEAHY: Thank you.

NIELSEN: Absolutely.

GRASSLEY: Senator -- you weren't on the list, but if you want a second round, you're next up.

BLUMENTHAL: Thank you, Mr. Chairman.

Thank you, again, Madam Secretary.

I want to emphasize how important the Special Counsel investigation of Russian meddling and collusion and possible obstruction of justice is. And I welcome your constructive and positive attitude toward that investigation.

I hope you'll talk to the president and ask him to agree with you that it isn't a witch hunt, it isn't a hoax. It has to be supported. Political interference, as you put it, on any side, is abhorrent.

On the question that we all want to move on from, which is that meeting on Thursday, I heard Senator Graham make reference to a tape. He, I believe, said that on the issue of whether or not the president used the word "love", we'll have to check the tape. Are you ...

NIELSEN: Oh, I'm sorry, the -- yes, sorry, now I know what you are referencing. That was the Tuesday meeting he was referencing the one that was publicly aired. So I think he was saying to go back to the tape, because that was on the -- that was on the news.

BLUMENTHAL: You're not aware of any tape of the Thursday meeting?

NIELSEN: I am not. No, sir.

BLUMENTHAL: Have you spoken to others about that meeting who might recall what words were used?

NIELSEN: I actually have not. I haven't spoken to Senators Cotton or Purdue or Leader McCarthy, others who were there. I have not.

BLUMENTHAL: How about anyone in the White House?

NIELSEN: No.

BLUMENTHAL: Have you discussed that meeting?

NIELSEN: No, sir.

BLUMENTHAL: Let me talk about the compromise that Senators Durbin and Graham have helped to lead. You mentioned that you had not seen anything before that meeting reduced to writing. You're aware that there is a summary now in writing?

NIELSEN: I do not have -- I personally do not have it. I would love to have it.

BLUMENTHAL: I have a copy of it.

NIELSEN: OK.

BLUMENTHAL: I don't believe that it is classified. But you have security clearance and I think, you would agree, it is the only bipartisan deal in town right now, correct?

NIELSEN: There is a bill that I understand was introduced in the House. It has not been voted on, as you know. But there is a Goodlatte, McCaw bill as well.

BLUMENTHAL: That's not bipartisan.

NIELSEN: I -- I -- like I said, it hasn't been voted on, so I ...

BLUMENTHAL: Well, it has no bipartisan sponsorship, correct?

NIELSEN: Understood.

BLUMENTHAL: So, if we're going to reach a deal by the end of the week, we ought to be working with this deal, correct?

NIELSEN: And my staff continues to do that, yes.

BLUMENTHAL: And no one is going to get everything they want at this stage, correct?

NIELSEN: Correct.

BLUMENTHAL: Let me move on to, again, Puerto Rico, and ask you; in past crises there have been agreements between FEMA and the Department of Housing and Urban Development.

You made reference to HUD earlier in terms of HUD carrying out FEMA's Individual Assistance Program. Why have FEMA and HUD not reached such agreement?

NIELSEN: With respect to housing?

BLUMENTHAL: Correct.

NIELSEN: Yes. So, we were -- a couple -- a couple reasons. One, we have some requests, as you know, that might come through the supplemental, or when the budget gets passed. So some of it is money that HUD needs to be able to implement its program. But, generally speaking, the roles and -- and the rules between the departments are very clear.

They're in the national disaster recovery framework and they're spelled out there in terms of the transitional period between response moving through to recovery.

BLUMENTHAL: But they have to enter into an interagency agreement. It's customary for your agency and HUD to do so. We're more than three months after the hurricane and there is no such agreement here. I hope that you will reach this agreement because so far, only 350,000 of the one million applications for assistance in individual disaster relief have been approved by FEMA and HUD could be a really partner, correct?

NIELSEN: Happy to look into that.

BLUMENTHAL: Would you agree with me that the relief package is essential in meeting Puerto Rico's needs? The House has allocated, I believe, \$81 billion, but none of it targeted to Puerto Rico. Would you agree that money has to be specifically allocated to Puerto Rico?

NIELSEN: The governor continues to be clear what he believes he needs for his state to recover. I don't have those figures in front of me but yes.

BLUMENTHAL: Well, he has said he needs \$94 billion in my visits. He has a lot of evidence in support for it. Let me just finish by asking you -- it's a simple question -- can you commit that the policies on sensitive locations, that there will be no enforcement operations at churches, hospitals, schools, courts will be rigorously followed by both CBP and ICE?

NIELSEN: Yes, sir with one exception. In the courthouse, not all of the courthouse is considered sensitive location. Part of the courthouse is a controlled area. We will not target victims in that area. But it is controlled. It is much safer for my officers to pick up a criminal in that environment.

But with respect to the 2012 list that continues to exist today, yes, you have my commitment, we will not enforce in those locations.

BLUMENTHAL: And would you respond to my letters regarding...

NIELSEN: Yes.

BLUMENTHAL: ...those failure (inaudible).

NIELSEN: Yes, sir. Yes, sir.

BLUMENTHAL: Thank you.

GRASSLEY: Senator Hirono.

HIRONO: Thank you.

Madam Secretary, how would it be possible for someone who entered this country through the visa lottery program and who was a legal permanent resident, but had not yet gotten his U.S. citizenship to be responsible for sponsoring 23 other people for visas in the space of seven years?

NIELSEN: As an LPR, you have the ability to sponsor.

HIRONO: Is it possible to sponsor 23 others in a span of seven years? Let me put this into context. Because President Trump has been very vocal about the diversity lottery program as well as the chain migration and he cited numerous times at the meeting that I was at in the White House on Thursday about a horrible terror attack, which happened on the West Side Highway in New York City.

And several times, he mentioned that the attacker who was admitted through the diversity visa program was responsible for 23 other immigrants entering the U.S. So I would like to get the factual basis for the president's assertion that this person has managed to bring in 23 other people into the country.

Because this is what the president repeated many times. Can you -- do have that information or can you get that information?

NIELSEN: I don't have it in front of me. I'm happy to provide it. As you know, there's no ceiling on the number of people -- to my knowledge, there's no ceiling on the number of people that you can sponsor. But happy to provide you the information requested.

HIRONO: There seems to be this -- this misconception about so-called chain migration that, somehow, someone can bring in an entire family tree, which includes just about anybody you can think of. And that is not how migration works. Because you have different groupings of family members that can come in under that kind of system.

So I would really like to get the factual basis for what the president was asserting as -- as to this particular immigrant who came to this country. Somehow, I don't think that there is a factual basis. So turning to unaccompanied minors, who are apprehended at the border and who are released to HHS, you stated that -- and they do have to show up for their deportation hearings.

You said that 90 percent of them do not show up?

NIELSEN: Yes, ma'am. And not just to deportation hearings per se, but just to their initial hearing...

HIRONO: Any kind of hearings? (ph)

NIELSEN: ...before they -- yes.

HIRONO: So the -- the statistics from the Executive Office of Immigration Review shows that the vast majority of children do show up and almost every child who has legal representation does show up. So I cosponsored a bill introduced by Senator Reed last Congress, and am introducing it again this Congress, that would require the government to appoint counsel to unaccompanied children coming across our border.

And we know that there are children as young as three and four and I -- I have been to immigration court where there these young children. It is very true that if they are accompanied by a lawyer, that they are more likely to succeed in their request for asylum or whatever, the -- they refugee status.

So if you would -- if you would like to see all the children return for the hearings, don't you agree that providing counsel is a good way to that -- to do that?

NIELSEN: We have a duty to protect the children that come here, ma'am. So I'm happy to work with you and look at the proposal.

HIRONO: I think one of the ways is to ensure that they be provided counsel, because you can hardly expect four, five, six year old children to be able to represent themselves in these proceedings. I want to turn to the priorities -- the deportation priorities that you have.

And you indicated that those who have final orders of -- for removal, even those people who have not been convicted of any criminal -- no criminal convictions, that they may have a final orders of removal. And many of them -- a number of them have received waivers from your department, waivers against deportation.

So, you know, nobody's arguing that we should not be deporting people with criminal convictions but do you consider that anyone who has a deportation order, regardless of what the basis for that order was and where waivers have been granted in the past should not be looked at and provided waivers?

Because we know of examples of -- in Hawaii, there was a coffee farmer who had married an American citizen, who had American children, who was deported. And he had received a number of waivers. So is it not within the authority of your department to grant these waivers?

NIELSEN: Ma'am, we look at each case on a case-by-case basis. What I was trying to assert before and I'll reassert now is we can ignore the law. So if they've gone through all of the courts, they've exhausted all possible appeals and they have a final order removal, we will remove...

HIRONO: There are a number of people with final orders of removal who have had waivers of their deportation. Is it not within the authority of your department to grant these waivers?

NIELSEN: We look at them case-by-case.

HIRONO: Yes or no. Do you have the -- you have the authority to grant the waivers?

NIELSEN: In some cases, yes.

HIRONO: Yes, you do. Thank you.

GRASSLEY: Senator Booker, before you talk, we've got -- I -- I said I had to quit around 2:00. Maybe it's more like 2:10. So I've got you and Harris. Senator Coons, do you want five minutes? That's 15, so I hope that we can -- that nobody else comes in here, because I'd like to get my questions in.

Go ahead, Senator Booker.

BOOKER: After I speak, I can Katie (ph) bar the door if you'd like me too, sir.

GRASSLEY: Go ahead, OK thank you. I'll -- I'll trust you.

BOOKER: Thank you sir. Well, just real quick, the -- I, like you, agree that dangerous criminals, we should get them out of our country, but when you say that bucket of criminals, you're talking about people that could be low level crimes from a decade ago. That still counts as a criminal, correct?

NIELSEN: The ones that we target are criminal offenses, in other words, there are some civil offenses that would not fall within our top tier prioritization.

BOOKER: But -- but it's a felony for marijuana possession, say, that somebody might have done 10, 15 years ago. That's a -- that's a criminal in your definition.

NIELSEN: Yes sir, yes sir.

BOOKER: And that person would be prioritized for deportation?

NIELSEN: One of however many we agree on are here illegally, 11 million, yes.

BOOKER: OK, you said earlier, and this might be a question for the record, because I know you weren't in your position at this time, but you said earlier that the customs border patrol follows court orders, correct?

NIELSEN: Yes, sir.

BOOKER: And so I had a personal experience with this last year when I went to Dulles Airport during the first iteration of the Muslim ban, there was a -- there was a temporary injunction from a federal judge, requiring the customs and border patrol to provide individuals effected by the executive order access to counsel.

I was called to go up there because they were refusing to abide by that and provide counsel for those individuals. This was a question for the record, would you please explain to me -- I was there myself, they refused to even talk to me or discuss it as I was holding the court order to let the people being detained.

Could you please, for the record -- I have yet to get an understanding of why customs and border patrol was refusing to abide by a court order.

NIELSEN: I'd be happy to look into that.

BOOKER: Thank you very much. On December 1st, 2017, Department of Homeland Security's office of Inspector General released a detail of report detailing the results of on and out spot inspections of six ICE detention facilities.

I'm sure this is a yes question, but you believe in the dignity of all human beings, correct?

NIELSEN: Absolutely.

BOOKER: And that they should be treated with a certain level that respects that dignity and affirms your humanity. Well, the Inspector General's report raised serious questions regarding the treatment and the care of ICE detainees.

The report stated, and I quote, we identified problems that undermine the protection of detainee's rights, their humane treatment and the provision of a safe and healthy environment. In light of this administration's highly aggressive posture towards the immigrant community, and putting people into these facilities, it's very troubling to me that your own Inspector General would have a report detailing the United States of America treating others in an inhumane manor that's an assault to their dignity.

And so can you affirm to me that you're aware of this report?

NIELSEN: I am aware of this report, yes sir.

BOOKER: And then what actions are you taking right now to address the concerns?

NIELSEN: First of all, looking into both the recommendations and the facts provided, as you might know, the Homeland Security Advisory Counsel did its own review independently for the department just a year ago, over a year ago I guess at this point, on detention centers.

I'd like to look at the recommendations from both to address any issues that remain, and certainly any concerns of inhumane treatment.

BOOKER: OK, and so you're saying that you're going to try and implement the recommendations of the report, can you give me some kind of timeline or show us (ph) and -

NIELSEN: I'm happy to come and brief you myself, sir. I have not had an opportunity to understand the depth of any changes that might be necessary, or whether the facts -- I just need more information, as you said it just came out in December.

So I'd be happy to do that.

BOOKER: I'm really grateful, and I will take you up on that offer. On September 11th, right after the attacks, the federal government created a -- I know you -- the NSEER System, the National Security Entry and Exit Registration System.

The program requires non-citizen Visa holders from certain countries to register with the federal government. The registration process included finger printing, photo -- photo taking, interrogations. Once an individual was registered, NSEERS required the person to regularly check in with immigration officials.

And finally, NSEERS monitors people who registered with the program to ensure that no one remained in the country longer than the law permitted them. Notably, the only people who had to register for the list were from Muslim countries with the exception of North Korea.

And so, I'm wondering, do you believe that it is legal in keeping with the values of our country and trying in our (ph) constitution to force people from Muslim nations to register their presence in the United States?

NIELSEN: Based on the fact that they're Muslim, absolutely not.

BOOKER: And I've introduced legislation trying to prevent that kind of registry from being created through NSEERS, is that something that you'd be willing to commit to making sure that does not happen in terms of creating something akin to a Muslim registry?

NIELSEN: Yes.

BOOKER: Thank you.

HARRIS: Thank you.

I think you would agree that all federal agencies, in fact all government agencies, have limited resources to perform their duties and responsibilities, and have to make priorities therefore about where they will use the limited resources and prioritize based on whatever they perceive to be their mission.

Your testimony before the Homeland Security Committee, which I am a member, on November 8th, you -- I asked you if you agreed with what your predecessor Secretary Kelly at the time, said which is that in terms of enforcement priorities, there has to be something else, we're operating more or less at the other end of the spectrum in terms of the range of offenses for which you can detain, and he said and we're operating more or less at the other end of the spectrum, and that is criminals, multiple convictions, he said.

I asked you that, and I quoted that, you said yes I agree, we should prioritize criminals and any others that we are concerned may present a national security concern. I asked you whether the definition of criminals would include people who have violated the law in terms of the violation of the penal code.

And I asked you to urge -- I urged you to consider those as the definition of a criminal. You said, quote, yes, so the criminal -- the criminally -- criminality that I would be talking about, with respect to enforcement priority, is above and beyond the original illegal entry.

The Washington Post reported in September of this past year, a three fold increase in arrests of non criminals by your agency. You also, in addition, apparently have changed the way that you report data in your department, and in the past, ICE would provide data broken down by individuals who committed the most serious offenses.

And, however, this year, your report has lumped all criminal offenses and convictions together so you have combined serious crimes with traffic offenses. I would urge you to recall and review your testimony before a Senate Committee only a couple of months ago, where you at that point, in seeking confirmation of this United States Senate, indicated that you saw a difference between criminal offenses, felonies, and those who have entered the country illegally.

For example, I would ask you to consider the case U.C. Berkeley student Luis Mora, who remains in DHS custody, I believe as of today, but was apprehended on January 4th. He came to this country as a child, he is a political science major, he volunteers at his church, he was the winner of the San Diego Union-Tribune's Young Latino Champion Award, and today's the first day of instruction at U.C. Berkeley for their Spring semester, and instead of being in class he is in ICE custody, at the Otay Mesa Detention Center.

Madam secretary, I would ask you to consider the previous comments you have made to a committee about your priorities regarding enforcement. Take a look at this case and determine whether he in fact fits what you have indicated before in your priorities. Because if you stand by your previous testimony, he does not.

NIELSEN: I stand by my testimony. I am happy to look into the facts. I can't -- not prepared to testify to them today because I'm not aware of them.

HARRIS: I appreciate if you'll look into the facts. Thank you for that.

During a January 4th, 2018 interview on Fox news ICE agency Acting Director Homan said he asked the Justice Department to, quote, "Look into criminal charges for elected officials with sanctuary policies, as they are harboring illegal aliens, according to 8-USC 1324." This comment was specifically about California elected officials after the enactment of the California Values Act. My question is whether DHS is currently working with the Justice Department to bring section 8-USC 1324 charges or any criminal charges against state or local officials.

NIELSEN: I believe the request was made. The Department of Justice is reviewing what avenues might be available. The context of this is of course not only putting my ICE officers at risk but also finding an efficient and effective way to enforce our immigration laws.

HARRIS: So, you are aware of cases in which this code will be used to criminally charge elected officials?

NIELSEN: I am not aware of any cases, no ma'am. I believe it was just a request to look into it.

HARRIS: And was that a request to from your department?

NIELSEN: Yes.

HARRIS: At your confirmation hearing, you committed that you would report to Congress within three months about what you have done to address the OIG's November 3rd report which

is entitled, Major Management and Performance Challenges Facing the Department of Homeland Security. Are you prepared to keep that commitment which would be March 5?

NIELSEN: Yes, ma'am

HARRIS: Last week, the White House disbanded the controversial Election Integrity Commission because -- without finding widespread evidence of voter fraud. Following it's disbanding Chris Kovach said claimed he would "be working closely with DHS and the White House on this issue." And my question -- my final question Mr. Chairman -- could you please specify, does Mr. Kovach have an advisory role or any role at DHS on this matter or any other matter?

NIELSEN: He does not have an advisory role. He is as you know a secretary of state. We're working with all of the secretaries of state to ensure the integrity of our systems but, no, he does not have any advisory, informal or formal role.

HARRIS: Thank you.

GRASSLEY: Senator Coons?

COONS: Thank you, Chairman Grassley.

Thank you, Madam Secretary, for a chance to continue questioning you on some of the issues I've raised previously and a few additional.

First, about conditions of detention. On September 26 last year the ACLU filed a complaint asking DHS to investigate 10 cases of pregnant women who were held for weeks at detention facilities in California and Texas despite a memo signed by Acting Director Homan last year barring the practice "absent extraordinary circumstances or the requirement of mandatory detention." I also raised this in person with then Acting Director Homan.

The complaint by ACLU alleges at least two of these women miscarried while in ICE detention centers because of insufficient healthcare support during detention. How many pregnant women are currently in ICE detention centers and what has DHS done to ensure they get the healthcare they need?

NIELSEN: Sir, I can't give you the number, but the guidance that you referenced by Acting Director Homan goes into quite some detail about the provisions and support that ICE detention centers would provide. Many of the instances I believe that have been in the press are actually in our sister agency related to HHS. So, we're working with HHS as well to ensure that the policies are aligned.

COONS: Thank you. The administration sought in this year's budget proposal, F.Y. '18 that we're now well into, to cut funding for the Port Security Grant Program by half from \$100 million to

\$50 million. And I understand there's a proposal being discussed to cut it even further to 36 million. Needless to say, this program's important to a number of ports on the Delaware River.

My home state is Delaware. Why do you think it's prudent to significantly reduce investments in port security?

NIELSEN: What I believe, sir, is that we -- what we did, what the administration did, was look at all of the grant programs across the board from a risk basis. There are other risks that we need to address so it's more of an allocation issue. It's not to say there isn't a risk at the ports. As you know, the Coast Guard continues to be very involved, as do other parts of DHS and the government that help with the security of the ports.

COONS: In April, Senator Rubio and I introduced the Counterterrorism and Screening Assistance Act. And there is a companion in the House. It would strengthen the ability of our allies and partners around the world to track terrorist and foreign fighter travel, in particular. It directs DHS to provide appropriate versions of custom and border protections, global travel, targeting and analysis systems, software, and other systems to foreign partner governments.

And it also authorizes DHS to provide excess nonlethal equipment, supplies, training to foreign governments to further U.S. Homeland Security interests. Does DHS support these goals? And, in your understanding, would it support the passage of this bill?

NIELSEN: To prevent foreign fighters from coming to the United States, absolutely. Yes, sir. We'd look forward to working with you on it.

COONS: We appreciate your engagement on that. About four months ago, Hurricane Maria slammed into the island of Puerto Rico and both the U.S. Virgin Island. And Puerto Rico particularly, and to some extent, Florida, suffered significant damage, but it was catastrophic for Puerto Rico. What's your sense today, four months later, of roughly what percentage the Island has power and water?

NIELSEN: Well, the power, as you know, goes up and down. We're around 60 percent to 70 percent water. The story with water's a little better. But there's a lot more that we need to do, sir. It's going to be a road of recovery, we need to continue to work with them.

COONS: And what's your sense of the official death toll in Puerto Rico as a result of Hurricane Maria?

