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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

November 2, 2021

**HOUSE REPUBLICAN CONFERENCE**  
**VICE CHAIRMAN**

**ASSISTANT WHIP**

**COMMITTEE ON THE JUDICIARY**

**SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS  
AND CIVIL LIBERTIES**  
**RANKING MEMBER**

**SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY  
AND THE INTERNET**

**SUBCOMMITTEE ON ANTITRUST, COMMERCIAL AND  
ADMINISTRATIVE LAW**

**COMMITTEE ON ARMED SERVICES**

**SUBCOMMITTEE ON READINESS**

**SUBCOMMITTEE ON CYBER, INNOVATIVE TECHNOLOGIES  
AND INFORMATION SYSTEMS**

The Honorable Merrick B. Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Dear Attorney General Garland:

I write to once again raise my concerns with respect to your October 4, 2021 memorandum targeting concerned parents at school board meetings.<sup>1</sup> As you know, I raised this issue when you appeared before the House Judiciary Committee on October 21, 2021. By any objective measure, your answers to very simple and direct questions during that hearing were inadequate. It is thus my obligation to again request information to determine whether you met your ethical obligations as our country's top law enforcement official in issuing the October 4 memorandum.

As we have discussed, the Code of Federal Regulations discourages Executive Branch officials from engaging in conduct that is likely to affect the financial interests of "a person with whom he has a covered relationship."<sup>2</sup> The Code further defines a covered relationship to include "a relative with whom the employee has a close personal relationship."<sup>3</sup> It has been widely publicized that your son-in-law co-founded Panorama Education, a company that "sells surveys to school districts across the country that focus on the local 'social and emotion climate.'"<sup>4</sup> These surveys are then used as the basis to promulgate curricula that millions of parents find objectionable—the same parents you targeted in your October 4 memorandum. Because your memorandum is viewed by millions of Americans as an effort to silence parents who raise concerns about a core financial interest of your family members, I sought information from you on this issue during your appearance before Congress.

In your testimony before the House Judiciary Committee, you insisted you are "very familiar" with the ethics requirements set forth in the Code of Federal Regulations.<sup>5</sup> However, you repeatedly failed to directly answer whether you consulted with the appropriate Department of Justice ethics officials

<sup>1</sup> Memorandum from Atty Gen. Merrick Garland, U.S. Dep't of Justice, Partnership Among Federal, State, Local, Tribal, And Territorial Law Enforcement to Address Threats Against School Administrators, Board Members, Teachers, and Staff (Oct. 4, 2021).

<sup>2</sup> Impartiality in Performing Official Duties, 5 C.F.R. §§ 2635.501(a) & 2635.502(b)(1)(ii) (1997).

<sup>3</sup> *Id.*

<sup>4</sup> Adam Andrzejewski, *Panorama Education, Co-Founded by U.S. AG Merrick Garland's Son-in-Law, Contracted with 23,000 Public Schools & Raised \$76m from Investors*, *Forbes* (Oct. 12, 2021).

<https://www.forbes.com/sites/adamandrzejewski/2021/10/12/panorama-education-owned-by-us-ag-merrick-garlands-son-in-law-contracted-with-23000-public-schools-for-social--emotional-climate-surveys/?sh=39c9e6154e60>

<sup>5</sup> *Oversight of the U.S. Department of Justice, Hearing Before the House Committee on the Judiciary*, 117<sup>th</sup> Congress (2021).

before issuing the memorandum. You provided similar responses before the Senate Judiciary Committee, but you suggested your memorandum had “no predictable effect” on the financial interests of your family.<sup>6</sup>

Respectfully, you are not in a position to make this determination. The Code of Federal Regulations is in place so independent third parties can review the relevant facts free from any biases an involved official may harbor. Your failure to directly answer my questions further erodes Americans’ faith in our institutions and the principle of equal justice under the law. In yet another attempt to assure concerned citizens there are not two standards of justice in our republic, I implore you to answer the following questions and provide all relevant documents regarding your ethical obligations in issuing the October 4 memorandum.

1. Have you sought counsel from the appropriate ethics officials at the Department of Justice regarding whether your October 4 memorandum violates any ethical requirements to which Executive Branch employees are bound?
2. If your answer to question 1 is in the affirmative, will you make the findings of that ethics determination available to the public?
3. If your answer to question 1 is in the negative, will you submit to an ethics inquiry conducted by the appropriate Department of Justice ethics officials and make the results of that inquiry available to the public?

Please provide your responses no later than November 19, 2021.

Sincerely,



Mike Johnson  
Member of Congress

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<sup>6</sup> *Oversight of the Department of Justice, Hearing Before the Senate Committee on the Judiciary, 117<sup>th</sup> Congress (2021).*

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051  
MINORITY (202) 225-5074

<https://oversight.house.gov>

November 3, 2021

The Honorable Merrick B. Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

Dear Attorney General Garland:

We write to request documents and information about your October 4, 2021, memorandum directing law enforcement—including the Federal Bureau of Investigation (FBI)—to work with U.S. Attorneys offices to mitigate threats against “school administrators, board members, teachers, and staff.”<sup>1</sup> Violence against any group must not be tolerated, particularly violence against those who educate our children. Yet, we are concerned that you issued the memorandum as a pretext to silence parents across the country who are exercising their First Amendment rights to vigorously debate policies that directly affect their children.

In the wake of the year-long school closures in many parts of the U.S., parents have grown increasingly frustrated with the quality of their children’s education. Parents across the country are exercising their rights to speak out on a range of issues such as the availability of in-person schooling, whether masks should be required, and what the curriculum should and should not include. Their voices deserve to be heard. School boards are not above reproach as was revealed by hot microphone, closed door Zoom school board meetings during the height of the pandemic.<sup>2</sup> Moreover, what is more fundamental and constitutionally privileged than a parent speaking on behalf of their children’s education?

Five days before you issued the memorandum, the National School Boards Association (NSBA) sent a letter to President Biden calling on his Administration to involve law enforcement to counter “propaganda purporting the false inclusion of critical race theory within classroom

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<sup>1</sup> Memorandum for Director, Federal Bureau of Investigation, et. al. from Merrick B. Garland, Attorney General re *Partnership among Federal, State, Local, Tribal, and Territorial Law Enforcement to Address Threats Against School Administrators, Board Members, Teachers, and Staff* (Oct. 4, 2021).

<sup>2</sup> Fitzsimons, Tim & Nicole Acevedo, *Entire California school board out after disparaging parents on accidental Zoom broadcast*, NBC NEWS (Feb. 19, 2021).



instruction and curricula” and likening parental advocacy to “a form of domestic terrorism.”<sup>3</sup> That letter strings together a series of anecdotes—many of which did not involve actual violence or threats of violence—to make the case that threats against school officials are on the rise, and puts the blame squarely on parents and other concerned individuals whose advocacy the letter views as disruptive. Reports have now surfaced that the White House may have been involved in discussions with the NSBA in drafting their letter before it was published.<sup>4</sup> This is particularly troubling given that NSBA President Viola Garcia was appointed to the National Assessment of Educational Progress Governing Board shortly after sending this letter, raising the possibility of a quid-pro-quo appointment in exchange for sending it.<sup>5</sup> This board is responsible for developing the assessment of what U.S. students know and can do in various subjects<sup>6</sup>—basically oversight over the country’s school curriculum.

Your memorandum unnervingly echoed the NSBA’s claim that “there has been a disturbing spike in harassment, intimidation, and threats of violence” against school officials. Your memorandum, however, did not include any supporting evidence or examples. You even appeared to be unaware of any evidence of such violence when you testified before the House Judiciary Committee on October 21.<sup>7</sup> The memorandum was also strangely devoid of any information regarding the relevant statutory framework for prosecution of alleged violence.

Based on the timing and content of your October 4 memorandum, the Biden Administration appears to have reflexively reacted to the NSBA’s accusatory September 29, 2021, letter. Further, the Biden White House may have colluded with the NSBA on its letter with the intent to stifle debate and silence parents. Significantly, the NSBA Board of Directors repudiated that letter, and the NSBA itself issued an apology for it on October 22, 2021.<sup>8</sup> You have not, however, retracted your October 4 memorandum. You have persisted with your belief that the task forces created by the memorandum are necessary during testimony before the Senate Judiciary Committee on October 27.<sup>9</sup> And you may even have a conflict of interest. Your son-in-law, Xan Tanner, owns a company, Panorama Education, that provides surveys to school districts that support the introduction of Critical Race Theory in schools, which is one of the issues that parents have raised to their school boards.<sup>10</sup> We hope that your Department will

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<sup>3</sup> Letter from Viola M. Garcia, President, National School Boards Association to President Joseph R. Biden (Sept. 29, 2021).

<sup>4</sup> Downey, Caroline, *National School Board Group Communicated with White House while Crafting Letter Likening Parents to Terrorists*, NATIONAL REVIEW (Oct. 21, 2021).

<sup>5</sup> U.S. Department of Education, Press Release, *Five Board Members Appointed to Board Overseeing the Nation’s Report Card* (Oct. 13, 2021), available at <https://www.ed.gov/news/press-releases/five-board-members-appointed-board-overseeing-nations-report-card>.

<sup>6</sup> THE NATIONAL ASSESSMENT GOVERNING BOARD, OVERVIEW, <https://www.nagb.gov/governing-board/overview.html>, (last visited Oct. 26, 2021).

<sup>7</sup> Chamberlain, Samuel, *National School Boards Association disavows letter that led to FBI parent crackdown*, N.Y. POST (Oct. 22, 2021).

<sup>8</sup> *Id.*

<sup>9</sup> Downey, Caroline, *Garland Refuses to Dissolve School-Board Task Force Despite National School Board Group Apology*, NATIONAL REVIEW (Oct. 27, 2021).

<sup>10</sup> Andrzejewski, Adam, *Panorama Education, Co-Founded By U.S. AG Merrick Garland’s Son-In-Law, Contracted with 23,000 Public Schools & Raised \$76M From Investors*, FORBES (Oct. 12, 2021).

distinguish such vigorous debate—an entirely lawful and Constitutionally protected activity—from actual threats of violence.

To assist the Republicans on the Committee in understanding why this policy was necessary and how it will be implemented, please provide the following documents and information no later than November 17, 2021:

1. All available Department of Justice data you relied on in making the assertion that “there has been a disturbing spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff...”;
2. All drafts and prior iterations of the memorandum the Department of Justice finally published;
3. All communications between or among the employees of the Department of Justice and the White House regarding issuance of the memorandum;
4. All Department of Justice prosecution guidelines or policies relevant to whether a parent would be prosecuted for seeking to “intimidate individuals based on their views,” including what statutory violations would be implicated in such a case, and how the Department of Justice distinguishes peaceful advocacy from such unlawful intimidation;
5. All documents and information in connection with any ethics guidance you sought related to issuance of the memorandum; and
6. All Department of Justice guidelines or policies for ensuring that prosecutions are not targeting individuals in retaliation for exercising fundamental rights or civil liberties.

Thank you for your consideration of this important issue. To make arrangements to deliver documents or ask any related follow-up questions, please contact Committee on Oversight and Reform Republican Staff at (202) 225-5074. The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Thank you in advance for your cooperation with this inquiry.

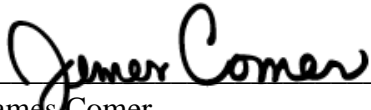
Sincerely,



Nancy Mace  
Ranking Member  
Subcommittee on Civil Rights  
& Civil Liberties



Ralph Norman  
Ranking Member  
Subcommittee on Environment



James Comer  
Ranking Member  
Committee on Oversight Reform



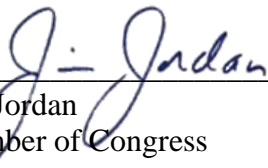
Jody Hice  
Ranking Member  
Subcommittee on Government  
Operations



Glenn S. Grothman  
Ranking Member  
Subcommittee on National Security



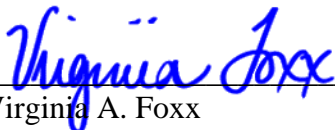
Michael Clourd  
Ranking Member  
Subcommittee on Economic and  
Consumer Policy



Jim Jordan  
Member of Congress



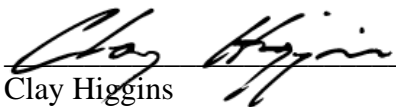
Paul A. Gosar, D.D.S.  
Member of Congress



Virginia A. Foxx  
Member of Congress



Bob Gibbs  
Member of Congress



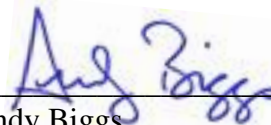
Clay Higgins  
Member of Congress



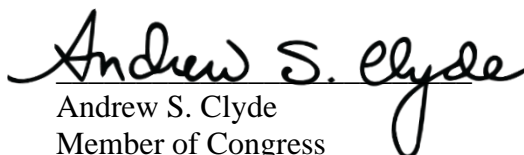
Pete Sessions  
Member of Congress



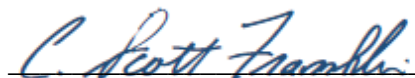
Fred Keller  
Member of Congress



Andy Biggs  
Member of Congress



Andrew S. Clyde  
Member of Congress



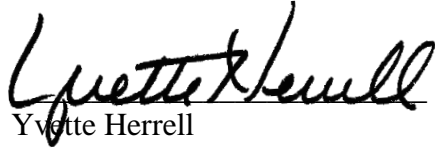
Scott Franklin  
Member of Congress



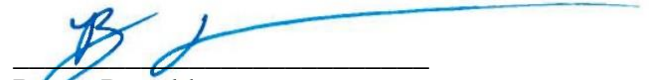
Jake LaTurner  
Member of Congress



Pat Fallon  
Member of Congress



Yvette Herrell  
Member of Congress



Byron Donalds  
Member of Congress

cc: The Honorable Carolyn Maloney, Chairwoman  
Committee on Oversight and Reform

The Honorable Gerald E. Connolly, Chairman  
Subcommittee on Government Operations

The Honorable Stephen F. Lynch, Chairman  
Subcommittee on National Security

The Honorable Raja Krishnamoorthi, Chairman  
Subcommittee on Economic and Consumer Policy

The Honorable Ro Khanna, Chairman  
Subcommittee on Environment

The Honorable Jamie Raskin, Chairman  
Subcommittee on Civil Rights and Civil Liberties

**From:** Greenfeld, Helaine A. (OLA)  
**Subject:** Questionnaire and 278 submissions  
**To:** DeBonis, Dena I. (PAO)  
**Sent:** January 22, 2021 4:52 PM (UTC-05:00)

Sorry to bombard you – this is a new topic. We are preparing to be able to submit Judge Garland’s questionnaire and financial disclosure statement to the Judiciary Committee on Monday. Should we make time maybe tomorrow to talk though with Matt how we can help you with any rollout or inquiries?

And then on Wednesday we are hoping to submit for Lisa Monaco and Vanita Gupta, so we should figure that out next.  
H

Helaine Greenfeld  
Acting Assistant Attorney General for the Office of Legislative Affairs  
U.S. Department of Justice



**From:** (b)(6) Matthew Klapper (OAG)  
**Subject:** Fwd: PRECLEARED: Merrick Garland - [message and attachment(s) contain CUI]  
**To:** DeBonis, Dena I. (PAO); Greenfeld, Helaine A. (OLA)  
**Sent:** January 28, 2021 9:45 PM (UTC-05:00)  
**Attached:** CUI Cover Sheet.pdf, Precleared EA - Garland.docx

FYI- This will transmit to committee soon.

Sent from my iPhone

Begin forwarded message:

**From:** "Raviv, Adam M. EOP/WHO" (b) (6)  
**Date:** January 28, 2021 at 7:44:08 PM EST  
**To:** "Secreta, James V. EOP/WHO" (b) (6) "Mann, Myles H. EOP/WHO"  
(b) (6) "Tobar, Maria D. EOP/WHO" (b) (6)  
Andrew Bates (b) (6) , "Klapper, Matthew B. (OAG)" (b) (6)  
**Cc:** "Duross, Jeanne M. EOP/WHO" (b) (6) "Phillips, Anjali W.  
EOP/WHO" (b) (6) "Songer, Erica K. EOP/WHO"  
(b) (6)  
**Subject:** FW: PRECLEARED: Merrick Garland - [message and attachment(s) contain CUI]

Merrick Garland has been precleared by OGE. His ethics materials are attached. He has already been nominated.

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**From:** Patrick J. Lightfoot <pjlightf@oge.gov>  
**Sent:** Thursday, January 28, 2021 6:05 PM  
**To:** Raviv, Adam M. EOP/WHO (b) (6) Duross, Jeanne M. EOP/WHO  
(b) (6) Phillips, Anjali W. EOP/WHO (b) (6)  
Olorunnipa, Funmi B. EOP/WHO (b) (6)  
**Cc:** 'Shaw, Cynthia K. (JMD)' (b) (6)  
**Subject:** RE: PRECLEARED: Merrick Garland - [message and attachment(s) contain CUI]

CONTROLLED

Email and attachment(s) contain CUI.

Good evening all,

Judge Garland's ethics agreement is attached.

Sincerely,

--

Patrick J. Lightfoot [he/him]  
Assistant Counsel, Ethics Law & Policy Branch  
General Counsel & Legal Policy Division

U.S. Office of Government Ethics  
1201 New York Ave NW, Suite 500  
Washington, DC 20005  
Telephone: (202) 482-9271

Visit OGE's website: >[www.oge.gov](http://www.oge.gov)<

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**From:** Deborah J. Bortot

**Sent:** Thursday, January 28, 2021 5:59 PM

**To:** Raviv, Adam M. EOP/WHO (b) (6) Duross, Jeanne M. EOP/WHO

(b) (6) Phillips, Anjali W. EOP/WHO (b) (6)

'Olorunnipa, Funmi B. EOP/WHO' (b) (6)

**Cc:** David J. Apol <djapol@oge.gov>; Heather A. Jones <hajones@oge.gov>; Teresa L. Williamson <tlwillia@oge.gov>; Keith Labeledz <klabeledz@oge.gov>; Patrick J. Lightfoot <pjlightf@oge.gov>; 'Shaw, Cynthia K. (JMD)' (b) (6)

**Subject:** PRECLEARED: Merrick Garland - [ Message contains CUI ]

CONTROLLED

All, Judge Garland is precleared. Patrick, please send the ethics agreement to the White House.

Thanks,

Deb

Deborah J. Bortot

Chief, Presidential Nominations Branch

U.S. Office of Government Ethics

1201 New York Ave., NW, Suite 500

Washington, DC 20005-3917

Telephone: (202) 482-9227

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CONTROLLED UNCLASSIFIED INFORMATION (CUI)

Use this space to indicate categories/subcategories, special instructions, points of contact, etc., if needed.

The attached document contains CUI that requires protection and safeguarding in a manner that prevents unauthorized disclosure of CUI. (e.g., locked file cabinet, restricted access to CUI, etc.)

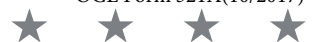
If you need additional information regarding the attached document containing CUI, please contact Patrick Lightfoot at (202) 482-9271 or [pjlightf@oge.gov](mailto:pjlightf@oge.gov).

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All individuals handling this information are required to protect it from unauthorized disclosure.

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## U.S. Department of Justice

Washington, D.C. 20530

The Honorable Emory A. Rounds, III  
Director  
Office of Government Ethics  
Suite 500  
1201 New York Avenue, NW  
Washington, DC 20005-3919

Dear Mr. Rounds:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of The Honorable Merrick B. Garland. President Biden has nominated Judge Garland to serve as Attorney General of the United States. We have conducted a thorough review of the nominee's report and have counseled him on the government ethics rules. The purpose of this letter is to describe the steps that Judge Garland will take to avoid any actual or apparent conflict of interest in the event that he is confirmed for the aforementioned position. Judge Garland understands that it is his responsibility to understand and comply with commitments outlined in this agreement.

Although it is not possible to provide for all of the specific circumstances which might give rise to a financial conflict of interest because the work of the Attorney General involves a wide variety of matters involving specific parties, and it is not possible to predict where conflicts will arise until specific parties are identified, we have counseled Judge Garland on the applicable conflict of interest laws and regulations and, in particular, on the application of the criminal conflicts of interest law at 18 U.S.C. § 208.

### SECTION 1 – GENERAL COMMITMENTS

As required by the criminal conflicts of interest law at 18 U.S.C. § 208(a), Judge Garland will not participate personally and substantially in any particular matter in which he knows that he has a financial interest directly and predictably affected by the matter, or in which he knows that a person whose interests are imputed to him has a financial interest directly and predictably affected by the particular matter, unless he first obtains a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualifies for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). He understands that the interests of the following persons are imputed to him:

- His spouse or any minor child of his;
- Any general partner of a partnership in which he is a limited or general partner;

- Any organization in which he serves as officer, director, trustee, general partner or employee; and
- Any person or organization with which he is negotiating or has an arrangement concerning prospective employment.

In determining whether a particular matter has a direct and predictable effect on his financial interests or on those of any other person whose interests are imputed to him, Judge Garland will consult with Department of Justice ethics officials. As stated in the attachment to this Ethics Agreement, Judge Garland understands and agrees to comply with the conflict of interest laws and regulations, and to follow the procedures set forth in this agreement.

If Judge Garland has a managed account or otherwise uses the services of an investment professional during his appointment, he will ensure that the account manager or investment professional obtains his prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the regulatory exemption for diversified mutual funds and unit investment trusts at 5 C.F.R. § 2640.201(a), or obligations of the United States.

Judge Garland will receive a live ethics briefing from Department ethics officials after his confirmation but not later than 15 days after his appointment pursuant to the ethics program regulation at 5 C.F.R. § 2638.305. Within 90 days of his confirmation, Judge Garland will submit his Certification of Ethics Agreement Compliance to Department ethics officials, which documents his compliance with this ethics agreement.

