

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

CAMPAIGN LEGAL CENTER
1411 K Street NW, Suite 1400
Washington, DC 20005

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE
950 Pennsylvania Avenue NW
Washington, DC 20530

Defendant.

Civil Action No.

COMPLAINT FOR INJUNCTIVE RELIEF

1. This action is brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel the Department of Justice to produce unredacted records responsive to a February 1, 2018 FOIA request concerning the addition of a “citizenship question” to the 2020 Census Questionnaire. Plaintiff seeks injunctive and other appropriate relief to compel defendant United States Department of Justice to disclose requested records.

JURISDICTION AND VENUE

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Campaign Legal Center (“CLC”) is a nonpartisan, nonprofit legal organization that works to strengthen American democracy at all levels of government. Among

other activities, CLC engages in local, state, and federal actions to ensure the political process is accessible to all citizens, resulting in a representative, responsive, and accountable government. As part of these activities, CLC conducts research, publishes reports and articles, and regularly provides expert analysis to the media. CLC is also involved in litigation throughout the country regarding voting rights matters, campaign finance, redistricting, and electoral ethics. To support these efforts and to educate the public, CLC regularly seeks information under FOIA regarding federal agency decision-making.

4. Defendant Department of Justice (“DOJ”) is a department of the Executive Branch of the United States Government. The Office of Information Policy (“OIP”) and the Civil Rights Division (“CRD”) are components of Defendant DOJ. Defendant DOJ is an “agency” within the meaning of 5 U.S.C. § 552(f).

STATEMENT OF FACTS

5. On February 1, 2018, CLC submitted to CRD a FOIA request for records pertaining to a request by Arthur E. Gary, the General Counsel of DOJ’s Justice Management Division, to the Census Bureau to add a citizenship question to the 2020 Census Questionnaire. *See Ex. 1* (Feb. 1, 2018 FOIA Letter).

6. In particular, CLC sought (1) documents to, from, or mentioning Dr. Ron Jarmin or Dr. Enrique Lamas; and (2) documents containing the phrases “2020 census,” “long form,” “citizenship question,” “questions regarding citizenship,” “ACS,” “American Community Survey,” “citizen voting age population,” or “CVPA,” dating from January 20, 2017 to the present.

7. CLC requested expedited processing because there is an “urgency to inform the public” about the “actual or alleged government activity” covered by the request and because 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.” 28 C.F.R. § 16.5(e)(1)(iv). Indeed, the Census Bureau’s decision to include a citizenship question on the 2020 census has gathered enormous media and public interest that affects public confidence in the government.

8. CRD responded to CLC’s request on February 28, 2018. CRD provided no documents and claimed that all responsive documents were “intra-agency memorandum [sic] containing privileged pre-decisional deliberative material and attorney work product material,” exempt from disclosure under 5 U.S.C. § 552(b)(5) (“Exemption 5”). *See* Ex. 2 (Feb. 28, 2018 CRD Response).

9. On March 22, 2018, Danielle Lang, Senior Legal Counsel at CLC, spoke with Mr. Hermilla, the Chief of the Freedom of Information/Privacy Acts Branch of the Civil Rights Division, on the phone. Ms. Lang requested a *Vaughn* index of the responsive documents so that CLC could analyze whether CRD’s blanket withholding of documents is proper under Exemption 5. Mr. Hermilla denied the request. *See* Ex. 3 (March 27, 2018 CLC Appeal).

10. On March 27, 2018, CLC submitted an administrative appeal to OIP of CRD’s decision to deny CLC’s FOIA request. *See* Ex. 3 (March 27, 2018 CLC Appeal).

11. On information and belief, and as noted in CLC’s administrative appeal, it is unlikely that there are no responsive documents whatsoever that are not covered by the Exemption 5. For example, communications from individuals outside of the government to DOJ employees would not be covered by Exemption 5. *See Dep’t of the Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1 (2001).

12. Likewise, on information and belief, the decision to request the addition of the “citizenship question” to the 2020 Census Questionnaire was made by DOJ in December 2017. Therefore, any subsequent documents are not “predecisional.” *See Mapother v. Dep’t of Justice*, 3 F.3d 1533, 1537 (D.C. Cir. 1993) (“[T]he deliberative process privilege protects materials that are both predecisional and deliberative.”).