NIELSEN: So, I know they're looking at that. As you know, it's a state and local determination to determine causation. We've been in close contact with the governor as he does his review and assessment. It's an important figure for us all to understand.

COONS: Do you believe your department's response to Hurricane Maria could have been better?

NIELSEN: I believe that we learn lessons as we go. It was an unprecedented response, is what I can tell you, both from a prepositioning to an immediate response to the men and women who are there on the ground now. We had one of the largest surge forces that we've ever had, meaning we had people coming from all parts of government to join with FEMA. But I'm very anxious to learn the lessons learned and just see how we can do better in the future.

COONS: I'll say, while I'm grateful for the service of those, the United States military and FEMA who responded, I think it could have been, and still needs to be, better than it has been. I hear regularly from the Puerto Rican community in Delaware about family members who are still stranded, and about failures to respond in a way that I would expect Delaware would have received or other states on the mainland would have received.

And I am gravely disappointed in the response to date and would love to work with you to try and, as you would put it, learn those lessons but also to strengthen the response. My last question; since November, the department has terminated TPS designations, temporary protected status designations, for quite a few countries. If I'm not mistaken, Haiti, the poorest country in the Western Hemisphere, they've suffered a devastating earthquake. El Salvador, a country with very high homicide levels; as well as Liberia, Guinea and Sierra Leone which suffered near catastrophic civil wars.

Our country has long welcomed those seeking refuge from natural disasters and from civil strife. There was, as has been discussed at great length, an unfortunate meeting last week where the president was reported to have suggested that we don't welcome people from certain countries and in particular countries under difficult circumstances.

In my experience, some of the greatest Americans have come from countries suffering through difficulties. Alexander Hamilton immigrated here from Nevis. I have been to Haiti, I have been to Liberia and there are Liberian Americans and Haitian Americans in my home state who make great contributions to our state and our economy and our culture every day.

Will you produce the analysis and the input the DHS received from other agencies that justify these terminations in TPS status (ph).

NIELSEN: I'm happy to work with your staff to the extent that some of the information does not belong to me, if you will. I'd have to work with my colleagues to be able to give you an affirmative. But yes I'm happy to walk you through the full analysis.

COONS: Thank you, Madam Secretary, for the answers and, in my view, it is important that we find a way working together to both protect our homeland from those threats we both see clearly yet to do so in a way that reflects and respects the values that have made this a country that has long been a beacon for human rights and a place that has welcomed refugees and that has been strengthened by the contributions of immigrants from all of the world.

Thank you, Mr. Chairman.

GRASSLEY: Two members left. Me with my second round. I'll have a couple questions and then I'm going to go and Senator Flake is going to finish up and he's going to use his 10 minutes. Since October 31st, and that's the terror attack that we had in the United States, call for an end to the Diversity Visa, those calls have increased.

As you know, the controversial program functions as a lottery allowing aliens from countries with low rates of immigration to the United States a chance to register to submit visa application. Due to random selection applicants many have expressed concern with the program's susceptibility to fraud.

2017 GAO report found that consular officer reported widespread use of fake documents to verify applicant's identity. In addition they state inspection general report found that aliens from countries with ties to terrorism were permitted to apply for this visa. In a recent response to a letter that I sent asking for a candid assessment of this program the State Department described the document an identify fraud that exists in the application process and the resource intensive method for uncovering it.

Due to the Diversity Visa Lottery's vulnerability to fraud and abuse it's document use by terrorists do you think the Diversity Visa Lottery Program should be eliminated? Do you think that this visa program has an increased potential for use by terrorists and criminals entering the country and receiving status? And the second question is more important than the first one.

NIELSEN: Sir, I believe, as you said, it's documented. There's a lot of fraud and abuse in this program and with the 80 plus programs that we have for legal immigration I believe that we can and should do better for the American people to ensure that those who come here are able to contribute, willing to contribute and to assimilate into our communities.

GRASSLEY: In regard to sanctuary cities and states, I applaud this administration's efforts to crack down on sanctuary jurisdictions and encourage communities to participate in the 287(g) program. Unfortunately since President Trump took office a number of jurisdictions decided to stop honoring ICE detainer requests.

That's dangerous and I worry about the impact an entire state becoming sanctuary will have on public safety. So, considering that, can you describe the Trump administration ongoing efforts to crack down on sanctuary jurisdictions and what steps you are taking encourage communities to cooperate?

NIELSEN: Yes, sir. First of all, as you know, we've asked Congress make clear that the detainer authority applies and also to provide indemnification from those who want to work with us. This is truly a issue of safety. This is it an issue of safety for immigrant communities, it is also an issue of safety for the officers and men and women of DHS.

The safest place to take someone into custody is in a controlled environment which is in the jails after they have committed the crime. The container, as you know, allows for a state and local jurisdiction to give us 48 hours notice. It does not have to be that they hold 48 hours after.

They can give us 48 hours notice and we will come and pick them up in a controlled environment which is safer to all of the communities and to my officers.

GRASSLEY: Yes. I think I'll submit the rest of my questions for answer in writing. Thank you for being here. And now, Senator Flake for your 10 minutes.

FLAKE: Thank you, Mr. Chairman.

Thank you and sorry I may have missed a lot of what is going on. I tried to get some of it coming in but if I plow old ground, I'm sorry. With regard to, I know, I heard mention of the president wanted to get a full \$20 billion appropriated for the border wall or wall system.

Do we have left over money even from last year, money that has been authorized that has not been spent on border infrastructure?

NIELSEN: Sir, the money, as you know, is allocated and there's plans to spend it. So the 20 that the president was speaking of is moving into the future in other needs that we've identified.

FLAKE: How quickly, if you moved as fast as fast as you can, could a border structure wall system be built?

NIELSEN: We will build it as fast as we can. As you know, there are a lot of variables that are hard to count for and not just the land acquisition but the willingness of states and localities to work with us.

FLAKE: Right.

NIELSEN: I would just note that California has a blacklisting law that they have proposed which would prevent contractors from working with the Department of Homeland Security and if they do they are not able to get state and local contracts. So, variables such as that are hard for me to account for but we will work on it as fast as we can, sir.

FLAKE: I believe I have heard you say we're talking seven years at the soonest that this could be built and that says nothing of eminent domain issues and litigation in Texas, for example, where it's almost all private land. Is there any -- do you believe it could be done faster than seven years?

NIELSEN: We are certainly looking into it, yes, sir.

FLAKE: If it can't be done in one year, is there any reason for the Congress to appropriate all \$20 billion for this at this time?

NIELSEN: I think the discussion was around authorization not appropriation. The idea there is if we only authorized year-by-year there's a question of whether we would have the funds for the next year. And, as you know, these contracts are quite complicated.

Being able to know that the money will be there the next year, at least from an authorization perspective makes quite a difference in terms of efficiency and effectiveness of acquisition programs.

FLAKE: Let me drill down a little on what the border wall or wall system actually means. The president is -- some language he's used is, to me, a little confusing. Right after he was elected, I believe he said we're not talking about a fence, we're talking about a wall.

And he's talked about a big beautiful wall. I have appreciated what you've said and what has been said recently by the president and others and appreciation that it can't and shouldn't be a 2000 mile wall that the topography simply does not allow it.

And -- but I just like to talk about Arizona for a minute. We have over 300 miles of border. Is there any place in Arizona that you are aware of that has an opaque style wall that somebody would think of as a wall?

NIELSEN: In terms of planning for future?

FLAKE: No, in terms of current.

NIELSEN: I -- sir, I don't know. I'm happy to get back to you on that.

FLAKE: I can answer some of that. We have had, in the past, through some of the communities, the old landing mats from Vietnam era that were turned on their end and cemented into the ground. The problem is you can't see through them. And so kids on the other side or others on the other side of the wall can throw rocks and there's property damage and injury to our border agents.

So we've actually been taking those out, the plan has been taking those walls out and putting in a bollard style fence, which works better. In fact, the president visited near -- well, in Yuma. Near Yuma, near San Luis. We have probably the best border infrastructure anywhere along the southern border. It's two fences with an access road in the middle.

But two fences, not a wall. I -- I'm struggling to think of any place in Arizona now where we have what could properly be called a wall or anywhere were such an opaque kind of structure that one thinks about when they say wall would be appropriate. Can you correct me there?

NIELSEN: I think your -- your point is well taken. What has changed is the president asked the men and women of CBP what is it that you need. What is it that you need to provide operational control of the border.

And what the men and women on the front lines came back and said is we do not need a wall from sea to shining sea, what we need is a variety -- and that's why we call it a wall system -- a variety of components that together help us reach those four missions that I mentioned earlier. I'll

just say quickly because I think you -- you were outside. But impedance and denial, which is that infrastructure, access and mobility admission readiness and domain awareness.

FLAKE: All right. There some parts of Arizona, actually, where we have a lot of our border traffic, near Naco or Douglas, where if you did put a border wall, it would actually drown out communities on the southern side. You have a watershed and river and floods that -- that go northward. And if you had a wall, it would impede the progress.

In fact, even the fences that we have there, the new fences have to have storm gates in them. And in certain times of the year, those storm gates have to be left open for the floods come through. And so I -- I just -- I hope that the -- the evolution of discussion on this will continue.

And that when you talk about a border wall and the wall and the wall has to be funded, it -- it conjures up images that don't exist, to say nothing of who would pay for it. And we won't even get into that. But -- but just when talking about the wall and insistence that the wall be funded, it -- it -- that may be a good rhetorical device or campaign device, but in the real world it doesn't mean much.

And I'm pleased, like I said, that you've been moving in a different direction, talking about a wall system, which really isn't a wall. Fences are better. Good fences make good neighbors is probably apt here. And we certainly do need more structures, more barriers more infrastructure. In previous iterations of immigration reform legislation, we've provided for that.

It's not just now. The president wasn't the first one to talk about needing a border barrier. So -- so anyway, that -- I'll move on from -- from that and talk a little about CBP hiring. We have the CBP Hire Act to make it easier to retain and hire border agents and port agents. Can you talk about what the needs are there?

NIELSEN: Yes...

FLAKE: We've had difficulty hiring them fast enough.

NIELSEN: We -- hiring continues to be a challenge but one that we're taking very seriously. Commissioner -- Acting Commissioner McAleenan has been very clear both on the need to hire and to retain. So we're looking not just at our authorities and how we can innovatively reach new and expanded audience, but also we're looking at things like the polygraphs that they have to take as officers, to ensure that they are done efficiently and that they're not inappropriately, if you will, and unnecessarily weeding some out.

FLAKE: All right. With regard to the -- the wall systems. Can you talk about the need for border roads or access roads?

NIELSEN: They're vital. It's the way in which CBP can then respond to an alert, whether it be a visual alert or whether it be from a sensor or camera so that access and mobility is key not only for safety of the agents, but also for their ability to do their job.

FLAKE: Let me just say for Arizona, when I talk to the property owners down there, the ranchers and others, that is one of the most important items that they reference again and again and again. And the border agents. You know, you -- you can have decent barriers, which we can't have everywhere. As I mentioned, the topography doesn't allow it. But you've got to have roads. You've got to have access.

And sometimes, the -- there can be activity, illegal activity or crossings just a few miles away. But without access roads to get there, it can take a couple of hours for agents to -- to -- to respond. So I -- I hope that that's on the list in the bipartisan bill that we've been working on. That is part of the -- what -- what is authorized, so I hope that -- that that can move ahead.

With -- with that, let me say do you support body cameras for DHS law enforcement?

NIELSEN: I have not had the opportunity to have that discussion with my component heads but I understand the need for it and I look forward to discussing with them. I'm happy to get back to you on that.

FLAKE: All right. Senator Whitehouse?

WHITEHOUSE: Thank you, Chairman Flake.

FLAKE: You're recognized for five minutes.

WHITEHOUSE: I think I may be the last questioner that you see. So I hope that as you go back and reflect on today's hearing, that a few things stick out. I think Senator Graham's conversation with you -- I hope that you take that very much to heart. I think it's formulation of the need for there to be a Phase 1 and then a phase two and that if either side wants everything in phase two pushed forward to Phase 1, we'll crash right at the very beginning, we won't be able to move forward.

Phase 1, I think, is a very constructive idea. And I thought that after the first meeting with the president, we were very close to the outline of a Phase 1 resolution. I think also the notion that's been discussed here of wall systems is a very good idea because I think there's a difference between being in support of border security and being in pursuit of massive, unnecessary, overly-expensive and unwanted public works spending programs, just walls for the sake of walls.

And particularly where they will do damage to local communities, local farmers, local access to the river and so forth. I think the more we calm down and think this thing through, the more you'll find that there is in fact support for considerable reasonable increases to border security. And I hope that's the key message you take away. I would like to change the topic in my last minutes to fentanyl.

Fentanyl is killing Americans at a phenomenal, appalling rate. Fentanyl is a compound created chemically that behaves in the mind, in the brain, as if it were heroin, but it can be dialed up to far more lethal concentrations.

And the result is that very often, an addict who is accustomed to heroin gets suddenly into Fentanyl, and they die. Rhode Island has a small town called Burrillville, it's got just a couple thousand people.

It's got, I think, only two funeral parlors. There may be 25, 30 people in the entire police department, so in one three month period, beginning of the year a couple of years back when I was working on the Comprehensive Addiction Recovery Act with Senator Portman, they had six fatalities in that little community.

That is a little bit like beating on a bruise, you know? People get hurt by the first fatality, and then the second, and then the third, and then the fourth, and people know each other and it's back to the same funeral homes and the police are starting to get very agonized at what they have to see and how hard it is for them to respond and that they can't deal with it.

And the lethal aspects of Fentanyl, I think, are felt all across the country in all of our states. My understanding is that a very good deal of it is coming from China, that it is so potent that it can be dialed down to fairly small packages and still shipped, and I would like to urge that you make it a really important border security priority, as important as walls and fences, to try to figure out how our shipping services and our postal service, through which customs controlled materials come from overseas, can find the damn Fentanyl before it gets into our children and kills them.

NIELSEN: You have my commitment, sir. Earlier, we talked about the STOP Act, we talked about the INTERDICTION Act, but we need to do more and couldn't -- I couldn't agree more.

WHITEHOUSE: I think the topics that I've mentioned in my previous questioning, election interference and cybersecurity, are ones where I think there's very considerable partisan eagerness to protect our country on both sides of the aisle.

Republicans and democrats alike feel very strongly about that. Fentanyl's exactly the same way.

NIELSEN: I agree.

WHITEHOUSE: There is a bipartisan door that is open to you on all three of these issues, so I urge you, come knocking.

NIELSEN: I look forward to it sir.

WHITEHOUSE: OK, good.

NIELSEN: Thank you for bringing all three up.

WHITEHOUSE: Now, I'm a little frustrated that there seems to be no proactive legislative effort coming from any part of the administration on cyber, coming from any part of the administration on election interference, and very little coming on -- on Fentanyl, and I think these are

opportunities that you are missing to accomplish important things in a bipartisan way that will save American lives.

NIELSEN: We will be by to talk about it.

WHITEHOUSE: Very well, thank you.

NIELSEN: Thank you.

WHITEHOUSE: Thank you, Chairman Flake.

FLAKE: Thank you, Senator Whitehouse.

I'm glad that Senator Graham mentioned the phases, I know we spoke about that in that Tuesday meeting. But those of us who have been involved in immigration reform legislation before recognize that some of these issues are extremely thorny.

They take a lot of negotiation and compromise on all sides, things like chain migration asylum policy -- policies dealing with unaccompanied minors, worker programs, enforcement issues, those are all things that will need to be part of comprehensive reform.

But in order to make sure that we protect those who came, through no fault of their own, the so called DACA kids, there's got to be a Phase 1, and phase two and probably a phase three. And I hope that that -- that message is taken back and certainly recognized, in order to get the votes that we need to pass this important legislation.

The hearing record will be open for one week. I would ask those who need to get questions in, and ask those who are answering the questions, to do it as quickly as possible.

And I ask unanimous consent that the closing statement of Senator Grassley be part of the record, without objection, and with ...

(LAUGHTER)

... nobody to object to. With that, the hearing stands adjourned.

NIELSEN: Thank you, sir.

END

Jan 16, 2018 20:35 ET .EOF

From:	Nielsen, Kirstjen <(b)(6)> (b)(6)
To:	"Hoffman, Jonathan (b)(6) (b)(6)
Subject:	RE: Media Request, Breitbart News, (b)(6)
Date:	2017/07/08 23:52:40
Priority:	Normal
Type:	Note

Fun

I have a calls at 10 and 1100. Is after that too late?

-----Chief of Staff

Department of Homeland Security

From: Hoffman, Jonathan

Sent: Saturday, July 08, 2017 11:37:38 PM

To: Nielsen, Kirstjen

Subject: FW: Media Request, Breitbart News, (b)(6)

Let's discuss this in the morning if you have time.

From: Lapan, David

Sent: Saturday, July 08, 2017 7:41:24 PM

To: Hoffman, Jonathan; Johnson, Liz

Subject: FW: Media Request, Breitbart News, (b)(6)

See this...

From: (b)(6)

Sent: Saturday, July 08, 2017 7:14:05 PM

To: Media Inquiry

Subject: Media Request, Breitbart News, (b)(6)

Hi,

I am writing to inquire about a recent leak to media from a "DHS official." The article in question is here:

<http://www.thedailybeast.com/mr-voter-fraud-goes-to-washington-cant-get-job>

The quote of concern is here:

“The ICE workforce, which Chris Crane claims to support, would be far better served if he focused his efforts on supporting ICE’s expanded enforcement priorities, instead of undermining them with false personal attacks,” said a DHS official. “Mr. Crane’s comments are strikingly out of touch with the impressive gains made in the enforcement of immigration law under the Trump administration.”

My sources claim that Acting ICE Director Thomas Roman’s advisor, Jon Freere, reached out to Gillian Christensen, ICE SPOX, and that she then contacted the Daily Beast and gave the quote as an “unnamed DHS official.” The quote clearly smears ICE Officer Chris Crane, a whistleblower who was praised as a hero by Attorney General Jeff Sessions and by the Trump campaign.

What steps is DHS taking to identify the leaker who used their position to put personal attacks against an ICE officer in the media? Would such behavior be seen as an issue for DHS?

Also, Gillian Christensen left ICE and went to USCIS after engaging me in her defense of Acting ICE Director Homan. Was this planned or is it a result of her alleged leaking to press?

Christensen has had issues before, specifically in 2015, as she was identified as a leaker who used her position in ICE to smear another law enforcement officer who took advantage of whistleblower protections. Here is the link yo that 2015 incident.

<http://dailycaller.com/2015/12/29/exclusive-ice-flack-tries-to-slime-whistleblower/>

Another area of concern for me is that DHS Secretary Kelly sent an on-the-record statement to the same reporter who published the leaked smear. He did so 10-12 hours after the unnamed DHS official smear was published. This gives the impression that Secretary Kelly was validating the original comments from the unnamed source, as he did not offer any objection while commenting on the subject matter of the original article.

Please provide comment on this as well. Was Secretary Kelly's intention to validate the unnamed DHS source's comments? If not, does he have a comment on such a leak that smears one of his own law enforcement officers?

Thank you,

(b)(6)

(b)(6)

Sender:	Nielsen, Kirstjen <(b)(6)> (b)(6)
Recipient:	"Hoffman, Jonathan (b)(6) (b)(6)
Sent Date:	2017/07/08 23:52:39
Delivered Date:	2017/07/08 23:52:40

From:	Delarentis, Vincent (b)(6)
To:	"Truhlar, Steven (b)(6) (h)(6) (b)(6)
Subject:	Secretary Kobach Bio from his website
Date:	2016/11/22 11:36:33
Priority:	Normal
Type:	Note

Potential DHS?

Full Bio:

Kris Kobach is the Secretary of State for Kansas, sworn in on January 10, 2011. Kansas voters elected him by a wide margin on a platform focused on stopping voter fraud. With that goal in mind, Secretary Kobach began his term by introducing the Secure and Fair Elections (SAFE) Act in the Kansas House of Representatives. The Act was adopted by both houses of the legislature on March 29, 2011 by wide margins with bipartisan support. The governor signed the SAFE Act on April 18, 2011.

Prior to his election as Secretary of State, Secretary Kobach was a Professor of Constitutional Law at the University of Missouri – Kansas City from 1996 to 2011. He is also a nationally-recognized litigator who represents US citizens, cities, and states in cases involving illegal immigration across the country. Secretary Kobach grew up in Topeka, Kansas, and graduated co-valedictorian from Washburn Rural High School in 1984. He received his Bachelor of Arts degree with highest distinction from Harvard University in 1988, graduating at the top of his class in the Harvard Government Department. In 1988, the British government awarded him a Marshall Scholarship, which took him to England for post-graduate study. In 1992, he received his doctorate in Political Science from Oxford University. In 1995, he received his Juris Doctorate from Yale Law School, where he served as notes development editor on the Yale Law Journal.