Judge Garland understands that as an appointee he will be required to sign the Ethics Pledge (Exec. Order No. 13989) and that he will be bound by it. Among other obligations, he will be required to recuse from particular matters involving specific parties involving his former employer or former clients for a period of two years after he is appointed, with the exception of Federal, state, and local governments.

Judge Garland will not modify this ethics agreement without my approval and the approval of the U.S. Office of Government Ethics pursuant to the ethics agreement requirements contained in the financial disclosure regulation at 5 C.F.R. § 2634.803(a)(4).

## SECTION 2 – DIVESTITURES

As soon as practicable, but not later than 90 days after his confirmation, Judge Garland will divest his interests in the following entities:

- Bristol-Myers Squibb Co.
- General Mills Inc.
- J.M. Smucker Co.
- Procter & Gamble Co.
- Pfizer
- Viatrix

With regard to each of these entities, Judge Garland will not participate personally and



substantially in any particular matter that to his knowledge has a direct and predictable effect on the financial interests of the entity until he has divested it, unless he first obtains a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualifies for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

As soon as practicable but not later than 90 days after his confirmation, Judge Garland also will divest his interest in the Nuveen Maryland Quality Municipal Inc. Fund. Until he has completed these divestitures, he will not participate personally and substantially in any particular matter that to his knowledge has a direct and predictable effect on the financial interests of any holding of the Nuveen Maryland Quality Municipal Inc. Fund that is invested in Maryland municipal bonds, unless he first obtains a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualifies for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

As soon as practicable, but not later than 90 days after his confirmation, Judge Garland will divest his interests in the following bonds:

- Univ MD Bond
- Univ Mich Bond

Judge Garland will not participate personally and substantially in any particular matter that to his knowledge has a direct and predictable effect on the marketability or market resale value of any of these bonds or on the ability or willingness of the issuer to pay their debt obligations to him until he have divested them, unless he first obtains a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualifies for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

Judge Garland has verified that he will be able to carry out the divestitures outline above within the timeframes described.

Judge Garland understands that he may be eligible to request a Certificate of Divestiture for qualifying assets and that a Certificate of Divestiture is effective only if obtained prior to divestiture. Regardless of whether he receives a Certificate of Divestiture, he will ensure that all divestitures discussed in this agreement occur within the agreed upon timeframes and that all proceeds are invested in non-conflicting assets. He understands that he must timely submit his request for a Certificate of Divestiture to allow for adequate time for OGE to process the Certificate of Divestiture, and in order to divest assets within the agreed upon timeframe.

Judge Garland (including his spouse) will not repurchase any asset he was required to divest without consultation with Department ethics officials and the U.S. Office of Government Ethics.

### SECTION 3 – PUBLIC POSTING

Judge Garland has been advised that this ethics agreement and the Certification of Ethics Agreement Compliance will be posted publicly, consistent with the public information law at 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Based on the above agreements and counseling, I am satisfied that the enclosed report presents no conflicts of interest under applicable laws and regulations and that you may so certify to the Senate Judiciary Committee.

Sincerely,

Lee J. Lofthus  
Assistant Attorney General  
for Administration and  
Designated Agency Ethics Official

Enclosure

## NOMINEE STATEMENT

I have read the Ethics Agreement signed by Lee J. Lofthus, Assistant Attorney General for Administration and Designated Agency Ethics Official on \_\_\_\_\_, 2021, and I agree to comply with the commitments outlined in this agreement. In addition, in the event that an actual or potential conflict of interest arises during my appointment, I will consult with the Department ethics officials and take the measures necessary to resolve the conflict, such as recusal from the particular matter or divestiture of an asset. I will not modify this ethics agreement without your approval and the approval of the U.S. Office of Government Ethics pursuant to the ethics agreement requirements contained in the financial disclosure regulation at 5 C.F.R. § 2634.803(a)(4). I (including my spouse) also will not repurchase any asset I was required to divest without my consultation with Department ethics officials and the U.S. Office of Government Ethics. Finally, I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13989) and that I will be bound by it. Among other obligations, I will be required to recuse from particular matters involving specific parties involving my former employer or former clients for a period of two years after I am appointed, with the exception of Federal, state, and local governments.

\_\_\_\_\_  
Hon. Merrick B. Garland

Date: \_\_\_\_\_

**From:** Klapper, Matthew B. (OAG)  
**Subject:** Fwd: PRECLEARED: Merrick Garland - [message and attachment(s) contain CUI]  
**To:** DeBonis, Dena I. (PAO); Greenfeld, Helaine A. (OLA)  
**Sent:** January 28, 2021 10:11 PM (UTC-05:00)  
**Attached:** Garland 278 1-28.pdf

278 (will be public soon).

Sent from my iPhone

Begin forwarded message:

**From:** "Raviv, Adam M. EOP/WHO" (b) (6)  
**Date:** January 28, 2021 at 10:05:31 PM EST  
**To:** "Klapper, Matthew B. (OAG)" (b) (6)  
**Subject:** RE: PRECLEARED: Merrick Garland - [message and attachment(s) contain CUI]

Matt, the EA will be public. Here is the 278.

Have a good night,  
Adam

---

**From:** Klapper, Matthew B. (OAG) (b) (6)  
**Sent:** Thursday, January 28, 2021 9:47 PM  
**To:** Raviv, Adam M. EOP/WHO (b) (6)  
**Subject:** Re: PRECLEARED: Merrick Garland - [message and attachment(s) contain CUI]

Thanks Adam. Will the EA be public, or only the 278? Do you have a final copy of the 278 you can share?

Sent from my iPhone

On Jan 28, 2021, at 7:44 PM, Raviv, Adam M. EOP/WHO  
(b) (6) wrote:

Duplicative Material, Document ID: 0.7.8808.15960, Bates Number 23cv391-22-00083-000516

**From:** Klapper, Matthew B. (OAG)  
**Subject:** RE: Press situation on Monday  
**To:** Greenfeld, Helaine A. (OLA)  
**Sent:** February 19, 2021 12:49 PM (UTC-05:00)

Yes re: daughters.

Xan = Alexander Tanner (son-in-law)

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**From:** Greenfeld, Helaine A. (OLA) (b) (6)  
**Sent:** Friday, February 19, 2021 12:43 PM  
**To:** Klapper, Matthew B. (OAG) (b) (6)  
**Subject:** RE: Press situation on Monday

So I'm clear – (b) (6) ? (b) (6) ? Xan? Full name?

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**From:** Klapper, Matthew B. (OAG) (b) (6)  
**Sent:** Friday, February 19, 2021 12:41 PM  
**To:** Greenfeld, Helaine A. (OLA) (b) (6)  
**Subject:** RE: Press situation on Monday

Car 1: (b) (6) driven by (b) (6) with (b) (6) and Xan as passengers  
Car 2: (b) (6) driven by (b) (6)

My car: (b) (6)

---

**From:** Greenfeld, Helaine A. (OLA) (b) (6)  
**Sent:** Friday, February 19, 2021 12:21 PM  
**To:** Klapper, Matthew B. (OAG) (b) (6) Coley, Anthony D. (PAO) (b) (6)  
**Cc:** DeBonis, Dena I. (PAO) (b) (6)  
**Subject:** RE: Press situation on Monday

If you can get me the parking information for the Garlands now, I'll send that to Phil and ask about the other seats we requested, and add an ask for an OPA person. We could almost surely have the OPA person in Dirksen somewhere if not the hearing room if they say no to one more.

---

**From:** Klapper, Matthew B. (OAG) (b) (6)  
**Sent:** Friday, February 19, 2021 12:15 PM  
**To:** Coley, Anthony D. (PAO) (b) (6) Greenfeld, Helaine A. (OLA) (b) (6)  
**Cc:** DeBonis, Dena I. (PAO) (b) (6)  
**Subject:** RE: Press situation on Monday

Thanks – Helaine, can we add 1 member of OPA to seating list?

---

**From:** Coley, Anthony D. (PAO) (b) (6)  
**Sent:** Friday, February 19, 2021 12:12 PM  
**To:** Klapper, Matthew B. (OAG) (b) (6) Greenfeld, Helaine A. (OLA)  
(b) (6)  
**Cc:** DeBonis, Dena I. (PAO) (b) (6)  
**Subject:** Press situation on Monday

**In the hearing room:** 6 still photogs; 12 print reporters at tables in the back of the room; TV cameras in the booths on



the second floor.

**Two official stakeout locations:** One at (b) (6) and another (b) (6). [Most likely one camera only, no reporters...though that's tentative.] Durbin staff notes, "I'd expect to see a decent amount of print and some TV reporters hanging outside of the hearing room"

**From:** Greenfeld, Helaine A. (OLA)  
**Subject:** Garage info  
**To:** Brest, Phillip (Judiciary-Dem)  
**Sent:** February 19, 2021 12:54 PM (UTC-05:00)

Car 1: (b) (6) driven by (b) (6) with (b) (6) and Alexander Tanner  
as passengers

Car 2: (b) (6) driven by (b) (6)

Car 3: (b) (6) driven by Matt Klapper

Car 4: (b) (6) drive by Helaine Greenfeld

Any word on the extra seats? If not, can we at least have one for our comms person? Anthony Coley.

**Helaine Greenfeld**

*Acting Assistant Attorney General for the Office of Legislative Affairs  
U.S. Department of Justice*

(b) (6)

**From:** Greenfeld, Helaine A. (OLA)  
**Subject:** RE: monday's hearing  
**To:** Ewing, Halle M. EOP/OVP  
**Cc:** Carmon, Brittany N. EOP/OVP; Brest, Phillip (Judiciary-Dem); Lucius, Kristine J. EOP/OVP  
**Sent:** February 19, 2021 5:01 PM (UTC-05:00)

Halle,

So sorry. I send this to Phil earlier.

For Monday – arrival around 8:45 am for the Judge and for:

Car 1: (b) (6) driven by (b) (6) with (b) (6) and Alexander Tanner as passengers

Car 2: (b) (6) driven by (b) (6)

Arrival around 8 am

Car 3: (b) (6) driven by Matt Klapper

Car 4: (b) (6) drive by Helaine Greenfeld

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**From:** Ewing, Halle M. EOP/OVP (b) (6)  
**Sent:** Friday, February 19, 2021 4:58 PM  
**To:** Greenfeld, Helaine A. (OLA) (b) (6)  
**Cc:** Carmon, Brittany N. EOP/OVP (b) (6); Brest, Phillip (Judiciary-Dem)  
(b) (6); Lucius, Kristine J. EOP/OVP (b) (6)  
**Subject:** Re: monday's hearing

Hello Helaine -

I wanted to follow up with you about the timing for Monday. I also wanted to see if you had any clarity on parking and access to the building for Judge Garland and his family. Let me know your thoughts.

Best,  
Halle

On Feb 19, 2021, at 8:55 AM, Brest, Phillip (Judiciary-Dem) (b) (6) wrote:

Terrific, thanks. See you shortly

On Feb 19, 2021, at 8:53 AM, Carmon, Brittany N. EOP/OVP (b) (6) wrote:

Hi Folks,

I'm here in 201. See you both soon.

Best,  
Brittany

---

**Brittany N. Carmon**

Associate Director for Legislative Affairs  
Office of the Vice President | The White House

Cell: (b) (6)

(b) (6)

On Feb 18, 2021, at 4:57 PM, Brest, Phillip (Judiciary-Dem)

(b) (6) wrote:

No worries – thanks and see you tomorrow bright and early!

---

**From:** Carmon, Brittany N. EOP/OVP (b) (6)

**Sent:** Thursday, February 18, 2021 4:32 PM

**To:** Brest, Phillip (Judiciary-Dem) (b) (6)

Lucius, Kristine J. EOP/OVP (b) (6) 'Greenfeld,

Helaine A. (OLA)' (b) (6)

**Cc:** Ewing, Halle M. EOP/OVP (b) (6)

**Subject:** RE: monday's hearing

Yes. Apologies, 201. Switched the numbers around!

---

**Brittany N. Carmon**

Associate Director for Legislative Affairs  
Office of the Vice President | The White House

Cell: (b) (6)

(b) (6)

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**From:** Brest, Phillip (Judiciary-Dem) (b) (6)

**Sent:** Thursday, February 18, 2021 4:24 PM

**To:** Carmon, Brittany N. EOP/OVP (b) (6) Lucius,

Kristine J. EOP/OVP (b) (6) 'Greenfeld, Helaine A.

(OLA)' (b) (6)

**Cc:** Ewing, Halle M. EOP/OVP (b) (6)

**Subject:** RE: monday's hearing

Thank you! And thanks so much to you and the Vice President for allowing the Committee and DOJ use of the VP's office.

One clarifying question – I had been told that the VP Suite was Dirksen 201, so just want to confirm that we should meet you at Dirksen 120. (Entirely possible, if not very likely, that the information conveyed to me was incorrect!)

Thanks again!

---

**From:** Carmon, Brittany N. EOP/OVP (b) (6)  
**Sent:** Thursday, February 18, 2021 4:11 PM  
**To:** Brest, Phillip (Judiciary-Dem) (b) (6)  
Lucius, Kristine J. EOP/OVP (b) (6) 'Greenfeld,  
Helaine A. (OLA)' (b) (6)  
**Cc:** Ewing, Halle M. EOP/OVP (b) (6)  
**Subject:** RE: monday's hearing

Hi Helaine and Phillip,

Thanks for hopping on the phone earlier. As discussed, I'll be onsite tomorrow and Saturday 30 mins prior to your walkthroughs. I'm planning to just meet you outside of Dirksen 120 and let you into the room, but will be on standby should you need help escorting folks into the perimeter. My cell is (b) (6)

On Monday, Halle will be the main POC for access to Dirksen 120. We will await guidance from you all on when to arrive so that you can be let into the room on that date. We will also await guidance from you on if you need additional help escorting the DOJ staff through the perimeter and into the Dirksen office that morning.

Best,  
Brittany

---

**Brittany N. Carmon**  
Associate Director for Legislative Affairs  
Office of the Vice President | The White House  
Cell: (b) (6)  
(b) (6)

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**From:** Brest, Phillip (Judiciary-Dem) (b) (6)  
**Sent:** Thursday, February 18, 2021 10:16 AM  
**To:** Lucius, Kristine J. EOP/OVP (b) (6) Carmon,  
Brittany N. EOP/OVP (b) (6) 'Greenfeld, Helaine  
A. (OLA)' (b) (6)  
**Cc:** Ewing, Halle M. EOP/OVP (b) (6)  
**Subject:** RE: monday's hearing

Understood

---

**From:** Lucius, Kristine J. EOP/OVP (b) (6)  
**Sent:** Thursday, February 18, 2021 10:15 AM  
**To:** Brest, Phillip (Judiciary-Dem) (b) (6)  
Carmon, Brittany N. EOP/OVP (b) (6) 'Greenfeld,  
Helaine A. (OLA)' (b) (6)  
**Cc:** Ewing, Halle M. EOP/OVP (b) (6)  
**Subject:** RE: monday's hearing



Good morning, Phil. (b) (7)(E)

Thanks. -Kristine

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**From:** Brest, Phillip (Judiciary-Dem) (b) (6)  
**Sent:** Thursday, February 18, 2021 10:09 AM  
**To:** Carmon, Brittany N. EOP/OVP (b) (6)  
'Greenfeld, Helaine A. (OLA)' (b) (6) Lucius, Kristine  
J. EOP/OVP (b) (6)  
**Cc:** Ewing, Halle M. EOP/OVP (b) (6)  
**Subject:** RE: monday's hearing

My only other question is whether you need me to coordinate with the Senate Sergeant at Arms entry into the VP's Dirksen suite or whether you all will get in touch with SAA separately. I have been working with them on the logistics around Judge Garland's hearing so I'm happy to run point but also don't want to overstep. Happy to wait to discuss that at 1 if easier.

Phil

---

**From:** Carmon, Brittany N. EOP/OVP (b) (6)  
**Sent:** Thursday, February 18, 2021 10:01 AM  
**To:** Brest, Phillip (Judiciary-Dem) (b) (6)  
'Greenfeld, Helaine A. (OLA)' (b) (6) Lucius, Kristine  
J. EOP/OVP (b) (6)  
**Cc:** Ewing, Halle M. EOP/OVP (b) (6)  
**Subject:** RE: monday's hearing

Thank you. This is a very helpful list. Are there any other needs you have that we can capture on this chain? I am free at 1 PM too if that works best for folks. I don't anticipate it will take too long. Maybe 10-15 mins max.

Best,  
Brittany

—  
**Brittany N. Carmon**  
Associate Director for Legislative Affairs  
Office of the Vice President | The White House

(b) (6)  
(b) (6)

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**From:** Brest, Phillip (Judiciary-Dem) (b) (6)  
**Sent:** Thursday, February 18, 2021 9:58 AM  
**To:** Carmon, Brittany N. EOP/OVP (b) (6)  
'Greenfeld, Helaine A. (OLA)' (b) (6) Lucius, Kristine  
J. EOP/OVP (b) (6)  
**Cc:** Ewing, Halle M. EOP/OVP (b) (6)  
**Subject:** RE: monday's hearing

Hey all,

Ideally we'd get access at the following times:

- 9 am tomorrow (2/19) for the pre-walkthrough walkthrough with the FBI;
- 11 am Saturday (2/20) for the Judge's walkthrough;
- Throughout the day on Monday, 2/22, during the hearing.

We would not need access to the room on 2/23.

I'm happy to join a call, but can't do until 1 pm.

Phil

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**From:** Carmon, Brittany N. EOP/OVP (b) (6)  
**Sent:** Thursday, February 18, 2021 9:55 AM  
**To:** 'Greenfeld, Helaine A. (OLA)' (b) (6) Lucius,  
Kristine J. EOP/OVP (b) (6) Brest, Phillip (Judiciary-  
Dem) (b) (6)  
**Cc:** Ewing, Halle M. EOP/OVP (b) (6)  
**Subject:** RE: monday's hearing

Hi Helaine,

Free to connect by phone today at 12:45 PM?

Best,  
Brittany

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**Brittany N. Carmon**  
Associate Director for Legislative Affairs  
Office of the Vice President | The White House  
Cell: (b) (6)  
(b) (6)

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**From:** Greenfeld, Helaine A. (OLA) (b) (6)  
**Sent:** Thursday, February 18, 2021 9:51 AM  
**To:** Lucius, Kristine J. EOP/OVP (b) (6) Brest, Phillip  
(Judiciary-Dem) (b) (6)  
**Cc:** Ewing, Halle M. EOP/OVP (b) (6) Carmon, Brittany  
N. EOP/OVP (b) (6)  
**Subject:** RE: monday's hearing

Thanks, Kristine. Adding Phil Brest from the Judiciary Committee, who is working with me and Judge Garland's security detail on his movements on Sunday and Monday.

On Sunday, Judge Garland, his detail, the DOJ Chief of Staff Matt Klapper, and I will be meeting Phil for a walkthrough of the places the Judge will be on Monday (you are correct that Tuesday is just for outside witnesses) at 11 am. If it's possible to access the suite at that time, all the better.

On Monday, I don't have an arrival time for the Judge yet, but I will plan to be

there around 8 am. As soon as I have his arrival time, I'll let you all know. He will have his detail with him, and his wife, two daughters, and one son-in-law will also be there. Again, Matt Klapper and I will staff him. As for an ending time, I can only hope it's not too late in the evening.

Halle and Carmon, I'm at (b) (6) if it's easier to work on details over the phone.

Helaine

**Helaine Greenfeld**

*Acting Assistant Attorney General for the Office of Legislative Affairs  
U.S. Department of Justice*

(b) (6)

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**From:** Lucius, Kristine J. EOP/OVP (b) (6)  
**Sent:** Thursday, February 18, 2021 8:54 AM  
**To:** Greenfeld, Helaine A. (OLA) (b) (6)  
**Cc:** Ewing, Halle M. EOP/OVP (b) (6); Carmon, Brittany  
N. EOP/OVP (b) (6)  
**Subject:** monday's hearing

Good morning, Helaine. Looping you with my two colleagues in the VP's capitol office. We are happy to host Judge Garland in the VP's Dirksen suite. Can you let us know when you need to use it (starting at what time Monday?) and how many people are traveling with him? I know the hearing is expected to reconvene on Tuesday but is that just for outside witnesses? Let us know how we can be helpful. Thanks. -Kristine

**From:** Brest, Phillip (Judiciary-Dem)  
**Subject:** FW: MONDAY, FEBRUARY 22, 0845 - VEHICLE ACCESS (b) (6)  
ST GOV SPACES GARLAND'S FAMILY, JUDICIARY  
**To:** Greenfeld, Helaine A. (OLA)  
**Sent:** February 19, 2021 6:16 PM (UTC-05:00)  
**Attached:** FEBRUARY 22 2021 - VEHICLE ACCESS (b) (6)  
GOV SPACES GARLAND'S FAMILY, JUDICIARY.docx, FEBRUARY 22 2021 -  
VEHICLE ACCESS (b) (6)  
GOV SPACES GARLAND'S FAMILY JUDICIARY.pdf, Map for GOV Spaces.PNG



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**From:** Gibbs, Jaivon (SAA) (b) (6)  
**Sent:** Friday, February 19, 2021 6:15 PM  
**To:** Brest, Phillip (Judiciary-Dem) (b) (6)  
**Cc:** Fado, Kelly (SAA) (b) (6); Heller, Michelle (Judiciary) (b) (6)  
(b) (6); Palmer, Bryan (Judiciary) (b) (6); Vachon, Heather (Judiciary)  
(b) (6)  
**Subject:** MONDAY, FEBRUARY 22, 0845 - VEHICLE ACCESS (b) (6)  
GOV SPACES GARLAND'S FAMILY, JUDICIARY  
**Importance:** High

The SAA Office of Security and Emergency Preparedness (OSEP) has approved this request and notified USCP for action. Should you have any questions, concerns, changes, cancellations, etc., please contact our main line at (b) (6) or email us at (b) (6). Our normal business hours are 8:30 a.m. to 5:30 p.m. We require a minimum of 24 to 48 hours notification for Senate Campus Access requests. Please contact us during normal business hours to assist with your request.

