

Exhibit A



October 2, 2018

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

**Re: Request Under Freedom of Information Act
(Expedited Processing and Fee Waiver/Limitation Requested)**

To Whom It May Concern:

Campaign Legal Center (“CLC”) submits this Freedom of Information Act (“FOIA”) request (“Request”) to U.S. Immigration and Customs Enforcement (“ICE”) for records pertaining to ICE communications with other federal agencies or external organizations or individuals regarding ICE’s recent requests for voter registration and election materials from the North Carolina State Board of Elections and 44 county election boards in North Carolina (collectively, “NCSBE”) and the North Carolina Division of Motor Vehicles (“NCDMV”). Given the importance of the right to vote, the sensitive nature of voter registration and ballot data, and the impending federal midterm elections, we request that your office expedite processing of this request.

I. Background

On August 31, 2018, the U.S. Attorney’s Office for the Eastern District of North Carolina (“USAO-EDNC”) issued a grand jury subpoena to the NCSBE.¹ The subpoena sought:

Any and all voter registration applications and/or other documents . . . that were submitted to, filed by, received by, or maintained by the [NCSBE and county election boards] from January 1, 2010, through August 30, 2018, within any of the counties in North Carolina. To include, but not limited to:

¹ Travis Fain, *Federal Subpoenas Demand ‘Tsunami’ of NC Voter Records*, WRAL (Sept. 5, 2018), <https://bit.ly/2Qmj0qX>.

1. Standard Voter Registration Application forms
2. Federal Post Card Applications (FPCA)
3. Federal Write-In-Absentee Ballots (FWAB)
4. One-Stop (Early Voting) application forms
5. Provisional Voting forms
6. N.C. Absentee Ballot Request forms
7. Any and all 'Admission or Denial of Non-Citizen Return Form' that were generated by the [NCSBE], or were caused to be generated by the [NCSBE], and/or the Ethics Enforcement Office.
8. Any and all Voter Registration Cancellation or Voter Revocation forms that have been generated by the [NCSBE], and/or the Ethics Enforcement Office.²

On the same date, the USAO-EDNC also issued a grand jury subpoena to the NCDMV.³ That subpoena sought:

Any and all North Carolina voter registration applications and supporting documents that were completed, filed, received, or maintained by the [NCDMV] from January 1, 2010 through August 30, 2018, that include one or more of the following parameters:

- A. Any and all applications for voter registration while applying for [NC]DMV benefits where the applicant indicated a state of birth, other than the fifty (50) United States and the District of Columbia (D.C.), or a country of birth other than the United States.
- B. Any and all applications for voter registration while applying for [NC]DMV benefits, where the applicant indicated that the applicant does not have a driver's license and/or a Social Security card.
- C. Any and all applications for voter registration while applying for [NC]DMV benefits, where the applicant indicated they are not a citizen of the United States.
- D. Any and all applications for voter registration where the applicant listed a North Carolina identification card (not a driver's license).
- E. Any and all applications for voter registration where the driver's license application or identification card included but was not limited to:
 - a. United States Citizenship and Immigration Services (USCIS) employment authorization cards, lawful

² Subpoena issued to North Carolina Board of Elections by the U.S. Attorney's Office for the Eastern District of North Carolina on behalf of U.S. Immigration and Customs Enforcement ("NCSBE Subpoena"), <https://bit.ly/2Q7TZAI>.

³ Travis Fain, *DMV Gets Subpoena Too in Federal Voting Query*, WRAL (Sept. 10, 2018), <https://bit.ly/2DMUvlp>.

permanent resident alien cards, non-immigrant visas, non-immigrant I-94 documents, and any other documents issued by USCIS that reflect the applicant was not a United States citizen.

- F. Any and all applications for voter registration where the driver's license application or identification card application included but was not limited to a foreign passport or other foreign identity document.
- G. Any and all voter registration applications that have been denied, rescinded, revoked, or otherwise have been found to be fraudulent, incorrectly filed, ineligible, or were found to have other irregularities.
- H. Any and all voter registration applications that were completed in a language other than English.⁴

The deadline for production of the documents was set for September 25, 2018.⁵ North Carolina election officials estimated that the requests encompass “millions of documents” and described the volume of the requests as “the most exhaustive on record” and “so massive as to be absurd.”⁶

Reports suggest that these subpoenas are related to a continuation of the objectives of the now-defunct Presidential Advisory Commission on Election Integrity (“PACEI”), led by Kansas Secretary of State Kris Kobach.⁷ When PACEI was disbanded, Kobach proposed that PACEI's mission and functions should be assumed by the Department of Homeland Security (“DHS”).⁸ ICE is a component agency of DHS.