Secretary Kobach was admitted to the Kansas Bar in 1995 and served as a law clerk to Judge Deanell Reece Tacha of the United States Court of Appeals for the 10th Circuit in 1995 and 1996. By that time, he had already published two books: *The Referendum: Direct Democracy in Switzerland* (Dartmouth, 1993), and *Political Capital: The Motives, Tactics, and Goals of Politicized Businesses in South Africa* (University Press of America, 1990). In addition, he has published numerous scholarly articles on elections, political science, constitutional law, and immigration law.

In 2001, Secretary Kobach was awarded a White House Fellowship, which took him to Washington, DC, to work for the Bush Administration in the personal office of United States Attorney General John Ashcroft. Secretary Kobach served as the Attorney General's chief advisor on immigration law and border security. After his fellowship year ended, the Attorney General appointed Kobach as his Counsel. After the 9/11 attacks, Secretary Kobach was put in charge of Department of Justice efforts to prevent terrorists from exploiting gaps in U.S. immigration controls. He led the team that designed and implemented the National Security Entry-Exit Registration System, which registers and fingerprints high-risk visitors to the United States. Within its first year of operation, the registration system resulted in the apprehension of numerous suspected terrorists. Secretary Kobach also led Department of Justice reforms of the immigration court system, resulting in the reshaping of the Board of Immigration Appeals in 2002.

Secretary Kobach is well known nationally for his role as co-author of Arizona's SB 1070 illegal immigration law. He assisted Arizona in the drafting and defense of that law, as well as other statutes designed to stop illegal immigration. He has provided similar assistance to other states and cities. Secretary Kobach has litigated some of the most significant immigration-related cases in the country. He is lead counsel defending Hazleton, Pennsylvania, in its efforts to stop the employment of unauthorized aliens and the harboring of illegal aliens in apartments. The lawsuit was brought by the American Civil Liberties Union and allied organizations. He is also defending Farmers Branch, Texas, and Fremont, Nebraska, against similar lawsuits.

Secretary Kobach has testified before Congress ten times on numerous topics, most often on questions involving immigration law. He has been a frequent legal commentator on The O'Reilly Factor (FOX News Channel), Fox and Friends (FOX News Channel) and other cable news programs. He has also been a frequent columnist for the New York Post and the Washington Times. In addition, he is the host of The Kris Kobach Show heard weekly on KCMO 710 AM talk radio.

Secretary Kobach and his wife Heather have five daughters: Lilly, Reagan, Molly, Charlotte, and Josephine. They reside in Piper, Kansas, and attend Open Door Baptist Church.

Vincent DeLaurentis
Director, Joint Requirements Council
Office of the Secretary
U.S. Department of Homeland Security

(b)(6)

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Sender:	Delarentis, Vincent (b)(6) (b)(6)
Recipient:	"Truhlar, Steven (b)(6) (b)(6)
Sent Date:	2016/11/22 11:36:33

From:	(b)(6)
To:	"Barsa, John <(b)(6)> (b)(6)
Subject:	Re: Nevada (b)(7)(A)
Date:	2017/08/11 20:56:30
Type:	Note

Ok. Thank you!

Sent from my iPhone

On Aug 11, 2017, at 4:12 PM, Barsa, John <(b)(6)> wrote:

OK. Gene has it! You may not hear from him until Monday.

From: (b)(6)

Sent: Friday, August 11, 2017 6:41 PM

To: Barsa, John (b)(6)

Subject: Nevada (b)(7)(A)

John,

Thank you for your call today. I enjoyed speaking with you about working towards a solution to the issues we are having in Nevada with our (b)(7)(A) (b)(7)(A) Nevada Senior Deputy Attorney General Brin Gibson, has been advising the Secretary of State's Office on these matters and we would greatly appreciate the opportunity to speak with Mr. Gene Hamilton at his convenience.

Please feel free to call or email me regarding the date and time Mr. Hamilton is available for a phone call and I will arrange with our team.

(b)(6)

Sincerely,

(b)(6)

(b)(6) | **Chief Criminal Investigator**

State of Nevada | Secretary of State | Securities Division

(b)(6)

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Sender:	(b)(6)
Recipient:	"Barsa, John (b)(6) (b)(6)
Sent Date:	2017/08/11 20:56:23
Delivered Date:	2017/08/11 20:56:30

From:	Barsa, John (b)(6)
To:	"McCament, James W (b)(6) Blank, Thomas (b)(6); (b)(6); (b)(7)(C)
CC:	(b)(6)
Subject:	RE: (b)(7)(A)
Date:	2017/07/24 07:55:20
Priority:	Normal
Type:	Note

+ Gene

Thank you sir! Adding Gene for his situational awareness.

From: McCament, James W
Sent: Sunday, July 23, 2017 4:22:55 PM
To: Barsa, John; Blank, Thomas
Cc: (b)(6)
Subject: RE: (b)(7)(A)

Thanks John. I sent it to our folks earlier and will let you know as soon as I hear back.

James W. McCament
Acting Director
Deputy Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
Washington, DC 20529-2150

(b)(6)

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From: Barsa, John
Sent: Sunday, July 23, 2017 4:09:18 PM
To: Blank, Thomas; McCament, James W
Cc: (b)(6)
Subject: RE: (b)(7)(A)

Copy. Thank you sir.

James, can USCIS get her the info she seeks?

From: Blank, Thomas
Sent: Sunday, July 23, 2017 3:01:51 PM
To: Barsa, John; McCament, James W
Cc: (b)(6)
Subject: RE: (b)(7)(A)

ICE folks say this one is not ours.

From: Barsa, John
Sent: Sunday, July 23, 2017 1:14 PM
To: McCament, James W; Blank, Thomas
Cc: (b)(6)
Subject: FW: (b)(7)(A)

James and Tom,

See email below from the Chief Investigative Officer for the Nevada Secretary of State.

(b)(5);(b)(7)(A);(b)(7)(E)

Can either of you be of assistance in getting her the information she seeks?

John

John Barsa
Acting Assistant Secretary
Office of Partnership and Engagement
U.S. Department of Homeland Security

(b)(6)

From: (b)(6)
Sent: Friday, July 21, 2017 2:58 PM
To: Barsa, John <(b)(6)>
Subject: (b)(7)(A)

Good Morning John,

I am the Chief Criminal Investigator for the Nevada Secretary of State (b)(7)(A);(b)(7)(E)

(b)(6);(b)(7)(A);(b)(7)(C);(b)(7)(E)

I greatly appreciate the efforts and assistance provided by both (b)(6);(b)(7) and (b)(6);(b)(7). I also realize the strain such a large request would put on any agency; however as the third month goes by, I don't know exactly where the list is or who it is with. I am unable to obtain an update as I have no contact information and have not received a response to my request for such information. (b)(7)(A)

(b)(7)(A)

Thank you for your help and please feel free to contact me for any additional information.

Sincerest Regards,

(b)(6)

(b)(6) **Chief Criminal Investigator**
State of Nevada | Secretary of State | Securities Division
(b)(6)

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Sender:	Barsa, John (b)(6) (b)(6)
Recipient:	"McCament, James W (b)(6) (b)(6) "Blank, Thomas (b)(6):(b)(7)(C) (b)(6):(b)(7)(C) (b)(6)
Sent Date:	2017/07/24 07:55:20

From:	Barsa, John <(b)(6)>
To:	(b)(6)
CC:	
Subject:	RE: (b)(7)(A)
Date:	2017/07/23 13:18:39
Priority:	Normal
Type:	Note

(b)(6)

Thank you so much for your email and for laying it all out so clearly. I've forwarded it to the highest levels of ICE and USCIS. Hopefully we will get an answer soon and you will get your data soon.

More to follow....

All the best,

John

John Barsa
Acting Assistant Secretary
Office of Partnership and Engagement
U.S. Department of Homeland Security

(b)(6)

From: (b)(6)
Sent: Friday, July 21, 2017 2:58 PM
To: Barsa, John (b)(6)
Subject: (b)(7)(A)

Good Morning John,

I am the Chief Criminal Investigator for the Nevada Secretary of State (b)(7)(A);(b)(7)(E)

(b)(7)(A);(b)(7)(E)

From:	Barsa, John (b)(6)
To:	"(b)(6)"
Subject:	FW: (b)(7)(A)
Date:	2017/07/24 16:50:40
Priority:	Normal
Type:	Note

(b)(6)

I'm still working this but here is what I have so far.

John

From: (b)(6)
Sent: Monday, July 24, 2017 12:35 PM
To: Barsa, John <(b)(6)>
Cc: Busch, Philip (b)(6)
(b)(6)
Subject: (b)(7)(A)

Mr. Barsa,

This responds to your email seeking information about a request (b)(7)(A) (b)(7)(A). On June 27, 2017, USCIS received the same request from the ICE HSI Office located in Las Vegas, Nevada via the DHS Single Point of Service Process (RFI) asking for assistance/information (see attached – we do note, however, that the below email does include additional information not included in the ICE HSI request). The --RFI provided, in pertinent part, the following request for assistance/information:

(b)(6);(b)(7)(A);(b)(7)(C)

After reviewing the request, the Office of Chief Counsel (OCC) advised (b)(5)

(b)(5)

(b)(5):(b)(7)(E)

/vr/

(b)(6)

(b)(6)

Counsel for Intelligence &
Emergency Management Coordination
Office of Chief Counsel
US Citizenship and Immigration Services
HSDN: (b)(6)
JWICS:
Office:
Cell: (
Fax: (

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From: Barsa, John
Sent: Sunday, July 23, 2017 1:14 PM
To: McCament, James W; Blank, Thomas
Cc: (b)(6)
Subject: FW: (b)(7)(A)

James and Tom,

See email below from the Chief Investigative Officer for the Nevada Secretary of State.

Bottom line up front – She is seeking information to assist a (b)(7)(A) (b)(7)(A) and it isn't clear if the information should come from ICE or USCIS.

Can either of you be of assistance in getting her the information she seeks?

John

From:	Blank, Thomas (b)(6) (b)(6)
To:	"Barsa, John (b)(6) (b)(6)
Subject:	(b)(7)(A)
Date:	2017/07/24 16:02:03
Priority:	Normal
Type:	Note

Call me on this one. (b)(6)

From: Barsa, John
Sent: Monday, July 24, 2017 3:39 PM
To: Blank, Thomas
Cc: Hamilton, Gene
Subject: FW: (b)(7)(A)

Tom,

Got a pretty detailed push back from USCIS saying ICE should provide the data for this voter fraud investigation. See below.

Thoughts?

John

From: (b)(6)
Sent: Monday, July 24, 2017 12:35 PM
To: Barsa, John <(b)(6)>
Cc: Busch, Philip B <(b)(6)>
(b)(6)
Subject: (b)(7)(A)

Mr. Barsa,

This responds to your email seeking information about a request (b)(7)(A)
(b)(7)(A) On June 27, 2017, USCIS received the same request from the ICE HSI Office located in Las Vegas, Nevada via the DHS Single Point of Service Process (RFI) asking for assistance/information (see attached – we do note, however, that the below email does include additional information not included in the ICE HSI request). The --RFI provided, in pertinent part, the following request for assistance/information:

(b)(6);(b)(7)(A);(b)(7)(C);(b)(7)(E)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMON CAUSE,
Plaintiff,

v.

PRESIDENTIAL ADVISORY COMMITTEE ON
ELECTION INTEGRITY,

and

U.S. DEPARTMENT OF HOMELAND
SECURITY,

and

U.S. SOCIAL SECURITY ADMINISTRATION
Defendants.

Case No. 1:17-cv-01398 (RCL)

**PLAINTIFF'S BRIEF IN SUPPORT OF ITS MOTION FOR A TEMPORARY
RESTRAINING ORDER OR, IN THE ALTERNATIVE, FOR A PRELIMINARY
INJUNCTION**

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Law Enforcement Activity Exception to the Privacy Act, 50 DePaul L. Rev. 675,
680 & nn.44-45 (2000)5

On July 26, 2017, Kris W. Kobach, the Vice Chair of the newly-formed Presidential Advisory Commission on Election Integrity (“Commission”), directed all 50 states and the District of Columbia to begin transmitting the public voting data of each of their citizens, including quintessentially First Amendment-protected political party affiliation and voter history data, to the Commission. States are complying: As of this filing, Arkansas had submitted its voters’ data to the Commission, and Colorado has stated that the data of its citizens will be submitted by July 31.

Passed by Congress in the wake of the Watergate scandal when it was revealed that the White House had compiled information on individuals with opposing political viewpoints, the Privacy Act of 1974 plainly prohibits federal agencies from collecting, maintaining, and/or disseminating information that “describ[es] how any individual exercises rights guaranteed by the First Amendment.” 5 U.S.C. § 552a(e)(7). Absent this Court’s intervention, the Commission, in cooperation with multiple other federal agencies, will soon be maintaining data on how millions of Americans have participated in the political process. The Commission’s actions are unlawful. They undermine public confidence in the nation’s electoral system and have caused and will continue to cause irreparable injury to Plaintiff and the public. Accordingly, Plaintiff’s application for a temporary restraining order, or, in the alternative, a preliminary injunction should be granted.

PRELIMINARY STATEMENT

Following repeated, unfounded claims of voter fraud by President Donald J. Trump, the Commission was established on May 11, 2017, with a stated “mission” of studying “registration and voting processes used in Federal elections.” The Commission’s activities have gone far

beyond “studying” “registration and voting processes.” It has launched an unprecedented investigation into alleged voter fraud for which it has solicited the state voting records of every American. Commission members, including Kansas Secretary of State and Commission Vice Chair Kris W. Kobach, have stated that the Commission plans to crosscheck this data against troves of other private information on individuals maintained by a group of federal agencies that is growing by the day. As Vice Chair Kobach has made clear, the end game of this investigation is to identify—and ultimately have removed from voter rolls—those individuals whom the Commission believes to have fraudulently registered to vote.

The Commission’s plans for handling the voter data have shifted repeatedly. The Commission first issued its sweeping request for individuals’ voter data on June 28, 2017. Data provided pursuant to this request was initially being housed on a server within the Department of Defense. But, following inquiry by Judge Kollar-Kotelly of this Court in a lawsuit involving a separate plaintiff and distinct legal claims from those here, the collection was moved to a “repurpose[d]” computer application within the White House. *Electr. Privacy Info. Ctr. v. Presidential Advisory Comm’n on Election Integrity*, No. 1:17-cv-1320 (CKK) (D.D.C. July 24, 2017), *appeal docketed*, No. 17-5171 (D.C. Cir. 2017) (“*EPIC* lawsuit”). The Commission, moreover, has not been forthcoming with the role that other agencies will play in the storage and use of the voter data. When asked by the court in the *EPIC* lawsuit whether other federal agencies were “cooperating” with the Commission, it informed the court that none then were. Transcript of Temporary Restraining Order at 30, *EPIC* lawsuit (July 7, 2017) (“Transcript”). But the Commission also stated that the “mechanics” of other agencies’ involvement in the White House technology system “may not be appropriate to say in a public setting.” *Id.* at 35. In light of an application for temporary injunctive relief made by the plaintiff in the *EPIC* suit, the

Commission rescinded its request for voter data on July 10 while the court was considering EPIC's request. Briefing and argument in that matter concluded on July 17. On July 24, the court denied EPIC's application, leading the Commission two days ago to re-issue its request for voter data.

This Court should enjoin the Commission's latest attempt to collect and maintain voter data. New facts have come to light since the conclusion of briefing in the *EPIC* lawsuit that demonstrate that the Commission and other Defendants are violating the Privacy Act and that through these very actions the Commission has demonstrated itself to be more than a mere advisory body. For example, at the July 19, 2017 Commission meeting, the breadth of the Commission's investigation and the impending data crosscheck project were revealed. Vice Chair Kobach spoke at that meeting of the controversial Interstate Voter Registration Crosscheck Program that he runs in his capacity as the chief elections official from Kansas, under which 30 states pool their voters' data to identify those who are registered in two states and then investigate whether to remove them from voter rolls, including—as Vice Chair Kobach specifically noted—by criminal prosecution. Vice Chair Kobach vowed that the Commission's work would be “equally successful” on a national scale. He then directed Commission staff to collect “whatever data there is” within the federal government that “might be helpful” to the Commission's investigation, including information kept by Defendant Department of Homeland Security, the Department of Justice, and the U.S. Census Bureau—all federal agencies to which the Privacy Act's strictures apply. Meanwhile, the Commission's plans regarding the storage of the voter data appear to have changed yet again: Vice Chair Kobach's July 26, 2017 letter “offer[s] a *new tool*” for states to “transmit data” to the Commission. Left unanswered once again is the role other federal agencies have in the administration of this “new tool.”

Defendants' unlawful actions have already caused and will continue to cause substantial, immediate and irreparable harm to Plaintiff Common Cause, its members, and the integrity of the country's political process. In response to the Commission's investigation and data crosscheck project, scores of voters have already removed their names from the voter rolls. Countering this wave of voter de-registrations and the other fallout from the Commission's investigation has caused Common Cause to divert substantial resources from its mission and ongoing activities. Moreover, individual members of Common Cause, who are voters and participants in the political process, are facing a high level of anxiety over how and why the government is collecting their party affiliation and voting history data.

To prevent any further injury from the Commission's investigation while this Court considers the merits of Plaintiff's claims, including potentially the need to conduct limited discovery into the identities and mechanics of the federal agencies involved in the Commission's investigation, this Court should immediately enjoin Defendants from collecting, maintaining, using, or disseminating individuals' voting history and party affiliation in violation of federal law.

BACKGROUND

I. Statutory Framework

The Privacy Act of 1974 ("Act") provides that an agency shall "maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity." 5 U.S.C. § 552a(e)(7). The Act, in turn, defines "maintain" to include "maintain, collect, use, or disseminate." 5 U.S.C. § 552a(a)(3).

In enacting the Act following Watergate, Congress had a “special concern for the protection of First Amendment rights” and “for unwarranted collection of information as a distinct harm in and of itself.” *Albright v. U.S.*, 631 F.2d 915, 918 (D.C. Cir. 1980); *see also* Steven W. Becker, *Maintaining Secret Government Dossiers on the First Amendment Activities of American Citizens: The Law Enforcement Activity Exception to the Privacy Act*, 50 DePaul L. Rev. 675, 680 & nn.44-45 (2000) (describing Watergate’s effect on passage of Privacy Act, including “revelations connected with Watergate-related investigations, indictments, trials, and convictions,” such as “the slowly emerging series of revelations of ‘White House enemies’ lists” and “surreptitious taping of personal conversations within the Oval Office of the White House as well as political surveillance, spying, and ‘mail covers.’” (citing H.R. Rep. No. 93-1416, at 8-9 (1974)). Thus, whereas *other* sections of the Privacy Act protect the information of individuals only once it is included by an agency within a system of records, “it is not surprising that Congress would have provided in this Act, dedicated to the protection of privacy, that an agency may not so much as collect information about an individual's exercise of First Amendment rights except under very circumscribed conditions.” *Albright*, 631 F.2d at 919.

II. Factual Background

A. President Trump’s Unsubstantiated Claims of Voter Fraud

Both during the campaign and following his election, President Trump made repeated, unsubstantiated assertions of voter fraud. On October 10, 2016, for example, then-candidate Trump tweeted that, “Of course there is large scale voter fraud happening on and before election day.” Donald J. Trump (@realDonaldTrump), Twitter (Oct. 10, 2016, 5:33 AM), *available at* <https://twitter.com/realdonaldtrump/status/787995025527410688?lang=en>. On October 17, 2016, candidate Trump rallied supporters at a campaign stop in Wisconsin with claims that “voter fraud is very, very common,” including voting by “people that have died 10 years ago” and “illegal immigrants.” C-SPAN, *Donald Trump Campaign Event in Green Bay, Wisconsin* (Oct. 17, 2016), *available at* <https://www.c-span.org/video/?417019-1/donald-trump-campaigns-green-bay-wisconsin>.