13. Moreover, DOJ bears the burden of showing that each responsive document meets the requirements of the deliberative process privilege. Therefore, in its administrative appeal, CLC also requested a *Vaughn* index describing the responsive documents in sufficient detail to enable CLC to evaluate the claim that all documents are subject to Exemption 5. *See* Ex. 3 (March 27, 2018 CLC Appeal); *Vaughn v. Rosen*, 484 F.2d 820, 827-28 (D.C. Cir. 1973).

14. On April 2, 2018, OIP denied CLC’s request for expedited treatment of the appeal, stating that “the other portions of your appeal will be responded to separately” and that the “appeal will be placed into chronological order with other pending appeals and will be addressed in turn” Ex. 4 (April 2, 2018 OIP Letter).

15. To date, CLC has not received a determination regarding its administrative appeal.

16. OIP has therefore exceeded the applicable deadline for responding to the appeal by failing to respond on or prior to April 24, 2018. *See* 5 U.S.C. § 552(a)(6)(A)(ii).

17. CLC has thus exhausted its administrative remedies. *See* U.S.C. § 552(a)(6)(C)(i) (“Any person making a request to any agency for records ... shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph.”).

CAUSE OF ACTION

Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records

18. Plaintiff repeats and alleges paragraphs 1-17.
19. Defendant's failure to make available complete records sought by CLC's request violates FOIA, 5 U.S.C. § 552(a)(3)(A).
20. Defendant has failed to make a determination with respect to Plaintiff's appeal within twenty working days as required by 5 U.S.C. § 552(6)(A)(ii).
21. Plaintiff has therefore exhausted its administrative remedies. *See* 5 U.S.C. § 552(6)(C)(i).
22. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested documents. *See* 5 U.S.C. 552(a)(B)(4) ("On complaint, the district court ... has jurisdiction to enjoin the agency from withholding agency records.").

REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Order Defendant DOJ to disclose all responsive records not covered by Exemption 5;
- B. Order Defendant DOJ to produce a *Vaughn* index for all documents it claims fall into Exemption 5;
- C. Award Plaintiff its costs and reasonable attorneys' fees incurred in this action; and
- D. Grant such other relief as the Court deems just and proper.

Dated: May 21, 2018

By: /s/ Adam Miller

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Counsel for Plaintiff Campaign Legal Center

EXHIBIT 1



February 1, 2018

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BICN Bldg., Room 3234
950 Pennsylvania Avenue, N.W.
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Laurie Day, Chief, Initial Request Staff
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Via U.S. Mail and Email and Online Form

**Re: Urgent Freedom of Information Request
(Expedited Processing & Fee Waiver/Limitation Requested)**

To Whom It May Concern,

Campaign Legal Center ("CLC") submits this Freedom of Information Act ("FOIA") request for all records pertaining to Arthur E. Gary's December 12, 2017 request to the Census Bureau to add a Citizenship question to the 2020 Census Questionnaire. The Census Bureau must make final decisions regarding Census questions and submit them to Congress by **March 31, 2018**. Given the national importance and urgency of this issue, we ask that the Department of Justice ("Department") expedite processing of this request.

Background

On December 12, 2017, Arthur E. Gary, General Counsel of the Justice Management Division, wrote a letter to Ron Jarmin, Acting Director of the U.S. Census Bureau, urging him to include a citizenship question on the 2020 Census questionnaire. In this letter, Gary stated, “the Department needs a reliable calculation of the citizen voting-age population in localities where voting rights violations are alleged or suspected.”¹ He further opined, “the decennial census questionnaire is the most appropriate vehicle for collecting that data, and reinstating a question on citizenship will best enable the Department to protect all American citizens’ voting rights under Section 2.” From this, he concluded, “the Department believes that decennial census questionnaire data regarding citizenship, if available, would be more appropriate for use in redistricting and Section 2 litigation than the [American Community Survey (“ACS”)] citizenship estimates.” However, Gary provided no probative evidence that the Department’s current voting rights litigation suffers from using the ACS data available nor that adding a citizenship Census question would, on balance, improve the accuracy of available data.²

To the contrary, members of the communities DOJ claims to seek to protect, as well as leading voting rights experts and former Census Bureau officials, all agree that adding a citizenship question, particularly at this late stage in preparations, will invoke fear in immigrant communities and exacerbate the already dangerous undercount of those communities.³ Many households in the United States include a

¹ Letter from Arthur E. Gary to Dr. Ron Jarmin, Dec. 12, 2017, <https://www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html>.