**USCP - PLEASE CONFIRM RECEIPT.**

**MR BREST – PLEASE FORWARD A COPY OF THE APPROVAL FORM TO THE DRIVER AND ENSURE THAT EACH DRIVER HAS A COPY TO PRESENT TO USCP FOR ENTRY & UPON REQUEST.**


**UNITED STATES SENATE**  
**SERGEANT AT ARMS**  
**OFFICE OF SECURITY & EMERGENCY PREPAREDNESS**  
**(OSEP)**


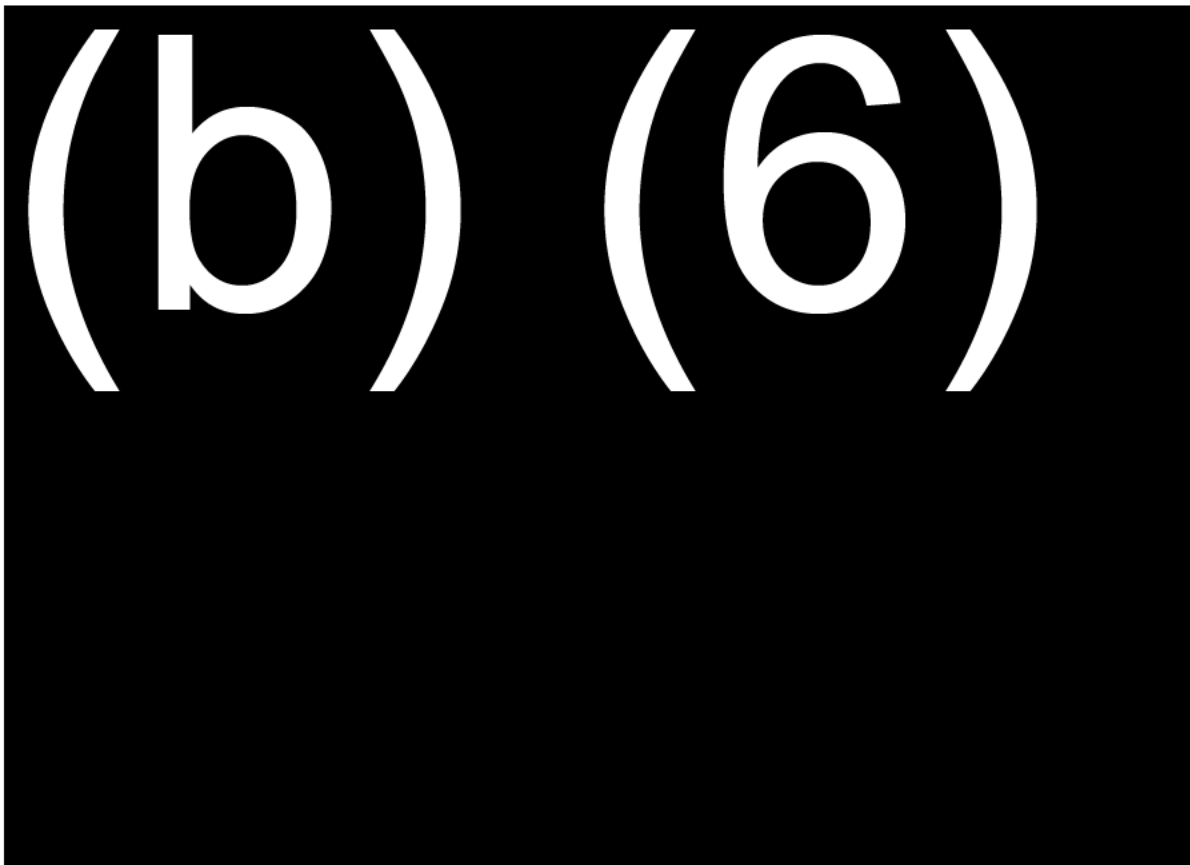
Police Operations  
**(b) (6)**

SENATE CAMPUS ACCESS NOTIFICATION

SAA Authorization – VEHICLE ACCESS	
<b>(b) (6)</b>	
Date:	MONDAY, February 22, 2021
ETA:	Arrival: 0845 HOURS      Departure:
Arrival:	<b>(b) (6)</b> for perimeter access.
Procedures:	<b>(b) (6)</b> for barricade access.
	<b>(b) (6)</b> GOV SPACES (make sure approval form displayed in windshields)
VEHICLE(s)	
Year:	<b>(b) (6)</b>
Make:	<b>(b) (6)</b>
Model:	<b>(b) (6)</b>
Color:	<b>(b) (6)</b>
Tag #:	<b>(b) (6)</b>
Driver:	<b>(b) (6)</b> <b>(b) (6)</b>
DL #:	
Cell #:	
VIP:	JUDGE GARLAND'S FAMILY
Pax:	<b>(b) (6)</b> and Alexander Tanner
SPONSOR	
Sponsor:	JUDICIARY COMMITTEE
POC:	Phil Brest, Cell <b>(b) (6)</b>
Reason:	AG Nomination Hearing
Destination:	<b>(b) (6)</b>
NOTES:	APPROVED – JTG
<b>PLEASE FORWARD A COPY OF THE APPROVAL FORM TO THE VENDOR/GUEST AND ENSURE THAT THE DRIVER HAS A COPY TO PRESENT TO USCP FOR ENTRY. GUEST MUST BE ESCORTED AT ALL TIMES BY CONGRESSIONALLY BADGED STAFF WHILE WITHIN PERIMETER.</b>	

**APPROVED**  
*By Jalvon Gibbs at 6:09 pm, Feb 19, 2021*

Please also see below and attached directions to the GOV Spaces:





Have a great weekend.

Thank you,

***Jaivon Gibbs***

*Police Operations Program Analyst*

*Security Planning and Police Operations*

*Office of Security and Emergency Preparedness*

*United States Senate*

Cell: (b) (6)

Desk: (b) (6)



**UNITED STATES SENATE  
SERGEANT AT ARMS  
OFFICE OF SECURITY & EMERGENCY PREPAREDNESS  
(OSEP)**



Police Operations

(b) (6)

**SENATE CAMPUS ACCESS NOTIFICATION**

SAA Authorization – VEHICLE ACCESS	
(b) (6)	
Date:	MONDAY, February 22, 2021
ETA:	Arrival: 0845 HOURS      Departure:
Arrival:	(b) (6) for perimeter access.
Procedures:	(b) (6) for barricade access.
	(b) (6) GOV SPACES (make sure approval form displayed in windshields)
VEHICLE(s)	
Year:	(b) (6)
Make:	(b) (6)
Model:	(b) (6)
Color:	(b) (6)
Tag #:	(b) (6)
Driver:	(b) (6)      (b) (6)
DL #:	
Cell #:	
VIP:	JUDGE GARLAND'S FAMILY
Pax:	(b) (6) and Alexander Tanner
Sponsor:	JUDICIARY COMMITTEE
POC:	Phil Brest; Cell: (b) (6)
Reason:	AG Nomination Hearing
Destination:	(b) (6)
NOTES: APPROVED – JTG	
*PLEASE FORWARD A COPY OF THE APPROVAL FORM TO THE VENDOR/GUEST AND ENSURE THAT THE DRIVER HAS A COPY TO PRESENT TO USCP FOR ENTRY. GUEST MUST BE ESCORTED AT ALL TIMES BY CONGRESSIONALLY BADGED STAFF WHILE WITHIN PERIMETER.	

**From:** (b)(6), (b)(7)(C) per FBI (DO) (FBI)  
**Subject:** (b)(6), (b)(7)(C), (b)(7)(E) per FBI  
**To:** Watson, Theresa (OAG)  
**Sent:** February 25, 2021 2:48 PM (UTC-05:00)  
Theresa,

Here's what I have so far for them:

(b)(6), (b)(7)(C) per FBI  
DoB - (b)(6), (b)(7)(C) per FBI  
Cell - (b)(6), (b)(7)(C) per FBI  
Home - (b)(6), (b)(7)(C) per FBI  
email - (b)(6), (b)(7)(C) per FBI

(b)(6), (b)(7)(C) per FBI  
DoB - (b)(6), (b)(7)(C) per FBI  
Cell - (b)(6), (b)(7)(C) per FBI  
Home address - (b)(6), (b)(7)(C) per FBI

(b)(6), (b)(7)(C) per FBI - Alexander Tanner (goes by Xan)  
DoB - (b)(6), (b)(7)(C) per FBI  
Cell - (b)(6), (b)(7)(C) per FBI  
Home address - (b)(6), (b)(7)(C) per FBI

(b)(6), (b)(7)(C) per FBI  
DoB - (b)(6), (b)(7)(C) per FBI  
Cell - (b)(6), (b)(7)(C) per FBI  
Home Address - (b)(6), (b)(7)(C) per FBI

We are working on photos and emails for (b)(6), (b)(7)(C) per FBI

Let me know if you need anything else.

(b)(6), (b)(7)(C)

SSA (b)(6), (b)(7)(C) per FBI  
Attorney General's Protection Detail  
Federal Bureau of Investigation

(b)(6), (b)(7)(C), (b)(7)(E) per FBI  
cell  
office

**From:** Schwartz, Leah F. (OLA)  
**Subject:** OLA incoming congressional correspondence 10/8/2021  
**To:** Klapper, Matthew B. (OAG); Heinzelman, Kate (OAG); Colangelo, Matthew (OASG); Hyun, Peter (OASG); Loeb, Emily M. (ODAG); Lewis, Megan (ODAG); Goodlander, Margaret V. (OAG)  
**Cc:** Woldemariam, Wintta (OLA); Gaeta, Joseph (OLA); Greenfeld, Helaine A. (OLA); Antell, Kira M. (OLA); Calce, Christina M. (OLA)  
**Sent:** October 9, 2021 9:47 AM (UTC-04:00)  
**Attached:** Grijalva.incoming.ltr.10.8.2021.pdf, Cruz.incoming.ltr.10.8.2021.pdf, Markey.incoming.ltr.10.8.2021.pdf, McConnell.incoming.ltr. 10.7.21.pdf

Please see below and attached. Hope everyone has a great long weekend!

1. Letter from Rep. Grijalva and 10 other MOCs to AG, POTUS, and BOP – writing to request the expedited release of Mr. Leonard Peltier from the Coleman Federal Correctional Center Complex in Florida and requesting that Mr. Peltier be granted clemency.
2. Letter from Senators Cruz, Lee, and Blackburn to AG – expressing concerns about the DOJ’s 10/4 memo addressing the threat of violence against school administrators. Also requesting answers to 8 questions about the AG’s son-in-law’s involvement with the company Panorama.
3. Letter from Senators Markey and Whitehouse and Reps. Lieu and Langevin to AG, and Departments of State, Treasury, and Homeland Security – urging all four Departments to pursue all available options to protect American communities and infrastructure from the growing threat of ransomware.
4. Letter from Senator McConnell to AG - expressing concerns about the DOJ’s 10/4 memo addressing the threat of violence against school administrators. Requesting response to 5 related questions prior to the AG’s appearance before SJC.

# United States Senate

Washington, DC 20510

October 8, 2021

The Honorable Merrick Garland  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Attorney General Garland:

On October 4, you issued a memorandum directing the Federal Bureau of Investigations (“FBI”) and United States Attorneys’ Offices to address purported harassment, intimidation, and threats of violence against school board members.<sup>1</sup> Actual violence, harassment, and threats are criminal activities and must be condemned. Yet your directive to the FBI runs a serious risk of conflating legitimate and meritorious protest by concerned parents with criminal conduct. The memorandum implies that parents who protest school boards, including those who oppose the inclusion of critical race theory in elementary, junior high, and high school curricula, may pose a public safety threat. In doing so, the memorandum appears intended to intimidate parents across the country into silence.

As a matter of policy, this memorandum is extraordinarily concerning, which is why we joined Senator Grassley’s letter on behalf of the 11 Republican members of the Senate Judiciary Committee in writing to you about this policy. Equally concerning, however, is reporting about an alleged connection between your family members and controversial curricula that will directly benefit from this memorandum and the chilling of speech.<sup>2</sup>

Your daughter, Rebecca Garland, married Alexander (“Xan”) Newman Tanner in 2018.<sup>3</sup> Mr. Tanner is a co-founder of Panorama Education (“Panorama”), a “social learning” provider that provides consultancy services that reportedly aids schools in teaching critical race theory under the guise of “equity and inclusion” to America’s children.<sup>4</sup> According to a recent report from the

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<sup>1</sup> Memorandum, *Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement to Address Threats Against School Administrators, Board Members, Teachers, and Staff*, Dep’t of Justice (Oct. 4, 2021), <https://www.justice.gov/ag/page/file/1438986/download>.

<sup>2</sup> See, e.g., Luke Rosiak, *AG Linked to Firm That Stores ‘Psychological Profiles’ of Students, Avoids Parental Consent*, Daily Wire (Oct. 7, 2021), <https://www.dailywire.com/news/garland-panorama-parental-consent>; Mark Moore, *Parents group: AG Garland has conflict of interest with Facebook, critical race theory*, N.Y. Post (Oct. 6, 2021), <https://nypost.com/2021/10/06/parents-group-garland-has-conflict-of-interest-with-facebook/>; Sam Dorman, *AG Garland faces scrutiny over ties to Zuckerberg-backed ed consultancy amid critical race theory battles*, Fox News (Oct. 6, 2021), <https://www.foxnews.com/politics/merrick-garland-son-in-law-panorama-zuckerberg>.

<sup>3</sup> *Rebecca Garland, Xan Tanner*, N.Y. Times (June 17, 2018), <https://www.nytimes.com/2018/06/17/fashion/weddings/rebecca-garland-xan-tanner.html>.

<sup>4</sup> *About Us*, Panorama Education (last accessed October 7, 2021), <https://www.panoramaed.com/about>. Notably, Facebook CEO Mark Zuckerberg’s foundation, Chan-Zuckerberg Initiative, gave \$16 million to Panorama Education in 2017. Sam Dorman, *AG Garland faces scrutiny over ties to Zuckerberg-backed ed consultancy amid*

Daily Wire, Panorama holds contracts with at least 22 school districts across the country, which have paid Panorama a combined \$12 million in recent years.<sup>5</sup>

These reports outline allegations that parents and advocacy groups have recently raised about Panorama's contracts, curriculum, data collection practices, and student surveys. In early September, Parents Defending Education (PDE) released an article detailing parents' concerns about data collection and student surveys implemented in Fairfax County, Virginia, under the local school district's contract with Panorama.<sup>6</sup> On September 29, the National School Boards Association sent a letter to the Biden administration raising complaints about parents' protests at school board meetings.<sup>7</sup> Then, less than a week later, you issued the memorandum, which will benefit companies like Panorama, whose contracts may be in jeopardy as parents stand up to school boards and demand that their children not be indoctrinated with critical race theory.<sup>8</sup>

According to the Department of Justice's ("DOJ") Conflict of Interest Policy, "*An employee may not participate, without authorization, in a particular matter having specific parties that could affect the financial interests of members of her household.*"<sup>9</sup> This policy is to prevent both actual conflicts of interests, as well as the appearance of a conflict of interest. In light of the allegations that your son-in-law's company may benefit directly from your memorandum, we request that you respond to the following questions no later than October 21, 2021:

- Does your son-in-law, Xan Tanner, currently work for Panorama? If not, when did he leave Panorama's employ?
- Has Panorama provided any consulting services to DOJ since January 20, 2021, or is Panorama under contract to provide any consulting services to DOJ in the future?
- Has Panorama provided consulting services or curriculum to any federal agency?
- Has there been any communication between Panorama and DOJ since January 20, 2021?
- Has any school district, teachers' union, or other trade organization contacted DOJ regarding Panorama since January 20, 2021?
- Have any school districts that hold or have held a contract with Panorama contacted DOJ regarding Panorama since January 20, 2021?
- Did you seek advice from an ethics official or attorney regarding Panorama before issuing the October 4, 2021 memoranda titled "*Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement to Address Threats Against School Administrators, Board Members, Teachers, and Staff*"?

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*critical race theory battles*, Fox News (Oct. 6, 2021), <https://www.foxnews.com/politics/merrick-garland-son-in-law-panorama-zuckerberg>.

<sup>5</sup> Luke Rosiak, *AG Linked to Firm That Stores 'Psychological Profiles' of Students, Avoids Parental Consent*, Daily Wire (Oct. 7, 2021), <https://www.dailywire.com/news/garland-panorama-parental-consent>.

<sup>6</sup> *Fairfax County signs five-year contract to pay \$2.4 million in COVID emergency funds to a Boston-based consultant to administer intrusive "social and emotional" screening*, Parents Defending Education (Sept. 7, 2021), <https://defendinged.org/incidents/test/>.

<sup>7</sup> Letter, Federal Assistance to Stop Threats and Acts of Violence Against Public Schoolchildren, Public School Board Members, and Other Public School District Officials and Educators, Nat'l Sch. Bd. Ass'n (Sept. 29, 2021), <https://nsba.org/-/media/NSBA/File/nsba-letter-to-president-biden-concerning-threats-to-public-schools-and-school-board-members-92921.pdf>.

<sup>8</sup> See *supra* fn. 1.

<sup>9</sup> *Conflicts*, Dep't of Justice (Aug. 13, 2021), <https://www.justice.gov/jmd/conflicts> (emphasis added).

- Did you or your staff have any communications with the White House regarding this memorandum or any of the issues discussed therein prior to October 4?

The American people have a strong interest in ensuring that the Department of Justice is acting in their best interests, and not in the financial interest of its officials or their families.

Sincerely,



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Ted Cruz  
Member, Senate Judiciary Committee



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Mike Lee  
Member, Senate Judiciary Committee



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Marsha Blackburn  
Member, Senate Judiciary Committee



**From:** Schwartz, Leah F. (OLA)  
**Subject:** OLA incoming congressional correspondence 10/8/2021  
**To:** OLA  
**Sent:** October 9, 2021 9:47 AM (UTC-04:00)  
**Attached:** Grijalva.incoming.ltr.10.8.2021.pdf, Cruz.incoming.ltr.10.8.2021.pdf, Markey.incoming.ltr.10.8.2021.pdf, McConnell.incoming.ltr.10.7.21.pdf

Please see below and attached. Hope everyone has a great long weekend!

1. Letter from Rep. Grijalva and 10 other MOCs to AG, POTUS, and BOP – writing to request the expedited release of Mr. Leonard Peltier from the Coleman Federal Correctional Center Complex in Florida and requesting that Mr. Peltier be granted clemency.
2. Letter from Senators Cruz, Lee, and Blackburn to AG – expressing concerns about the DOJ’s 10/4 memo addressing the threat of violence against school administrators. Also requesting answers to 8 questions about the AG’s son-in-law’s involvement with the company Panorama.
3. Letter from Senators Markey and Whitehouse and Reps. Lieu and Langevin to AG, and Departments of State, Treasury, and Homeland Security – urging all four Departments to pursue all available options to protect American communities and infrastructure from the growing threat of ransomware.
4. Letter from Senator McConnell to AG - expressing concerns about the DOJ’s 10/4 memo addressing the threat of violence against school administrators. Requesting response to 5 related questions prior to the AG’s appearance before SJC.

**From:** Bidelman, Kiley  
**Subject:** [EXTERNAL] Letter for Attorney General Garland  
**To:** Pings, Anne (OLA); DOJ Correspondence (SMO)  
**Cc:** Castor, Stephen  
**Sent:** October 13, 2021 12:00 PM (UTC-04:00)  
**Attached:** 2021-10-13 HJC GOP to Garland - DOJ re ethics questions.pdf

Good afternoon – please see attached a letter addressed to Attorney General Garland.

Please confirm receipt of this letter.

Thanks,  
Kiley

**Kiley N. Bidelman**  
Clerk  
Committee on the Judiciary  
Rep. Jim Jordan, Ranking Member  
2226 Rayburn HOB, Washington, DC 20515

(b) (6)

ONE HUNDRED SEVENTEENTH CONGRESS

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951  
judiciary.house.gov

October 13, 2021

The Honorable Merrick B. Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Dear Attorney General Garland:

This letter is to express our serious concerns about your recent decision to involve federal law enforcement entities in local school board debates and to stifle First Amendment-protected political speech. Your actions are not just inappropriate, but also appear to have been improperly influenced by politics and by your family's interest in the matter. As members of the House Committee on the Judiciary, we have a responsibility to conduct oversight of the U.S. Department of Justice (DOJ) and we trust that you will fully cooperate with our inquiry.

On October 4, 2021, you issued a memorandum directing the Federal Bureau of Investigation and U.S. Attorneys' offices to strategize with state and local leaders in response to perceived threats against public school officials.<sup>1</sup> Local law enforcement should properly address and prevent legitimate threats and any actual violence against school board officials. But there is little—if any—basis to interject the immense powers of the federal government into these local matters. Your directive to do so will only serve to discourage parents from voicing concerns or disagreement about the important issues of education policy in their communities.

Your memorandum appears to be motivated by politics more than by any pressing federal law enforcement need. You issued your directive just days after President Biden received a letter from the National School Board Association (NSBA) that equated concerned parents with domestic terrorists and perpetrators of hate crimes.<sup>2</sup> This letter referred to what are legitimate parental concerns about far-left curricula such as Critical Race Theory, radical gender identity ideology, and oppressive coronavirus-related mandates in their local schools.<sup>3</sup> The NSBA urged

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<sup>1</sup> Memorandum from Atty Gen. Merrick Garland, U.S. Dep't of Justice, Partnership Among Federal, State, Local, Tribal, And Territorial Law Enforcement to Address Threats Against School Administrators, Board Members, Teachers, and Staff (Oct. 4, 2021).

<sup>2</sup> Letter from Ms. Viola M. Garcia, President, Nat'l School Board Assoc. & Mr. Chip Slaven, Chief Exec. Officer, Nat'l School Board Assoc., to President Joseph R. Biden, White House (Sept. 29, 2021).