On November 8, 2016, Donald J. Trump was elected to be the forty-fifth president of the United States. Shortly thereafter, he tweeted: “In addition to winning the Electoral College in a landslide, I won the popular vote if you deduct the millions of people who voted illegally.” Donald J. Trump (@realDonaldTrump), Twitter (Nov. 27, 2016, 12:30 PM), *available at* <https://twitter.com/realdonaldtrump/status/802972944532209664>. Three days later, Kansas Secretary of State and Trump campaign adviser Kris W. Kobach echoed the president-elect’s assertion, telling reporters that, although he had no hard evidence, “I think the president-elect is absolutely correct when he says the number of illegal votes cast exceeds the popular vote margin between him and Hillary Clinton.” Hunter Woodall, *Kris Kobach Agrees With Donald Trump That ‘Millions’ Voted Illegally But Offers No Evidence*, *Kansas City Star* (Nov. 30, 2016), *available at* <http://www.kansascity.com/news/politics-government/article117957143.html>. Mr. Kobach was also photographed in late November 2016 carrying a document entitled, *Department of Homeland Security: Kobach Strategic Plan for the First 365 Days*, that contained a reference to voter rolls. *See* Brian Lowry, Curtis Tate & Lindsay Wise, *Trump-Kobach Photo Shows Homeland Security Plans*, *Wichita Eagle* (Nov. 21, 2016), *available at* <http://www.kansas.com/news/politics-government/election/article116227188.html>. In separate litigation challenging Kansas’s non-compliance with the National Voter Registration Act (“NVRA”), Mr. Kobach has resisted releasing the photographed document, which outlines proposed amendments to the NVRA, and he has been fined \$1,000 by the court for “deceptive conduct and lack of candor.” *Fish v. Kobach*, No. 16-2105-JAR, slip op. at 2-10 (D. Kan. June 23, 2017).

President Trump was inaugurated on January 20, 2017. Five days later, he tweeted: “I will be asking for a major investigation into VOTER FRAUD, including those registered to vote in two states, those who are illegal and even, those registered to vote who are dead (and many for a long time). Depending on results, we will strengthen up voting procedures!” Donald J. Trump (@realDonaldTrump), Twitter (Jan. 25, 2017, 4:10 AM and 4:13 AM), *available at* <https://twitter.com/realdonaldtrump/status/824227824903090176> and

<https://twitter.com/realdonaldtrump/status/824228768227217408?lang=en>. President Trump soon thereafter reiterated his claims that allegedly fraudulent votes were cast for his opponent: “We’re gonna launch an investigation to find out. And then the next time—and I will say this, of those votes cast, none of ‘em come to me. None of ‘em come to me. They would all be for the other side. . . . But when you look at the people that are registered: dead, illegal and two states and some cases maybe three states.” He vowed to “make sure it doesn’t happen again.”

TRANSCRIPT: ABC News anchor David Muir interviews President Trump, ABC News (Jan. 25, 2017), available at <http://abcnews.go.com/Politics/transcript-abc-news-anchor-david-muir-interviews-president/story?id=45047602>. That same day, *CNN* reported that, according to a senior administration official, “President Donald Trump could sign an executive order or presidential memorandum initiating an investigation into voter fraud as early as Thursday.” Dan Merika, Eric Bradner, and Jim Acosta, *Trump considers executive order on voter fraud*, CNN (Jan. 25, 2017), available at <http://www.cnn.com/2017/01/25/politics/trump-calls-for-major-investigation-into-voter-fraud/index.html>. The official further informed *CNN* that “[t]he investigation would be carried out through the Department of Justice.” *Id.*

B. Creation of the Presidential Advisory Commission on Election Integrity

Against this backdrop, the White House established the Commission by Executive Order on May 11, 2017. *See* Executive Order No. 13,799, Establishment of Presidential Advisory Commission on Election Integrity, 82 Fed. Reg. 22389 (May 11, 2017) (“Executive Order”). President Trump has referred to the Commission as a “Voter Fraud Panel.” Donald J. Trump (@realDonaldTrump), Twitter (July 1, 2017, 6:07 AM) available at <https://twitter.com/realdonaldtrump/status/881137079958241280>. The Commission’s stated “mission” is to study, “consistent with applicable law,” the “registration and voting processes used in Federal elections.” Executive Order § 3. The Executive Order provides that the Commission “shall strive to avoid duplicating [] the efforts of existing governmental entities” and that “[r]elevant executive departments and agencies shall endeavor to cooperate with the Commission.” *Id.* § 7(b).

The Commission is chaired by Vice President Michael Pence and is to be composed of up to 15 additional members. *Id.* § 2. President Trump appointed Mr. Kobach as a member and Vice Chair of the Commission. The White House, *President Announces Formation of Bipartisan Presidential Commission on Election Integrity* (May 11, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/05/11/president-announces-formation-bipartisan-presidential-commission>. Although the Executive Order describes the Commission as “solely advisory,” Executive Order § 3, the White House announcement stated that the Commission “will also study concerns about voter suppression, as well as other voting irregularities” and, in so doing, “will utilize all available data, including state and federal databases.” The White House, *President Announces Formation of Bipartisan Presidential Commission on Election Integrity* (May 11, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/05/11/president-announces-formation-bipartisan-presidential-commission>. Three days later, Vice Chair Kobach detailed his planned uses for these federal databases in a televised interview. According to Vice Chair Kobach, “for the first time in our country’s history,” the Commission would be “using the federal government’s databases” to crosscheck against data collected from all 50 states. In particular, as he explained, “The Social Security Administration has data on people when they pass away. The Department of Homeland Security knows of the millions of aliens who are in the United States legally and that data that’s never been bounced against the state’s voter rolls to see whether these people are registered.” *Kobach talks goals of new voter fraud commission*, Fox News, Sunday Morning Futures (May 14, 2017), available at <http://www.foxnews.com/transcript/2017/05/14/kobach-talks-goals-new-voter-fraud-commission-commerce-secretary-on-nkorea-missile-test-china-trade-deal.html>. The next day, Vice Chair Kobach again emphasized the unprecedented nature of the Commission’s undertaking, explaining that the Commission’s “goal is to, for the first time, have a nationwide fact-finding effort, to see what evidence there is of different forms of voter fraud across the country.” *See*

Transcript of Interview of Kris W. Kobach on New Day, CNN (May 15, 2017), available at <http://www.cnn.com/TRANSCRIPTS/1705/15/nday.06.html>.

To build this evidentiary record, the Commission will have a dedicated, full-time staff of approximately three employees; a budget of approximately \$250,000 for Fiscal Years 2017 and 2018; and “administrative services, funds, facilities, staff, equipment, and other support services” furnished by the General Services Administration. Charter of the Presidential Advisory Commission of Election Integrity at ¶ 7 (“Charter”), available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/docs/commission-charter.pdf>; Executive Order § 7. Apart from the Chair and Vice Chair, the Commission presently has ten additional members, consisting of a current member of the United States Elections Assistance Commission, present and former state election and judicial officials, and an employee of the Heritage Foundation. See *Presidential Advisory Commission on Election Integrity*, White House Blog (July 13, 2017), available at <https://www.whitehouse.gov/blog/2017/07/13/presidential-advisory-commission-election-integrity>.

C. The Commission’s Sweeping and Unprecedented Request for Voter Data

The Commission convened as a group for the first time on a June 28, 2017 call. Following brief welcoming remarks, Vice President Pence “disconnected from the call.” Declaration of Andrew J. Kossack at ¶ 5, *Am. Civil Liberties Union v. Trump*, No. 17-1351 (D.D.C. July 13, 2017) (“Kossack Declaration”). At that point, Vice Chair Kobach “informed the members of his intention to request information from the states,” including “information from voter rolls.” *Id.* Vice Chair Kobach “and staff described the request” to the other Commission members, but the members did not see a copy of the request before the meeting, did not vet the language of the request, and “did not vote” on whether to send it out. *Id.*; Sam Levine, *Trump Voter Fraud Commission Was Cautioned About Seeking Sensitive Voter Information*, Huffington Post (July 5, 2017), available at http://www.huffingtonpost.com/entry/trump-voter-fraudcommission_us_595d511fe4b02e9bdb0a073d; Celeste Katz, *Trump election integrity*

commission member: “We should have predicted” the backlash, Mic (July 5, 2017), available at <https://mic.com/articles/181510/trump-election-integrity-commission-member-we-should-have-predicted-the-backlash#.oeqOZx3hl>.

Later that day, Vice Chair Kobach “directed” that a letter be sent under his signature to the Secretaries of State or other election officials in all 50 states and the District of Columbia. Declaration of Kris W. Kobach at ¶ 4, *EPIC* lawsuit, (July 5, 2017) (“Kobach Declaration”). Vice Chair Kobach’s letter “invite[d]” state officials, among other things, to share “evidence or information . . . you have regarding instances of voter fraud or registration fraud in your state” and asked how the Commission could “support” state election officials regarding “information technology security and vulnerabilities.” *See, e.g.*, Letter from Kris W. Kobach, Vice Chair, PACEI to the Honorable Matt Dunlap Secretary of State of Maine, at 1 (June 28, 2017), *available at* [http://i2.cdn.turner.com/cnn/2017/images/06/30/peic.letter.to.maine\[2\].pdf](http://i2.cdn.turner.com/cnn/2017/images/06/30/peic.letter.to.maine[2].pdf). In addition, the letter gave recipients a deadline of July 14, 2017 to provide “the publicly available voter roll data for [your state], including, if publicly available under the laws of your state, the full first and last names of all registrants, middle names or initials if available, addresses, dates of birth, political party (if recorded in your state), last four digits of social security number if available, voter history (elections voted in) from 2006 onward, active/inactive status, cancelled status, information regarding any felony convictions, information regarding voter registration in another state, information regarding military status, and overseas citizen information.” *Id.* at 1-2. The letter further instructed recipients to “submit your responses electronically to ElectionIntegrityStaff@ovp.eop.gov or by utilizing the Safe Access File Exchange (“SAFE”), which is a secure FTP site the federal government uses for transferring large data files. You can access the SAFE site at <https://safe.amrdec.army.mil/safe/Welcome.aspx>.” *Id.* at 2. The letter closed by warning that “any documents that are submitted to the full Commission will also be made available to the public.” *Id.*

Vice Chair Kobach has stated that the purpose of the data request is “to have the best data possible” to support the Commission’s “purpose . . . to quantify different forms of voter fraud

and registration fraud and offer solutions.” Bryan Lowry, *Kris Kobach wants every U.S. voter’s personal information for Trump’s commission* (June 29, 2017), *Kansas City Star*, available at <http://www.kansascity.com/news/politics-government/article158871959.html>. The Vice President’s office confirmed that the Commission intends to run the data it receives “through a number of different databases” to check for potential fraudulent registration. Jessica Huseman, *Election Experts See Flaws in Trump Voter Commission’s Plan to Smoke Out Fraud*, *ProPublica* (July 6, 2017), available at <https://www.propublica.org/article/election-experts-see-flaws-trump-voter-commissions-plan-to-smoke-out-fraud>.

D. The Broadening Scope of the Commission’s Investigation

The scope of the Commission’s investigation has broadened even further since the issuance of the June 28 letter. At the Commission’s second meeting on July 19, 2017, Vice Chair Kobach described his operation of the Interstate Voter Registration Crosscheck Program, under which 30 states pool their voter data to identify those who are registered in more than one state with the aim of removing duplicative names from the voter rolls, including by criminal prosecution. The White House, *Remarks by Vice President Pence and Elected Officials at the First Meeting of the Presidential Advisory Commission on Election Integrity* (July 19, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/07/19/remarks-vice-president-pence-and-elected-officials-first-meeting>. The methodology and reliability of the Interstate Voter Registration Crosscheck Program have been questioned, and concerns have been raised as to whether it is being used as a tool for voter suppression. *See, e.g.*, Greg Palast, *The GOP’s Stealth War Against Voters*, *Rolling Stone* (Aug. 24, 2016), available at <http://www.rollingstone.com/politics/features/the-gops-stealth-war-against-voters-w435890> (quoting Oregon’s Secretary of State as stating, “We left [Crosscheck] because the data we received was unreliable.”); Kia Makarechi, *Did Trump Just Begin Laying the Groundwork for “Mass Voter Purging”?*, *Vanity Fair* (June 30, 2017), available at <http://www.vanityfair.com/news/2017/06/trump-kobach-voter-fraud>. This notwithstanding, Vice Chair Kobach then stated for the first time his hope that the Commission’s work would be

“equally successful on the national level.” The White House, *Remarks by Vice President Pence and Elected Officials at the First Meeting of the Presidential Advisory Commission on Election Integrity* (July 19, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/07/19/remarks-vice-president-pence-and-elected-officials-first-meeting>. At the same meeting, Commission members proposed obtaining the following information maintained by federal agencies to aid the Commission in its data crosschecking project:

- **Department of Homeland Security:** information on all non-citizens both legally and illegally within the United States as well as answers given by applicants on naturalization forms regarding voting history; The White House, *Presidential Advisory Commission on Election Integrity* (published on July 24, 2017), available at <https://www.youtube.com/watch?v=oZI27wB8-po&feature=youtu.be> (1:31:20, 1:34:20);
- **U.S. Census Bureau:** surveys on individuals who did not vote or did not register to vote; *Id.* at 1:55:15;
- **Federal district courts:** information regarding individuals excused from jury duty for being non-citizens; *Id.* at 1:32:20; and
- **Department of Justice:** information regarding referrals for criminal prosecution based on non-citizens excused from jury duty or admissions on naturalization forms to having voted in an election as a non-citizen; *Id.* at 1:33:10.

Vice Chair Kobach instructed Commission staff “in the interim” between meetings to “collect whatever data there is that’s already in the possession of the federal government that might be helpful to us.” *Id.* at 1:37:05.

E. The Commission Shifts Its Plans to Maintain the Personal and Voting Data

In response to litigation, the Commission has repeatedly shifted its plans regarding the storage of the personal and voting data it receives as part of its investigation. In a declaration filed on July 5, 2017 in the *EPIC* lawsuit against the Commission, Vice Chair Kobach initially stated that he “intended” that only “narrative responses” provided in response to his June 28

letter be sent to the eop.gov email address in the letter and that “voter roll data” be uploaded onto the SAFE website that is operated by the U.S. Army and that Vice Chair Kobach described as a “tested and reliable method of secure file transfer used routinely by the military for large, unclassified data sets” that “also supports encryption by individual users.” Kobach Declaration at ¶ 4.

After the court in the *EPIC* lawsuit inquired at a July 7, 2017 hearing if the Department of Defense should be joined as a defendant by virtue of its operation of the SAFE website, the Commission changed course on its data storage plans. In a subsequent declaration filed on July 10, 2017, Vice Chair Kobach stated that “[i]n order not to impact the ability of other customers to use” SAFE, the Director of White House Information Technology was “repurposing an existing system” to collect the information “within the White House Information Technology enterprise.” Third Declaration of Kris W. Kobach at ¶ 1, (July 10, 2017), *EPIC* lawsuit. Asked by the court at the same July 7 hearing what other federal agencies support the White House’s computer system, the Commission stated that the “mechanics” of the White House’s information technology program are “complicated” and “something that may not be appropriate to say in a public setting.” Transcript at 35, *EPIC* lawsuit. And asked by the court whether other agencies were cooperating with the Commission, it stated that none then were. *See id.* at 30. A week later, another declarant, Charles Herndon, the White House’s Director of Information Technology, stated that no other federal agency will have a role in this initial “data collection process” from the states, but left unaddressed the mechanics of the upcoming data crosscheck project and the process for collecting, storing or using the data maintained by the other federal agencies. Declaration of Charles Christopher Herndon at ¶ 6, (July 17, 2017), *EPIC* lawsuit.¹

¹ Among the many unknowns regarding the voter data is whether, notwithstanding the Commission’s relocation of the initial data collection away from the Defense Department’s SAFE website, the Department remains involved in the Commission’s efforts. As noted above, Herndon is the Director of Information Technology at the White House. The Director of Information Technology is “responsible for the information resources and information systems provided to the President, Vice President, and EOP by the Presidential Information Technology Community (Community).” White House, Presidential Memorandum-Establishing the Director

F. The Commission’s Renewed Request for First Amendment-Protected Voter Data and “New Tool” for Data Collection

Although Vice Chair Kobach’s June 28 letter initially gave states a deadline of July 14 to transmit their voters’ data, the Commission put the data collection on hold pending a decision on the temporary restraining order and preliminary injunction that was filed in the *EPIC* lawsuit. *See* Third Declaration of Kris W. Kobach at ¶¶ 2-3. On July 24, 2017, the court denied the injunctive relief. *See* Order (July 24, 2017), *EPIC* lawsuit.²

On July 26, 2017, Vice Chair Kobach renewed the data request in a letter to the states, explaining that the Commission is interested in “gathering facts” and, in keeping with the open-ended nature of its investigation, “going where those facts lead.” *See* Letter from Kris W. Kobach, Vice Chair PACEI to Office of the Secretary of State of Alabama at 2 (July 26, 2017) *available at* <https://www.whitehouse.gov/sites/whitehouse.gov/files/docs/letter-vice-chair-kris-kobach-07262017.pdf>. The letter described yet another system for collecting the voter data, stating that the “Commission is offering a new tool” to transmit the voter data to the “White House computer system” and that “detailed instructions” would be provided after states reached

of White House Information Technology and the Executive Committee for Presidential Information Technology (March 19, 2015), *available at* <https://obamawhitehouse.archives.gov/the-press-office/2015/03/19/presidential-memorandum-establishing-director-white-house-information-te>. Information services for the Community are provided by the White House Communications Agency, which “is a joint service military agency under the operational control of the White House Military Office (WHMO) and administrative control of the [Defense Information Systems Agency].” Fiscal Year 2018 President’s Budget Defense Information Systems Agency (DISA) 204-05, 215 (May 2017). DISA, in turn, is a “combat support agency of the Department of Defense” that complies with the Privacy Act. OUR WORK / DISA 101, *available at* <http://www.disa.mil/About/Our-Work>; *see also, e.g.*, Privacy Act, *available at* <http://www.disa.mil/About/Legal-and-Regulatory/Privacy-Office> (listing DISA Privacy Act System of Records Notices, among other documents).

² On July 24, the State of Ohio made available its voter data, including party affiliation and voter history, in a letter to the Commission. *See* Letter from John Husted, Ohio Secretary of State, to Members of the Presidential Advisory Commission on Election Integrity (July 24, 2017), *available at* <https://www.whitehouse.gov/sites/whitehouse.gov/files/docs/July-24-letter-from-Ohio-Secretary-of-State.pdf> (providing Commission with link to download data).

out to an email address provided in the letter. *Id.* The July 26 letter once again left unaddressed any role other federal agencies may have in the operation of this “new tool.” *Id.*

On July 27, 2017, Arkansas transmitted its voters’ data, including party affiliation and voter history. *Arkansas Again Submits Info to Voting Commission*, Associated Press (July 27, 2017), available at <https://www.usnews.com/news/best-states/arkansas/articles/2017-07-27/arkansas-again-submits-info-to-voting-commission>. Colorado likewise has said it plans to transmit the same information for its voters by close of business on July 31. Blair Miller, *Colorado to send voter info. to Trump commission Monday; no evidence any withdrawals were ineligible*, The Denver Channel (July 27, 2017), available at <http://www.thedenverchannel.com/news/politics/colorado-to-send-voter-info-to-trump-commission-monday-no-evidence-any-withdrawals-were-ineligible?page=2>.

Although certain states have indicated that they may withhold their voters’ data from the Commission, President Trump stated at a Commission meeting that 30 states “have already agreed” to share their voters’ data and that data “will be forthcoming” from the rest of the states, observing that, “If any state does not want to share this information, one has to wonder what they’re worried about.” The White House, *Remarks by President Trump and Vice President Pence at the Presidential Advisory Commission on Election Integrity Meeting* (July 19, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/07/19/remarks-president-trump-and-vice-president-pence-presidential-advisory>. Multiple additional states, including Florida and Texas, have indicated that they intend to turn over voter data, including party affiliation and voter history, to the Commission. *See* Letter from Ken Detzner, Florida Secretary of State to Kris W. Kobach, Kansas Secretary of State (July 6, 2017), available at https://www.brennancenter.org/sites/default/files/analysis/Florida_DOS_Letter_to_Presidential_Advisory_Commission.pdf; Anna M. Tinsley, “What Texas will (and won’t) send to Trump’s voter fraud commission,” *Star-Telegram* (July 7, 2017), available at <http://www.star-telegram.com/news/politics-government/election/article160151354.html>.