On September 6, 2018, after discussions with NCSBE, USAO-EDNC postponed the deadline for compliance with the subpoenas to January 2019.⁹ Also on September 6, 2018, members of the North Carolina Congressional Delegation issued a statement declaring their intention to request that the Inspectors General of DHS and the Department of Justice “investigate the legality and motivations for this action.”¹⁰ On

⁴ Subpoena issued to North Carolina Division of Motor Vehicles by U.S. Attorney's Office for Eastern District of North Carolina on behalf of U.S. Immigration and Customs Enforcement (“NCDMV Subpoena”), <https://bit.ly/2NUeeEs>.

⁵ NCSBE Subpoena, <https://bit.ly/2Q7TZAI>; NCDMV Subpoena, <https://bit.ly/2NUeeEs>.

⁶ Fain, *Federal Subpoenas*, *supra* note 1.

⁷ Richard Fausset & Michael Wines, *Justice Dept. Demands Millions of North Carolina Voter Records, Confounding Elections Officials*, N.Y. Times (Sept. 5, 2018), <https://nyti.ms/2wKuVqs>; Fain, *Federal Subpoenas*, *supra* note 1.

⁸ *Kris Kobach on What Led to the Disbandment of Controversial Election Commission*, NPR (Jan. 4, 2018), <https://n.pr/2EaVfw4>; John Wagner, *Trump's Voter Commission Is Dead, But Critics Worry its Mission May Live on*, Washington Post (Jan. 6, 2018), <https://wapo.st/2Qme8SY>.

⁹ Jane C. Timm, *ICE's Move to Seize Millions of Voter Records Stalled After N. Carolina Officials Balk*, NBC News (Sept. 6, 2018), <https://nbcnews.to/2MWREKM>.

¹⁰ Press Release, Office of Congressman G. K. Butterfield, Butterfield, Price Statement on DOJ/ICE Subpoenas (Sept. 6, 2018), <https://bit.ly/2RlqmMW>.

September 7, 2018, the bipartisan NCSBE voted unanimously to authorize the North Carolina Attorney General's Office to move to quash the subpoenas in federal court.¹¹

II. Requested Records

CLC requests copies of the following documents pursuant to FOIA, 5 U.S.C. § 552. We ask that you search for responsive documents from ICE generally, as well as documents specifically relating to the ICE Document and Benefit Fraud Task Force.

1. For the time period from May 11, 2017 to the present, any and all records related to the requests for voter data issued to the NCSBE and/or NCDMV by USAO-EDNC on behalf of ICE, including communications and other documentation related to plans for the use of such data.
2. For the time period from May 11, 2017 to the present, any and all documents related to the following subjects:
 - Voter fraud
 - Illegal voting
 - Non-citizen voting
3. All communications from May 11, 2017 to the present that mention or were sent to or from the Presidential Advisory Committee on Election Integrity or its members:
 - Kris Kobach
 - Vice President Mike Pence
 - Connie Lawson
 - Bill Gardner
 - Ken Blackwell
 - Christy McCormick
 - David Dunn
 - Mark Rhodes
 - Hans von Spakovsky
 - J. Christian Adams
 - Alan King

In order to fulfill these requests as expeditiously as possible, CLC is open to discussing a rolling production schedule or separate processing of the above numbered requests, as needed.

III. Application for Waiver or Limitation of Fees

CLC requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure is "likely to contribute significantly to public understanding of the

¹¹ Laura Leslie, *State Elections Board to Challenge Federal Voter Records Subpoenas*, WRAL (Sept. 7, 2018), <https://bit.ly/2OoVJra>.

operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). It is extraordinarily important that the public understand ICE’s intended uses for this voter information.

CLC is not filing this request to further its commercial interest. CLC is a nonprofit, nonpartisan 501(c)(3) organization. Any information disclosed to CLC by way of this request will be made available to the public at no cost. CLC will also use documents responsive to the request to create analytical content—from op-eds to reports to blogs—that will further educate the public about these matters. Thus, CLC satisfies all the criteria for a fee waiver. A fee waiver would further Congress’s intent in providing for waivers for noncommercial requesters. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’”).

CLC also requests a fee waiver on the grounds that CLC qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). CLC meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III).