<sup>3</sup> *Id.*

“the federal government’s intervention against individuals or hate groups who are targeting our schools and educators.”<sup>4</sup>

Even more concerning is the appearance that a member of your family has a financial stake in local school boards adopting a far-left educational curriculum. Reports allege that your son-in-law is the co-founder of Panorama Education, Inc., a company that publishes and sells Critical Race Theory and “anti-racism” materials and works with school districts nationwide to obtain and analyze data on students.<sup>5</sup> The company’s surveys reportedly include intrusive questions such as whether a student feels “gender fluid.”<sup>6</sup> To avoid student privacy laws and collect student data without parental consent, Panorama Education staff members are classified as “school officials.”<sup>7</sup> The company has reportedly surveyed more than 13 million students in 21,000 schools in all 50 states to date<sup>8</sup> and has received funding from liberal activists such as Mark Zuckerberg.<sup>9</sup>

Your actions appear to run afoul of relevant rules of federal ethics. According to the Code of Federal Regulations, an employee of the Executive Branch is discouraged from engaging in conduct that is likely to affect the financial interests of “a person with whom he has a covered relationship.”<sup>10</sup> A covered relationship includes “a relative with whom the employee has a close personal relationship.”<sup>11</sup> You and your daughter and son-in-law may meet this criterion, and it is unclear whether you consulted with the Department’s designated agency ethics official on this matter prior to issuing your memorandum.<sup>12</sup>

As our nation’s top law enforcement official, your most fundamental responsibility is to uphold the standards of equal justice under the law and to protect the constitutional rights and liberties of all Americans. The circumstances around the issues of your memorandum jeopardize these standards and call into question the propriety of your actions. More fundamentally, your directive to insert the might of the federal government into legitimate debates about local education policies shows a serious misunderstanding of the duties of your office.

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<sup>4</sup> *Id.*

<sup>5</sup> Mark Moore, *Parents group: AG Garland has conflict of interest with Facebook, critical race theory*, N. Y. Post (Oct. 6, 2021, 3:54 PM), <https://nypost.com/2021/10/06/parents-group-garland-has-conflict-of-interest-with-facebook/>.

<sup>6</sup> Elizabeth Elkind, *Daughter of Attorney General who ordered DOJ to probe angry parents for domestic terrorism is married to founder of education group that promotes Critical Race Theory: Merrick Garland accused of a conflict of interest*, Daily Mail (Oct. 8, 2021, 12:37 PM), <https://www.dailymail.co.uk/news/article-10069425/Garland-accused-conflict-ties-education-group-promoting-Critical-Race-Theory.html>.

<sup>7</sup> Fairfax County increases five-year contract to \$2.4 million to Panorama Education, a government contractor cofounded by son-in-law of U.S. Attorney General, Parents Defending Education, <https://defendinged.org/incidents/panorama-education-datamining/> (last visited Oct. 8, 2021).

<sup>8</sup> Panorama, *Our Story*, <https://www.panoramaed.com/about> (last visited Oct. 7, 2021).

<sup>9</sup> Press Release, Newswire, *Serving 5 Million Students, Panorama Education Raises \$16M to Expand Reach of Social-Emotional Learning and Increase College Readiness in Schools* (Nov. 7, 2017).

<sup>10</sup> *Impartiality in Performing Official Duties*, 5 C.F.R. §§ 2635.501(a) & 2635.502(b)(1)(ii) (1997).

<sup>11</sup> *Id.*

<sup>12</sup> U.S. Dep’t of Justice, Dep’t Ethics Office, *Conflicts*, <https://www.justice.gov/jmd/conflicts> (last visited Oct. 8, 2021).

Thus, we request you promptly consult with the designated agency ethics official to determine if your actions in this matter have resulted in an ethics violation for a breach of impartiality. The results of this inquiry must be made public and reported to the House and Senate Committees on the Judiciary in order to protect the integrity of the office of Attorney General. Furthermore, depending on the result, your recusal from this issue may be warranted, and the rescission of the memorandum required.

Thank you for your prompt attention to this matter. We await your response.

Sincerely,



Mike Johnson  
Ranking Member  
Subcommittee on the Constitution  
Civil Rights and Civil Liberties



Jim Jordan  
Ranking Member



Dan Bishop  
Member of Congress



Steve Chabot  
Member of Congress



Louie Gohmert  
Member of Congress



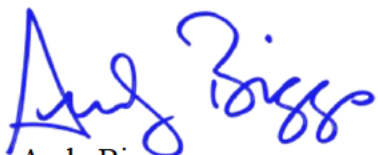
Darrell Issa  
Ranking Member  
Subcommittee on Courts, Intellectual  
Property and the Internet



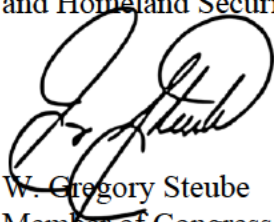
Ken Buck  
Ranking Member  
Subcommittee on Antitrust,  
Commercial and Administrative Law



Matt Gaetz  
Member of Congress



Andy Biggs  
Ranking Member  
Subcommittee on Crime, Terrorism  
and Homeland Security



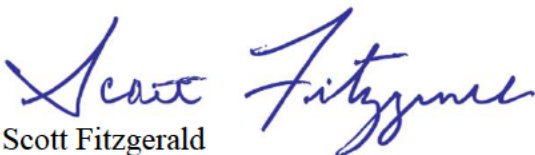
W. Gregory Steube  
Member of Congress



Thomas Massie  
Member of Congress



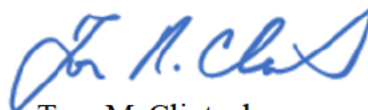
Michelle Fischbach  
Member of Congress



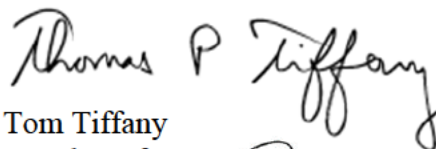
Scott Fitzgerald  
Member of Congress



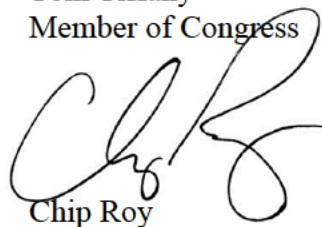
Burgess Owens  
Member of Congress



Tom McClintock  
Ranking Member  
Subcommittee on Immigration and  
Citizenship



Tom Tiffany  
Member of Congress



Chip Roy  
Member of Congress



Victoria Spartz  
Member of Congress



Cliff Bentz  
Member of Congress

**From:** Pietranton, Kelsey (PAO)  
**Subject:** RE: [EXTERNAL] Media Inquiry from Alex Nester - Washington Free Beacon  
**To:** Press; Shevlin, Shannon (PAO)  
**Cc:** Hornbuckle, Wyn (PAO)  
**Sent:** October 14, 2021 5:19 PM (UTC-04:00)  
Plus Wyn for OIG.

-----Original Message-----

From: Press <Press@jmd.usdoj.gov>  
Sent: Thursday, October 14, 2021 5:13 PM  
To: Pietranton, Kelsey (PAO) (b) (6); Shevlin, Shannon (PAO)  
(b) (6)  
Cc: Press <Press@jmd.usdoj.gov>  
Subject: FW: [EXTERNAL] Media Inquiry from Alex Nester - Washington Free Beacon

-----Original Message-----

From: no-reply@usdoj.gov <no-reply@usdoj.gov>  
Sent: Thursday, October 14, 2021 4:43 PM  
To: Press <Press@jmd.usdoj.gov>  
Subject: [EXTERNAL] Media Inquiry from Alex Nester - Washington Free Beacon

Date Thursday, October 14, 2021 - 4:43pm EDT

Name: Alex Nester

Email Address: (b) (6)

Topic: Inspector General

Media Outlet: Washington Free Beacon

Deadline: 5:30 PM today, October 14

Inquiry:

To whom it may concern:

My name is Alex Nester and I write on education for the Washington Free Beacon.

I am reaching out for comment regarding a letter I received from Rep. Doug Lamborn (R.) to Inspector General Horowitz. The representative is asking General Horowitz to investigate Attorney General Garland's ties to Panorama Education, a left-wing education company that creates many race and gender-based surveys.

Is it appropriate for the Attorney General to direct federal and state law enforcement to investigate parents who speak out against radical racial and gender ideology infiltrating the classroom, while his son-in-law runs an organization responsible for some of the very surveys parents are upset about?

Any further information regarding Garland's ties to the organization are welcome.

Thanks so much,  
Alex

**From:** Fletcher, Brian H. (OAG)  
**Subject:** RE: AG ethics question  
**To:** Shaw, Cynthia K. (JMD)  
**Sent:** July 16, 2021 4:10 PM (UTC-04:00)

Great. Thanks again—much appreciated.

---

**From:** Shaw, Cynthia K. (JMD) (b) (6)  
**Sent:** Friday, July 16, 2021 4:04 PM  
**To:** Fletcher, Brian H. (OAG) (b) (6)  
**Subject:** RE: AG ethics question

Sorry, I should have said more. Because these are diversified mutual funds, they meet the CD re-invest requirements.

Also they are also EIFs for 278 purposes because they meet OGE's definition of EIF: (1) independently managed, that is, not managed by the investor; (2) widely held (by more than 100 people); and (3) either publicly traded or widely diversified. Sector funds can be EIFs for reporting purposes, but they are not diversified mutual funds for CD purposes. (That's really intuitive, isn't it.) Because the funds below are EIFs, the AG will not have to report these funds' underlying assets.

Finally, I see no appearance problems arising from ownership of these funds. They are exactly the kind of funds that do not cause conflicts and a reasonable person would know that.

Cindy

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**From:** Fletcher, Brian H. (OAG) (b) (6)  
**Sent:** Friday, July 16, 2021 2:45 PM  
**To:** Shaw, Cynthia K. (JMD) (b) (6)  
**Subject:** RE: AG ethics question

Thanks so much for the quick follow-up, Cindy—I really appreciate it.

Two quick follow-up questions:

First, (b) (5)

Second, (b) (5)

Thanks again,  
Brian

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**From:** Shaw, Cynthia K. (JMD) (b) (6)  
**Sent:** Friday, July 16, 2021 2:41 PM  
**To:** Fletcher, Brian H. (OAG) (b) (6)  
**Subject:** RE: AG ethics question

Hi,

Based on everything I see at these sites, with a double-check on Yahoo! Finance, I conclude these are all diversified mutual funds. When he sells by COB August 1, he will have complied with all the rules re CDs.



Re the financial disclosure rules: He is not required to file a 278-T within 30 days of purchasing these funds, due to the fact they are diversified mutual funds. But I recommend that he file a report because it will make filling out his Annual Report easier next year. All the transactions can be pre-populated into the Annual. If he doesn't report them on a 278-T, the purchases will need to added manually.

Happy to discuss.

Cindy

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**From:** Fletcher, Brian H. (OAG) (b) (6)

**Sent:** Friday, July 16, 2021 12:19 PM

**To:** Shaw, Cynthia K. (JMD) (b) (6)

**Subject:** RE: AG ethics question

Great. Thanks very much. (b) (5) :

(b) (5)

Please just let me know if you have questions or want more information—happy to do whatever I can to help. (And I'll add that (b) (5) , but we want to double check that with you. And we're also interested in any other legal/prudential flags that we might not be thinking about...)

Thanks again,  
Brian

---

**From:** Shaw, Cynthia K. (JMD) (b) (6)

**Sent:** Friday, July 16, 2021 12:14 PM

**To:** Fletcher, Brian H. (OAG) (b) (6)

**Subject:** RE: AG ethics question

Hi,  
Send me the proposed assets ASAP. He has until August 1 (60 days after the sale), to reinvest the proceeds. I will research the proposed purchases.  
Thanks!  
Cindy

---

**From:** Fletcher, Brian H. (OAG) (b) (6)

**Sent:** Friday, July 16, 2021 11:11 AM

**To:** Shaw, Cynthia K. (JMD) (b) (6)

**Subject:** AG ethics question

Hi Cindy-

When you have a moment, I have another ethics question for the AG. He is in the process of deciding how to invest the proceeds of his required divestitures, and (b) (5)

What's the best way to get answers to those questions? (b) (5)

Please just let me know what you prefer.

Thanks very much,  
Brian

**From:** Davidson, Marcia A. (OAG)  
**Subject:** FW: Late Submission Request  
**To:** (b)(6) Holiday Cards (WHO/EOP)  
**Sent:** October 19, 2021 2:31 PM (UTC-04:00)

My apologies in advance for making this late submission request. Would it be possible for me to submit a request for 8 holiday cards on behalf of the Attorney General?/marcia

**Marcia A. Davidson**  
Confidential Assistant  
Office of the Attorney General  
U.S. Department of Justice  
Office: (b) (6)  
Cell: (b) (6)

---

If you can accommodate the request, we would be appreciative. It turns out to be 7 addresses. Thank you for your consideration./marcia

(b) (6)

(b) (6)

(b) (6)

(b) (6)

(b) (6)

(b) (6) Alexander Tanner  
c/o The Tanners

(b) (6)

(b) (6)

**From:** Ramamurti, Arjun R. (OAG)  
**Subject:** RE: HJC Transcript  
**To:** Seidman, Ricki (OASG); Goodlander, Margaret V. (OAG)  
**Sent:** October 22, 2021 1:50 PM (UTC-04:00)  
**Attached:** HJC Transcript - By Topic.docx

Reorganized version attached. Let me know if another organization is preferred. Questions included where relevant.

Arjun

---

**From:** Seidman, Ricki (OASG) (b) (6)  
**Sent:** Friday, October 22, 2021 10:25 AM  
**To:** Goodlander, Margaret V. (OAG) (b) (6) Ramamurti, Arjun R. (OAG)  
(b) (6)  
**Subject:** FW: HJC Transcript

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**From:** Calce, Christina M. (OLA) (b) (6)  
**Sent:** Thursday, October 21, 2021 9:08 PM  
**To:** Seidman, Ricki (OASG) (b) (6)  
**Cc:** Greenfeld, Helaine A. (OLA) (b) (6)  
**Subject:** HJC Transcript

Hi Ricki,

I'm attaching the transcript from today's HJC hearing.

Thanks,  
Christina

Contents

I. School Boards ..... 2

# Scoped Out Per Agreement

## I. School Boards

**JIM JORDAN:**

Thank you, Mr. Chairman. The chairman just said the Trump DOJ was political and went after their opponents. Are you kidding me? Three weeks ago, the National School Boards Association writes President Biden asking him to involve the FBI and local school board matters. Five days later, the attorney general of the United States does just that, does exactly what a political organization asked to be done. . . . MS-13 can just waltz right across the border, but the Department of Justice, they're going to open up a snitch line on parents. . . . I don't think the good people of this great country are going to cower and hide. I think your memo, Mr. Attorney General, was the last straw. I think it was the catalyst for a great awakening that is just getting started.

**STEVE CHABOT:**

According to the Sarasota Herald-Tribune, one example of a so-called terrorist incident was apparent, merely questioning whether school board members had earned their high school diplomas. Now, that might have been rude, but does that seem like an act of domestic terrorism that you or your Justice Department ought to be investigating?

**MERRICK GARLAND:**

Absolutely not. And I want to be clear, the Justice Department supports and defends the First Amendment right of parents to complain as vociferously as they wish about the education of their children, about the curriculum taught in the schools. That is not what the memorandum is about at all, nor does it use the words domestic terrorism or Patriot Act. Like you, I can't imagine any circumstance in which the Patriot Act would be used in the circumstances of parents complaining about their children, nor can I imagine a circumstance where they would be labeled as domestic terrorism.

**MERRICK GARLAND:**

I do not believe that parents who testify, speak, argue with, complain about school boards and schools should be classified as domestic terrorists or any kind of criminals. Parents have been complaining about the education of their children and about school boards since there were such things as school boards and public education.

This is totally protected by the First Amendment. I take your point that true threats of violence are not protected by the First Amendment. Those are the things we're worried about here.

**MERRICK GARLAND:**

Just to say again, we are not investigating peaceful protest or parent involvement in school board meetings. There is no precedent for doing that, and we would never do that.

We are only concerned about violence, threats of violence against school administrators, teachers, staff, people like your mother, a teacher.

That is what we're worried about. . . . We are worried about that across the board. . . . We're worried about threats against members of Congress. We're worried about threats against police.

**MIKE JOHNSON:**

Published reports show that your son-in-law co-founded a company called Panorama Education. We now know that that company publishes and sells critical race theory and so-called antiracism materials to schools across the country and it works with school districts nationwide to obtain and analyze data on students often without parental consent. On its website, the company brags that it surveyed more than 13 million students in the US. It's raised \$76 million from powerful investors including people like Mark Zuckerberg just since 2017. My first question is this, are you familiar with Title 5 of the Code of Federal Regulations which addresses the rules of impartiality for executive branch employees and officials?

**MERRICK GARLAND:**

I am very familiar with it. And I want to be clear, once again, that there is nothing in this memorandum which has any effect on the kinds of curriculums that are taught or the ability of parents to complain . . . .

**MIKE JOHNSON:**

Did you have the appropriate agency ethics official look into this? Did you seek guidance as the federal regulation requires?

**MERRICK GARLAND:**

This memorandum is aimed at violence and threats of violence.

**MIKE JOHNSON:**

I understand you're talking point, you're not answering my question, Mr. Attorney General. With all due respect, will you submit to an ethics review of this matter? Yes or no?

**MERRICK GARLAND:**

There's no company in America or, hopefully, no law-abiding citizen in America who believes that threats of violence should not be prevented. There are no conflicts of interest that anyone could have . . . . All I can say is I completely agree that the rule of law and respect for it is essential and I will always do everything possible to uphold that and to avoid any kind of conflict of interest.

**JIM JORDAN:**

Mr. Attorney General, was it just a coincidence that your memo came five days after the National School Boards Association letter went to the president?

**MERRICK GARLAND:**

So, we are concerned about violence and threats of violence across the board against school officials. . . . Obviously, the letter, which was public and asked for assistance from the Justice Department was brought to our attention and it's a relevant factor—

**JIM JORDAN:**

Who gave you the letter?

**MERRICK GARLAND:**

I read about the letter in the news. That's how I read about it. . . . No one in the White House spoke to me about the memo at all, but I am sure I was -- at least, I certainly would believe that White House communicated its concerns about the letter to the Justice Department, and that is perfectly appropriate.

**JIM JORDAN:**

Did you or anyone at the Justice Department discussed the memo with White House personnel or with anyone at the White House before the memo was sent?

**MERRICK GARLAND:**

I did not. I don't know whether anyone discussed the memo. I am sure that the communication from the National Association of School Boards was discussed between the White House and the Justice Department, and that's perfectly appropriate just as --

**JIM JORDAN:**

With those individuals, who at the White House talked with you at the Justice Department?

**MERRICK GARLAND:**

I don't know. I don't know. . . . I think I've answered. No one from the White House spoke to me. But the White House is perfectly appropriately concerned about violence just like they're concerned about violence in the streets, and they make a request to the Justice Department in that respect just like they're --

**JIM JORDAN:**

Did you or anyone at the Department of Justice communicate with the American Federation of Teachers, the National Education Association, the National School Boards Association prior to your memo?



**MERRICK GARLAND:**

I did not. I don't know. . . . I would be surprised if that happened, but I don't know.

**JIM JORDAN:**

Will FBI agents be attending local school board meetings?

**MERRICK GARLAND:**

No. FBI agents will not be attending local school board meetings. And there is nothing in this memo to suggest that. I want to, again, try to be clear, this memo is about violence and threats of violence.

**JIM JORDAN:**

Well, let me just point out, the same day you did the memo, the Justice Department sent out a press release. . . . You said there's no way you're going to be treating parents as domestic terrorist, but you got the National Security Division in a press release regarding your memo that day.

**MERRICK GARLAND:**

My memo does not mention the National Security Division. It's addressed to the criminal division.

**JIM JORDAN:**

When did you first review the data showing this so-called disturbing uptick?

**MERRICK GARLAND:**

So, I read the letter, and we have been seeing, over time, threats . . . . When the National School Boards Association, which represents thousands of school boards and school board members, says that there are these kind of threats, when we read in the newspapers reports of threats of violence, when that is in the context of threats of—

**MERRICK GARLAND:**

We are trying to prevent violence and threats of violence. It's not only about schools. We have similar concerns with respect to election workers, with respect to hate crime, with respect to judges and police officers. This is a rising problem, in the United States, of threats of violence, and we are trying to prevent the violence from occurring.

**MERRICK GARLAND:**

No, I do not think that parents getting angry at school boards, for whatever reason, constitute domestic terrorism. It's not even a close question.

**MERRICK GARLAND:**

Look, the Justice Department has no role, with respect to what curriculum is taught in the schools, this is a matter for local decision making and not for the Justice Department, and we are not in any way suggesting that we have any.

**TOM TIFFANY:**

Have states asked for help?

**MERRICK GARLAND:**

So, we have state and local partners for all of our matters. This is an assessment of whether there is a problem. And there are federal statutes involved, and there are state statutes involved. And we are trying to prevent violence and threats of violence against public officials across a broad spectrum of kinds of public officials.

**DAN BISHOP:**

Are these meetings occurring?

**MERRICK GARLAND:**

So, let me just be clear one more -- again here. This memo is expressly directed against threats of violence and violence. . . . I don't know whether they're ongoing, but I expect and hope that they are going, yes, because I did ask that they take place. . . . I doubt there have been meetings in every jurisdiction. I expect there have been some -- in some jurisdictions, and I hope so because that's the purpose of the meeting -- of the memo, to have meetings to discuss whether there's a problem, to discuss strategies, to discuss whether local law enforcement needs assistance or doesn't need assistance.

**JIM JORDAN:**

How many meetings have taken place?

**MERRICK GARLAND:**

I don't know the answer. I'm sure that there have been meetings, I'm -- but I am sure that they have not --

**MERRICK GARLAND:**

Prosecutors are well aware of where the First Amendment line is. This is addressed to prosecutors and members of law enforcement. They -- these are the kinds of statutes that we deal with every single day. They know the line.