G. The Irreparable Harm to Plaintiff and its Members from the Commission's Request for Voter Data

As a result of the Commission seeking to collect and maintain voter data, including party affiliation and voter history, voters have de-registered from the rolls, while others are gravely concerned about how their data will be used by the Commission, making them hesitant to fully participate in the political process. *See, e.g., Thousands Unregister From Voter Rolls After Trump Panel's Data Requests*, NBC News (July 18, 2017), available at <http://www.nbcwashington.com/news/politics/Thousands-Unregister-Voter-Rolls-Election-Integrity-435155813.html>; Brian Eason, *More than 3,000 Colorado voters have canceled their registrations since Trump election integrity commission request*, The Denver Post (July 13, 2017), available at <http://www.denverpost.com/2017/07/13/trump-election-integrity-commissions-colorado-voters-cancel-registration/>. Inhibiting public participation in this way undermines public confidence in the political process. In addition to this effect, which in and of itself injures Common Cause's purpose and mission, both the organization and its members will continue to be harmed if the Commission's collection of voter data concerning voter history and party affiliation is not enjoined.

1. Common Cause

As a non-partisan membership organization dedicated to promoting the integrity of the U.S. election process, election protection, and open, honest, and accountable government, Common Cause and its members regularly engage in education and advocacy efforts in the realm of campaign finance reform, ethics, redistricting, transparency, fair access to media, and voting matters. Declaration of Karen Hobert Flynn, attached hereto as Exhibit A at ¶¶ 3-5. For example, Common Cause and its members conduct nonpartisan voter protection, education and outreach activities, including on-site election protection assistance. *Id.* Common Cause also helps to facilitate voter registration and advocates for policies, practices, and legislation that aim to protect eligible voters from disenfranchisement. *Id.*

The Commission's request for voter data has forced Common Cause to spend considerable time and effort opposing the request and attempting to counteract its harmful

effects, including preparing op-ed and other opinion pieces opposing the request, corresponding with Secretaries of State regarding the request, speaking at a rally and encouraging voters not to deregister, and organizing approximately 30,000 individuals to send a petition to the White House opposing the Commission. *Id.* at ¶ 15; *see also* Declaration of Liza McClanhan, attached hereto as Ex. B at ¶ 6. As a consequence, Common Cause has had to divert resources from its core activities and ongoing projects, frustrating its mission and purpose. Ex. A at ¶¶ 16-17; Ex. B at ¶ 6. Common Cause expects that it will have to continue to expend these resources if the Commission is permitted to continue its collection of voter history and party affiliation. *Id.*

2. Common Cause's Members

Common Cause's members are gravely concerned about the Commission collecting their voting history and party affiliation data and crosschecking it against databases from other federal agencies. They are highly anxious about how their data will be used as well as whether it will be disclosed to other parties and/or the public. Ex. B at ¶ 7; Decl. of Anthony Gutierrez, attached hereto as Exhibit C at ¶ 5-8. The Commission's collection of this data undermines their confidence in the country's election systems as participants in the political process. *Id.* Moreover, some members are anxious that the collection of their voter data will lead to their vote being suppressed, particularly given remarks by certain Commission members. Ex. C at ¶ 7. Members of Common Cause will continue to be injured if the Commission is not stopped from collecting voter history and party affiliation.

STANDARD OF REVIEW

To obtain preliminary injunctive relief, a moving party must show: "(1) a substantial likelihood of success on the merits, (2) that it would suffer irreparable injury if the injunction were not granted, (3) that an injunction would not substantially injure other interested parties, and (4) that the public interest would be furthered by the injunction." *Brady Campaign to Prevent Gun Violence v. Salazar*, 612 F.Supp.2d 1, 11–12 (D.D.C. 2009) (citing *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006); *see also Hall v. Johnson*, 599 F. Supp. 2d 1, 3 n.2 (D.D.C 2009) ("The same standard applies to both temporary restraining

orders and to preliminary injunctions.”). In applying this four-factor standard, district courts may employ a sliding scale under which a particularly strong showing in one area can compensate for weakness in another. *Id.* Accordingly, “[i]f the showing in one area is particularly strong, an injunction may issue even if the showings in other areas are rather weak.” *Id.* (quoting *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir.1995)).³

ARGUMENT

To stop the ongoing irreparable harm to Common Cause and its members as well as to the political process, this Court should enjoin the Commission from collecting data concerning individuals’ voter history and party affiliation. Each of the elements for preliminary relief weighs in favor of preliminary injunctive relief, and taken together they decidedly compel that result.

I. Common Cause Has a Likelihood of Success on the Merits

Common Cause is likely to succeed on the merits. The Privacy Act plainly prohibits federal agencies from collecting, maintaining, using and disseminating data concerning an individual’s First Amendment activity.

A. The Commission is an “Agency” under the Privacy Act

The Privacy Act incorporates the definition of “agency” found in the Freedom of Information Act, 5 U.S.C. § 552(a)(1), which, in turn, defines “agency” as “any executive department, military department, Government corporation, Government controlled corporation,

³ “[I]t is not clear whether this Circuit’s sliding-scale approach to assessing the four preliminary injunction factors survives the Supreme Court’s decision in *Winter v. Nat. Res. Def. Counsel*, 555 U.S. 7, 22 (2008). See *Save Jobs USA v. U.S. Dep’t of Homeland Sec.*, 105 F.Supp.3d 108, 112 (D.D.C. 2015). Several judges on the D.C. Circuit Court of Appeals have “read *Winter* at least to suggest if not to hold ‘that a likelihood of success is an independent, free-standing requirement for a preliminary injunction.’” *Id.* (citing *Sherley*, 644 F.3d 388, 392 (D.C. Cir. 2011)). However, the Court of Appeals has yet to hold definitively that *Winter* has displaced the sliding-scale analysis. See *id.* (citing *Sherley*, 644 F.3d at 393). In any event, the Court need not resolve that question in the instant motion, because Common Cause makes a strong and sufficient showing on each of the preliminary injunction factors.

or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.” *Id.* at § 552(f)(1).

The Commission satisfies this definition. In cooperation with Defendants Department of Homeland Security (“DHS”) and Social Security Administration (“SSA”) and a still-emerging number of other federal agencies, the Commission is engaged in a first-of-its-kind investigation into alleged voter fraud for which it is amassing the personal and voting data of millions of Americans and comparing it to other data that the federal government keeps on individuals. These classic agency functions go beyond merely offering advice and demonstrate that the Commission is an “agency” to which the Privacy Act applies under the law of this Circuit or, at the very least, that discovery is necessary to obtain information known only to Defendants regarding the Commission’s authority and operations as well as its interactions with other federal agencies.

1. Agency Status is a Case-by-Case Determination Guided by Core Principles and Aided by Discovery

There is no bright-line rule for determining when a particular government entity is accorded “agency” status for purposes of the Privacy Act. Rather, the D.C. Circuit has made clear that, when confronted “with one of the myriad organizational arrangements for getting the business of the government done,” each such arrangement “must be examined anew and in its own context” by a reviewing court. *Washington Research Project, Inc. v. Dep’t of Health, Educ. and Welfare*, 504 F.2d 238, 245-46 (D.C. Cir. 1974). Consistent with the case-by-case nature of this determination, “the specific evidence bearing upon that question varies with the entity in question.” *Armstrong v. Exec. Office of the President*, 90 F.3d 553, 558–59 (D.C. Cir. 1996). As another court in this district has observed, in determining whether an entity is an “agency,” courts have frequently looked “beyond public documents” to depositions, document discovery, letters, memoranda, and other statements, particularly where the “language establishing the entity’s power [in the public documents] is broad and lacking in firm parameters.” *Elect. Privacy Info. Ctr. v. Office of Homeland Security*, 1:02-cv-00620-CKK (“Office of Homeland

Security”), Memorandum Opinion at 12 & n.4 (Dec. 26, 2002) (declining to grant motion to dismiss and ordering discovery in order to determine whether entity was an “agency”).

Consideration of such evidence is “at the very least, helpful, *if not required*, in determining the status of an entity positioned within the Executive Office of the President.” *Id.* (emphasis added).

Although the specific evidence consulted may vary by entity, the D.C. Circuit has set forth principles to guide the inquiry. In its most recent decision on “agency” status, the Circuit instructed courts to assess the so-called *Soucie* factors, “[1] whether the entity exercises substantial independent authority, [and 2] whether ... the entity’s sole function is to advise and assist the President” —and, “in an effort to harmonize these tests” — “[1] how close operationally the group is to the President, [2] whether it has a self-contained structure, and [3] the nature of its delegated authority.” *Citizens for Responsibility & Ethics in Washington (“CREW”) v. Office of Admin.*, 566 F.3d 219, 222–23 (D.C. Cir. 2009) (citing *Armstrong*, 90 F.3d at 558 and *Meyer v. Bush*, 981 F.2d 1288, 1293 (D.C. Cir. 1993)). And, “in the absence of a direct comparator [to an entity already deemed to be an ‘agency’], then, the Court is required to draw upon the principles elucidated by the D.C. Circuit’s previous opinions in discerning the side of the ‘agency’ line on which [an entity] falls.” *Citizens for Responsibility & Ethics in Washington*, 559 F.Supp.2d 9 at 24 (D.D.C. 2008) (“*CREW*”).

In *Soucie v. David*, 448 F.2d 1067 (D.C. Cir. 1971), for instance, the D.C. Circuit held that the Office of Science and Technology Policy (“OSTP”) within the White House was an “agency” for purposes of FOIA because, in addition to “advis[ing] and assist[ing] the President in achieving coordinated federal policies in science and technology,” *id.* at 1073-74, OSTP had “the function of evaluating federal programs,” *id.* at 1075. As the D.C. Circuit subsequently recognized, its analysis in *Soucie* hinged on the OSTP’s actual functions; for even though “the reports under consideration in *Soucie* were requested by the President precisely for advisory purposes,” the Circuit held that the OSTP was an agency precisely “because the Office had functions in addition to advising the President.” *Ryan v. Dep’t of Justice*, 617 F.2d 781, 788

(D.C. Cir. 1980); *see also* *Rushforth v. Council of Econ. Advisers*, 762 F.2d 1038, 1041 (D.C. Cir. 1985) (observing that “critically, it was the functional role of the agency on which *Soucie* turned”).

The D.C. Circuit similarly found the Defense Nuclear Facilities Safety Board (“Board”) to be an “agency” in *Energy Research Foundation. v. Defense Nuclear Facilities Safety Bd.*, 917 F.2d 581, 582, 584 (D.C. Cir. 1990). There, the Circuit once again looked to *Soucie* and the actual functions performed by the Board, holding that it “does considerably more than merely offer advice,” but also “formally evaluates the Energy Department’s standards relating to defense nuclear facilities and it forces public decisions about health and safety” and “conducts investigations.” *Id.* Invoking its previous holding, the Circuit went on to explain that just as in *Soucie*, “Evaluation plus advice was enough to make the [Board] an ‘agency.’” *Id.*; *see also* *Pacific Legal Found. v. Council on Envtl. Quality*, 636 F.2d 1259 (D.C. Cir. 1980) (finding Council on Environmental Quality to be an agency); *Sierra Club v. Andrus*, 581 F.2d 895, 902 (D.C. Cir. 1978) (same, for the Office of Management and Budget).

By contrast, the D.C. Circuit held in *CREW* that the Office of Administration (“OA”) did not warrant “agency” status because OA neither “perform[ed] [n]or is authorized to perform tasks other than operational and administrative support for the President and his staff.” 566 F.3d at 224. Importantly, however, the Circuit reached this conclusion only *after* the district court had permitted deposition and document discovery centered on OA’s “interactions with federal agencies,” “the duties OA performs,” and OA’s “authority and operations,” an understanding of which the D.C. Circuit deemed “critical” to the agency analysis. *Id.* at 225-26; *see also id.* (noting that discovery included deposition testimony from OA’s director regarding “its interactions with federal agencies[] and the duties OA performs”); *see also* *Armstrong*, 90 F.3d 553, 561, 565 (concluding, following deposition discovery of a senior official about his actual duties, that the National Security Council is not an agency because it “plays [no] substantive role apart from that of the President, as opposed to a coordinating role on behalf of the President”). And in *Meyer*, 981 F.2d 1288 (D.C. Cir. 1993), the D.C. Circuit has likewise held that President

Ronald Reagan’s Task Force on Regulatory Relief—which “reviewed agency rules and proposed regulatory revisions to the President, but [] could not issue guidelines or other types of directives,” *CREW*, 566 F.3d at 223 (citing *Meyer*, 981 F.2d at 1289-90, 1294) —was not an agency because it “was not a body with ‘substantial independent authority’ to direct executive branch officials.” *Meyer*, 981 F.2d at 1297. Synthesizing the Circuit’s prior teachings, the D.C. Circuit in *Meyer* further reasoned that because the Task Force “seems to have been merely a committee which convened periodically both to bring together the views of various cabinet department heads concerning significant proposed regulations, and to shape for the President’s decision intra-agency disputes,” it therefore “fell within the *Soucie* test as an entity whose sole function is to advise and assist the President.” *Meyer*, 981 F.2d at 1297 (finding no indication that Task Force members “were to exercise substantial independent authority, nor in fact, did they do so” (internal quotation marks omitted)).

As the above case law illustrates, a court’s determination of an entity’s “agency” status turns on an assessment of both the authorized and actual functions of an entity. *See, e.g., CREW*, 566 F.3d at 224 (assessing tasks that OA “performed” and was “authorized to perform”); *Meyer*, 981 F.2d at 1297 (same, for authority Task Force members “were to exercise” and what they “in fact” exercised); *Soucie*, 448 F.2d at 1075 (assessing “function” of OSTP); *Rushforth*, 762 F.2d at 1041 (“critically, it was the functional role of the agency on which *Soucie* turned”). As one district court in this Circuit has observed, an entity’s “function may be discerned from its charter documents as well as the responsibilities [the entity] actually undertakes, if they in fact extend beyond the responsibilities delineated in [the] charter documents.” *CREW*, 559 F.Supp.2d at 24.

Nor is this Court bound by Judge Kollar-Kotelly’s denial, without prejudice, of a temporary restraining order and preliminary injunction in the *EPIC* lawsuit in an opinion that held that the “record presently” before the court was “insufficient to demonstrate that the Commission is an agency for the purposes of the APA.” Memorandum Opinion, *EPIC* lawsuit at 27 (“Opinion”). As an initial matter, the *EPIC* decision is not binding precedent here. *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (stating black letter principle that a decision of a federal

district court judge is not binding precedent in that judicial district or even upon the same judge). But more to the point, the plaintiff in the *EPIC* matter brought different claims—premised on the Commission’s failure to conduct a Privacy Impact Assessment in violation of the E-Government Act of 2002 and the Administrative Procedure Act—against a different roster of Defendants apart from the Commission—including the Department of Defense, the United States Digital Service, and the Executive Committee for Presidential Information Technology—and sought different forms of relief—principally, that the data collection be enjoined until the completion of a Privacy Impact Assessment—than Plaintiff does here. Consequently, the court in the *EPIC* matter was presented with a factual record that differed in significant and material ways from the record before this Court. The court in the *EPIC* case, moreover, underscored that the facts pertaining to the Commission were in a state of flux, noting that its holding as to the Commission’s “agency” status “may need to be revisited” to the extent “that factual circumstances change . . . for example, if the *de jure* and *de facto* powers of the Commission expand beyond those of a purely advisory body.” *Id.* at 3, 27; *see also, e.g., id.* at 2 (noting that the “factual circumstances. . . have changed substantially since this case was filed three weeks ago”). As set forth above and described in further detail below, the factual circumstances have indeed already changed in material ways since the closure of briefing in the *EPIC* matter. As a result, the actual and authorized functions of the Commission contained in the present factual record demonstrate that it is an “agency” under the guiding principles identified by the D.C. Circuit.

2. The Commission exercises “substantial independent authority” and its sole function is not to “advise and assist the President”

The Commission’s stated “mission,” as set forth in its chartering documents, is “consistent with applicable law, [to] study the registration and voting processes used in Federal elections.” Executive Order at § 3. It must “cooperate with” other federal agencies and “shall strive to avoid duplicating” existing efforts by these agencies. *Id.* at § 5. And, in executing its work, the Commission “will utilize all available data, including state and federal databases.”

The White House, *President Announces Formation of Bipartisan Presidential Commission on Election Integrity* (May 11, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/05/11/president-announces-formation-bipartisan-presidential-commission>. These documents also establish a firm and defined structure for the Commission, providing that it will have a dedicated staff and no more than 15 additional members; setting forth a budget for the next two fiscal years; and charging the General Services Administration with “provid[ing] the Commission with such administrative services, funds, facilities, staff, equipment, and other support services as may be necessary to carry out its mission on a reimbursable basis.” Executive Order at §§ 5, 7; *see also* Charter ¶¶ 7, 11.

The Commission’s “function may be discerned from . . . the responsibilities [it] actually undertakes, if they in fact extend beyond the responsibilities delineated in [the] charter documents.” *CREW*, 559 F.Supp.2d at 24. That is clearly the case here, where the Commission’s investigation already far transcends its nominal “mission,” and is continuing to broaden. As demonstrated by the Commission’s actions and the statements of its members and their surrogates, the Commission has embarked upon an unprecedented investigation into voter fraud with the aim of ultimately ejecting allegedly fraudulently registered voters from state voter rolls. To accomplish this end, the Commission is poised to receive extensive personal and voting data from residents of all 50 states and the District of Columbia. The goal of aggregating this national voter file, in Vice Chair Kobach’s words, is to enable the Commission “for the first time in our country’s history” to compare the data on citizens received from the states against “the federal government’s databases,” including those maintained by the Social Security Administration and the Department of Homeland Security, “to see whether these people are registered.” *See Kobach talks goals of new voter fraud commission*, Fox News, Sunday Morning Futures (May 14, 2017), available at <http://www.foxnews.com/transcript/2017/05/14/kobach-talks-goals-new-voter-fraud-commission-commerce-secretary-on-nkorea-missile-test-china-trade-deal.html>. *Cf. Int’l Refugee Assistance Project v. Trump*, 857 F.3d 554, 595 (4th Cir. 2017), as amended (May 31, 2017), as amended (June 15, 2017), cert. granted, 137 S. Ct. 2080

(2017) (statements of President Trump and his advisors “taken together, provide direct, specific evidence of what motivated” recent executive order and “are the exact type of ‘readily discoverable fact[s]’ that we use in determining a government action’s primary purpose” (quoting *McCreary*, 545 U.S. at 862)). The Vice President’s office has confirmed that the personal and voter data received by the Commission will be run “through a number of different databases” to check for potential fraudulent registration. Jessica Huseman, *Election Experts See Flaws in Trump Voter Commission’s Plan to Smoke Out Fraud*, ProPublica (July 6, 2017), available at <https://www.propublica.org/article/election-experts-see-flaws-trump-voter-commissionsplan-to-smoke-out-fraud>. This already sweeping investigation widened in scope at the July 19, 2017 meeting—notably, after the closure of briefing in the *EPIC* matter—when Vice Chair Kobach invoked the controversial Interstate Crosscheck program over which he presides and stated that the Commission would be “equally successful” on a national scale. He then directed the Commission’s staff to obtain data from the Department of Justice and the U.S. Census Bureau, in addition to the Department of Homeland Security, in order to crosscheck against the data being collected from the states.

As revealed by its actions and the comments of its members and their surrogates, the Commission in no way is limited to advising and assisting the President. Rather, it is carrying out a wide-scale investigation and data crosscheck project of presently unknown scope in cooperation, and on par with, multiple other federal investigative agencies that maintain information on individuals. At a minimum, then, the Commission plainly is playing the sort of independent “evaluating” function that was sufficient to confer “agency” status in *Soucie*. In reality, and as demonstrated by the present record, the Commission’s actions extend well beyond mere evaluation into the kind of investigative activities that define federal agencies as distinct from other types of entities within the Executive Branch.

3. The Commission has a “self-contained structure,” is operationally distinct from the President, and exercises substantial delegated authority

The latter three factors identified by the D.C. Circuit likewise establish that the Commission is an “agency” to which the Privacy Act applies. *First*, the Commission’s structure is well-defined and self-contained. As the Circuit explained in *Meyer*, the Task Force at issue there was “simply a partial cabinet group” and the “President does not create an [agency]...every time he convenes a group of senior staff or departmental heads to work on a problem.” *Meyer*, 981 F.2d at 1296; *see also Armstrong*, 90 F.3d at 560 (juxtaposing self-contained National Security Council with “an amorphous assembly from which *ad hoc* [sic] task groups are convened periodically by the President,” notwithstanding “several points of tangency between the White House and the NSC staff”). The Commission, by contrast, is not merely an ill-defined subset of the President’s cabinet and White House staff: It has a dozen members, including one federal agency head (who is purportedly serving in her personal capacity) and numerous state elected and appointed officials; a dedicated staff and operating budget for the next two fiscal years; and the ability to draw on “administrative services, funds, facilities, staff [and] equipment” from the General Services Administration “as may be necessary.” *See* Charter ¶ 7 (describing Commission’s operating budget for FY2017 and FY2018 and staff); Call Agenda (June 28, 2017) (listing “[o]verview of Election Integrity Commission staff” as discussion topic).