As the D.C. Circuit has held, the “representative of the news media” test is focused on the requestor rather than the specific FOIA request. *Cause of Action v. FTC*, 799 F.3d 1108, 1121 (D.C. Cir. 2015). CLC satisfies this test. CLC maintains a website¹² that provides a wealth of editorial content about election law issues, including campaign finance, voting rights, redistricting, and ethics. CLC also publishes a regularly updated blog with original editorial and educational content,¹³ and communicates its research analysis through multiple social media platforms such as Facebook, Twitter, and Medium.¹⁴ CLC also disseminates original editorial and educational content to the public through interviews with other news outlets.¹⁵

The D.C. Circuit has held that a requester may qualify as a news media entity if it “‘distribute[s] [its] work’ by issuing press releases to media outlets in order to reach the public indirectly.” *Cause of Action*, 799 F.3d at 1126 (second alteration in original). Courts have found that other organizations with functionally similar missions engaged in similar public education activities qualify as “representatives of the news media,” even if engaged in litigation or other advocacy beyond educating the public about the operations of government. *See, e.g., id.* at 1121–25 (finding a public interest advocacy organization that comments to other media outlets about documents it obtains under FOIA a news media requester); *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003) (finding nonprofit public interest group that

¹² www.campaignlegal.org.

¹³ www.campaignlegal.org/latest.

¹⁴ Campaign Legal Center, FACEBOOK, www.facebook.com/CampaignLegalCenter/; Campaign Legal Center, TWITTER, <https://twitter.com/CampaignLegal>; Campaign Legal Center, MEDIUM, <https://medium.com/clc-blog>.

¹⁵ www.campaignlegal.org/media-center/campaign-legal-center-news.

published a biweekly email newsletter a news media requester); *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 133 F. Supp. 2d 52, 52–54 (D.D.C. 2000) (finding “public interest law firm” Judicial Watch a news media requester).

“It is critical that the phrase ‘representative of the news media’ be broadly interpreted if the act is to work as expected. . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a ‘representative of the news media.’*” *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (emphasis in original) (citing 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986)). Given this, there can be no doubt that CLC performs important functions as a representative of the news media.

In the event the fee waiver is not granted, CLC may not be charged for the first two hours of search time, or for the first hundred pages of duplication. Please contact and advise us of the cost of this Request if processing costs exceed \$100. You can contact Danielle Lang at (202) 856-7911 or dlang@campaignlegalcenter.org and Jonathan Diaz at (202) 868-4758 or jdiaz@campaignlegalcenter.org.

IV. Request for Expedited Processing

CLC requests expedited processing of this Request. 5 U.S.C. § 552(a)(6)(E); 11 C.F.R. § 9405.7(h). CLC certifies that this is a true and correct statement detailing the basis for our request for expedited processing.

CLC requests expedited processing because there is an “urgency to inform the public” about the “actual or alleged federal government activity” covered by the request and CLC is an organization “primarily engaged in “disseminating information.” 11 C.F.R. § 9405.7(h)(1); 5 U.S.C. § 552(a)(6)(E)(v)(II).

CLC is primarily engaged in disseminating information to the public about actual or alleged government activity because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding that such organizations are “representative[s] of the news media” and are “primarily engaged in disseminating information”). As discussed above, CLC disseminates information to the public through numerous avenues, both through our own avenues such as our website, and through major media outlets.

CLC is not filing this request to further its commercial interest. CLC is a nonprofit, nonpartisan 501(c)(3) organization. Any information disclosed to CLC by way of this request will be made available to the public at no cost. CLC will also use documents responsive to the Request to create analytical content—from op-eds to reports to blogs—that will further educate the public about these matters.

An urgent need for expedited processing exists where the records requested touch on an issue that is “the subject of current news coverage.” *Al-Fayed v. CIA*, 254 F.3d 300, 308 (D.C. Cir. 2001). The subpoenas issued on ICE’s behalf to the NCSBE and NCDMV have been the subject of significant news coverage; in particular, the

volume and nature of the requests and the proximity of the requests to the upcoming federal election have garnered significant public attention.¹⁶

This is a matter of utmost public importance. Voting is a fundamental constitutional right. *Reynolds v. Sims*, 377 U.S. 533, 561–562 (1964). Preserving the security of voter registration and ballot information is an essential step in protecting that constitutional right. The requested documents are necessary to determine the purpose for these requests and ICE’s intended uses for the voter registration and ballot information requested in the subpoenas. The need to inform the public is urgent given the upcoming midterm elections and the sensitive nature of the requested information.