**MERRICK GARLAND:**

I hope you can assure your constituents that we are not trying, the Justice Department is not trying, to chill there or whatever objections they want to make to school boards. Our only concern is violence and threats of violence. So, if you could make that clear to your constituents, perhaps that would help on that question.

**MERRICK GARLAND:**

Well, the Supreme Court is quite clear that the First Amendment protects spirited, vigorous, argumentative, even vituperative speech, perfectly acceptable for people to complain about what their school boards are doing or what their teachers are doing in the most aggressive terms. What they're not allowed to do is threaten people with death or serious bodily injury, the so-called truth that -- true threats line of cases.

**MERRICK GARLAND:**

Well, the courts have been quite clear that threats, that of an intent to commit an unlawful act of death or threat of serious bodily injury are not protected by the First Amendment. Anger, getting up in your face, those things are protected unless there are some local provisions, one way or the other.

**MERRICK GARLAND:**

Yes, people can argue with you, people can say vile things to you, people can insult you. I'm sorry to say this, doesn't mean I like that idea, it doesn't mean that that's where we should be in a civil society, but the First Amendment protects vigorous argument. I -- with respect to self-protection, I'm going to have to leave that to the Capitol Police and their protective organization to give those -- that kind of advice to you. If you think you have a threat, if you've received a threat of violence or threat of serious bodily injury, you should report it. Many other members of Congress have done that. We just arrested somebody in Alaska for threatening the two Alaskan senators.

**GREG STUEBE:**

Mr. Garland, do you believe that these environmental extremists who forced their way into the Department of Interior are also domestic terrorists?

**MERRICK GARLAND:**

This particular example, it doesn't mean the Justice Department doesn't know about it, but I personally haven't heard about it before what you're saying right now. But I want to be clear, we don't care whether the violence comes from the left or from the right or from the middle or from up or from down. We will prosecute violations of the law according to the statutes and facts that we have. This is a nonpartisan determination of how to do that.

**THOMAS MASSIE:**

In your opinion, what limitations does the 10th Amendment bring to your effort to police those school board meetings and the speech there in?

**MERRICK GARLAND:**

Well, let me be clear. We have no intention of policing school board meetings, nor does any memorandum from me suggest that we would do that. The memorandum that you're referring to is about threats of violence and violence. And that's all it's about. We greatly respect the First Amendment right of parents to appear before school boards and challenge and argue against provisions that the school boards are doing.

This memorandum has absolutely nothing to do with that. . . . Obviously, the first step is for state and local authorities to do that. This memorandum is about cooperating with state and local authorities. Now, there are some federal statutes that cover threats and intimidation, and harassment. And we have the obligation to enforce those.

**CHIP ROY:**

I appreciate that, Mr. Chairman. I have a document from an organization, Parents Defending Education, in which they had sought a FOIA request from the National School Board Association. And we've got the email exchanges from that, that I would like to insert into the record in which the interim director discusses on an email on September 29, the talks over the last several weeks with White House staff "explaining" the coordination with the White House.

[Re: Loudoun County]

**MERRICK GARLAND:**

Sounds like a state case and I'm not familiar with it, I'm sorry.

**CHIP ROY:**

Is the FBI or the Department of Justice investigating the Loudon School Board, for violating civil rights or under authority of say, the Violence Against Women Act?

**MERRICK GARLAND:**

I don't believe so, but I don't know the answer to that.

**From:** OIP-NoReply  
**Subject:** Notification of Records Search to be Conducted in Response to the FOIA, Clark, OIP No. FOIA-2022-00197  
**To:** Washington, Tracy T (OAG); Cash, Tabitha (OAG); Reich, Mitchell (OAG)  
**Cc:** Hibbard, Douglas (OIP); Fiorillo, Andrew (OIP); Watson, Theresa (OAG)  
**Sent:** November 29, 2021 3:10 PM (UTC-05:00)  
**Attached:** 01. Initial Request (10.26.21).pdf

The purpose of this email is to notify you that the records of the below-listed officials will be searched in response to the attached Freedom of Information Act (FOIA) request.

**Should you have any questions concerning this matter, please email or call the OIP Official(s) cc'd in this email.**

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The requester, Christine Clark, is seeking:

- Emails between Attorney General Merrick Garland and Panorama Education from March 11, 2021, to October 25, 2021.

The officials whose records will be searched for this request are:

- Attorney General Merrick Garland
- Please advise our office if any of the above custodians should be removed, or additional custodians should be included in this search.

The FOIA requires agencies to conduct a reasonable search in response to FOIA requests. For your information, this search will encompass the email and computer files (e.g. C or H drive) maintained by the officials listed above.

**To the extent officials within your office maintain other types of records, such as paper records or material maintained within a classified system that would be responsive to this request, but would not be located as a result of OIP's unclassified electronic search, please indicate so in response to this email as soon as possible.** OIP staff will make arrangements to conduct those searches as necessary. Similarly, if your office would not maintain any records responsive to this request and/or you can readily identify the officials, be they either current or former employees, who would maintain records responsive to this request, you may indicate so in response to this email.

Please note that the Federal Records Act, as amended in 2014 and [DOJ Policy Statement 0801.04](#) provide that government employees should not use a non-official account including, but not limited to, email, text, or instant message, for official business. However, should this occur, the communication must be fully captured in a DOJ recordkeeping system – either by copying any such messages to one's official account or forwarding them to one's official account within twenty days. Should any records custodians have official records responsive to this FOIA request, which are maintained only in a non-official account, and not copied into an official account, then those records should be provided to OIP.

ATTACHMENT (Initial Request Ltr)

**Please do not reply to this e-mail account, as this account is not monitored. Thank you.**

# Request

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## Request Information

Request Number	FOIA-2022-00197
Request Type	Request
Request Date	10/26/2021
Perfected Date	10/26/2021
Due Date	11/24/2021
Request is in Litigation	No
Unusual Circumstances	
Significant	No
Coordination	No
Track	Complex
Agency	OIP
Document Delivery Method	Email

## Topic

eDiscovery Number

FOIA.gov Request ID

Sending Agency

Agency Point of Contact

Agency Tracking Number

## Litigation Information

First Name of Litigator

Last Name of Litigator

Litigator Office

Case Name

Federal District Court

Litigation Short Description

Litigation Reviewer

Date of Final Adjudication by  
Court

## Requester Information

Salutation Ms.

First Name Christine

Middle Name

Last Name Clark

Email Address (b) (6)

Organization	Daily Caller
Register Number	
Phone Number	(b) (6)
Fax Number	
Other Information	
Address Type	Home
Country	United States
Address Line 1	(b) (6)
Address Line 2	
Military Branch	
City	(b) (6)
State	(b) (6)
Province	
Zip/Postal Code	(b) (6)
Description of Request	
Summary of Request	Emails between Attorney General Merrick Garland and Panorama Education from March 11, 2021, to October 25, 2021.
Description	I am requesting email communications between Attorney General Merrick Garland and any associates or employees of the education group "Panorama Education" between the dates of 03/11/2021 and 10/25/2021.
File Type 1	
File 1	No Attachment
File Type 2	
File 2	No Attachment
File Type 3	
File 3	No Attachment
Expedited Processing Information	
Expedited Processing Requested?	No
Expedited Processing Request Date	
Expedited Processing Determination	
Expedited Determination Date	
Expedited Requested Due Date	
Standards for Expedition	
Expedited Justification	

Fee Information	
Will Pay Up To	
Fee Category	Representative of the news media
Fee Waiver Requested?	Yes
Fee Waiver Granted?	
Fee Waiver Justification	This information will serve a broader public interest.
Records Management	
Disposition Date	
Marked for Disposition	
Disposition Confirmed	
Disposition Confirmed By	
Workflow State	In Progress
Workflow Status	Assignment
Assigned Analyst	Hill, Monique
IR Reviewer	



**From:** Creighton, Kelly M (PAO)  
**Subject:** RE: OIP Expedited Processing Request of Rubinstein (FOIA-2022-00211)  
**To:** Gilbeaux, Georgianna (OIP)  
**Cc:** Hibbard, Douglas (OIP); Fiorillo, Andrew (OIP); Villanueva, Valeree A (OIP); Queen, Auriahn (PAO)  
**Sent:** November 16, 2021 10:43 AM (UTC-05:00)  
**Attached:** PAO Memo.pdf, 01. Initial Request (10.27.21).pdf, Expedite Request, National School Board, AG Memo, Blanket Approval.pdf

Please see the attached approval memo.

Thank you.

KC

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**From:** Gilbeaux, Georgianna (OIP) (b) (6)  
**Sent:** Thursday, October 28, 2021 10:34 AM  
**To:** Creighton, Kelly M (PAO) (b) (6)  
**Cc:** Hibbard, Douglas (OIP) (b) (6); Fiorillo, Andrew (OIP) (b) (6)  
Villanueva, Valeree A (OIP) (b) (6)  
**Subject:** OIP Expedited Processing Request of Rubinstein (FOIA-2022-00211)

Kelly,

Attached is a memorandum to PAO, including the FOIA request, for expedition review pursuant to standard iv. The expedition determination is due by Friday, November 5<sup>th</sup>.

Should you have any questions, please feel free to contact our Office.

Thank you,

Georgianna



October 27, 2021

**Via Online Portal and Email**

Douglas Hibbard, Chief, Initial Request Staff  
Office of Information Policy U.S. Department of Justice  
441 G Street, N.W., 6<sup>th</sup> Floor  
Washington, D.C. 20530-0001  
[MRUFOIA.Requests@usdoj.gov](mailto:MRUFOIA.Requests@usdoj.gov)

**Freedom of Information Act Request: ODAG Communications**

Dear Mr. Hibbard:

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. Pursuant to 5 U.S.C. § 552(a), we make the following Freedom of Information Act request.

**I. Special Definitions**

“FBI” means the Federal Bureau of Investigation and/or any person with an email containing “fbi.gov”

“October 4 Memo” means U.S. Dep’t of Justice, ATTORNEY. GEN. MEM. RE PARTNERSHIP AMONG FEDERAL, STATE, LOCAL, TRIBAL, AND TERRITORIAL LAW ENFORCEMENT TO ADDRESS THREATS AGAINST SCHOOL ADMINISTRATORS, BOARD MEMBERS, TEACHERS, AND STAFF (Oct. 4, 2021) <https://www.justice.gov/ag/page/file/1438986/download>

“ODAG” means any person in the Office of the Deputy Attorney General

“OPA 21-960” means U.S. Dep’t of Justice Office of Public Affairs, *Justice Department Addresses Violent Threats Against School Officials and Teachers* (Oct. 4, 2021) <https://www.justice.gov/opa/pr/justice-department-addresses-violent-threats-against-school-officials-and-teachers>

“Record” has the meaning given at 44 U.S.C. § 3301(a)(1)

## II. Custodians

- A. ODAG
- B. Lisa O. Monaco
- C. All persons with the title Assistant Deputy Attorney General
- D. All attorneys in ODAG with a grade of GS-13 or above.

## III. Requested Records

A. All records of or concerning communications between all custodians and the FBI regarding the October 4 Memo, OPA 21-960, and/or the subject matter thereof. The time frame for this Item is October 1, 2021, to October 8, 2021.

B. The calendar(s) of all custodians in groups B, C, and D, listed above. The time frame for this Item is October 1, 2021, to October 8, 2021.

C. All records of or concerning communications between any custodian and any person having an email address containing eop.gov or dhs.gov regarding any of the subjects of Item A. The time frame for this Item is October 1, 2021, to October 8, 2021.

## IV. Processing

FOIA requires the Department to disclose records freely and promptly. The department must liberally construe AFL's requests and make a good faith effort to search for requested records using methods "which can be reasonably expected to produce the information requested." At all times, FOIA must be construed to carry out Congress's open government mandate according to the ordinary public meaning of its terms at the time of its enactment.<sup>1</sup> As a general matter:

- Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. If a record contains information responsive to a FOIA request, then the Department must disclose the entire record, as a single record cannot be split into responsive and non-responsive bits. Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.

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<sup>1</sup> 5 U.S.C. §§ 552(a)(3)(A), 552(a)(6)(A); *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1738 (2020); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978); *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151 (1989); *Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990).

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please construe both our Items and the term “record” broadly and give full effect to all applicable authorities.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move records to official systems within a certain time. AFL has a right to records in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.
- Please use all available tools to conduct a complete and efficient search for potentially responsive records. Many agencies have adopted the National Archives and Records Administration (“NARA”) Capstone program or similar policies. These provide options for searching emails and other electronic records in a manner reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, then please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted before our Items are processed. If potentially responsive records are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold.

## **V. Fee Waiver**

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10, AFL requests a waiver of all search and duplication fees.

Fees should be waived “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” AFL’s request concerns identifiable operations or activities of the government, and the information requested is likely to contribute significantly to the public understanding such activities.

AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. As a nonprofit organization primarily engaged in the dissemination of information to educate the public, AFL does not have a commercial purpose and the release of the information requested is not primarily in AFL’s financial interest. Our status as a qualified non-commercial public education and news media requester previously has been acknowledged and recognized by this department and by the Departments of Defense, Education, Energy, Interior, Health and Human Services, and Homeland Security, and the Office of the Director of National Intelligence.

## VII. Expedited Processing

AFL requests expedited processing of Items A and B. In support thereof, AFL certifies its compelling need for expedited processing under 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e), and states as follows:

A. As other federal agencies have acknowledged in granting AFL expedited processing, AFL is primarily engaged in disseminating information.”<sup>2</sup> Additionally, there is an urgency to inform the public regarding the circumstances behind both the October 4 Memo and OPA 21-960.<sup>3</sup> In these documents, the Attorney General *promised* a coordinated, nationwide federal law enforcement deployment against parents, a deployment including “each” United States Attorney, the FBI, and the department’s National Security Division. However, it is now clear the given justification for the unprecedented measures outlined therein was merely fabricated political pretext. Ostensibly, the October 4 Memo and OPA 21-960 were based on the manufactured, false, and now retracted National School Boards Association letter of September 29, 2021.<sup>4</sup>

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<sup>2</sup> See Exhibit 1.

<sup>3</sup> See Letter from Rep. Jim Jordan, Ranking Member, et al, to the Hon. Merrick B. Garland (Oct. 25, 2021) <https://republicans-judiciary.house.gov/wp-content/uploads/2021/10/2021-10-25-HJC-GOP-to-Garland-re-school-memo.pdf>

<sup>4</sup> See *id.*; see also Ronn Blitzer, *Garland Grilled on School Board Memo, Hunter Biden, Jan. 6 at House Judiciary Hearing*, FOX NEWS (Oct. 21, 2021) <https://www.foxnews.com/politics/merrick-garland-house-judiciary-committee-hearing-doj-testimony>; Samuel Chamberlin, *WH Aided School Board Group’s ‘Domestic Terrorism’ Letter Before Garland Sicked FBI on Parents*, THE NEW YORK POST (Oct.

In testimony before the House Judiciary Committee on October 21, 2021, he said that the letter “was brought to our attention, and that someone at the White House had discussed it with someone at the Justice Department. When asked who from the White House and department had that conversation, the Attorney General said he did not know.<sup>5</sup> The common public meaning of “urgency” at the time of § 552(a)(6)(E)(v)(II)’s enactment was “the quality or state of being urgent.” The common public meaning of “urgent”, in turn, was “requiring or compelling speedy action or attention.” The civil liberties and political implications of this matter are obvious, profound, and require and compel speedy production of the requested records. Accordingly, this request should receive expedited processing under 5 U.S.C. § 552(a)(6)(E)(i).

B. Our request also meets three of the department’s regulatory tests for expedited processing. First, it satisfies 28 C.F.R. § 16.5(e)(ii), for the reasons discussed above. Second, it satisfies § 16.5(iii), providing for expedited processing of requests for records involving the “loss of substantial due process rights.” Deploying federal law enforcement against perceived political opponents to, at a minimum, chill their First Amendment rights, and using a false, manufactured pretext to do so,

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21, 2021) <https://nypost.com/2021/10/21/wh-aided-school-board-groups-letter-before-garland-sicced-fbi-on-parents/>; Jordan Davidson, *AG Merrick Garland Admits Federal War On Parents Sprang From School Boards Letter, Not Evidence*, THE FEDERALIST (Oct. 21, 2021) <https://thefederalist.com/2021/10/21/ag-merrick-garland-admits-federal-war-on-parents-sprang-from-school-boards-letter-not-evidence/>; see also Nat’l School Board Ass’n, *Letter to Joseph R. Biden Re: Federal Assistance to Stop Threats and Acts of Violence Against Public Schoolchildren, Public School Board Members, and Other Public School District Officials and Educators* (sic) at 5 (Sept. 29, 2021) <https://nsba.org/-/media/NSBA/File/nsba-letter-to-president-biden-concerning-threats-to-public-schools-and-school-board-members-92921.pdf>. Alleging, “acute threats and actions that are disruptive to ... interstate commerce” (sic), the letter solicited “the expertise and resources of the U.S. Department of Justice, Federal Bureau of Investigation (FBI), U.S. Department of Homeland Security, U.S. Secret Service, and its National Threat Assessment Center”. The letter, however, was false and misleading. For example, it cited the case of a Virginia father who was arrested at a school board meeting as evidence of malicious threat. However, it neglected to mention he was arrested for attempting to speak out about his ninth-grade daughter, who had been raped in a girls’ bathroom by a boy who had access to the intimate facility solely because he “identified” as gender fluid and wore a dress, at a school board meeting about “equity.” Also, it asserted that “Coupled with attacks against school board members and educators for approving policies for masks to protect the health and safety of students and school employees, many public school (sic) officials are also *facing physical threats* because of propaganda purporting the false inclusion of critical race theory within classroom instruction and curricula.” (Emphasis added.) As support for this claim, it cited an analysis by the Armed Conflict Location & Event Data Project. However, this analysis concluded “all anti-CRT events involving these actors have remained peaceful.” In other words, the alleged source for the threshold claim that public school officials are facing physical threats over racial indoctrination proves the exact opposite. Association Letter at 1 n.1 <https://nsba.org/-/media/NSBA/File/nsba-letter-to-president-biden-concerning-threats-to-public-schools-and-school-board-members-92921.pdf> *citing* The Armed Conflict Location & Event Data Project (ACLED), “Fact Sheet: Demonstrations over Critical Race Theory in the United States,” July 14, 2021, [https://acleddata.com/acleddatanew/wp-content/uploads/2021/07/ACLED\\_Fact-Sheet\\_CRT-Demos\\_2021.pdf](https://acleddata.com/acleddatanew/wp-content/uploads/2021/07/ACLED_Fact-Sheet_CRT-Demos_2021.pdf); However, <https://acleddata.com/2021/07/14/fact-sheet-demonstrations-over-critical-race-theory-in-the-united-states/> reflects no violent anti-CRT protests.

<sup>5</sup> Blitzer, *supra* note 4.

would certainly seem to meet this test. Third, it satisfies § 16.5(e)(1)(iv), providing for expedited processing whenever it is determined that the request involves a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.<sup>6</sup>

C. Our request also meets the Circuit's three factor test for expedited processing test.<sup>7</sup> Respecting factor one, as discussed *supra*, the subject of our request is a matter public concern and media interest that is central to a pressing issue of the day. It is very much a currently unfolding story.<sup>8</sup> Respecting factor two, a delayed response will compromise significant and legally recognized interests. Specifically, if production is delayed, then both AFL and the public will be precluded from obtaining in a timely fashion information vital to the current and ongoing debate surrounding the October 4<sup>th</sup> Memo, OPA 21-960, and the Biden Administration's unprecedented

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<sup>6</sup> See notes 3, 4, and 5, *supra*; see also Tyler O'Neil, *Virginia Parents Slam Obama's 'Tone-deaf' Dismissal of Education Issues Amid Alleged Sexual Assault, Obama Suggested that an Alleged Sexual Assault Cover-up in School is 'Fake Outrage' and a 'Trumped-up' Issue*, FOX NEWS (Oct. 25, 2021) <https://www.foxnews.com/politics/virginia-parents-slam-obamas-tone-deaf-dismissal-of-education-issues-in-governor-race>; Chuck Ross, *Biden Admin Taps School Board Association Honcho For Post In Wake Of Infamous Letter, Appointment is the Latest Indication of the Biden Administration's Collaboration with the Group*, THE WASHINGTON FREE BEACON (Oct. 25, 2021) <https://freebeacon.com/biden-administration/school-board-association-president-got-federal-post-after-infamous-letter/>; Noah Pollack, TWITTER (Oct. 22, 2021, 8:21 pm) <https://twitter.com/NoahPollak/status/1451705222531674112> ("Breaking: In the wake of yesterday's @FreeBeacon report, National School Board Association announces "we regret and apologize for the letter" to Biden admin characterizing concerned parents as potentially domestic terrorists"); see also Valerie Richardson, *School Boards Group Apologizes for Letter Linking Protesting Parents to Domestic Terrorism, Attorney General Merrick Garland Created Task Force to Respond to Threats*, THE WASHINGTON TIMES (Oct. 23, 2021) <https://www.washington-times.com/news/2021/oct/23/nsba-apologizes-letter-linking-rowdy-school-board-/>; Chuck Ross, *'No Justification': School Board Association Retracts Letter Likening Parents to Domestic Terrorists, Admission comes in wake of Free Beacon report exposing coordination with White House*, THE WASHINGTON FREE BEACON (Oct. 23, 2021) <https://freebeacon.com/biden-administration/school-board-group-apologizes-for-comparing-parents-to-domestic-terrorists/>; Brittany Bernstein, *Parents Group Sounds Alarm Over AG Garland's Ties to Pro-CRT, Zuckerberg-Backed Consultancy*, NATIONAL REVIEW (Oct. 7, 2021) <https://www.nationalreview.com/news/parents-group-sounds-alarm-over-ag-garlands-ties-to-pro-crt-zuckerberg-backed-consultancy/>; Jerry Dunleavy, *GOP Senators Rise Conflict of Interest Concerns Over Garland's Son-In-Law's Education Company*, WASHINGTON EXAMINER (Oct. 10, 2021) <https://www.washingtonexaminer.com/news/gop-senators-raise-conflict-interest-concerns-garland-son-in-law-company-panorama-education>; Sen. Ted Cruz, Sen. Mike Lee, and Sen. Marsha Blackburn, Letter to the Hon. Merrick Garland, Attorney General (Oct. 8, 2021) <https://www.cruz.senate.gov/imo/media/doc/202110.08crtlettertoaggarland.pdf>; Elizabeth Elkind, *Daughter of Attorney General Who Ordered DOJ to Probe Angry Parents for Domestic Terrorism is Married to Founder of Education Group that Promotes Critical Race Theory: Merrick Garland Accused of a Conflict of Interest*, DAILY MAIL (Oct. 7, 2021) <https://www.dailymail.co.uk/news/article-10069425/Garland-accused-conflict-ties-education-group-promoting-Critical-Race-Theory.html>. Indeed, even this denial garnered media attention. Michael Lee, *America First Legal Request for Expedited FOIA on DOJ Targeting School Board 'Violence' Denied*, Fox News (Oct. 18, 2021) <https://www.foxnews.com/politics/america-first-legal-request-expedited-foia-seeking-information-doj-targeting-parents-denied>.