Second, the Commission is operationally separate from the President. Although the Commission was established by Executive Order and is Chaired by the Vice President, there is not an “intimate organizational and operating relationship between the President and the [Commission].” *Armstrong*, 90 F.3d at 560. Quite the contrary, and consistent with the wide-ranging authority granted to any federal agency head, Vice Chair Kobach alone “directed” the investigative action of seeking the unprecedented voter data set from the states. Kobach Declaration at ¶ 4. He also informed the other Commission members of the data request only after Vice President Pence had “disconnected” from the June 28 meeting, *see* Kossack Declaration at ¶ 5, and without giving the other members the chance to vote on or vet the letter,

see Sam Levine, *Trump Voter Fraud Commission Was Cautioned About Seeking Sensitive Voter Information*, Huffington Post (July 5, 2017), available at http://www.huffingtonpost.com/entry/trump-voter-fraudcommission_us_595d511fe4b02e9bdb0a073d; Celeste Katz, *Trump election integrity commission member: "We should have predicted" the backlash*, Mic (July 5, 2017), available at <https://mic.com/articles/181510/trump-election-integrity-commission-member-we-should-have-predicted-the-backlash#.oeqOZx3hl>. Likewise, at the July 29, 2017 meeting, Vice Chair Kobach instructed Commission staff broadly to obtain "whatever data there is that's already in the possession of the federal government that might be helpful" to the Commission's investigation, including from multiple federal agencies that maintain assorted data sets on individuals. He again did so, in real time, and without intervention of either the President or the Vice President, further supporting the Commission's operational independence.

Finally, as described above *supra* at 23-25, the Commission is exercising substantial independent authority in conducting the unprecedented and broadening investigation and data crosscheck involving individuals' personal and voter data in cooperation with multiple other federal agencies. See *CREW*, 559 F.Supp.2d at 28 (observing that the D.C. Circuit's evaluation of the nature of an entity's delegated authority "appears to focus on the *Soucie* factors").

For the reasons described above, the Commission is an "agency" for purposes of the Privacy Act.⁴

⁴ If the Court nevertheless finds that the current record is insufficient to establish the Commission's agency status, and given both the fast-changing factual circumstances regarding the Commission and the continued lack of clarity regarding the mechanics of the data flow between the cooperating federal agencies, Plaintiff requests that the Court order limited, expedited discovery into the Commission's operations, authority, and interactions with federal agencies participating in the data crosscheck project. *CREW*, 566 F.3d at 225-26 (discovery that "shed light on OA's authority and operations" permitted by the district court was "critical" to determining whether OA was an "agency"); *Office of Homeland Security*, Memorandum Opinion at 12 & n.4 (Dec. 26, 2002) (declining to grant motion to dismiss and ordering discovery in order to determine whether entity was an "agency").

B. Defendants Seek to Maintain Records Describing How Individuals Exercise Rights Guaranteed by the First Amendment.

There can be no doubt that the information sought by the Commission, specifically, citizens' political party affiliation and voting history and registration status, are the type of records—those describing how individuals exercise rights guaranteed by the First Amendment—whose maintenance is prohibited by the Privacy Act. *See* 5 U.S.C. § 552a(e)(7). Indeed, in considering allegations that a prior Department of Justice had violated the Privacy Act, including Section 552a(e)(7), by not selecting attorney applicants for interviews because of their political affiliations, the D.C. Circuit accepted that such political affiliations—including party affiliation—were “First Amendment activities” for the purposes of the Privacy Act. *Gerlich v. U.S. Dep’t of Justice*, 711 F.3d 161, 172 (D.C. Cir. 2013) (discussing Green Party membership). And as the Supreme Court has explained, “[p]olitical participation is integral to our democratic government; for this reason, limitations [on it] ‘operate in an area of the most fundamental First Amendment activities.’” *Stop This Insanity Inc. Emp. Leadership Fund v. Fed. Election Comm’n*, 761 F.3d 10, 13 (D.C. Cir. 2014) (quoting *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (per curiam)) (discussing campaign contributions and expenditures); *Norman v. Reed*, 502 U.S. 279, 288-90 (1992) (describing “the First Amendment right of political association” which “advances the constitutional interest of like-minded voters to gather in pursuit of common political ends, thus enlarging the opportunities of all voters to express their own political preferences”); *see also Am. Commc’ns Ass’n, C.I.O., v. Douds*, 339 U.S. 382, 452 (1950) (“the postulate of the First Amendment is that our free institutions can be maintained without proscribing or penalizing political belief, speech, press, assembly, or party affiliation”) (emphasis added); *Vieth v. Jubelirer*, 541 U.S. 267, 314 (2004) (Kennedy, J., concurring in the judgment) (discussing allegations that “involve the First Amendment interest of not burdening or penalizing citizens because of their participation in the electoral process, their voting history, their association with a political party, or their expression of political views”) (citing *Elrod v. Burns*, 427 U.S. 347 (1976) (plurality opinion)); *League of Latin Am. Citizens v. Perry*, 548 U.S. 399, 461-62 (2006)

(Stevens, J., concurring in part and dissenting in part) (finding that the First Amendment protects “citizens from official retaliation based on their political affiliation”).

The history of the Act underscores this conclusion. As the D.C. Circuit has explained: “The legislative history of the Act reveals Congress’ own special concern for the protection of First Amendment rights, as borne out by statements regarding ‘the preferred status which the Committee intends managers of information technology to accord to information touching areas protected by the First Amendment of the Constitution.’” *Albright*, 631 F.2d at 919 (citing S. Rep. No. 1183, 93d Cong., 2d Sess., *reprinted in* (1974) U.S. Code Cong. & Admin. News, pp. 6916, 6971)). The initial implementation guidelines for the Act promulgated by the Office of Management and Budget (OMB) further highlight the special status accorded by the Act to records concerning individuals’ First Amendment-protected activities.⁵ According to OMB’s guidelines, § 552a(e)(7) established a “rigorous standard governing the maintenance of records regarding the exercise of First Amendment rights,” including “political beliefs” and “freedom of assembly,” and asked agencies to “apply the broadest reasonable interpretation” in determining whether a particular activity is protected by § 552a(e)(7). OMB, Responsibilities for the Maintenance of Records About Individuals by Federal Agencies, 40 Fed. Reg. 28,948, 28,965 (July 9, 1975). Accordingly, the D.C. Circuit has held that an agency “may not so much as collect information about an individual’s exercise of First Amendment rights except under very circumscribed conditions” and that Section 552a(e)(7) applies regardless whether a record is maintained in an agency’s system of records. *Albright*, 631 F.2d at 919. The Commission is thus plainly prohibited from maintaining the records it is poised to collect.

⁵ “These guidelines are owed the deference usually accorded interpretation of a statute by the agency charged with its administration, particularly when, as here, the regulation ‘involves a contemporaneous construction of a statute by the (persons) charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.’” *Albright*, 631 F.2d at 919, n.5 (quoting *Zenith Radio Corp. v. United States*, 437 U.S. 443, 450 (1978)).

Defendants DHS and SSA are likewise prohibited from maintaining individuals' First Amendment-protected information. Conspicuously unaddressed within the Government's submissions thus far in the *EPIC* matter are the mechanics of how individuals' First Amendment-protected data will be handled by the growing list of federal agencies involved in the crosscheck project. Understanding these mechanics is crucial to ensuring that the law is followed. It is unclear, for example, whether these agencies will be collecting and maintaining the data themselves—directly in contravention of § 552a(e)(7)—or if they plan instead to disclose their data to the Commission—which could violate separate provisions of the Privacy Act, such as § 552a(b), which provides that “[n]o agency shall disclose any record which is contained in a system of records” except under certain limited circumstances, *see Sussman v. U.S. Marshalls Serv.*, 494 F.3d 1106, 1121 (D.C. Cir. 2007); *see also* 5 U.S.C. § 552a(b). To ensure that *no* provision of the Act is violated, the Commission should, at a minimum, reveal the mechanics of the involvement of SSA and DHS, among other agencies, in the data crosscheck project.

II. Plaintiff Will Suffer Irreparable Harm Absent a Preliminary Injunction

The collection of sensitive data that reveals an individual's First Amendment activities by federal agencies constitutes irreparable injury to the individual's privacy interests as well as their interests in freedom of expression under the First Amendment. *Albright*, 631 F.3d at 919 (“although not expressly provided for in the Constitution, courts have long recognized that the First Amendment has a penumbra where privacy is protected from governmental intrusion”) (internal quotations and citations omitted). Indeed, the D.C. Circuit has recognized in the context of Section 552a(e)(7) of the Privacy Act that “unwarranted collection of information [i]s a distinct harm in and of itself.” *Id.* (“[T]he section is directed to inquiries made for research or statistical purposes which, even though they may be accompanied by sincere pledges of confidentiality are, by the very fact that government make (sic) the inquiry, infringing on zones of personal privacy which should be exempted from unwarranted Federal inquiry.” (quoting S.Rep. No. 1183, (1974) U.S. Code Cong. & Admin. News at 6971-72)).

Common Cause has submitted declarations from two of its members describing the extent of the injuries that they already have experienced and will continue to experience if the Commission is not enjoined from collection, maintenance, and dissemination data concerning their party affiliation and personal voting history. Ex. B at ¶ 7; Ex. C at ¶ 5-8. As these declarations document, voters should not be exposed to high levels of anxiety or have to consider whether they will suffer consequences as a result of their voting and participation in the political process for fear that the Executive Branch is collecting and crosschecking information about their activities. Such injuries are significant and irreparable. *See also Albright*, 631 F.3d at 919; *League of Women Voters*, 838 F.3d at 14; *Brady Campaign to Prevent Gun Violence v. Salazar*, 612 F. Supp. 2d 1, 25 (D.D.C. 2009) (“Brady has submitted declarations from several of its members indicating that they are now concerned for their personal safety in parks and refuges and cannot fully enjoy their visits to certain national parks or wildlife refuges because they feel less safe....These environmental and aesthetic injuries are irreparable.”).

In addition to their members’ injuries, Common Cause itself has suffered irreparable injury to its organization and its mission. As outlined in the Declaration of Karen Hobert Flynn, Common Cause has had to divert resources away from its pressing and core projects to activities and actions aimed at counteracting the effects of the Commission’s unlawful actions. Common Cause cannot recover this time or these resources, which demonstrates the irreparable nature of the injury it has and will continue to suffer. *League of Women Voters*, 838 F.3d at 14 (“Because, as a result of the Newby Decisions, those new obstacles unquestionably make it more difficult for the Leagues to accomplish their primary mission...they provide injury for purposes both of standing and irreparable harm.”). This is not a case where Plaintiff stands to suffer financial harm that can be recouped back through a damages award at a later stage in the litigation. To the contrary, the injuries that Plaintiff and its members have experienced and will continue to experience as a result of the Commission’s actions are irreparable and can only be remedied with the Court’s exercise of its equitable powers.

III. A Temporary Restraining Order Will Not Substantially Injure Other Interested Parties

No party will be harmed by this Court's issuance of a temporary restraining order. To start, the governmental interest at stake is a spurious one: in effect to validate President Trump's unsubstantiated claims of massive voter fraud. Additionally, the Commission has shown itself rightfully willing to pause its data request to allow legal challenges to its actions to be adjudicated. Thus, the Government will experience no discernable harm in halting its collection, maintenance, and dissemination of party affiliation and voter history data while this Court considers the merits of the case. Indeed, the Government should have every interest in ensuring that the actions it takes are legal and, thus, waiting until the merits of the claims are determined in this matter prior to engaging in further collection of individuals' data.

On the other side of the scale, Common Cause and its members stand to suffer grave harm, as discussed above, absent an injunction issuing. In addition to Common Cause and its members, others – such as members of the general public whose own voter files are also subject to the Commission's request – will also experience the very harm the Privacy Act was designed to prevent should this Court not issue temporary relief. The balance of equities, thus, clearly tilts towards issuing the requested relief.

IV. The Public Interest Favors a Temporary Restraining Order

The public interest overwhelmingly favors a temporary restraining order here. Absent relief, there is a substantial risk that citizens will be disenfranchised and/or hesitant to participate fully and actively in the political process. Echoing the Supreme Court, this Circuit has recognized that the public has a “strong interest in exercising the fundamental political right to vote.” *League of Women Voters of United States v. Newby*, 838 F.3d 1, 13–14 (D.C. Cir. 2016) (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (internal quotation marks omitted)). Actions, such as the Commission's impermissible attempt to collect and maintain voter history and party affiliation, undermine citizens' rights to vote. Here, voters have already deregistered as a result of the Commission's requests and additional de-registrations will result from the Commission's

renewed request. Granting temporary injunctive relief is necessary to prevent members of the public from removing themselves from the political process.

Moreover, “there is generally no public interest in the perpetuation of unlawful agency action.” *League of Women Voters*, 838 F.3d at 12 (quoting *Pursuing America’s Greatness v. Fed. Election Commission*, 831 F.3d 500, 511–12 (D.C. Cir. 2016)); *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013). The public has a “substantial” interest in “governmental agencies abid[ing] by the federal laws that govern their existence and operations.” *Id.* (quoting *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994)). No public interest is served in allowing the Defendants to continue their efforts to collect, maintain, and disseminate voter history and party affiliation data in violation of the Privacy Act.

V. Common Cause Has Standing

Common Cause has organizational and associational standing. As to the former, organizational standing is established by a “concrete and demonstrable injury to [an] organization’s activities – with the consequent drain on the organization’s interests.” *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). For such an injury to exist, “there must . . . be a direct conflict between the defendant’s conduct and the organization’s mission.” *Abigail All. For Better Access to Developmental Drugs v. Eschenbach*, 469 F.3d 129, 133 (D.C. Cir. 2006). As detailed above, *see supra* at 16-17, 30-31, and in the Declarations of its President and two members, *see Exs. A-C*, the Commission’s actions directly conflict with Common Cause’s mission. Those actions have forced Common Cause to divert its resources from ongoing and core projects in order to counteract the effects and fallout of the Commission’s actions. That injury easily suffices to establish organizational standing. *See e.g., People for the Ethical Treatment of Animals v. U.S. Dept. of Agric.*, 797 F.3d 1087 at 1094 (D.C. Cir. 2015) (organizational standing found where “the organization used its resources to counteract [a harm to its mission]”); *League of Women Voters of the United States v. Newby*, 838 F.3d 1, 8 (D.C. Cir. 2016) (“An organization is harmed if the ‘actions taken by the defendant have perceptibly impaired the [organization’s] programs.’”).

With respect to associational standing, courts look to whether (a) an organization's members, or any one of them, has standing to sue in their own right, (b) whether the interests the organization seeks to protect in the litigation are germane to the organization's purpose, and (c) whether the claim or relief requested requires the participation of individual members in the lawsuit. *See Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 342 (1977); *Ctr. for Sustainable Econ. v. Jewell*, 779 F.3d 588, 598 (D.C. Cir. 2015). Common Cause meets this standard, too. As outlined above, *see supra* 16-17, 30-31, Common Cause members are experiencing extreme anxiety over their voter history and party affiliation data being released to the Commission without their consent; their confidence in the electoral system is being eroded. Moreover, absent injunction, Common Cause members' personal voter history and party affiliation will be released to the Commission as well as potentially to other third parties or the public. Any one of these injuries confer standing upon Common Cause members to sue. *See, e.g., League of Women Voters*, 838 F.3d at 10-14; *Rice v. United States*, 245 F.R.D. 3, 6 (D.D.C. 2007) ("Plaintiffs' assertions of emotional injury were sufficient to survive the government's motion for judgement on the pleadings.") (citing *Albright*, 732 F.2d at 181). These interests, which Common Cause seeks to vindicate in this action, are germane to its organizational purpose, outlined in detail *supra* at 16-17, 30-31. And both the claims and relief sought do not require participation of individual members, since the Commission's activities are aimed at all 50 states and the District of Columbia and the remedy sought does not require individualized proof.

Dated: July 28, 2017

Respectfully submitted,

/s/ Javier M. Guzman

Javier M. Guzman

D.C. Bar No. 462679

Josephine Morse* (*pro hac vice motion pending*)

Skye L. Perryman

D.C. Bar No. 984573

Karianne M. Jones** (*pro hac vice motion pending*)

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Attorneys for Plaintiff

*Admitted to practice in New York; practicing under the supervision of organization attorneys.

**Admitted to practice in Minnesota; practicing under the supervision of organization attorneys.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July, 2017, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF system, which will send a notice of filing to all counsel of record.

/s/ Javier M. Guzman

JAVIER M. GUZMAN



U.S. Department of Justice

Civil Division
Federal Programs Branch

Mailing Address
P.O. Box 883
Washington, D.C. 20044

Overnight Delivery Address
950 Pennsylvania Ave, N.W.
Washington, D.C. 20530

(b)(6)
Trial Attorney

(b)(6)

August 3, 2017

LITIGATION HOLD NOTICE

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGE
ATTORNEY WORK PRODUCT**

Via Electronic Mail

(b)(6)

Attorney-Advisor
Legal Counsel Division
Office of the General Counsel
Department of Homeland Security

Re: Litigation Hold Notice for (b)(5)
(b)(5)

Dear Counsel:

(b)(5)

Page 0498

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 0499

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 0500

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

From:	(b)(6)
To:	(b)(6)
Subject:	(b)(5)
Date:	2017/09/05 12:39:44
Priority:	Normal
Type:	Note

No, he didn't.

From: (b)(6)
Sent: Tuesday, September 05, 2017 11:08:16 AM
To: (b)(6)
Subject: (b)(5)

(b)(5)

(b)(6)

Just checking in re: this case. Did (b)(6) provide you with anything in my absence?

If not, I will follow up with him.

Thanks,

(b)(6)

From: (b)(6)
Sent: Friday, August 18, 2017 11:25 AM
To: (b)(6)
Cc: (b)(6)
Subject: (b)(5)

(b)(5)

Thanks, (b)(6), for talking this morning.

(b)(5)

(b)(6)

Best,

(b)(6)

(b)(6)

Attorney-Advisor (Privacy)
Legal Counsel Division,
Office of the General Counsel
U.S. Department of Homeland Security

(b)(6)

~~This communication, along with any attachments, may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply to the sender and delete this message.~~

From: (b)(6)
Sent: Thursday, August 17, 2017 4:54 PM
To: (b)(6)
Subject: (b)(5)
(b)(5)

I am available. Thanks.

(b)(6)
USCIS, Office of Chief Counsel
(b)(6)

From: (b)(6)
Sent: Thursday, August 17, 2017 4:50 PM
To: (b)(6)
Subject: (b)(5)
(b)(5)

Great. Thanks. Probably around 11 AM if possible. If not, let me know when you are generally available.

From: (b)(6)
Sent: Thursday, August 17, 2017 4:49 PM
To: (b)(6)
Subject: (b)(5)
(b)(5)

(b)(6) You can reach me tomorrow at (b)(6)

(b)(6)
USCIS, Office of Chief Counsel

(b)(6)

From: (b)(6)
Sent: Thursday, August 17, 2017 4:49 PM
To: (b)(6)
Subject: (b)(5)
(b)(5)

Hi (b)(6)

Will you be around tomorrow to talk?

If so, I would like to talk to you about my discussion with the AUSA.

I have to head out now for kid duty.

Thanks,

(b)(6)

From: (b)(6)
Sent: Thursday, August 17, 2017 12:39 PM
To: (b)(6)
(b)(6)
Cc: (b)(6)
(b)(6)
Subject: (b)(5)
(b)(5)

Ok. I will reach out to her today and let you know.

Cheers,

(b)(6)

From: (b)(6)
Sent: Thursday, August 17, 2017 12:38 PM
To: (b)(6)
(b)(6)
Cc: (b)(6)
(b)(6)

Subject: (b)(5)
(b)(5)

Thanks (b)(6). It would be interesting to get the AUSA's perspective on (b)(5)
(b)(5)

(b)(6)
USCIS, Office of Chief Counsel
(b)(6)

From: (b)(6)
Sent: Thursday, August 17, 2017 12:36 PM
To: (b)(6)
Cc: (b)(6)
Subject: (b)(5)
(b)(5)

(b)(6)

(b)(5)

(b)(5)

I haven't spoken to the AUSA but am happy to discuss this point to her. I just wanted to get USCIS's position or opinion before I did it.