V. Conclusion

Pursuant to DHS regulations, CLC expects notification of a decision on its request for expedited processing within ten (10) calendar days. 6 C.F.R. § 5.5(e). Even if expedited processing should be rejected, CLC expects a response to this Request within twenty (20) working days as required by statute. 5 U.S.C. § 552(a)(6)(A)(ii). If the Request is denied in full or in part, CLC asks that you justify all deletions by reference to specific FOIA exemptions. If some portions of the requested records are exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. 5 U.S.C. § 552(b). If any portion of the requested records is exempt from disclosure, please provide an index of the withheld materials as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

Thank you for your prompt attention and response to this matter. When possible, please send the requested records electronically via email to dlang@campaignlegalcenter.org and jdiaz@campaignlegalcenter.org or on a data drive to the address listed below. Please furnish all applicable paper records to: Campaign Legal Center, c/o Jonathan Diaz, 1411 K Street NW, Suite 1400, Washington, DC 20005.

Sincerely,

/s/ Danielle Lang

Danielle Lang
Senior Legal Counsel
Voting Rights and Redistricting
Campaign Legal Center
1411 K Street, NW, Suite 1400
Washington, DC 20005
(202) 856-7911
dlang@campaignlegalcenter.org

¹⁶ See, e.g., Fain, *Federal Subpoenas*, *supra* note 1; Fausset & Wines, *supra* note 7.

Jonathan Diaz

Legal Counsel

Voting Rights

1411 K Street, NW, Suite 1400

Washington, DC 20005

(202) 868-4758

jdiaz@campaignlegalcenter.org

Exhibit B

From: Moshe Pasternak
Sent: Monday, December 3, 2018 9:07 AM
To: 'ICE-FOIA@dhs.gov'
Subject: Outstanding FOIA Request
Attachments: CLC FOIA Request 10.2.18.pdf

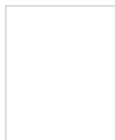
Good morning!

On October 2nd my colleagues, Jonathan Diaz and Danielle Lang submitted the attached request. We still have not received an acknowledgement letter let alone any responsive documents.

Do you have an update for when we can expect a response?

Thank you and have a great day!

-Mo



Moshe Pasternak

Program Assistant
202.736.2200

Campaign Legal Center
1411 K St. NW, Suite 1400
Washington, DC 20005
campaignlegalcenter.org

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Exhibit C

From: Moshe Pasternak
Sent: Friday, December 7, 2018 10:37 AM
To: 'ice-foia@ice.dhs.gov'
Subject: Outstanding FOIA Request
Attachments: CLC FOIA Request 10.2.18.pdf

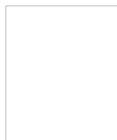
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Moshe Pasternak

Program Assistant
202.736.2200

Campaign Legal Center
1411 K St. NW, Suite 1400
Washington, DC 20005
campaignlegalcenter.org

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Exhibit D

From: ice-foia@dhs.gov <ice-foia@dhs.gov>

Sent: Friday, December 7, 2018 10:19 AM

To: Danielle Lang

Subject: ICE FOIA Request 2019-ICFO-23637

December 07, 2018

Danielle Lang
Campaign Legal Center
1411 K St. NW, Suite 1400
Washington, DC 20005

RE: ICE FOIA Case Number 2019-ICFO-23637

Dear Ms. Lang:

This acknowledges receipt of your November 02, 2018, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for responsive documents from ICE generally, as well as documents specifically relating to the ICE Document and Benefit Fraud Task Force (see request for details). Your request was received in this office on December 03, 2018.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, ICE processes FOIA requests according to their order of receipt. Although ICE's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10- day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care 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.

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 Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester, you will be charged 10 cents per page for duplication; the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors 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 **2019-ICFO-23637**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit <http://www.dhs.gov/foia-status>. Please note that to check the status of a request, you must enter the 2019-ICFO-XXXXX tracking number. If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office. You may send an e-mail to ice-foia@ice.dhs.gov, call toll free (866) 633-1182, or you may contact our FOIA Public Liaison, Fernando Pineiro, in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS 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; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Regards,

ICE FOIA Office
Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
Telephone: 1-866-633-1182
Visit our FOIA website at www.ice.gov/foia

Exhibit E

From: ICE-FOIA <ICE-FOIA@ice.dhs.gov>
Sent: Tuesday, December 11, 2018 9:24 AM
To: Moshe Pasternak
Subject: RE: Outstanding FOIA Request

Good morning,

In regards to 2018-ICFO-23637 we have queried the appropriate component of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. We will process your request as expeditiously as possible. Upon completion of the processing, all documents that can be released will be made available to you at the earliest possible date. We sincerely apologize for the delay you are experiencing and appreciate your continued patience.