<sup>7</sup> *Al-Fayed v. Central Intelligence Agency*, 254 F.3d 300, 309-10 (D.C. Cir. 2001).

<sup>8</sup> *Brennan Ctr. for Just. at NYU Sch. of L. v. Dep't of Com.*, 498 F. Supp. 3d 87, 98 (D.D.C. 2020).

decision to use the department's coercive powers against American parents. Being closed off from the opportunity to debate the legality and propriety of the department's conduct here itself is a harm in an open democracy.<sup>9</sup> Disclosing relevant records months or even years from now will be of academic interest only—any damage will have been done and stale information is of little value.<sup>10</sup> Respecting factor three, AFL's request clearly concerns "federal government activity."

D. Any concerns the department or other requesters may raise about granting AFL expedited processing have been weighed by Congress, and Congress has concluded them to be of subsidiary importance to compelling and time-sensitive cases, such as this. Practically speaking, AFL believes it is difficult for the department to credibly argue expedited processing in this case would cause much delay to other requesters given the very specific nature of AFL's FOIA requests and the extremely limited time window.

## VIII. Production

AFL welcomes production on an agreed rolling basis to speed production and reduce agency burden. If possible, please provide responsive records in an electronic format by email, native format by mail, or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14<sup>th</sup> Street NW, 5<sup>th</sup> Floor, Washington, D.C. 20005.

## IX. Conclusion

If you have any questions about this request or believe further discussions regarding search and processing will speed the efficient production of records of interest to AFL, then please contact me at [FOIA@aflegal.org](mailto:FOIA@aflegal.org). Finally, please contact us immediately if AFL's request for a fee waiver is not granted in full. Thank you in advance for your cooperation.

Sincerely yours,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation

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<sup>9</sup> *Brennan Ctr.*, 498 F. Supp. 3d at 98; *Protect Democracy Project, Inc. v. U.S. Dep't of Def.*, 263 F. Supp. 3d 293, 299-300 (D.D.C. 2017); *Elec. Priv. Info. Ctr. v. Dep't of Just.*, 416 F. Supp. 2d 30, 41 (D.D.C. 2006).

<sup>10</sup> *Brennan*, 498 F. Supp.3d at 102 (citations omitted); *Payne Enterprises, Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988).



# EXHIBIT 1



August 31, 2021

VIA DHS PAL & ELECTRONIC MAIL – [FOIA@HQ.DHS.GOV](mailto:FOIA@HQ.DHS.GOV)

U.S. Department of Homeland Security  
Privacy Office, Mail Stop 0655  
2707 Martin Luther King Jr. AVE SE  
Washington, DC 20528-065

**Freedom of Information Act Request: Evacuations from Afghanistan.**

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

**I. Introduction**

For months, the Biden Administration assured Americans it had matters well in hand in Afghanistan, and that the terrorists were not about to take over. For example, at President Biden’s July 8, 2021, press conference, he said:

Q. Is a Taliban takeover of Afghanistan now inevitable?

THE PRESIDENT: No, it is not.

Q. Why?

THE PRESIDENT: Because you — the Afghan troops have 300,000 well-equipped — as well-equipped as any army in the world — and an air force against something like 75,000 Taliban. It is not inevitable.

\* \* \* \*

Q. Mr. President, thank you very much. Your own intelligence community has assessed that the Afghan government will likely collapse.

THE PRESIDENT: That is not true.<sup>1</sup>

These assurances were false.<sup>2</sup>

The Taliban is now in control, and the United States has completely withdrawn its military and diplomatic presence from Afghanistan. The Biden government claims to have evacuated over 120,000 individuals from Afghanistan, but its planning has been inept, its execution chaotic, and its reporting and transparency lacking in detail. It has withheld critical facts, including, among other things, the number of American citizens still in Afghanistan, the nationalities of all those evacuated, the locations of all non-citizens granted admission to the United States, the immigration status—or lack thereof—of all non-citizens, and the process, procedures, and criteria used for vetting and screening evacuees for security and other risks.

AFL’s mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, to educate the public. At the core of this mission is keeping government officials accountable for their duty to faithfully execute the laws and protect and defend the Constitution and laws of the United States and to inform the public as to who the government is allowing entry to the country unscreened. Therefore, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, AFL hereby requests the following records within twenty business days.

## II. Definitions

“U.S. Citizen” means a natural born or naturalized citizen of the United States of America.

“INL Air Wing” means Bureau of International Narcotics and Law Enforcement Affairs Office of Aviation, its employees, contractors, vehicles, and aircraft, all as more particularly described at <https://www.state.gov/aviation-support/>

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<sup>1</sup> The White House, *Remarks by President Biden on the Drawdown of U.S. Forces in Afghanistan* (July 8, 2021) <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/08/remarks-by-president-biden-on-the-drawdown-of-u-s-forces-in-afghanistan/>.

<sup>2</sup> The evidence is the Biden Administration knew, or should have known, these assurances were false at the time they were made. *See, e.g.*, Dep’t of Defense, *Lead Inspector General, Quarterly Report to the U.S. Congress on Operation Freedom’s Sentinel (OFS), April 1, 2021 – June 30, 2021* at 3, 18, 22-25 (Aug. 17, 2021) <https://media.defense.gov/2021/Aug/17/2002832926/-1/-1/1/LEAD%20INSPECTOR%20GENERAL%20FOR%20OPERATION%20FREEDOM%E2%80%99S%20SENTINEL%20I%20QUARTERLY%20REPORT%20TO%20THE%20UNITED%20STATES%20CONGRESS%20I%20APRIL%201,%202021%20-%20JUNE%2030,%202021.PDF>; Joseph Clark, *Biden Administration Ignored Warnings on Afghanistan, Leaked State Dept. Cable Shows*, THE WASHINGTON TIMES (Aug. 21, 2021), <https://www.washingtontimes.com/news/2021/aug/20/state-department-cable-shows-biden-administration-/>;

“National Vetting Center” means the Center created pursuant to National Security Presidential Memorandum (NSPM)-9, *Optimizing the Use of Federal Government Information in the Support of the National Vetting Enterprise* and more particularly described at <https://www.cbp.gov/border-security/ports-entry/national-vetting-center>

“Non-U.S. person” means an alien as defined by 8 U.S.C. § 1101(a)(3).

“Parole authority” means the authority granted under 8 U.S.C. § 1182(d)(5).

“Refugee” has the meaning assigned to it by 8 U.S.C. § 1101(a)(42).

“Special Immigrant Visa” means Special Immigrant Visas for Iraqi and Afghan Translators/Interpreters as defined by Public Law 109-163, and subsequent amendments, and as detailed on the State Department’s website at <https://travel.state.gov/content/travel/en/us-visas/immigrate/siv-iraqi-afghan-translators-interpreters.html#references>.

### **III. Requested Records**

A. All records that mention or reference screening or vetting individuals being evacuated from Kabul and/or Afghanistan in the possession of the following custodians:

1. Secretary Alejandro Mayorkas
2. Deputy Secretary John Tien
3. Karen Olick
4. Any Deputy Chief of Staff to the Secretary
5. Any Counselor or Senior Counselor to the Secretary
6. Kimberly O’Connor
7. Randolph D. “Tex” Alles
8. Shonnie Lyon
9. John D. Cohen
10. Robert Silvers
11. Kelli Ann Burriesci
12. David Shahoulian
13. Samantha Vinograd
14. Serena Hoy
15. Marsha Espinosa
16. Meira Bernstein
17. Heather Fluit
18. Chris Tomney
19. Jennifer Daskal
20. Robert J. Fenton

The timeframe for this request is August 12, 2021, to August 31, 2021.

- B. All records related to DHS providing any other government partner any information on the identity of any person who boarded a U.S. operated aircraft leaving Afghanistan between August 10, 2021, and August 31, 2021.
- C. For any non-U.S. person evacuated by the United States out of Afghanistan between August 10, 2021, and August 31, 2021, records sufficient to show each person's application status (as a refugee, SIV, or otherwise) on the date that they were evacuated.
- D. All records that mention or reference screening, vetting, or processing for individuals seeking evacuation or resettlement out of Kabul, Afghanistan, or KBL. The time frame for this request is July 1, 2021, to the date this records request is processed.
- E. For the custodians referenced in request A above, all records that mention or reference the Department of Homeland Security's parole authority and/or paroling Afghans into the United States pursuant thereto. The time frame for this request is August 10, 2021, to August 31, 2021.
- F. All records of communications with, or that mention or reference, the National Vetting Center, and (1) contain the words "Kabul", "Afghan", "Bagram", or "KBL" or (2) refer to a person from Afghanistan seeking evacuation from and/or admission to the United States. The time frame for this request is July 1, 2021, to the date this records request is processed.
- G. All records of communications with, or that mention or reference coordination with the Department of Defense or the Department of State to screen or vet a person from Afghanistan seeking evacuation from Afghanistan and/or admission into the United States. The time frame for this request is July 1, 2021, to the date this records request is processed.
- H. Records sufficient to show (1) the number of U.S. Citizens evacuated or otherwise removed from Afghanistan, (2) the number non-U.S. persons evacuated or otherwise removed from Afghanistan and admitted or seeking admission into the United States, and (3) the number of non-U.S. persons identified as posing a potential security risk. The time frame for this request is March 1, 2021, to the date this records request is processed.
- I. Records sufficient to show the number of individuals evacuated from Afghanistan by nationality. The time frame for this request July 1, 2021, to the date this records request is processed.

- J. All records in the possession of any custodian identified in request A that mention or refer to—including the development or drafting of—the memo titled “Guidance for the Immigration Processing of Afghan Citizens During Operation Allies Refuge” dated August 23, 2021, sent from Secretary Mayorkas to Acting Commissioner Troy Miller.

#### IV. Redactions

Redactions are disfavored as the FOIA’s exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then Department of State must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; see also *Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, Department of State should produce email attachments.

In connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term “record” in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (“NARA”) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

## **V. Fee Waiver Request**

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11, AFL requests a waiver of all search and duplication fees associated with this request.

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public’s understanding of your policies and practices will be enhanced through AFL’s analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL’s financial interest. Other agencies, including the Departments of Education, Energy, Interior, and Homeland Security, and the Office of the Director of National Intelligence have previously granted AFL a fee waiver.

Second, waiver is proper as disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government.” The sudden and abrupt withdraw of forces from a country where the United States has maintained a presence for nearly 20 years, the rapid collapse of the local government to an international terrorist organization in the matter of days, and the Biden Administration’s inept response has made this an issue of intense public interest.

## VI. Request for Expedited Processing

AFL seeks expedited processing of requests A, B, E, and J.

Your regulations provide that you will grant expedited processing requests that demonstrate a “compelling need.”<sup>3</sup> You define “compelling need” as existing, *inter alia*, if the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal government activity.”<sup>4</sup> As demonstrated above, both criteria are met here.

First, AFL is an organization primarily engaged in disseminating information to the public. We intend to disseminate the information we receive and our analysis about this request to the public and to other members of the press.

Second, the Biden Administration claims more than 123,000 people, including about 6,000 American citizens, have been evacuated from Afghanistan.<sup>5</sup> However, the evacuation has been chaotic, poorly planned, and badly executed.<sup>6</sup> The Biden Administration turned over Kabul to the Taliban, giving it operational control over access to the Kabul airport and lists of U.S. Citizens and Afghan human assets.<sup>7</sup> Generally speaking, only individuals the Taliban allowed to leave Afghanistan were able to do so.

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<sup>3</sup> 6 C.F.R. § 5.5.

<sup>4</sup> *Id.*

<sup>5</sup> *Transcript of Statement of Anthony Blinken on Afghanistan*, THE NEW YORK TIMES (Aug. 30, 2021) <https://www.nytimes.com/2021/08/31/us/politics/blinken-afghanistan-speech.html>

<sup>6</sup> Molly Hennessy-Fiske, *Americans Faced Taliban, Airport Chaos in Scramble to Evacuate Afghanistan*, LOS ANGELES TIMES (Aug 18, 2021), <https://www.latimes.com/world-nation/story/2021-08-18/american-c-struggle-to-leave-afghanistan>; Lauren Leatherby, Jim Huylebroek, Scott Reinhard & Sarah KerrAug, *The Dangerous Road to the Kabul Airport*, THE NEW YORK TIMES (Aug. 18, 2021), <https://www.nytimes.com/interactive/2021/08/18/world/asia/kabul-airport-afghanistan-maps.html> (“While American forces have taken control of Kabul’s airport, chaos dominates just outside. As thousands desperately try to flee Afghanistan, Taliban fighters have blocked entrances, fired rifles and beaten some people in the crowds.”).

<sup>7</sup> Aaron Blake, *The Biden administration’s increasingly muddy denials on giving the Taliban lists*, THE WASHINGTON POST (Aug. 30, 2021) <https://www.msn.com/en-us/news/us/the-biden-administration-e2-80-99s-increasingly-muddy-denials-on-giving-the-taliban-lists/ar-AANU3cH?ocid=uxbndlbing>; Jerry Dunleavy, *White House: Taliban Setting Up More Entry Points Beyond Perimeter to Stop*



Yet the Biden government has not transparently disclosed the vetting and screening process used to ensure evacuees do not pose a security risk. The lack of transparency is problematic first because this Administration has repeatedly disregarded U.S. immigration laws,<sup>8</sup> and second because it has, over a period of months, repeatedly misrepresented the facts on the ground. The Biden credibility gap is wide and deep with respect to Afghanistan, immigration enforcement, and respect for the rule of law. Accordingly, there is an urgent need for immediate disclosure of the measures being taken to verify identities, to vet for terror ties, and to protect American Citizens here at home.<sup>9</sup>

Finally, there is a high likelihood that the information AFL seeks in the above-specified requests will be rendered stale once foreign nationals are granted admission to the United States. Given that the processing of many tens of thousands foreign nationals for admission to the United States is apparently still in process, the requested records are needed urgently to inform the public and policy makers about the processes and criteria this Administration is using to screen and vet potential security risks, and to ensure applicable laws and regulations are being followed.

## VI. Production

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14<sup>th</sup> Street NW, 5<sup>th</sup> Floor, Washington, D.C. 20005.

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*ISIS-K Attacks*, THE WASHINGTON EXAMINER (Aug. 23, 2021) <https://news.yahoo.com/white-house-taliban-setting-more-170600073.html>; *Taliban Captured Key US Military Biometric Devices: Report*, The Times of India (Aug. 19, 2021), <https://timesofindia.indiatimes.com/world/us/taliban-captured-key-us-military-biometric-devices-report/articleshow/85445501.cms>.

<sup>8</sup> America First Legal Foundation, *AFL Files FOIAs Demanding Answers about the Biden Administration's Implementation of Catch-and-Release and Other Open Border Policies* (July 27, 2021), <https://www.aflegal.org/news/afl-files-foias-demanding-answers-about-the-biden-administrations-implementation-of-catch-and-release-and-other-open-border-policies>

<sup>9</sup> According to CNN, "The approach from the administration has been 'get as many people on the plane as you can, and we'll sort out the (immigration visa) stuff later'". Geneva Sands and Evan Perez, *Arriving Afghans Without Paperwork Prompt Delays and Security Challenges*, CNN (Aug. 21, 2021), <https://www.cnn.com/2021/08/25/politics/arriving-afghans-paperwork-delays-security/index.html>.

Compare Lizzie Dearden, *Paris Attacks: Some Jihadists 'Took Advantage of Refugee Crisis to Slip into Europe'*, *French Prime Minister Says*, The Independent (Nov. 20, 2015), <https://www.independent.co.uk/news/world/europe/paris-attacks-some-jihadists-took-advantage-refugee-crisis-slip-europe-french-prime-minister-says-a6741466.html>.

## VII. Conclusion

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at [FOIA@aflegal.org](mailto:FOIA@aflegal.org). Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Thank you,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation



# Homeland Security

*Privacy Office, Mail Stop 0655*

September 17, 2021

**SENT VIA E-MAIL TO: [info@aflegal.org](mailto:info@aflegal.org)**

Reed Rubinstein  
600 14th St. NW, 5th Floor  
Washington, DC 20005

Re: **2021-HQFO-01432**

Dear Mr. Rubinstein:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated August 31, 2021, and to your request for expedited handling and a waiver of all assessable FOIA fees. Our office received your request on August 31, 2021. Specifically, you requested:

A. All records that mention or reference screening or vetting individuals being evacuated from Kabul and/or Afghanistan in the possession of the following custodians:

1. Secretary Alejandro Mayorkas
2. Deputy Secretary John Tien
3. Karen Olick
4. Any Deputy Chief of Staff to the Secretary
5. Any Counselor or Senior Counselor to the Secretary
6. Kimberly O'Connor
7. Randolph D. "Tex" Alles
8. Shonnie Lyon
9. John D. Cohen
10. Robert Silvers
11. Kelli Ann Burriesci
12. David Shahoulian
13. Samantha Vinograd
14. Serena Hoy
15. Marsha Espinosa
16. Meira Bernstein
17. Heather Fluit
18. Chris Tomney
19. Jennifer Daskal
20. Robert J. Fenton

The timeframe for this request is August 12, 2021, to August 31, 2021.

B. All records related to DHS providing any other government partner any information on the identity of any person who boarded a U.S. operated aircraft leaving Afghanistan between August 10, 2021, and August 31, 2021.

C. For any non-U.S. person evacuated by the United States out of Afghanistan between August 10, 2021, and August 31, 2021, records sufficient to show each person's application status (as a refugee, SIV, or otherwise) on the date that they were evacuated.

D. All records that mention or reference screening, vetting, or processing for individuals seeking evacuation or resettlement out of Kabul, Afghanistan, or KBL.

The time frame for this request is July 1, 2021, to the date this records request is processed.

E. For the custodians referenced in request A above, all records that mention or reference the Department of Homeland Security's parole authority and/or paroling Afghans into the United States pursuant thereto. The time frame for this request is August 10, 2021, to August 31, 2021.

F. All records of communications with, or that mention or reference, the National Vetting Center, and (1) contain the words "Kabul", "Afghan", "Bagram", or "KBL" or (2) refer to a person from Afghanistan seeking evacuation from and/or admission to the United States. The time frame for this request is July 1, 2021, to the date this records request is processed.

G. All records of communications with, or that mention or reference coordination with the Department of Defense or the Department of State to screen or vet a person from Afghanistan seeking evacuation from Afghanistan and/or admission into the United States. The time frame for this request is July 1, 2021, to the date this records request is processed.

H. Records sufficient to show (1) the number of U.S. Citizens evacuated or otherwise removed from Afghanistan, (2) the number non-U.S. persons evacuated or otherwise removed from Afghanistan and admitted or seeking admission into the United States, and (3) the number of non-U.S. persons identified as posing a potential security risk. The time frame for this request is March 1, 2021, to the date this records request is processed.

I. Records sufficient to show the number of individuals evacuated from Afghanistan by nationality. The time frame for this request July 1, 2021, to the date this records request is processed.

J. All records in the possession of any custodian identified in request A that mention or refer to—including the development or drafting of—the memo titled "Guidance for the Immigration Processing of Afghan Citizens During Operation Allies Refuge" dated August 23, 2021, sent from Secretary Mayorkas to Acting Commissioner Troy Miller.

Your request for expedited treatment is hereby granted.

Furthermore, due to the subject matter of your request, I am transferring **items B, C, G, H and I** of this request to the FOIA Officer for **U.S. Citizenship & Immigration Services (USCIS)**, for processing under the FOIA and direct response to you. Please find their contact information below:

**U.S. Citizenship & Immigration Services (USCIS)**

Create an account to avoid delays! [FIRST](#)

National Records Center, FOIA/PA Office

P. O. Box 648010

Lee's Summit, MO. 64064-8010

Phone: 1-800-375-5283 (USCIS Contact Center) | Fax: 816-350-5785 | E-mail:

[uscis.foia@uscis.dhs.gov](mailto:uscis.foia@uscis.dhs.gov)

[USCIS Website](#)

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. Part 5 § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances under 6 C.F.R. Part 5 § 5.5(c). As your request seeks documents that will require a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request pursuant to 6 C.F.R. Part 5 § 5.5(c). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

You have requested a fee waiver. The DHS FOIA regulations at 6 C.F.R. Part 5 § 5.11(k) set forth six factors DHS must evaluate to determine whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations or activities of the government," (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities, (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons, (4) Whether the contribution to public understanding of government operations or activities will be "significant," (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure, and (6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Upon review of the subject matter of your request, and an evaluation of the six factors identified above, DHS has determined that it will conditionally grant your request for a fee waiver. The fee waiver determination will be based upon a sampling of the responsive documents received from the various DHS program offices as a result of the searches conducted in response to your FOIA request. DHS will, pursuant to DHS FOIA regulations applicable to media requesters, process the first 100 pages free of charge. If upon review of these documents, DHS determines that the disclosure of the information contained in those documents does not meet the factors permitting DHS to waive the fees, then DHS will at that time either deny your request for a fee waiver entirely, or will allow for a percentage reduction in the amount of the fees corresponding to the

amount of relevant material found that meets the factors allowing for a fee waiver. In either case, DHS will promptly notify you of its final decision regarding your request for a fee waiver and provide you with the responsive records as required by applicable law.