Best,
(b)(6)

From: (b)(6)
Sent: Thursday, August 17, 2017 12:19 PM
To: (b)(6)
(b)(6) >
Cc: (b)(6)
(b)(6)

(b)(6)

Subject: (b)(5)

(b)(5)

(b)(5);(b)(6)

(b)(6)

USCIS, Office of Chief Counsel

(b)(6)

From: (b)(6)

Sent: Thursday, August 17, 2017 12:05 PM

To: (b)(6)

Cc: (b)(6)

Subject: (b)(5)

(b)(5)

Hi (b)(6),

(b)(5)

Happy to discuss over the phone as well.

Best regard,

(b)(6)

(b)(6)

Attorney-Advisor (Privacy)

Legal Counsel Division,
Office of the General Counsel
U.S. Department of Homeland Security

(b)(6)

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From: (b)(6)

Sent: Thursday, August 10, 2017 10:11 AM

To: (b)(6)

(b)(6)

Cc: (b)(6)

(b)(6)

Subject: (b)(5)

(b)(5)

Thank you (b)(6)! Adding (b)(6) who is graciously the ALD point of contact, at least for the time being.

(b)(6)

From: (b)(6)

Sent: Thursday, August 10, 2017 8:42 AM

To: (b)(6)

Cc:

Subject: (b)(5)

(b)(5)

Thanks (b)(6). I will discuss this with Craig and get back to you.

(b)(6)

Chief, CALD
USCIS Office of Chief Counsel

(b)(6)

From: (b)(6)

Sent: Thursday, August 10, 2017 8:39:23 AM

To: (b)(6)

Cc:

Subject: (b)(5)

(b)(5)

Hi (b)(6)

I was focusing on the second bullet point of the (b)(5)

(b)(5)

Please let me what your thoughts are on this interpretation.

Thanks,

(b)(6)

From: (b)(6)

Sent: Wednesday, August 9, 2017 4:53 PM

To: (b)(6)

(b)(6)

Cc: (b)(6)

(b)(6)

Subject: (b)(5)

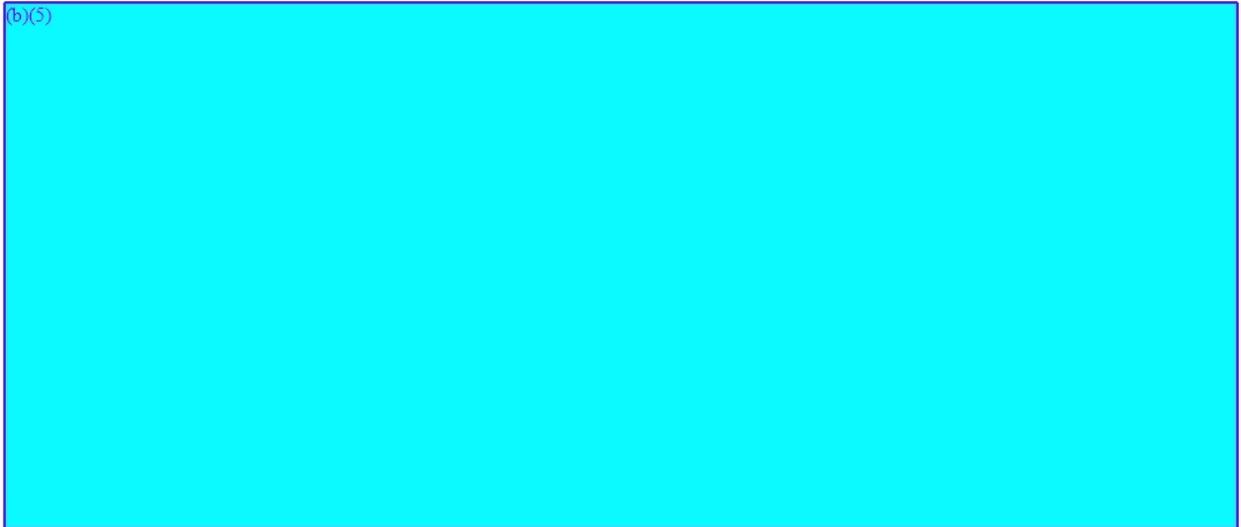
(b)(5)

(b)(6)

(b)(5)

(b)(5)

(b)(5)



(b)(6)

USCIS, Office of Chief Counsel

(b)(6)

From: (b)(6)

Sent: Tuesday, August 08, 2017 3:46 PM

To: (b)(6)

Cc:

Subject: (b)(5)

(b)(5)

Dear (b)(6)

I am following up on my email from Friday.

Does USCIS OCC have a POC that I can confer with in (b)(5)

(b)(5)

(b)(5)

Thank you.

(b)(6)

(b)(6)

Attorney-Advisor (Privacy)
Legal Counsel Division,
Office of the General Counsel
U.S. Department of Homeland Security

(b)(6)

(b)(6)

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From: (b)(6)
Sent: Friday, August 4, 2017 3:39 PM
To: (b)(6)
(b)(6)
Cc: (b)(6)
Subject: (b)(5)
(b)(5)

Dear (b)(6)

I have been in contact with DOJ regarding existing litigation. See attached complaint. (b)(5)

(b)(5)

(b)(5)

Please let me know me if you have any questions, comments, or concerns.

Best,
(b)(6)

(b)(6)
Attorney-Advisor (Privacy)
Legal Counsel Division,
Office of the General Counsel
U.S. Department of Homeland Security

(b)(6)

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~~hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply to the sender and delete this message.~~

From: (b)(6)
Sent: Thursday, August 3, 2017 6:36 PM
To: (b)(6)
Cc: (b)(6)
Subject: (b)(5)
(b)(5)

Hi (b)(6),

(b)(5)

I am happy to discuss the attached notice in more detail, and can be reached at the number below.

Best,

(b)(6)

(b)(6)

Trial Attorney, U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW | Washington, DC 20530

(b)(6)

Sender:	(b)(6)
Recipient:	(b)(6)
Sent Date:	2017/09/05 12:39:43
Delivered Date:	2017/09/05 12:39:44

From:	(b)(6)	
To:		
CC:		
Subject:	(b)(5)	
Date:	2017/09/05 12:51:31	
Priority:	Normal	
Type:	Note	

OK. Thanks. Much appreciated.

From: (b)(6)
Sent: Tuesday, September 5, 2017 12:51 PM
To: (b)(6)
Cc: (b)(6)
Subject: (b)(5)
(b)(5)

(b)(6) I will need to find out the status of this. I was out last week.

(b)(6)
Chief, CALD
USCIS Office of Chief Counsel
(b)(6)

From: (b)(6)
Sent: Tuesday, September 05, 2017 12:49:16 PM
To: (b)(6)
Cc:
Subject: (b)(5)
(b)(5)

Hi (b)(6)

(b)(5)

Thank you.

From:	(b)(6)
To:	(b)(6)
Subject:	(b)(5)
Date:	2017/09/21 11:23:22
Priority:	Normal
Type:	Note

Hi (b)(6)

Any updates?

Thanks,

(b)(6)

From: (b)(6)
Sent: Tuesday, September 12, 2017 11:37 AM
To: (b)(6)
Subject: (b)(5)
(b)(5)

I will check. Thanks.

(b)(6)
Chief, CALD
USCIS Office of Chief Counsel

(b)(6)

From: (b)(6)
Sent: Tuesday, September 12, 2017 11:30:45 AM
To: (b)(6)
Subject: (b)(5)
(b)(5)

Hi (b)(6),

(b)(5)

Thanks,

(b)(6)

From: (b)(6)
Sent: Wednesday, September 6, 2017 12:26 PM

To: (b)(6)

Subject: (b)(5)
(b)(5)

Thanks.

(b)(6)
USCIS, Office of Chief Counsel

(b)(6)

From: (b)(6)
Sent: Wednesday, September 06, 2017 12:18 PM

To: (b)(6)

Subject: (b)(5)
(b)(5)

Hi (b)(6)

(b)(5)

If I could be cc'ed on the final copy I would appreciate it.

Thanks,

(b)(6)

From: (b)(6)
Sent: Wednesday, September 6, 2017 9:51 AM

To: (b)(6)

Subject: (b)(5)
(b)(5)

(b)(6) (b)(5) This is the draft message we are
contemplating sending (b)(5)

(b)(6)
USCIS, Office of Chief Counsel

(b)(6)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMON CAUSE,
Plaintiff,

v.

PRESIDENTIAL ADVISORY COMMITTEE ON
ELECTION INTEGRITY,

and

U.S. DEPARTMENT OF HOMELAND
SECURITY,

and

U.S. SOCIAL SECURITY ADMINISTRATION
Defendants.

Case No. 1:17-cv-01398 (RCL)

NOTICE OF FILING OF AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(a)(2), Plaintiff Common Cause hereby notifies the Court of the filing of the AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF with Defendants' written consent.

This case is related to the following cases pending before Judge Kollar-Kotelly of this Court:

- *Electronic Privacy Information Center v. Trump, et al.*, 1:17-cv-01320-CKK (D.D.C.);
- *American Civil Liberties Union v. Trump, et al.*, 1:17-cv-01351-CKK (D.D.C.);
and
- *Lawyers' Committee for Civil Rights Under Law v. Presidential Advisory Commission on Election Integrity, et al.*, 1:17-cv-01354-CKK (D.D.C).

Dated: September 13, 2017

Respectfully submitted,

/s/ Skye L. Perryman

Javier M. Guzman

(D.C. Bar No. 462679)

Josephine Morse *pro hac vice*

Skye L. Perryman

D.C. Bar No. 984573

Karianne M. Jones *pro hac vice*

Democracy Forward Foundation

P.O. Box 34553

Washington, D.C. 20043

(202) 448-9090

jguzman@democracyforward.org

jmorse@democracyforward.org

sperryman@democracyforward.org

kjones@democracyforward.org

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September, 2017, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF system, which will send a notice of filing to all counsel of record.

/s/ Skye L. Perryman _____

SKYE L. PERRYMAN

From:	(b)(6)
To:	(b)(6)
Subject:	FW: Common Cause v. PACEI, et al - Amended Complaint
Date:	2017/09/14 09:44:22
Priority:	Normal
Type:	Note

FYSA.

From: (b)(6)
Sent: Thursday, September 14, 2017 9:24 AM
To: (b)(6)
Cc: (b)(6)
Subject: Common Cause v. PACEI, et al - Amended Complaint

Hi (b)(6)

(b)(5)

Best,

(b)(6)

(b)(6)

Trial Attorney, U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW | Washington, DC 20530

(b)(6)

Sender:	(b)(6)
Recipient:	(b)(6)
Sent Date:	2017/09/14 09:44:22

EXHIBIT A

EXHIBIT 3

ACRONYMS

Commission or PACEI	Presidential Advisory Commission on Election Integrity
DFO	Designated Federal Officer
DHS	Department of Homeland Security
DOD	Department of Defense
DOJ	Department of Justice
DWHIT	Director of White House Information Technology
EEOB	Eisenhower Executive Office Building
EFT	Electronic Funds Transfer
EOP	Executive Office of the President
EPIC	Electronic Privacy Information Center
FACA	Federal Advisory Committee Act
FOIA	Freedom of Information Act
GAI	Government Accountability Institute
GAO	Government Accountability Office
GSA	General Services Administration
IT	Information Technology
MOU	Memorandum of Understanding
NARA	National Archives and Records Administration
NASS	National Association of Secretaries of State
OMB	Office of Management and Budget
OVP	Office of the Vice President
PRA	Presidential Records Act
SAFE	Safe Access File Exchange
SGE	Special Governmental Employee
SoS	Secretary of State
SSA	Social Security Administration
TRO	Temporary Restraining Order
VP	Vice President

1	Document(s)/Category Description	Document Originator (if applicable)	Document Recipient(s) (if applicable)	Date Document Created and/or Shared (if applicable)	Commission Views as Subject to 10(b)?	Has Document Been Currently Disclosed?	Rational for non-disclosure (see 3d Kossack Decl. ¶ 12)
2							
3	<i>Public Documents Related to the Creation and Organization of the Commission</i>						
4	Executive Order No. 13,799, establishing the Commission	The President	Members of the Public	11-May-17	Yes	Yes	NA
5	White House Press Release: President Announces Formation of Bipartisan Presidential Commission on Election Integrity (May 11, 2017)	White House Press Secretary	Members of the Public	11-May-17	Yes	Yes	NA
6	Charter: Presidential Advisory Commission on Election Integrity	Commission Staff	Commission Members	23-Jun-17	Yes	Yes	NA
7	<i>Public Documents Related to June 28 Organizational Call</i>						
8	Agenda for June 28, 2017, Organizational Conference Call	Commission Staff	Commission Members	For June 28 call	Yes	Yes	NA
9	Email regarding June 28, 2017, initial organizational call	Kossack	Commission Members	For June 28 call	No	discretionary release	NA
10	Readout of the Vice President's Call with the Presidential Advisory Commission on Election Integrity	White House Office of the Vice President	Members of the Public	28-Jun-17	Yes	Yes	NA
11	<i>Public Documents Related to July 19 Meeting</i>						
12	PACEI Bylaws (as adopted and as drafted)	Commission Staff	Commission Members	For July 19 meeting	Yes	Yes	NA
13	List of Possible Topics for Commission to Address	Kobach	Commission Members	For July 19 meeting	Yes	Yes	NA
14	GSA briefing on FACA and Presidential Records Act	GSA	Commission Members	Presentation delivered at an administrative session held before the July 19 meeting began	No	discretionary release	NA

1	Document(s)/Category Description	Document Originator (if applicable)	Document Recipient(s) (if applicable)	Date Document Created and/or Shared (if applicable)	Commission Views as Subject to 10(b)?	Has Document Been Currently Disclosed?	Rational for non-disclosure (see 3d Kossack Decl. ¶ 12)
15	GSA briefing on Ethics Training for SGEs	GSA	Commission Members	Presentation delivered at an administrative session held before the July 19 meeting began	No	discretionary release	NA
16	Heritage Foundation: Database entitled A sampling of Election Fraud Cases From Across the Country	Shared by von Spakovsky	Commission Members	For July 19 meeting	Yes	Yes	NA
17	Report: Election Administration and Voting Survey - 2016 Comprehensive Report (by U.S. Election Assistance Commission)	Shared by McCormack	Commission Members	For July 19 meeting	Yes	Yes	NA
18	Opening Statement of J. Kenneth Blackwell (shared with other members)	Blackwell	Commission Members	For July 19 meeting	Yes	Yes	NA
19	PowerPoint presentation by Hans von Spakovsky (untitled)	von Spakovsky	Commission Members	For July 19 meeting	Yes	Yes	NA
20	Yale Law & Policy Review Article: The Other Voting Right: Protecting Every Citizen's Vote by Safeguarding the Integrity of the Ballot Box, by J. Kenneth Blackwell & Kenneth A. Klukowski	Shared by Blackwell	Commission Members	For July 19 meeting	Yes	Yes	NA
21	Video of the July 19 PACEI Meeting	Commission Staff	Commission Members	For July 19 meeting	Yes	Yes	NA
22	Remarks by President Trump and Vice President Pence at the Presidential Advisory Commission on Election Integrity meeting	White House Press Secretary	Members of the Public	19-Jul-17	Yes	Yes	NA
23	Remarks by Vice President Pence and Elected Officials at the First Meeting of the Presidential Advisory Commission on Election Integrity	White House Office of the Vice President	Members of the Public	19-Jul-17	Yes	Yes	NA
24	July 19, 2017 meeting agenda	Commission Staff	Commission Members	For July 19 meeting	Yes	Yes	NA
25	Revised July 19, 2017 meeting agenda	Commission Staff	Commission Members	For July 19 meeting	Yes	Yes	NA
26	Federal Register Meeting Notice for July 19 meeting	Commission Staff	Members of the Public	5-Jul-17	Yes	Yes	NA
27	<i>Public Documents Related to September 12 Meeting</i>						
28	Announcement of September 12 Commission Meeting	White House Press Secretary	Members of the Public	24-Aug-17	Yes	Yes	NA

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29	Federal Register Meeting Notice for September 12, 2017 meeting	Commission Staff	Members of the Public	24-Aug-17	Yes	Yes	NA
30	Agenda for September 12, 2017 Commission Meeting	Commission Staff	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
31	Written statement by Donald Palmer, Panelist at Sept. 12 meeting, entitled "Election Integrity Issues Affecting Public Confidence"	Donald Palmer (Panelist)	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
32	PowerPoint presentation by Andrew E. Smith, Panelist at Sept. 12 meeting, entitled "Turnout and Voter Trust"	Andrew E. Smith (Panelist)	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
33	PowerPoint presentation by John R. Jott, Jr., Panelist at Sept. 12 meeting, entitled "A suggestion and some evidence"	John R. Lott, Jr. (Panelist)	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
34	Updated PowerPoint presentation by John R. Lott, Jr., Panelist at Sept. 12 meeting, entitled "A suggestion and some evidence"	John R. Lott, Jr. (Panelist)	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
35	PowerPoint presentation by Ronald L. Rivest, Panelist at September 12 meeting, entitled "Remarks on Election Integrity"	Ronald L. Rivest (Panelist)	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
36	Report by Government Accountability Institute: "America the Vulnerable: The Problem of Duplicate Voting"	Shared by von Spakovsky	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
37	PowerPoint presentation by Hans von Spakovsky, PACEI Member/Panelist at Sept. 12 meeting (untitled)	von Spakovsky	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
38	PowerPoint presentation by Harri Hursti, Panelist at Sept. 12 meeting, entitled "Threat models and the tools of the industry"	Harri Hursti (Panelist)	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
39	PowerPoint presentation by Ken Block, Panelist at Sept. 12 meeting, entitled "Data Mining for Potential Voter Fraud"	Ken Block (Panelist)	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
40	PowerPoint presentation by Kimball Brace, panelist at Sept. 12 meeting, entitled "The Election Process From a Data Prospective"	Kimball Brace (Panelist)	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
41	Updated PowerPoint presentation by Kimball Brace, panelist at Sept. 12 meeting, entitled "The Election Process From a Data Prospective"	Kimball Brace (Panelist)	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
42	Letter from Shawn N. Jasper, Speaker of the New Hampshire House of Representatives, to New Hampshire Secretary of State and Commissioner of Department of Public Safety re: efforts to insure the accuracy and validity of New Hampshire's voter checklists	Shared by Secretary Gardner	Commission Members	For Sept. 12 meeting	Yes	Yes	NA

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43	PowerPoint presentation by William Gardner, Commission Member/Sept. 12 meeting host (untitled)	Gardner	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
44	PowerPoint presentation by Andrew W. Appel, Panelist at Sept. 12 meeting, entitled "Record and counting votes in a trustworthy way"	Andrew W. Appel (panelist)	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
45	Press release by N.H. Speaker Jasper re: response to inquiry of NH Departments of State and Safety	Shared by Gardner	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
46	Response to N.H. Speaker's request for information by N.H. Department of State and Department of Safety, re: voter verification request	Shared by Gardner	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
47	Written statement by Judge Alan L. King, PACEI Member, entitled "Statement of Issues/Recommendations"	King	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
48	Paper: "Evidence of Voter Fraud and the Impact that Regulations to Reduce Fraud have on Voter Participation Rates," by John R. Lott, Jr. (2007)	John R. Lott, Jr. (Panelist)	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
49	Report: "Garden State Gotcha" by Public Interest Legal Foundation (Sept. 2017)	Shared by Adams	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
50	Belitto v. Sinipes, 221 F. Supp. 3d 1354 (S.D. Fla. 2016)	Shared by Adams	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
51	ACLU v. Martinez-Rivera, 166 F. Supp. 3d 779 (S.D. Fla. 2017)	Shared by Adams	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
52	Voter Integrity Project NC, Inc. v. Wake Cty. Bd. of Elections, No. 5:16-cv-683-BR (E.D.N.C. Feb. 21, 2017)	Shared by Adams	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
53	Bates in the News: Nov. 11, 2016 - Voter Suppression (by Jay Burns)	Shared by Dunlap	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
54	Written Statement by Robert D. Popper, Panelist at Sept. 12 meeting, entitled "It is Time to Start Enforcing the National Voter"	Robert D. Popper (panelist)	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
55	Article: "It Appears That Out-of-State Voters Changed The Outcome of the New Hampshire U.S. Senate Race" (by Kris Kobach, published on Breitbart)	Kobach	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
56	List of panelists and biographies for Sept. 12 Meeting	Commission Staff	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
57	Report: "Alien Invasion II: The Sequel to the Discovery and Cover-Up of Non-Citizen Registration and Voting in Virginia" (by Public Interest Legal Foundation)	Mentioned by Adams	Commission Members	For Sept. 12 meeting	Yes	Yes	NA
58	Guare v. New Hampshire, No. 2014-5 (N.H. 2015)	Mentioned by Kobach	Commission Members	For Sept. 12 meeting	Yes	Yes	NA