Sincerely,
ICE FOIA

From: Moshe Pasternak <MPasternak@campaignlegalcenter.org>
Sent: Friday, December 7, 2018 10:37 AM
To: ICE-FOIA <ICE-FOIA@ice.dhs.gov>
Subject: Outstanding FOIA Request

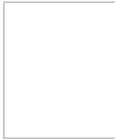
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Do you have an update for when we can expect a response?

Thank you and have a great day!

-Mo



Moshe Pasternak
Program Assistant

202.736.2200

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Exhibit F



December 21, 2018

By Electronic Mail (ICE-FOIA@dhs.gov)

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
ICE-FOIA@dhs.gov

RE: FOIA Case Number 2019-ICFO-23637

Dear Sir or Madam:

The Campaign Legal Center (“CLC”) respectfully requests that U.S. Immigration and Customs Enforcement (“ICE”) provide CLC with a timeline for production of the documents in the above-referenced Freedom of Information Act (“FOIA”) request, as well as a response to CLC’s request for expedited processing.

On October 2, 2018, CLC submitted a request for, *inter alia*, documents related to requests for election records made by the ICE Document and Benefit Fraud Task Force in North Carolina. Contrary to the statutory requirement that an agency respond to a request within 20 days, ICE failed to even acknowledge receipt of CLC’s request until December 7, 2018—a period of more than two months. While ICE’s acknowledgement of receipt stated that CLC’s request was dated November 2, 2018 and was received by ICE on December 3, 2018, the request was actually dated October 2, 2018 and the U.S. Postal Service confirmed delivery of the request via certified mail on October 5, 2018. A copy of the request and the delivery confirmation is enclosed with this letter.

Moreover, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e)(4), ICE is required to make a determination with respect to CLC’s request for expedited processing within ten (10) days of receipt of the request. Even by ICE’s claimed date of receipt—December 3, 2018—that deadline has now passed, and ICE has failed to notify CLC whether the expedited processing request has been granted or rejected.

Part of CLC's mission is to watchdog election law matters, ensure transparency in electoral administration, and enforce the constitutional right to vote. As described in our request, the requested documents are vital to the public interest and should be disclosed immediately. Accordingly, if ICE does not produce the requested documents to CLC by January 23rd, 2019, CLC will consider legal recourse to challenge ICE's unreasonable delay in fulfilling the above-captioned requests.

CLC's FOIA Request

On October 2, 2018, CLC submitted a request via certified mail to ICE's FOIA office. The request is attached as Exhibit A. CLC received confirmation of delivery from the U.S. Postal Service on October 5, 2018. The delivery confirmation is attached as Exhibit B.

The request noted that the U.S. Attorney's Office for the Eastern District of North Carolina issued grand jury subpoenas on behalf of ICE to the North Carolina State Board of Elections and the North Carolina Department of Motor Vehicles seeking information including, but not limited to, voter registration data. News reports suggested that these subpoenas were related to a continuation of the objectives of the now-defunct Presidential Advisory Commission on Election Integrity. Accordingly, CLC sought:

- Records related to the requests for voter data issued to the North Carolina State Board of Elections and/or North Carolina Department of Motor Vehicles by the U.S. Attorney's Office for the Eastern District of North Carolina on behalf of ICE, including communications and other documentation related to the plans for the use of such data.
- Records related to the following subjects:
 - Voter fraud
 - Illegal voting
 - Non-citizen voting
- All communications that mention or were sent to or from the Presidential Advisory Committee on Election Integrity or its members.

ICE's Failure to Comply With Its FOIA Responsibilities

CLC has followed up several times with ICE's FOIA office but has yet to receive a schedule for production nor a formal determination on CLC's request for expedited processing.

On December 3, 2018, CLC emailed the ICE FOIA office at ICE-FOIA@dhs.gov requesting a status update on CLC's request and received no response.

On December 7, 2018, CLC again emailed the ICE FOIA office requesting a status update on CLC's request. CLC then called the ICE FOIA office at 866-633-1182, but was unable to speak to a live FOIA officer.

Later on December 7, CLC received an email from ICE-FOIA acknowledging receipt of CLC's request for the first time and assigning the request reference number 2019-ICFO-23637. ICE's email inaccurately stated the date of CLC's request as November 2, 2018—one month *later* than the actual date of CLC's submission. The email also stated that ICE was invoking a 10-day extension on the basis that CLC's request "seeks numerous documents that will necessitate a thorough and wide-ranging search[.]" The acknowledgement email is attached as Exhibit C.

On December 11, 2018, ICE-FOIA sent another email in response to CLC's December 7 email. ICE-FOIA notified CLC that they had begun the internal query and review process and would "process [CLC's] request as expeditiously as possible." The email erroneously cited reference number 2018-ICFO-23637.