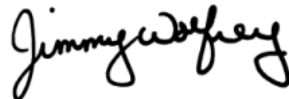
In the event that your fee waiver is denied, and you determine that you still want the records, provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS FOIA regulations as they apply to media requesters. As a media requester you will be charged 10 cents per page for duplication; the first 100 pages are free. In the event that your fee waiver is denied, we will construe the submission of your request as an agreement to pay up to \$25.00. This office will contact you before accruing any additional fees.

We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the analysts in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2021-HQFO-01432**. Please refer to this identifier in any future correspondence. The status of your FOIA request is now available online and can be accessed at: <https://foiarequest.dhs.gov/app/CheckStatus.aspx>, by using this FOIA request number.

If you have any questions, or would like to discuss this matter, please feel free to contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,

A handwritten signature in black ink that reads "Jimmy Wolfrey". The signature is written in a cursive, flowing style.

Jimmy Wolfrey  
Senior Director, FOIA Operations and Management  
(Acting)



August 31, 2021

Via Email & OSD/JS PAL - [dcsa.quantico.dcsa-hq.mbx.foia@mail.mil](mailto:dcsa.quantico.dcsa-hq.mbx.foia@mail.mil)

Freedom of Information Division  
1155 Defense Pentagon  
Washington, DC 20301-1155

**Freedom of Information Act Request: Evacuations from Afghanistan.**

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

**I. Introduction**

For months, the Biden Administration assured Americans it had matters well in hand in Afghanistan, and that the terrorists were not about to take over. For example, at President Biden’s July 8, 2021, press conference, he said:

Q. Is a Taliban takeover of Afghanistan now inevitable?

THE PRESIDENT: No, it is not.

Q. Why?

THE PRESIDENT: Because you — the Afghan troops have 300,000 well-equipped — as well-equipped as any army in the world — and an air force against something like 75,000 Taliban. It is not inevitable.

\* \* \* \*

Q. Mr. President, thank you very much. Your own intelligence community has assessed that the Afghan government will likely collapse.

THE PRESIDENT: That is not true.<sup>1</sup>

These assurances were false.<sup>2</sup>

The Taliban is now in control, and the United States has completely withdrawn its military and diplomatic presence from Afghanistan. The Biden government claims to have evacuated over 120,000 individuals from Afghanistan, but its planning has been inept, its execution chaotic, and its reporting and transparency lacking in detail. It has withheld critical facts, including, among other things, the number of American citizens still in Afghanistan, the nationalities of all those evacuated, the locations of all non-citizens granted admission to the United States, the immigration status—or lack thereof—of all non-citizens, and the process, procedures, and criteria used for vetting and screening evacuees for security and other risks.

AFL’s mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, to educate the public. At the core of this mission is keeping government officials accountable for their duty to faithfully execute the laws and protect and defend the Constitution and laws of the United States and to inform the public as to who the government is allowing entry to the country unscreened. Therefore, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, AFL hereby requests the following records within twenty business days.

## II. Definitions

“U.S. Citizen” means a natural born or naturalized citizen of the United States of America.

“INL Air Wing” means Bureau of International Narcotics and Law Enforcement Affairs Office of Aviation, its employees, contractors, vehicles, and aircraft, all as more particularly described at <https://www.state.gov/aviation-support/>

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<sup>1</sup> The White House, *Remarks by President Biden on the Drawdown of U.S. Forces in Afghanistan* (July 8, 2021) <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/08/remarks-by-president-biden-on-the-drawdown-of-u-s-forces-in-afghanistan/>.

<sup>2</sup> The evidence is the Biden Administration knew, or should have known, these assurances were false at the time they were made. *See, e.g.,* Dep’t of Defense, *Lead Inspector General, Quarterly Report to the U.S. Congress on Operation Freedom’s Sentinel (OFS), April 1, 2021 – June 30, 2021* at 3, 18, 22-25 (Aug. 17, 2021) <https://media.defense.gov/2021/Aug/17/2002832926/-1/-1/1/LEAD%20INSPECTOR%20GENERAL%20FOR%20OPERATION%20FREEDOM%E2%80%99S%20SENTINEL%20I%20QUARTERLY%20REPORT%20TO%20THE%20UNITED%20STATES%20CONGRESS%20I%20APRIL%201,%202021%20-%20JUNE%2030,%202021.PDF>; Joseph Clark, *Biden Administration Ignored Warnings on Afghanistan, Leaked State Dept. Cable Shows*, THE WASHINGTON TIMES (Aug. 21, 2021), <https://www.washingtontimes.com/news/2021/aug/20/state-department-cable-shows-biden-administration-/>;



“National Vetting Center” means the Center created pursuant to National Security Presidential Memorandum (NSPM)-9, *Optimizing the Use of Federal Government Information in the Support of the National Vetting Enterprise* and more particularly described at <https://www.cbp.gov/border-security/ports-entry/national-vetting-center>

“Non-U.S. person” means an alien as defined by 8 U.S.C. § 1101(a)(3).

“Parole authority” means the authority granted under 8 U.S.C. § 1182(d)(5).

“Refugee” has the meaning assigned to it by 8 U.S.C. § 1101(a)(42).

“Special Immigrant Visa” means Special Immigrant Visas for Iraqi and Afghan Translators/Interpreters as defined by Public Law 109-163, and subsequent amendments, and as detailed on the State Department’s website at <https://travel.state.gov/content/travel/en/us-visas/immigrate/siv-iraqi-afghan-translators-interpreters.html#references>.

### **III. Requested Records**

A) All records that mention or reference screening or vetting individuals being evacuated from Kabul and/or Afghanistan in the possession of the following custodians:

- 1) Secretary of Defense Lloyd J. Austin III
- 2) Deputy Secretary of Defense Kathleen Hicks
- 3) Assistant to the Secretary of Defense for Public Affairs John Kirby
- 4) General Mark Milley
- 5) General Kenneth McKenzie
- 6) Chief of Staff to the Secretary of Defense Kelly Magsamen
- 7) General Counsel Caroline D. Krass
- 8) Under Secretary Dr. Colin H. Kahl
- 9) Assistant Secretary of Defense (Indo-Pacific Security Affairs) Ely Ratner
- 10) Melissa Dalton
- 11) Assistant Secretary of Defense (Special Operations and Low-Intensity Conflict) Christopher Maier
- 12) Assistant Secretary of Defense (Strategy, Plans, and Capabilities) Dr. Mara Karlin
- 13) Under Secretary of Defense (Intelligence and Security) Ronald Moultrie
- 14) Under Secretary of Defense (Personnel and Readiness) Gil Cisneros
- 15) Assistant Secretary of Defense (Readiness) Shawn Skelly
- 16) Secretary of the Army Christine Wormuth
- 17) Secretary of the Navy Carlos Del Toro
- 18) Secretary of the Air Force Frank Kendall III

The timeframe for this request is August 12, 2021, to August 31, 2021.

- B) Records sufficient to show the process the Department of Defense used to confirm the identity of each person who boarded a U.S. operated or controlled aircraft leaving Afghanistan between August 10, 2021, and August 31, 2021.
- C) For any non-U.S. person evacuated by the United States out of Afghanistan between August 10, 2021, and August 31, 2021, records sufficient to show each person's application status (as a refugee, SIV, or otherwise) on the date that they were evacuated.
- D) All records that mention or reference screening, vetting, or processing for individuals seeking evacuation or resettlement out of Kabul, Afghanistan, or KBL. The time frame for this request is July 1, 2021, to the date this records request is processed.
- E) For the custodians referenced in request A above, all records that mention or reference the Department of Homeland Security's parole authority and/or paroling Afghans into the United States pursuant thereto. The time frame for this request is August 10, 2021, to August 31, 2021.
- F) All records of communications with, or that mention or reference, the National Vetting Center, and (1) contain the words "Kabul", "Afghan", "Bagram", or "KBL" or (2) refer to a person from Afghanistan seeking evacuation from and/or admission to the United States. The time frame for this request is July 1, 2021, to the date this records request is processed.
- G) All records that mention or reference coordination with the Department of Homeland Security or the Department of State to screen or vet an individual seeking evacuation from Afghanistan and/or admission into the United States. The time frame for this request is July 1, 2021, to the date the records request is processed.
- H) All records that mention or reference (1) U.S. government property, whether military, intelligence-related, or otherwise, left behind or taken by the Taliban, or (2) any person(s) freed by or released to the Taliban. The time frame for this request is July 1, 2021, to the date this records request is processed.
- I) For the custodians identified in request A above, all records that mention or reference "Bagram" airbase. The time frame for this request is June 1, 2021, to the date this records request is processed.

- J) Records sufficient to show (1) the number of U.S. Citizens evacuated or otherwise removed from Afghanistan, (2) the number non-U.S. persons evacuated or otherwise removed from Afghanistan and admitted or seeking admission into the United States, and (3) the number of non-U.S. persons identified as posing a potential security risk. The time frame for this request is March 1, 2021, to the date this records request is processed.
- K) Records sufficient to show the number of individuals evacuated from Afghanistan by nationality. The time frame for this request July 1, 2021, to the date this records request is processed.

#### IV. Redactions

Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass'n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then Department of State must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; see also *Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, Department of State should produce email attachments.

In connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term “record” in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and

procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (“NARA”) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

## **V. Fee Waiver Request**

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 32 C.F.R. § 286.12, AFL requests a waiver of all search and duplication fees associated with this request.

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public’s understanding of your policies and practices will be enhanced

through AFL’s analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL’s financial interest. Other agencies, including the Departments of Education, Energy, Interior, and Homeland Security, and the Office of the Director of National Intelligence have previously granted AFL a fee waiver.

Second, waiver is proper as disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government.” The sudden and abrupt withdraw of forces from a country where the United States has maintained a presence for nearly 20 years, the rapid collapse of the local government to an international terrorist organization in the matter of days, and the Biden Administration’s inept response has made this an issue of intense public interest.

## VI. Request for Expedited Processing

AFL seeks expedited processing of requests A, B, I, and J.

Your regulations provide that you will grant expedited processing requests that demonstrate a “compelling need.”<sup>3</sup> You define “compelling need” as existing, *inter alia*, if the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal government activity.”<sup>4</sup> As demonstrated above, both criteria are met here.

First, AFL is an organization primarily engaged in disseminating information to the public. We intend to disseminate the information we receive and our analysis about this request to the public and to other members of the press.

Second, the Biden Administration claims more than 123,000 people, including about 6,000 American citizens, have been evacuated from Afghanistan.<sup>5</sup> However, the evacuation has been chaotic, poorly planned, and badly executed.<sup>6</sup> The Biden Administration turned over Kabul to the Taliban, giving it operational control over access to the

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<sup>3</sup> 32 C.F.R. § 286.8(e).

<sup>4</sup> *Id.*

<sup>5</sup> *Transcript of Statement of Anthony Blinken on Afghanistan*, THE NEW YORK TIMES (Aug. 30, 2021) <https://www.nytimes.com/2021/08/31/us/politics/blinken-afghanistan-speech.html>

<sup>6</sup> Molly Hennessy-Fiske, *Americans Faced Taliban, Airport Chaos in Scramble to Evacuate Afghanistan*, LOS ANGELES TIMES (Aug 18, 2021), <https://www.latimes.com/world-nation/story/2021-08-18/american-c-struggle-to-leave-afghanistan>; Lauren Leatherby, Jim Huylebroek, Scott Reinhard & Sarah KerrAug, *The Dangerous Road to the Kabul Airport*, THE NEW YORK TIMES (Aug. 18, 2021), <https://www.nytimes.com/interactive/2021/08/18/world/asia/kabul-airport-afghanistan-maps.html> (“While American forces have taken control of Kabul’s airport, chaos dominates just outside. As thousands desperately try to flee Afghanistan, Taliban fighters have blocked entrances, fired rifles and beaten some people in the crowds.”).

Kabul airport and lists of U.S. Citizens and Afghan human assets.<sup>7</sup> Generally speaking, only individuals the Taliban allowed to leave Afghanistan were able to do so.

Yet the Biden government has not transparently disclosed the vetting and screening process used to ensure evacuees do not pose a security risk. The lack of transparency is problematic first because this Administration has repeatedly disregarded U.S. immigration laws,<sup>8</sup> and second because it has, over a period of months, repeatedly misrepresented the facts on the ground. The Biden credibility gap is wide and deep with respect to Afghanistan, immigration enforcement, and respect for the rule of law. Accordingly, there is an urgent need for immediate disclosure of the measures being taken to verify identities, to vet for terror ties, and to protect American Citizens here at home.<sup>9</sup>

Finally, there is a high likelihood that the information AFL seeks in the above-specified requests will be rendered stale once foreign nationals are granted admission to the United States. Given that the processing of many tens of thousands foreign nationals for admission to the United States is apparently still in process, the requested records are needed urgently to inform the public and policy makers about the processes and criteria this Administration is using to screen and vet potential security risks, and to ensure applicable laws and regulations are being followed.

## VI. Production

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, records in native format or in PDF format on a USB drive.

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<sup>7</sup> Aaron Blake, *The Biden administration's increasingly muddy denials on giving the Taliban lists*, THE WASHINGTON POST (Aug. 30, 2021) <https://www.msn.com/en-us/news/us/the-biden-administration-e2-80-99s-increasingly-muddy-denials-on-giving-the-taliban-lists/ar-AANU3cH?ocid=uxbndlbng>; Jerry Dunleavy, *White House: Taliban Setting Up More Entry Points Beyond Perimeter to Stop ISIS-K Attacks*, THE WASHINGTON EXAMINER (Aug. 23, 2021) <https://news.yahoo.com/white-house-taliban-setting-more-170600073.html>; *Taliban Captured Key US Military Biometric Devices: Report*, The Times of India (Aug. 19, 2021), <https://timesofindia.indiatimes.com/world/us/taliban-captured-key-us-military-biometric-devices-report/articleshow/85445501.cms>.

<sup>8</sup> America First Legal Foundation, *AFL Files FOIAs Demanding Answers about the Biden Administration's Implementation of Catch-and-Release and Other Open Border Policies* (July 27, 2021), <https://www.aflegal.org/news/afl-files-foias-demanding-answers-about-the-biden-administrations-implementation-of-catch-and-release-and-other-open-border-policies>

<sup>9</sup> According to CNN, "The approach from the administration has been 'get as many people on the plane as you can, and we'll sort out the (immigration visa) stuff later'". Geneva Sands and Evan Perez, *Arriving Afghans Without Paperwork Prompt Delays and Security Challenges*, CNN (Aug. 21, 2021), <https://www.cnn.com/2021/08/25/politics/arriving-afghans-paperwork-delays-security/index.html>.

Compare Lizzie Dearden, *Paris Attacks: Some Jihadists 'Took Advantage of Refugee Crisis to Slip into Europe'*, *French Prime Minister Says*, The Independent (Nov. 20, 2015), <https://www.independent.co.uk/news/world/europe/paris-attacks-some-jihadists-took-advantage-refugee-crisis-slip-europe-french-prime-minister-says-a6741466.html>.

Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14<sup>th</sup> Street NW, 5<sup>th</sup> Floor, Washington, D.C. 20005.

## **VII. Conclusion**

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at [FOIA@aflegal.org](mailto:FOIA@aflegal.org). Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Thank you,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation



**DEPARTMENT OF DEFENSE  
FREEDOM OF INFORMATION DIVISION  
1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155**

Ref: 21-F-1477  
August 31, 2021

Mr. Gene Hamilton  
America First Legal  
600 14th Street NW  
5th Floor  
Washington, District of Columbia 20005

Dear Mr. Hamilton:

This is an interim response to your August 31, 2021 Freedom of Information Act (FOIA) request, a copy of which is enclosed for your convenience. We received your request on August 31, 2021, and assigned it FOIA case number 21-F-1477. We ask that you use this number when referring to your request.

Upon review of your request, we are granting expedited processing in accordance with our Department of Defense (DoD) Regulation found at 32 CFR Part 286. Your request has been placed in our expedited processing queue and is currently being worked. We have initiated the necessary search actions with the appropriate components of the Office of the Secretary of Defense (OSD).

For your awareness, please understand that the granting of expedited processing does not provide for a guarantee that your request will be completed by a certain date, as all of our required procedures for searching and reviewing any records located must be followed. In fact, although we have already begun processing your request, we will not be able to respond within the FOIA's 20-day statutory time period as there are unusual circumstances which impact our ability to quickly process your request. The FOIA defines unusual circumstances as (a) the need to search for and collect records from a facility geographically separated from this office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. At least one, if not more of these scenarios applies or would likely apply to your request. While this office handles FOIA requests for OSD, the Joint Staff (JS) and other component offices, we do not actually hold their records and our office is not geographically located with these organizations. As we do not hold the records, until the required record searches are complete, we are unable to estimate the potential volume of records or the number of consultations that will be required to make a release determination. These circumstances impact the total time required to process your request to completion, so placing your request at the top of the FOIA queue, simply means that the work of processing your request is underway.

If you have requested a fee waiver, please note that decisions to waive or reduce fees are made on a case-by-case basis, and we will make a determination concerning your fee waiver request at the conclusion of the search and assessment of responsive records, should they exist. However, this office will only assess fees if we provide the final response to your FOIA



request within the statutory time allotted by the FOIA or if the responsive records total more than 5,000 pages, even after a good faith effort on our part to limit the scope of your request.

In some instances, we have found that requesters who narrow the scope of their requests experience a reduction in the time needed to process their requests. If you wish to narrow the scope of your request or have questions about the foregoing, please do not hesitate to contact your Action Officer, Michael Coen, at michael.e.coen2.civ@mail.mil or 571-372-0413.

Please note that this request should be sent to the United States Army, Air force and Navy. These services operates their own FOIA programs and also would have cognizance over the information you have requested. For your convenience, contact information for these services are provided below:

U.S. Army Freedom of Information Act Office  
Records Management and Declassification Agency  
9301 Chapek Rd. Bldg 1458  
Fort Belvoir, VA 22060

Department of the Air Force  
SAF/AAlI (FOIA)  
1000 Air Force Pentagon  
Washington, DC 20330-1000

SECNAV/CNO FOIA Office  
Chief of Naval Operations (DNS-36)  
2000 Navy Pentagon  
Washington, DC 20350-2000

Additionally, if you have concerns about service received by our office, please contact a member of our Leadership Team at 571-372-0498 or Toll Free at 866-574-4970.

Should you wish to inquire about mediation services, you may contact the OSD/JS FOIA Public Liaison, Tonya R. Fuentes, at 571-372-0462 or by email at OSD.FOIALiaison@mail.mil, or the Office of Government Information Services (OGIS) at the National Archives and Records Administration. The contact information for OGIS is as follows:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, MD 20740  
E-mail: ogis@nara.gov  
Telephone: 202-741-5770  
Fax: 202-741-5769  
Toll-free: 1-877-684-6448

We regret the delay in responding to your request and appreciate your patience. As previously stated, please contact the Action Officer assigned to your request, Michael Coen, and reference FOIA case number 21-F-1477, if you have any questions or concerns.

Sincerely,

*Stephen L. Fisher*

Stephanie L. Carr

*For* Chief

Enclosure:  
As stated



August 31, 2021

VIA ELECTRONIC MAIL - [FOIARequest@state.gov](mailto:FOIARequest@state.gov)

Kellie Robinson, Public Liaison  
U. S. Department of State  
A/GIS/IPS/PP  
2201 C Street N.W., Suite B266  
Washington, D. C. 20520-0000

**Freedom of Information Act Request: Evacuations from Afghanistan.**

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

**I. Introduction**

For months, the Biden Administration assured Americans it had matters well in hand in Afghanistan, and that the terrorists were not about to take over. For example, at President Biden’s July 8, 2021, press conference, he said:

Q. Is a Taliban takeover of Afghanistan now inevitable?

THE PRESIDENT: No, it is not.

Q. Why?

THE PRESIDENT: Because you — the Afghan troops have 300,000 well-equipped — as well-equipped as any army in the world — and an air force against something like 75,000 Taliban. It is not inevitable.

\* \* \* \*

Q. Mr. President, thank you very much. Your own intelligence community has assessed that the Afghan government will likely collapse.

THE PRESIDENT: That is not true.<sup>1</sup>

These assurances were false.<sup>2</sup>

The Taliban is now in control, and the United States has completely withdrawn its military and diplomatic presence from Afghanistan. The Biden government claims to have evacuated over 120,000 individuals from Afghanistan, but its planning has been inept, its execution chaotic, and its reporting and transparency lacking in detail. It has withheld critical facts, including, among other things, the number of American citizens still in Afghanistan, the nationalities of all those evacuated, the locations of all non-citizens granted admission to the United States, the immigration status—or lack thereof—of all non-citizens, and the process, procedures, and criteria used for vetting and screening evacuees for security and other risks.

AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, to educate the public. At the core of this mission is keeping government officials accountable for their duty to faithfully execute the laws and protect and defend the Constitution and laws of the United States and to inform the public as to who the government is allowing entry to the country unscreened. Therefore, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, AFL hereby requests the following records within twenty business days.

## II. Definitions

“U.S. Citizen” means a natural born or naturalized citizen of the United States of America.

“INL Air Wing” means Bureau of International Narcotics and Law Enforcement Affairs Office of Aviation, its employees, contractors, vehicles, and aircraft, all as more particularly described at <https://www.state.gov/aviation-support/>

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<sup>1</sup> The White House, *Remarks by President Biden on the Drawdown of U.S. Forces in Afghanistan* (July 8, 2021) <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/08/remarks-by-president-biden-on-the-drawdown-of-u-s-forces-in-afghanistan/>.

