



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.<sup>1</sup> 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:

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<sup>1</sup> 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.<sup>2</sup>

On the same date, the USAO-EDNC also issued a grand jury subpoena to the NCDMV.<sup>3</sup> 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

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<sup>2</sup> 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>.

<sup>3</sup> 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.<sup>4</sup>

The deadline for production of the documents was set for September 25, 2018.<sup>5</sup> 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.”<sup>6</sup>

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.<sup>7</sup> When PACEI was disbanded, Kobach proposed that PACEI's mission and functions should be assumed by the Department of Homeland Security (“DHS”).<sup>8</sup> 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.<sup>9</sup> 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.”<sup>10</sup> On

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<sup>4</sup> 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>.

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

<sup>6</sup> Fain, *Federal Subpoenas*, *supra* note 1.

<sup>7</sup> 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.

<sup>8</sup> *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>.

<sup>9</sup> 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>.

<sup>10</sup> 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.<sup>11</sup>

## **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

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<sup>11</sup> 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 website<sup>12</sup> 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,<sup>13</sup> and communicates its research analysis through multiple social media platforms such as Facebook, Twitter, and Medium.<sup>14</sup> CLC also disseminates original editorial and educational content to the public through interviews with other news outlets.<sup>15</sup>

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

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<sup>12</sup> [www.campaignlegal.org](http://www.campaignlegal.org).

<sup>13</sup> [www.campaignlegal.org/latest](http://www.campaignlegal.org/latest).

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

<sup>15</sup> [www.campaignlegal.org/media-center/campaign-legal-center-news](http://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](mailto:dlang@campaignlegalcenter.org) and Jonathan Diaz at (202) 868-4758 or [jdiaz@campaignlegalcenter.org](mailto: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.<sup>16</sup>

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](mailto:dlang@campaignlegalcenter.org) and [jdiaz@campaignlegalcenter.org](mailto: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

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

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