As of December 20, 2018, CLC has not received a proposed timeline for production of responsive documents or a formal decision with respect to expedited processing. To date, the request status posted on <https://www.dhs.gov/foia-status> displays no information and states that "[t]here is no FOIA request in the system for [2019-ICFO-23637]."

Legal Analysis

The FOIA statute anticipates that an agency will respond to a request within 20 days after receiving the request. 5 U.S.C. § 552(a)(1). Moreover, DHS FOIA regulations provide that:

Whenever the statutory time limits for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and the component extends the time limits on that basis, the component shall, ***before expiration of the twenty-day period to respond***, notify the requester in writing of the unusual circumstances involved and ***of the date by which processing of the request can be expected to be completed***.

6 C.F.R. § 5.5(c) (emphasis added).

ICE stated that it received CLC's request on December 3, 2018, and the twenty-day period (excluding weekends and federal holidays) would therefore expire on January 9, 2019; ICE's claimed ten-day extension would continue that deadline to January 23, 2019. However, ICE has provided no explanation for

the nearly two-month gap between the date on which USPS delivered CLC's request and the date of "receipt" by ICE.

ICE first responded and acknowledged receipt of CLC's request 45 days after it was delivered. Moreover, despite ICE's severely delayed response, the agency sought an even further ten-day extension. After this lengthy delay, ICE failed to offer CLC a date by which the processing would be complete.

Moreover, despite CLC's request for expedited processing, ICE has failed to notify CLC within ten calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing," as required by DHS regulations. 6 C.F.R. § 5.5(e)(4).

These delays and lack of communication are unreasonable. Accordingly, CLC will consider all available legal remedies if ICE does not produce the requested documents by ICE's claimed deadline of January 23, 2019.

Respectfully submitted,

/s/

Jonathan Diaz
Legal Counsel, Voting Rights
Campaign Legal Center

Exhibit G

From: Moshe Pasternak
Sent: Monday, January 28, 2019 2:37 PM
To: 'ICE-FOIA'; 'ICE-FOIA@dhs.gov'
Subject: RE: Update Regarding FOIA Request 2019-ICFO-23637

Good afternoon!

I was wondering if you had an update on the status of FOIA request 2019-ICFO-2363. The request was submitted on October 2nd 2018 and I want to know how the government shutdown may alter the timeline for a response.

Thanks!

-Mo

Moshe Pasternak

Program Assistant

202.736.2200

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Washington, DC 20005
campaignlegalcenter.org

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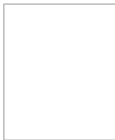
From: Moshe Pasternak
Sent: Friday, December 21, 2018 10:25 AM
To: 'ICE-FOIA' <ICE-FOIA@ice.dhs.gov>; 'ICE-FOIA@dhs.gov' <ICE-FOIA@dhs.gov>
Cc: Danielle Lang <dlang@campaignlegalcenter.org>; Jonathan Diaz <JDiaz@campaignlegalcenter.org>
Subject: Update Regarding FOIA Request 2019-ICFO-23637

Good morning!

Please see the attached letter with regard to FOIA Request 2019-ICFO-23637.

Thank you and have a nice day.

-Mo



Moshe Pasternak

Program Assistant

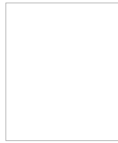
202.736.2200

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Exhibit H

From: Danielle Lang
Sent: Wednesday, February 6, 2019 11:31 AM
To: Moshe Pasternak; Jonathan Diaz
Subject: Fw: ICE FOIA Request 2019-ICFO-23637



Danielle Lang

Co-Director, Voting Rights & Redistricting

202.856.7911 | [@DaniLang_DC](#)

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From: ice-foia@dhs.gov <ice-foia@dhs.gov>
Sent: Thursday, January 31, 2019 11:05 AM
To: Danielle Lang
Subject: ICE FOIA Request 2019-ICFO-23637

January 31, 2019

Danielle Lang
Campaign Legal Center
1411 K St. NW, Suite 1400
Washington, DC 20005

RE: ICE FOIA Case Number 2019-ICFO-23637

Dear Ms. Lang:

This responds to your December 21, 2018 letter in which you requested an update as to the status of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated November 02, 2018, and received in this office on December 03, 2018. Your request sought responsive documents from ICE generally, as well as documents specifically relating to the ICE Document and Benefit Fraud Task Force (see request for details).

By letter dated, December 7, 2018, we advised you that due to the increasing number of FOIA requests received by this office, we would encounter some delay in processing your request. Requests are processed in chronological order based on the date we received a perfected request.