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59	New Hampshire Voter Registration Form	Mentioned by Kobach	Commission Members	For Sept. 12 meeting	yes	Yes	NA
60	<i>Public Documents Related to Request to States for Data/Views</i>						
61	June 28, 2017, letter from Kobach to states, requesting views, recommendations, and publically available data (identical copies sent to election officials of the 50 states and District of Columbia)	Kobach	State Election Officials	28-Jun-17	Yes	Yes	NA
62	Statement from Kobach, Kansas Secretary of State and Vice Chair of the Presidential Advisory Commission on Election Integrity (related to data collection)	White House Press Secretary	Members of the Public	5-Jul-17	Yes	Yes	NA
63	July 26, 2017, letter from Kobach to state election officials, renewing June 28 informational request (identical copies sent to election officials of the states and the District of Columbia)	Kobach	State Election Officials	26-Jul-17	Yes	Yes	NA
64	Response to Data Request Letter	Michele Reagan, Arizona Secretary of State	Kobach	3-Jul-17	Yes	Yes	NA
65	Response to Data Request Letter	John Merrill, Alabama Secretary of State	Kobach	5-Jul-17	Yes	Yes	NA
66	Response to Data Request Letter	Jesse White, Illinois Secretary of State	Kobach	5-Jul-17	Yes	Yes	NA
67	Response to Data Request Letter	Ken Drezner, Florida Secretary of State	Kobach	6-Jul-17	Yes	Yes	NA
68	Response to Data Request Letter	Paul Zirax, Secretary of the Oklahoma State Election Board	Kobach	6-Jul-17	Yes	Yes	NA
69	Response to Data Request Letter	Kenneth R. Menzel, General Counsel, Illinois State Board of Elections	Kobach	7-Jul-17	Yes	Yes	NA
70	Response to Data Request Letter	Shantel Krebs, South Dakota Secretary of State	Kobach	10-Jul-17	Yes	Yes	NA
71	Response to Data Request Letter	Frank Jung, General Counsel, Missouri Secretary of State	Kobach	10-Jul-17	Yes	Yes	NA

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72	Response to Data Request Letter	Mac Warner, West Virginia Secretary of State	Kobach	11-Jul-17	Yes	Yes	NA
73	Response to Data Request Letter	Wayne W. Williams, Colorado Department of State	Kobach	14-Jul-17	Yes	Yes	NA
74	Response to Data Request Letter	Ed Murray, Wyoming Secretary of State	Kobach	14-Jul-17	Yes	Yes	NA
75	Response to Data Request Letter	Tre Hargett, Tennessee Secretary of State	Kobach	14-Jul-17	Yes	Yes	NA
76	Response to Data Request Letter	Delbert Hosemann, Mississippi Secretary of State	Kobach	19-Jul-17	Yes	Yes	NA
77	Response to Data Request Letter	James C. Condos, Vermont Secretary of State	PACEI	19-Jul-17	Yes	Yes	NA
78	Response to Data Request Letter	John Husted, Ohio Secretary of State	Commission Members	24-Jul-17	Yes	Yes	NA
79	Response to Data Request Letter	John Husted, Ohio Secretary of State	PACEI	24-Jul-17	Yes	Yes	NA
80	Response to Data Request Letter	Paul O. Pate, Iowa Secretary of State	Kobach	26-Jul-17	Yes	Yes	NA
81	Response to Data Request Letter	Scoti T. Nago, Chief Election Officer, Hawaii	Kobach	27-Jul-17	Yes	Yes	NA
82	Response to Data Request Letter	Bryan A. Caskey, Director of Elections, Kansas Secretary of State	Williams	27-Jul-17	Yes	Yes	NA
83	Response to Data Request Letter	John Conklin, Director of Public Information, NYS Board of Elections	Kossack	27-Jul-17	Yes	Yes	NA
84	Email re: point of contact for secure transfer of voting data	Brandon Newell, Office of Secretary of State, Arkansas	Williams	27-Jul-17	Yes	Yes	NA

1	Document(s)/Category Description	Document Originator (if applicable)	Document Recipient(s) (if applicable)	Date Document Created and/or Shared (if applicable)	Commission Views as Subject to 10(b)?	Has Document Been Currently Disclosed?	Rational for non-disclosure (see 3d Kossack Decl. ¶ 12)
85	Response to Data Request Letter	Wayne Thorley, Nevada Deputy Secretary of State for Elections	Williams	28-Jul-17	Yes	Yes	NA
86	Response to Data Request Letter	Matthew Dunlap, Maine Secretary of State	Kobach	31-Jul-17	Yes	Yes	NA
87	Letter containing instructions to request information from Texas databases	Lindsey Aston, General Counsel, Texas Secretary of State	Kobach	31-Jul-17	Yes	Yes	NA
88	Response to Data Request Letter	Jerold A. Bonnet, General Counsel, Office of the Indiana Secretary of State	Kobach	4-Aug-17	Yes	Yes	NA
89	Response to Data Request Letter	Tom Schedler, Louisiana Secretary of State	PACEI	9-Aug-17	Yes	Yes	NA
90	Response to Data Request Letter	Jade K. Fountain-Tanigawa, Office of the County Clerk, County of Kauai	Kobach	10-Aug-17	Yes	Yes	NA
91	Response to Data Request Letter	Bryon Mallott, Alaska Lt. Gov.	Kobach	21-Aug-17	Yes	Yes	NA
92	Response to Data Request Letter	Steve Simon, Minnesota Secretary of State	Kobach	22-Aug-17	Yes	Yes	NA
93	Response to Data Request Letter	Elaine Manlove, Delaware State Election Commissioner	Kobach	28-Aug-17	Yes	Yes	NA
94	Response to Data Request Letter	Alvin A. Jaeger, North Dakota Secretary of State	PACEI	5-Sep-17	Yes	Yes	NA
95	Response to Data Request Letter	John A. Gale, Nebraska Secretary of State	Kobach	19-Sep-17	Yes	Yes	NA

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96	Response to Data Request Letter	Kenneth Menzel, General Counsel, Illinois State Board of Elections	Kobach	19-Sep-17	Yes	Yes	NA
97	<i>State Data Received -- Listed by State</i>						
98	Arkansas				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
99	North Carolina				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
100	Florida				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
101	Ohio				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
102	Colorado				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
103	Washington				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
104	Nevada				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
105	New York				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
106	Kansas				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
107	Oklahoma				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
108	New Jersey				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11

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109	Hawaii (Kaua'i County)				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
110	Montana				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
111	Pennsylvania				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
112	West Virginia				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
113	Alaska				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
114	Idaho				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
115	Oregon				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
116	Missouri				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
117	Iowa				Yes	No	Exempt pursuant to (b)(6). See 3d Kossack Decl. ¶ 11
118	Other Public Documents						
119	Book: Who's Counting? How Fraudsters and Bureaucrats Put Your Vote at Risk, by June Fund and Hans von Spakovsky	Shared by Hans von Spakovsky	Commission Members	Shared after July 19 meeting	Yes	Yes	NA
120	Public Comments received from members of the public to the Commission's email address and posted online	Members of the Public	Commission Members	6/29/17 - 09/12/2017	Yes	Yes	NA
121	Public Comments received from members of the public to the Commission's regulations.gov website and posted online	Members of the Public	Commission Members	Accepted through the submission of the Commission's final report	Yes	Yes	NA

1	Document(s)/Category Description	Document Originator (if applicable)	Document Recipient(s) (if applicable)	Date Document Created and/or Shared (if applicable)	Commission Views as Subject to 10(b)?	Has Document Been Currently Disclosed?	Rational for non-disclosure (see 3d Kossack Decl. ¶ 12)
122	Public comments submitted to Commission, but not posted publicly because comments are overly profane and/or contain threats, and contain nothing by way of substance	Members of the Public	Commission Members	Since June 2017	No	No	(a)
123	Letter from Sen. Amy Klobuchar, et al. re: Commission activities	Members of Congress	The Vice President and Kobach	6/29/2017	Yes	Yes	NA
124	Letter from Sen. Amy Klobuchar, et al. re: Commission activities	Members of Congress	The Vice President and Kobach	7/6/2017	Yes	Yes	NA
125	Letter from Sen. Tester and Gov. Bullock re: Commission activities	Montana officials	The Vice President and Kobach	7/11/2017	Yes	Yes	NA
126	Letter from Rep. Cummings, et al. re: Commission activities	Members of Congress	Commission Members	7/18/2017	Yes	Yes	NA
127	Letter from Rep. Eshoo, et al. re: Commission activities	Members of Congress	The Vice President and Kobach	7/18/2017	Yes	Yes	NA
128	Letter from Sens. Klobuchar and Whitehouse re: Commission activities	Sens. Klobuchar and Whitehouse	Commission Members	9/12/2017	Yes	Yes	NA
129	Statement by Sen. Shaheen re: Sept 12 meeting re: Commission activities	Sen. Shaheen	Commission Members	9/12/2017	Yes	Yes	NA
130	<i>Emails Sent by Commission DFO to Commission Membership (To avoid repetition, these documents are not also listed separately under each Commissioner)</i>						
131	Welcome and Initial Organizational Call	Kossack	Commission Members	26-Jun-17	No	discretionary release	N/A
132	Email planner holding June 28, 2017 Organizational Call	Kossack	Commission Members	27-Jun-17	No	No	(b)
133	Email sending agenda for June 28, 2017 organizational call	Kossack	Commission Members	27-Jun-17	No	No	(b)
134	Updated email planner sending dial-in information for June 28 organizational call	Kossack	Commission Members	27-Jun-17	No	No	(b)
135	Email containing dial-in information related to June 28 call as well as documents related to ethics standards for special government employees	Kossack	Commission Members	27-Jun-17	No	No	(b)
136	Email containing copy of June 28 Kobach letter, to be sent to secretaries of state and chief state election officials	Kossack	Commission Members	28-Jun-17	No	No	(b)

	Document(s)/Category Description	Document Originator (if applicable)	Document Recipient(s) (if applicable)	Date Document Created and/or Shared (if applicable)	Commission Views as Subject to 10(b)?	Has Document Been Currently Disclosed?	Rational for non-disclosure (see 3d Kossack Decl. ¶ 12)
137	Email forwarding email sent from Commission to States, asking them to hold off sending data pending resolution of EPIC TRO	Kossack	Commission Members	10-Jul-17	No	No	(b)
138	Email regarding financial disclosure, EFT Enrollment form, and travel logistics for July 19 meeting	Kossack	Commission Members	11-Jul-17	No	No	(b)
139	Email regarding booking travel for July 19 meeting and reminder to submit 450 Financial Disclosure form	Kossack	Commission Members	13-Jul-17	No	No	(b)
140	Email containing agenda for July 19 meeting	Kossack	Commission Members	14-Jul-17	No	No	(b)
141	Email forwarding email from GSA containing information on how to book travel; cover email reviews meeting location and schedule	Kossack	Commission Members	14-Jul-17	No	No	(b)
142	Email containing logistical information for attending July 19 meeting and ethics question related to financial disclosure	Kossack	Commission Members	17-Jul-17	No	No	(b)
143	Email containing draft By-Laws, revised agenda, and reminder about July 19 meeting logistics	Kossack	Commission Members	18-Jul-17	No	No	(b)
144	Email containing instructions for travel expense reimbursements	Kossack	Commission Members	20-Jul-17	No	No	(b)
145	Email containing copies of letters received from Colorado and Wyoming secretaries of state	Kossack	Commission Members	21-Jul-17	No	No	(b)
146	Email containing letter from Ohio Secretary of State	Kossack	Commission Members	25-Jul-17	No	No	(b)
147	Email containing copy of July 26 letter from Kobach to states regarding data collection	Kossack	Commission Members	26-Jul-17	No	No	(b)
148	Email containing follow up communication from GSA regarding Hatch Act	Kossack	Commission Members	2-Aug-17	No	No	(b)
149	Email containing litigation holds (and attachments, i.e., complaints/filings)	Kossack	Commission Members	7-Aug-17	No	No	(b)
150	Email containing save-the-date for September 12 meeting	Kossack	Commission Members	18-Aug-17	No	No	(b)
151	Email containing travel and logistical information for September 12 meeting	Kossack	Commission Members	24-Aug-17	No	No	(b)
152	Email containing letter from Kobach regarding submission of meeting materials for September 12 meeting and reminder of litigation hold letter	Kossack	Commission Members	30-Aug-17	No	No	(b)
153	Email promising proposed agenda for September 12 meeting soon and asking members to submit any written materials by Sept. 7	Kossack	Commission Members	1-Sep-17	No	No	(b)

	Document(s)/Category Description	Document Originator (if applicable)	Document Recipient(s) (if applicable)	Date Document Created and/or Shared (if applicable)	Commission Views as Subject to 10(b)?	Has Document Been Currently Disclosed?	Rational for non-disclosure (see 3d Kossack Decl. ¶ 12)
154	Email containing reminder of ethics rules that govern teaching, speaking, and writing	Kossack	Commission Members	5-Sep-17	No	No	(b)
155	Email containing agenda for September 12 meeting	Kossack	Commission Members	5-Sep-17	No	No	(b)
156	Email containing revised agenda for September 12 meeting	Kossack	Commission Members	6-Sep-17	No	No	(b)
157	Email containing materials for September 12 meeting	Kossack	Commission Members	8-Sep-17	No	No	(b)
158	Email stating that materials prepared for September 12 meeting are posted online	Kossack	Commission Members	8-Sep-17	No	No	(b)
159	Email containing logistical information for September 12 meeting and reminder about FACA open-meeting requirements	Kossack	Commission Members	11-Sep-17	No	No	(b)
160	<i>Materials of Commission Member J. Christian Adams</i>						
161	Email forwarding news article	Adams	OVP Counsel	13-May-17	No	No	(h)
162	Email forwarding information about potential staff member for Commission	Adams	OVP Counsel	18-May-17	No	No	(g)
163	Email forwarding news article	Adams	OVP Counsel	30-May-17	No	No	(h)
164	Email forwarding news article	Adams	OVP Counsel	31-May-17	No	No	(h)
165	Email addressing potential research opportunities for Commission	Adams	OVP Counsel	5-Jun-17	No	No	(f)
166	Email addressing election integrity; suggesting potential outreach options	Adams	Kossack	5-Jul-17	No	No	(f)
167	Email about potential participants in Commission	Adams	Kossack, OVP Counsel	6-Jul-17	No	No	(g)
168	Email forwarding press release	Adams	Kossack, OVP Counsel, von Spakovsky	6-Jul-17	No	No	(h)
169	Email requesting Adam's preferred title for appointment announcement	Kossack	Adams	11-Jul-17	No	No	(c)
170	Email forwarding press release re: Adams' appointment to Commission	Adams	Kossack, OVP Counsel	11-Jul-17	No	No	(h)
171	Email forwarding link to television appearance	Adams	Kossack, OVP Counsel, von Spakovsky, Blackwell	17-Jul-17	No	No	(h)
172	Cover email forwarding material to be used for July 19 meeting	Adams	Kossack, OVP Counsel	18-Jul-17	No	No	(c)

1	Document(s)/Category Description	Document Originator (if applicable)	Document Recipient(s) (if applicable)	Date Document Created and/or Shared (if applicable)	Commission Views as Subject to 10(b)?	Has Document Been Currently Disclosed?	Rational for non-disclosure (see 3d Kossack Decl. ¶ 12)
173	Email requesting copy of photograph from July 19 meeting	Adams	OVP Counsel	20-Jul-17	No	No	personal
174	Email chain discussing potential data analysts	Adams	Kossack	28-Jul-17	No	No	(i)
175	Email exchange in response to press inquiry about Commission	Adams	Kossack, OVP Counsel, von Spakowsky	14-Aug-17	No	No	(j)
176	Email asking about September 12 meeting location	Adams	Kossack	18-Aug-17	No	No	(c)
177	Email forwarding news article	Adams	Kossack	31-Aug-17	No	No	(h)
178	Email sending copy of materials to be used at September 12 presentation	Adams	Kossack, von Spakowsky	1-Sep-17	No	No	(c)
179	Email forwarding third-party individual's request for press credentials for September 12 meeting	Adams	Kossack	1-Sep-17	No	No	(c)
180	Email responding to ethics reminder	Adams	Kossack, OVP Counsel, Williams	5-Sep-17	No	No	(c)
181	Cover email sending copy of materials to be used at September 12 presentation	Adams	Kossack, Kobach, OVP Counsel, Williams	7-Sep-17	No	No	(c)
182	Email forwarding link to article	Adams	Kossack	7-Sep-17	No	No	(h)
183	Email forwarding link to article	Adams	Kossack, OVP Counsel	10-Sep-17	No	No	(h)
184	Email sending copy of press release	Adams	Kossack, OVP Counsel	11-Sep-17	No	No	(h)
185	Email sending link to news article	Adams	Kossack, OVP Counsel, Williams	13-Sep-17	No	No	(h)
186	Email about potential witnesses at a future Commission meeting	Adams	Kossack, OVP Counsel, Williams	15-Sep-17	No	No	(f)
187	Email forwarding news article	Adams	Kossack, OVP Counsel, Williams	20-Sep-17	No	No	(h)
188	Miscellaneous emails related to travel booking				No	No	(c)
189	Miscellaneous emails related to the submission of financial disclosure and government ethics forms; copies of government ethics forms				No	No	(c)
190	<i>Materials of Commission Member Kenneth Blackwell</i>						
191	Email re: scheduling time to speak	OVP Counsel	Blackwell	19-May-17	No	No	(c)

1	Document(s)/Category Description	Document Originator (if applicable)	Document Recipient(s) (if applicable)	Date Document Created and/or Shared (if applicable)	Commission Views as Subject to 10(b)?	Has Document Been Currently Disclosed?	Rational for non-disclosure (see 3d Kossack Decl. ¶ 12)
192	Email re: appointment documents and background information	OVP	Blackwell	19-May-17	No	No	(c)
193	Email chain sharing multiple news articles	Blackwell	OVP counsel, WHO members	7/5/2017 - 7/6/2017	No	No	(h)
194	Mass email sharing tweets/facebook posts	Blackwell	Mass email, received by Kossack	11-Jul-17	No	No	(h)
195	Email sharing link to news article	Blackwell	OVP and EOP staff members	14-Jul-17	No	No	(h)
196	Emails sending copy of opening remarks and law review article	Blackwell	Kossack	18-Jul-17	No	No	(c)
197	Email re: Blackwell's media availability	Blackwell	EOP staff member	18-Jul-17	No	No	(c)
198	Four tweets posted on July 19, 2017	Blackwell	Twitter	19-Jul-17	No	Yes	(h)
199	Email containing photo of commissioners	Blackwell	Kossack, Kobach, von Spakovsky, Adams	20-Jul-17	No	No	personal
200	Email re: interview request	News Producer	Blackwell	10-Aug-17	No	No	(j)
201	Email re: formation of a new interest group	Blackwell	Kossack, Kobach, OVP Counsel	14-Aug-17	No	No	(h)
202	Email re: time to speak	Kossack	Blackwell	18-Aug-17	No	No	(c)
203	Travel authorization documents for September 12 meeting	Travel Agency	Blackwell	6-Sep-17	No	No	(c)
204	Email chain re: time to speak	Kossack	Blackwell	7-Sep-17	No	No	(c)
205	Handwritten notes from September 12 meeting	Blackwell	N/A	12-Sep-17	No	No	(k)
206	Miscellaneous emails related to travel booking				No	No	(c)
207	Miscellaneous emails related to the submission of financial disclosure and government ethics forms; copies of government ethics forms				No	No	(c)
208	<i>Materials of Commission Member Matthew Dunlap</i>						
209	Request for interview and email exchange with Dunlap staff member regarding logistics	Reporter	Dunlap and staff	11-May-17	No	No	(j)
210	Press Release	Office of California Secretary of State	Members of the Press/Public	11-May-17	No	No	(n)
211	Email forwarding public statement of Kentucky Secretary of State	NASS staffer	Dunlap and staff	11-May-17	No	No	(o)
212	Email forwarding press release	Advocacy group	Dunlap and staff	18-May-17	No	No	(n)