<sup>2</sup> The evidence is the Biden Administration knew, or should have known, these assurances were false at the time they were made. *See, e.g.,* Dep't of Defense, *Lead Inspector General, Quarterly Report to the U.S. Congress on Operation Freedom's Sentinel (OFS), April 1, 2021 – June 30, 2021* at 3, 18, 22-25 (Aug. 17, 2021) <https://media.defense.gov/2021/Aug/17/2002832926/-1/-1/1/LEAD%20INSPECTOR%20GENERAL%20FOR%20OPERATION%20FREEDOM%E2%80%99S%20SENTINEL%20I%20QUARTERLY%20REPORT%20TO%20THE%20UNITED%20STATES%20CONGRESS%20I%20APRIL%201,%202021%20-%20JUNE%2030,%202021.PDF>; Joseph Clark, *Biden Administration Ignored Warnings on Afghanistan, Leaked State Dept. Cable Shows*, THE WASHINGTON TIMES (Aug. 21, 2021), <https://www.washingtontimes.com/news/2021/aug/20/state-department-cable-shows-biden-administration-/>;

“National Vetting Center” means the Center created pursuant to National Security Presidential Memorandum (NSPM)-9, *Optimizing the Use of Federal Government Information in the Support of the National Vetting Enterprise* and more particularly described at <https://www.cbp.gov/border-security/ports-entry/national-vetting-center>

“Non-U.S. person” means an alien as defined by 8 U.S.C. § 1101(a)(3).

“Parole authority” means the authority granted under 8 U.S.C. § 1182(d)(5).

“Refugee” has the meaning assigned to it by 8 U.S.C. § 1101(a)(42).

“Special Immigrant Visa” means Special Immigrant Visas for Iraqi and Afghan Translators/Interpreters as defined by Public Law 109-163, and subsequent amendments, and as detailed on the State Department’s website at <https://travel.state.gov/content/travel/en/us-visas/immigrate/siv-iraqi-afghan-translators-interpreters.html#references>.

### **III. Requested Records**

A. All records that mention or reference screening or vetting individuals being evacuated from Kabul and/or Afghanistan in the possession of the following custodians:

1. Secretary Antony Blinken
2. Deputy Secretary Wendy Sherman
3. Brian P. McKeon
4. Victoria Nuland
5. Derek Chollet
6. Rema Blitter
7. Gentry Smith
8. Suzy George
9. Salman Ahmed
10. Jalina Porter
11. Ned Price
12. Samantha Power
13. Gabriela Chojkier
14. Amy Paro
15. Uzra Zeya
16. Nancy Izzo Jackson
17. Any person employed by, detailed to, or serving as a contractor for the INL Air Wing

The timeframe for this request is August 10, 2021, to August 31, 2021.

- B. Records sufficient to show the process the State Department used to confirm the identity of each person who boarded a U.S. operated or controlled aircraft leaving Afghanistan between August 10, 2021, and August 31, 2021.
- C. For any non-U.S. person evacuated by the United States out of Afghanistan between August 10, 2021, and August 31, 2021, records sufficient to show each person's application status (as a refugee, SIV, or otherwise) on the date that they were evacuated.
- D. All records that mention or reference screening, vetting, or processing for individuals seeking evacuation or resettlement out of Kabul, Afghanistan, or KBL. The time frame for this request is July 1, 2021, to the date this records request is processed.
- E. For the custodians referenced in request A above, all records that mention or reference the Department of Homeland Security's parole authority and/or paroling Afghans into the United States pursuant thereto. The time frame for this request is August 10, 2021, to August 31, 2021.
- F. All records of communications with, or that mention or reference, the National Vetting Center, and (1) contain the words "Kabul", "Afghan", "Bagram", or "KBL" or (2) refer to a person from Afghanistan seeking evacuation from and/or admission to the United States. The time frame for this request is July 1, 2021, to the date this records request is processed.
- G. All records of communications with, or that mention or reference coordination with the Department of Defense, the Department of Homeland Security, or the Department of Justice to screen or vet a person from Afghanistan seeking evacuation from Afghanistan and/or admission into the United States. The time frame for this request is July 1, 2021, to the date this records request is processed.
- H. All records that mention or reference (1) U.S. government property, whether military, intelligence-related, or otherwise, left behind or taken by the Taliban, or (2) any person(s) freed by or released to the Taliban. The time frame for this request is July 1, 2021, to the date this records request is processed.
- I. For the custodians identified in request A above, all records that mention or reference "Bagram" airbase. The time frame for this request is June 1, 2021, to the date this records request is processed.
- J. Records sufficient to show (1) the number of U.S. Citizens evacuated or otherwise removed from Afghanistan, (2) the number non-U.S. persons evacuated or otherwise removed from Afghanistan and admitted or seeking admission

into the United States, and (3) the number of non-U.S. persons identified as posing a potential security risk. The time frame for this request is March 1, 2021, to the date this records request is processed.

- K. Records sufficient to show the number of individuals evacuated from Afghanistan by nationality. The time frame for this request July 1, 2021, to the date this records request is processed.

#### **IV. Redactions**

Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass 'n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then Department of State must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; see also *Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, Department of State should produce email attachments.

In connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term “record” in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those

files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (“NARA”) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

## **V. Fee Waiver Request**

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 22 C.F.R. § 171.16, AFL requests a waiver of all search and duplication fees associated with this request.

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public’s understanding of your policies and practices will be enhanced through AFL’s analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the infor-



mation requested is not in AFL’s financial interest. Other agencies, including the Departments of Education, Energy, Interior, and Homeland Security, and the Office of the Director of National Intelligence have previously granted AFL a fee waiver.

Second, waiver is proper as disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government.” The sudden and abrupt withdraw of forces from a country where the United States has maintained a presence for nearly 20 years, the rapid collapse of the local government to an international terrorist organization in the matter of days, and the Biden Administration’s inept response has made this an issue of intense public interest.

## VI. Request for Expedited Processing

AFL seeks expedited processing of requests A, B, J, and K.

Your regulations provide that you will grant expedited processing requests that demonstrate a “compelling need.”<sup>3</sup> You define “compelling need” as existing, *inter alia*, if the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal government activity.”<sup>4</sup> As demonstrated above, both criteria are met here.

First, AFL is an organization primarily engaged in disseminating information to the public. We intend to disseminate the information we receive and our analysis about this request to the public and to other members of the press.

Second, the Biden Administration claims more than 123,000 people, including about 6,000 American citizens, have been evacuated from Afghanistan.<sup>5</sup> However, the evacuation has been chaotic, poorly planned, and badly executed.<sup>6</sup> The Biden Administration turned over Kabul to the Taliban, giving it operational control over access to the

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<sup>3</sup> 22 C.F.R. § 171.11(f).

<sup>4</sup> *Id.*

<sup>5</sup> *Transcript of Statement of Anthony Blinken on Afghanistan*, THE NEW YORK TIMES (Aug. 30, 2021) <https://www.nytimes.com/2021/08/31/us/politics/blinken-afghanistan-speech.html>

<sup>6</sup> Molly Hennessy-Fiske, *Americans Faced Taliban, Airport Chaos in Scramble to Evacuate Afghanistan*, LOS ANGELES TIMES (Aug 18, 2021), <https://www.latimes.com/world-nation/story/2021-08-18/american-c-struggle-to-leave-afghanistan>; Lauren Leatherby, Jim Huylebroek, Scott Reinhard & Sarah KerrAug, *The Dangerous Road to the Kabul Airport*, THE NEW YORK TIMES (Aug. 18, 2021), <https://www.nytimes.com/interactive/2021/08/18/world/asia/kabul-airport-afghanistan-maps.html> (“While American forces have taken control of Kabul’s airport, chaos dominates just outside. As thousands desperately try to flee Afghanistan, Taliban fighters have blocked entrances, fired rifles and beaten some people in the crowds.”).

Kabul airport and lists of U.S. Citizens and Afghan human assets.<sup>7</sup> Generally speaking, only individuals the Taliban allowed to leave Afghanistan were able to do so.

Yet the Biden government has not transparently disclosed the vetting and screening process used to ensure evacuees do not pose a security risk. The lack of transparency is problematic first because this Administration has repeatedly disregarded U.S. immigration laws,<sup>8</sup> and second because it has, over a period of months, repeatedly misrepresented the facts on the ground. The Biden credibility gap is wide and deep with respect to Afghanistan, immigration enforcement, and respect for the rule of law. Accordingly, there is an urgent need for immediate disclosure of the measures being taken to verify identities, to vet for terror ties, and to protect American Citizens here at home.<sup>9</sup>

Finally, there is a high likelihood that the information AFL seeks in the above-specified requests will be rendered stale once foreign nationals are granted admission to the United States. Given that the processing of many tens of thousands foreign nationals for admission to the United States is apparently still in process, the requested records are needed urgently to inform the public and policy makers about the processes and criteria this Administration is using to screen and vet potential security risks, and to ensure applicable laws and regulations are being followed.

## VI. Production

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, records in native format or in PDF format on a USB drive.

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<sup>7</sup> Aaron Blake, *The Biden administration's increasingly muddy denials on giving the Taliban lists*, THE WASHINGTON POST (Aug. 30, 2021) <https://www.msn.com/en-us/news/us/the-biden-administration-e2-80-99s-increasingly-muddy-denials-on-giving-the-taliban-lists/ar-AANU3cH?ocid=uxbndlbng>; Jerry Dunleavy, *White House: Taliban Setting Up More Entry Points Beyond Perimeter to Stop ISIS-K Attacks*, THE WASHINGTON EXAMINER (Aug. 23, 2021) <https://news.yahoo.com/white-house-taliban-setting-more-170600073.html>; *Taliban Captured Key US Military Biometric Devices: Report*, The Times of India (Aug. 19, 2021), <https://timesofindia.indiatimes.com/world/us/taliban-captured-key-us-military-biometric-devices-report/articleshow/85445501.cms>.

<sup>8</sup> America First Legal Foundation, *AFL Files FOIAs Demanding Answers about the Biden Administration's Implementation of Catch-and-Release and Other Open Border Policies* (July 27, 2021), <https://www.aflegal.org/news/afl-files-foias-demanding-answers-about-the-biden-administrations-implementation-of-catch-and-release-and-other-open-border-policies>

<sup>9</sup> According to CNN, “The approach from the administration has been ‘get as many people on the plane as you can, and we’ll sort out the (immigration visa) stuff later’”. Geneva Sands and Evan Perez, *Arriving Afghans Without Paperwork Prompt Delays and Security Challenges*, CNN (Aug. 21, 2021), <https://www.cnn.com/2021/08/25/politics/arriving-afghans-paperwork-delays-security/index.html>.

Compare Lizzie Dearden, *Paris Attacks: Some Jihadists 'Took Advantage of Refugee Crisis to Slip into Europe'*, *French Prime Minister Says*, The Independent (Nov. 20, 2015), <https://www.independent.co.uk/news/world/europe/paris-attacks-some-jihadists-took-advantage-refugee-crisis-slip-europe-french-prime-minister-says-a6741466.html>.

Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14<sup>th</sup> Street NW, 5<sup>th</sup> Floor, Washington, D.C. 20005.

## **VII. Conclusion**

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at [FOIA@aflegal.org](mailto:FOIA@aflegal.org). Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Thank you,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation



United States Department of State

Washington, D.C. 20520

October 14, 2021

FOIA Case No. F-2021-09922

Reed D. Rubinstein  
America First Legal Foundation  
600 14th Street NW, 5th Floor  
Washington DC, 20005

Email: [FOIA@aflegal.org](mailto:FOIA@aflegal.org)

Dear Mr. Rubinstein:

This is in response to your Freedom of Information Act (FOIA) request, dated August 31, 2021, for records pertaining to vetting of Afghan nationals by the Biden Administration. Specifically, this letter addresses your appeal dated October 6, 2021, requesting expedited processing of sections A, B, J, and K of your request.

I understand the Department has granted your request for expedited processing. Therefore, your appeal has been overcome by events and there is nothing to appeal.

For further communications with this office, please contact [FOIAStatus@state.gov](mailto:FOIAStatus@state.gov) and include the case number F-2021-09922.

Sincerely,

/s/

Lori Hartmann  
Appeals Officer  
Office of Information Programs  
and Services



July 16, 2021

VIA FOIA Online & Email - [FOIARequests@cdc.gov](mailto:FOIARequests@cdc.gov)

CDC/ATSDR  
Attn: FOIA Office, MS-D54  
1600 Clifton Road, N.E.  
Atlanta, GA 30333

**Freedom of Information Act Request: Information Regarding Flagging  
“disinformation” to Facebook administrators.**

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to promote the rule of law in the United States by preventing Executive Branch overreach, ensuring due process and equal protection for all Americans, and advancing public knowledge and understanding of individual rights guaranteed under the Constitution and laws of the United States. AFL’s mission includes gathering official information, analyzing it, and disseminating it through reports, articles, press releases, emails, and/or through electronic media, including social media platforms. A core part of our educational mission is served by making public the partnership between the President and the agencies he directs, on the one hand, and social media and other corporate special interests, on the other, to control what American citizens are allowed to read, to see, and to say.

**I. Introduction**

Yesterday, White House Press Secretary Jen Psaki said “[i]n terms of actions . . . we've increased disinformation research and tracking. Within the Surgeon General's Office, we're flagging posts for Facebook that spread disinformation.” She also said “those engagements typically happen through members of our senior staff.”<sup>1</sup> This is an alarming admission—that the Biden Administration, at senior levels, is working with private corporations to censor speech that departs from the preferred narrative. The First Amendment does not permit the federal government to engage in content

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<sup>1</sup> Ian Schwartz, *WH's Psaki: We're Flagging Problematic Posts for Facebook That Spread Disinformation*, REALCLEARPOLITICS, [https://www.realclearpolitics.com/video/2021/07/15/psaki\\_were\\_flagging\\_problematic\\_posts\\_for\\_facebook\\_that\\_spread\\_disinformation.html](https://www.realclearpolitics.com/video/2021/07/15/psaki_were_flagging_problematic_posts_for_facebook_that_spread_disinformation.html) (Jul. 15, 2021).

moderation and infringe on free speech rights of individuals by labeling speech it does not like as “disinformation” and using private corporations to take down anything with which the government disagrees. One might expect such interactions to occur in Cuba, or China—but not in the United States. But it appears as though that is exactly what the White House Press Secretary admitted is occurring on a regular basis.

The American people have a right to know who from the government is saying what, to whom, and for what reasons. A social media company taking down content with which it disagrees is a troubling practice, but a social media company doing so at the behest of the United States is a significant problem. Accordingly, AFL requests access to the following records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, within twenty business days.

## **II. Requested Records**

1. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to any efforts to flag COVID-19 or COVID-19 vaccine related “misinformation” or “disinformation” to any social media company, including but not limited to Facebook, Twitter, TikTok, Instagram, Snapchat, Reddit, YouTube, LinkedIn, Tumblr, and Pinterest. The timeframe for this request is January 20, 2021, to date the records request is processed.
2. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes sufficient to show any and all communications with any social media company, including but not limited to Facebook, Twitter, TikTok, Instagram, Snapchat, Reddit, YouTube, LinkedIn, Tumblr, and Pinterest, regarding any efforts to flag COVID-19 or COVID-19 vaccine related “misinformation” or “disinformation”. The timeframe for this request is January 20, 2021, to date the records request is processed.
3. All records, including, but not limited to, communications with any email address for a White House office or individual serving in the White House, including those ending in “@who.eop.gov” or “@nsc.eop.gov” of, regarding, or relating to the “flagging” of “disinformation” to any social media company, including but not limited to Facebook, Twitter, Instagram, TikTok, Snapchat, Reddit, YouTube, LinkedIn, Tumblr, and Pinterest. The timeframe for this request is January 20, 2021, to date the records request is processed.
4. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes sufficient to show how CDC and/or the Administration will determine the veracity of any given post.

5. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, sufficient to show who will decide what is “misinformation” and the basis on which they will make that determination.
6. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, sufficient to show who will decide what is “disinformation” and the basis on which they will make that determination.
7. All communications with any email address ending in “@facebook.com”. The timeframe for this request is January 20, 2021, to date the records request is processed.
8. All communications with any email address ending in “@twitter.com”. The timeframe for this request is January 20, 2021, to date the records request is processed.
9. All communications with any email address ending in “@instagram.com”. The timeframe for this request is January 20, 2021, to date the records request is processed.
10. All communications with any email address ending in “@youtube.com”. The timeframe for this request is January 20, 2021, to date the records request is processed.
11. All records sufficient to show the identities of every natural or legal person engaged in “disinformation research and tracking” referenced by Ms. Psaki. The time frame for this request is January 20, 2021, to the date this records request is processed.
12. All records sufficient to show the identities of each of the “members of our senior staff” referenced by Ms. Psaki.

### **III. Redactions**

Redactions are disfavored as the FOIA’s exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass 'n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then CDC must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; *see also Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, CDC should produce email attachments.

In connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term “record” in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.



- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

#### **IV. Request for Expedited Processing**

Your regulations provide for the granting of expedited processing to requests that demonstrate a compelling need. Your regulations say you will process requests “on an expedited basis” whenever there is “an urgent need to inform the public about an actual or alleged Federal Government activity.”<sup>2</sup> We are an organization engaged in gathering, analyzing, and disseminating information, and there is great urgency to inform the public concerning patently unlawful and inappropriate federal activity, namely that the White House appears to be colluding with or at least pressuring social media companies to censor content running counter to the White House’s preferred political narrative. The fact that the White House Press Secretary just admitted to using social media companies to make an end run around the First Amendment has generated outrage and intense media interest. Also, the public has a compelling interest in the efficacy of federal COVID-19 policy. Given the strength of the public interest, and the strong possibility the public will have only a limited amount of time to express its opinions on this matter before those opinions themselves are deemed “disinformation” and censored, expedited processing is proper. Furthermore, this is a straightforward and simple document request that should take few resources to process.

#### **V. Fee Waiver Request**

We request a waiver of all applicable fees. 5 U.S.C. § 552(a)(4)(A)(iii) provides that you shall furnish requested records without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”<sup>3</sup>

In this case, a fee waiver is appropriate because of the public’s right to know whether their government is using social media companies as tools of the state to make an end run around the First Amendment. The public also has a right to know how the decision to attempt this was made, and by whom, as it could constitute an impeachable offense. To date, the information requested has not been released in any

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<sup>2</sup> 45 C.F.R. § 5.27.

<sup>3</sup> 5 U.S.C. § 552(a)(4)(A)(iii); *see also Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1115-19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

form to the public; its release in response to this request will therefore contribute significantly to public understanding of the operations of the government.

In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public's understanding of your internal policies and practices with respect to the granting of regulatory waivers will be enhanced through AFL's analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL's financial interest.

## **VI. Record Preservation Requirement**

We request that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.<sup>4</sup>

## **VII. Production**

To accelerate release of responsive records, AFL welcomes production on a rolling basis. Please provide responsive records in electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14<sup>th</sup> Street NW, 5<sup>th</sup> Floor, Washington, D.C. 20005.

## **VIII. Conclusion**

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at [FOIA@aflegal.org](mailto:FOIA@aflegal.org). Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Thank you,

/s/ Gene Hamilton

Gene Hamilton

America First Legal Foundation

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<sup>4</sup> *Chambers v. Dep't of the Interior*, 568 F.3d 998, 1004-05 (D.C. Cir. 2009) (“[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act.”); *Judicial Watch, Inc. v. Dep't of Commerce*, 34 F. Supp. 2d 28, 41-44 (D.D.C. 1998).



July 22, 2021

Gene Hamilton  
America First Legal Foundation  
Via email: foia@aflegal.org

Dear Mr. Hamilton:

The Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) received your Freedom of Information Act (FOIA) request dated July 16, 2021. Your request assigned number is 21-01575-FOIA, and it has been placed in our complex processing queue.

### **Extension of Time**

In unusual circumstances, an agency can extend the twenty-working-day limit to respond to a FOIA request.

We will require more than thirty working days to respond to your request because:

- x We reasonably expect that two or more CDC centers, institutes, and offices (C/I/Os) may have responsive records.
- x We reasonably expect to receive and review voluminous records in response to your request.
- x We reasonably expect to consult with two or more C/I/O/s, or another HHS operating division or another federal agency about your request.

To process your request promptly, please consider narrowing the scope of your request to limit the number of responsive records. If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact the analyst handling your request LaShonda Schofield at 770-488-6241 or our FOIA Public Liaison, Roger Andoh at 770-488-6277. Additionally, you may contact the Office of Government Services (OGIS) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services; National Archives and Records Administration; 8601 Adelphi Road-OGIS; College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

### **Expedited Processing**

You requested that we expedite processing your request. Your request is granted and your FOIA request would be processed as quickly as possible.

### **Fees and Fee Waivers**

You requested that we waive fees associated with processing your request, your request is granted, however we may charge reduced fees instead of waiving all fees. If we decide to charge reduced fees you will be notified.

**Fee Category**

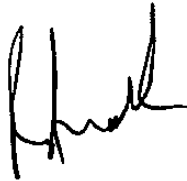
Because you are considered an “Other requester” you are entitled to two hours of free search time, and up to 100 pages of duplication (or the cost equivalent of other media) without charge, and you will not be charged for review time. We may charge for search time beyond the first two hours and for duplication beyond the first 100 pages. (10 cents/page).

**Cut-off-date**

If you don't provide us with a date range for your request, the cut-off date for your request will be the date the search for responsive records starts.

You may check on the status of your case on our FOIA webpage <https://foia.cdc.gov/app/Home.aspx> and entering your assigned request number. If you have any questions regarding your request, please contact me at 770-488-6241 or via email at [hur7@cdc.gov](mailto:hur7@cdc.gov).

Sincerely,



Roger Andoh  
CDC/ATSDR FOIA Officer  
Office of the Chief Operating Officer  
(770) 488-6399  
Fax: (404) 235-1852

21-01575-FOIA