For your information, document(s) responsive to your request have been located and forwarded to this office for review. We will process your request as expeditiously as possible. Upon completion of the processing, all documents that can be released will be made available to you at the earliest possible date. We sincerely apologize for the delay you are experiencing and appreciate your continued patience.

Your request has been assigned reference number **2019-ICFO-23637**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit <http://www.dhs.gov/foia-status>. Please note that to check the status of a request, you must enter the 2019-ICFO-XXXXX tracking number. You may contact this office at (866) 633-1182. Our mailing address is 500 12th Street, S.W., Stop 5009, Washington, D.C. 20536-5009

Sincerely,

ICE FOIA Office
Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
Telephone: 1-866-633-1182
Visit our FOIA website at www.ice.gov/foia

Exhibit I

From: Moshe Pasternak
Sent: Thursday, March 7, 2019 2:30 PM
To: 'ICE-FOIA'; 'ICE-FOIA@dhs.gov'
Subject: RE: Update Regarding FOIA Request 2019-ICFO-23637

Hello!

I was wondering if there was an update on the status of this request.

-Mo

Moshe Pasternak

Program Assistant

202.736.2200

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Washington, DC 20005
campaignlegalcenter.org

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From: Moshe Pasternak
Sent: Monday, January 28, 2019 2:37 PM
To: 'ICE-FOIA' <ICE-FOIA@ice.dhs.gov>; 'ICE-FOIA@dhs.gov' <ICE-FOIA@dhs.gov>
Subject: RE: Update Regarding FOIA Request 2019-ICFO-23637

Good afternoon!

I was wondering if you had an update on the status of FOIA request 2019-ICFO-2363. The request was submitted on October 2^d 2018 and I want to know how the government shutdown may alter the timeline for a response.

Thanks!

-Mo

Moshe Pasternak

Program Assistant

202.736.2200

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Washington, DC 20005
campaignlegalcenter.org

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From: Moshe Pasternak
Sent: Friday, December 21, 2018 10:25 AM
To: 'ICE-FOIA' <ICE-FOIA@ice.dhs.gov>; 'ICE-FOIA@dhs.gov' <ICE-FOIA@dhs.gov>
Cc: Danielle Lang <dlang@campaignlegalcenter.org>; Jonathan Diaz <JDiaz@campaignlegalcenter.org>
Subject: Update Regarding FOIA Request 2019-ICFO-23637

Good morning!

Please see the attached letter with regard to FOIA Request 2019-ICFO-23637.

Thank you and have a nice day.

-Mo



Moshe Pasternak

Program Assistant
202.736.2200

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Exhibit J

From: ICE-FOIA <ICE-FOIA@ice.dhs.gov>
Sent: Friday, March 8, 2019 1:56 PM
To: Moshe Pasternak
Subject: RE: Update Regarding FOIA Request

Good afternoon,

Your request is currently in the queue to be processed by an analyst. Requests are processed on a first in, first out basis and timing can vary greatly depending on the volume of responsive documents and the date the request was received.

Sincerely,
ICE/FOIA

From: Moshe Pasternak <MPasternak@campaignlegalcenter.org>
Sent: Thursday, March 7, 2019 2:30 PM
To: ICE-FOIA <ICE-FOIA@ice.dhs.gov>; ICE-FOIA@dhs.gov
Subject: RE: Update Regarding FOIA Request

Hello!

I was wondering if there was an update on the status of this request.

-Mo

Moshe Pasternak

Program Assistant

202.736.2200

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1411 K St. NW, Suite 1400
Washington, DC 20005
campaignlegalcenter.org

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From: Moshe Pasternak
Sent: Monday, January 28, 2019 2:37 PM
To: 'ICE-FOIA' <ICE-FOIA@ice.dhs.gov>; 'ICE-FOIA@dhs.gov' <ICE-FOIA@dhs.gov>
Subject: RE: Update Regarding FOIA Request 2019-ICFO-23637

Good afternoon!

I was wondering if you had an update on the status of FOIA request 2019-ICFO-2363. The request was submitted on October 2nd 2018 and I want to know how the government shutdown may alter the timeline for a response.

Thanks!

-Mo

Moshe Pasternak

Program Assistant

202.736.2200

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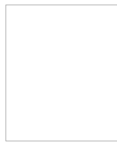
From: Moshe Pasternak
Sent: Friday, December 21, 2018 10:25 AM
To: 'ICE-FOIA' <ICE-FOIA@ice.dhs.gov>; 'ICE-FOIA@dhs.gov' <ICE-FOIA@dhs.gov>
Cc: Danielle Lang <dlang@campaignlegalcenter.org>; Jonathan Diaz <JDiaz@campaignlegalcenter.org>
Subject: Update Regarding FOIA Request 2019-ICFO-23637

Good morning!

Please see the attached letter with regard to FOIA Request 2019-ICFO-23637.

Thank you and have a nice day.

-Mo



Moshe Pasternak

Program Assistant
202.736.2200

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Exhibit K

From: Jonathan Diaz
Sent: Tuesday, March 12, 2019 4:43 PM
To: 'ice-foia@dhs.gov' <ice-foia@dhs.gov>
Subject: Freedom of Information Act Request 2019-ICFO-23637

Dear Ms. Pavlik-Keenan:

Campaign Legal Center ("CLC") writes to address the lack of progress in completing the above-referenced FOIA request (the "Request") and your office's failure to provide a date by which the processing of the Request will be complete.

On October 2, 2018, the CLC submitted the Request to Immigration and Customs Enforcement ("ICE") for records pertaining to ICE communications with other federal agencies or external organizations or individuals regarding ICE's then-recent requests for voter registration and election materials from the North Carolina State Board of Elections and 44 county election boards in North Carolina (collectively, "NCSBE") and the North Carolina Division of Motor Vehicles ("NCDMV"). The Request sought responsive documents from ICE generally, as well as from the ICE Document and Benefit Fraud Task Force. In particular, CLC sought (1) any records related to the requests for voter data issued to NCSBE and/or NCDMV by the U.S. Attorney's Office for the Eastern District of North Carolina on behalf of ICE, including communications and other documentation related to plans for the use of such data; (2) documents related to "voter fraud," "illegal voting," and "non-citizen voting" dating from May 11, 2017 to the present; and (3) communications that mention or were sent to or from the Presidential Advisory Committee on Election Integrity or its members, including Kris Kobach, Hans von Spakovsky, J. Christian Adams, and Vice President Mike Pence, among others.

CLC also requested expedited processing because there is an "urgency to inform the public" about the "actual or alleged government activity" covered by the Request, and CLC is an organization "primarily engaged in disseminating information." 6 C.F.R. § 5.5(e)(ii); 5 U.S.C. § 552(a)(6)(E)(v)(II). Further, the requested records involve "a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence." 6 C.F.R. § 5.5(e)(iv).

For two months, CLC received no substantive response to the Request from ICE.

- On December 3, 2018, CLC emailed ICE-foia@dhs.gov requesting an update on the status of the Request.
- On December 7, 2018, ICE contacted CLC and acknowledged receipt of the Request and stated that there would be a delay in the processing of the Request.
- On December 11, 2018, ICE notified CLC that they would "process [the] request as expeditiously as possible" but did not provide a timeline for processing and production.
- On December 21, 2018, CLC sent ICE a letter requesting a timeline for production of the requested documents and a formal decision on CLC's request for expedited processing.
- On January 28, 2019, CLC emailed ICE-foia@dhs.gov requesting an update on the status of the Request.
- On January 31, 2019, ICE sent an email to CLC indicating that documents responsive to the Request had been located and forwarded to ICE's FOIA office for review. ICE again said they would "process [CLC's] request as expeditiously as possible" but did not provide any timeline for production.

- On March 7, 2019, CLC emailed ICE-foia@dhs.gov requesting an update on the status of the Request.
- On March 8, 2019, ICE emailed CLC and stated: “Your request is currently in the queue to be processed by an analyst. Requests are processed on a first in, first out basis and timing can vary greatly depending on the volume of responsive documents and the date the request was received.”

Despite the urgency of responding to the Request and ICE’s acknowledgement that it would “process [CLC]’s request as expeditiously as possible,” ICE has failed to provide CLC with the date on which a determination is expected as required by 5 U.S.C. § 552(a)(6)(B)(i)-(iii).

Please provide an update on the processing of the Request and an expected completion date. We are prepared to seek judicial relief if we do not receive a determination promptly. Please contact us if you have any questions.

Sincerely,

Jonathan Diaz

Voting Rights Counsel

**Licensed to practice in New York only; supervision by Danielle Lang, a member of the D.C. bar.*

202.868.4758 | [@JMDiazJD](https://twitter.com/JMDiazJD)

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campaignlegalcenter.org

Exhibit L

Request Number: 2019-ICFO-23637

Received Date: 12/03/2018

Request Status: Request for Docs Sent

Estimated Delivery Date: 01/09/2019

Closed Date:

Check performed on 04/08/2019 04:56:34 PM EDT

Status information is current as of 04/08/2019

Enter Request Number *

Check Status



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