² The Editorial Board, *Census 2020 Doesn’t Need Citizenship Question*, USA Today, Jan. 8, 2018, <https://www.usatoday.com/story/opinion/2018/01/08/census-2020-no-citizenship-question-editorials-debates/1007921001/> (“The government, moreover doesn’t need citizenship data in more detail than it already gets through the ACS. The Supreme Court has ruled that political districts are to be drawn according to their number of residents, not their number of citizens. And federal spending on roads, law enforcement and other services follows similar logic.”).

³ Justin Elliot, *Trump Justice Department Pushes for Citizenship Question on Census, Alarming Experts*, ProPublica, Dec. 29, 2017, <https://www.propublica.org/article/trump-justice-department-pushes-for-citizenship-question-on-census-alarming-experts> (“People are not going to come out to be counted because they’re going to be fearful the information would be used for negative purposes,” said Steve Jost a former top bureau official during the 2010 census.”) (“This is a recipe for sabotaging the census,” said Arturo Vargas, a member of the National Advisory Committee of the Census and the executive director of NALGO Educational Fund, a Latino advocacy group. “When you start adding last-minute questions that are not tested — how will the public understand the question? How much will it suppress response rates?”); *see also* Priscilla Alvarez, *The Controversial Question DOJ Wants to Add to the U.S. Census*, The Atlantic, Jan. 10, 2018, <https://www.theatlantic.com/politics/archive/2018/01/the-controversial-question-doj-wants-to-add-to-the-us-census/550088/> (“I think the argument ridiculous. The Justice Department never needed or asked for that question on the short form of the census before and the enforcement of the Voting Rights Act does not need it,” said Vanita Gupta, the president and CEO of the Leadership Conference on Civil and Human Rights who ran DOJ’s Civil Rights Division . . .”).

mix of citizens, documented immigrants, and undocumented immigrants. This question will lead to a serious undercount of these households. In 2015, CLC submitted an *amicus* brief to the Supreme Court on behalf of four former directors of the Census explaining that the sum effect of adding a citizenship question “would be bad Census data.”⁴

CLC does not believe that the American people should be left in the dark concerning an issue that is sure to affect one of the most fundamental rights we have as Americans. It is vital that the public receive up-to-date information as soon as possible about the DOJ’s request to include the citizenship question in the 2020 Census. The Census Bureau must make final decisions regarding Census questions and submit them to Congress by March 31, 2018.⁵ Last week, the Census Bureau reported that its lawyers are currently reviewing the DOJ’s request.⁶

Request

CLC requests copies of the following documents pursuant to the Freedom of Information Act, 5 U.S.C. §552. We ask that you search for responsive documents from the following components: Justice Management Division, the Attorney General’s Office, and the Civil Rights Division.

For the time period from January 20, 2017 to the present, any and all documents—including draft and final memoranda, recommendations, legal opinions, policy advisories or evaluations, educational materials, and all correspondence and communications, including emails,⁷ letters, social media posts, and Twitter direct messages—within the following categories:

- Any documents to, from, or mentioning Dr. Ron Jarmin or Dr. Enrique Lamas;
- Any documents containing the following phrases: “2020 census,” “long form,” “citizenship question,” “question regarding citizenship,” “ACS,” “American Community Survey,” “citizen voting age population,” or “CVAP.”

⁴ Brief of Former Directors of the U.S. Census Bureau As *Amicus Curiae* In Support of Appellees at 25, *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016), <http://www.campaignlegalcenter.org/document/evenwel-v-abbott-supreme-court-amici-brief-clc-behalf-former-directors-us-census-bureau>; Hansi Lo Wang, *Adding Citizenship Question Risks ‘Bad Count’ For 2020 Census, Experts Warn*, NPR, Jan. 10, 2018, <https://www.npr.org/2018/01/10/575145554/adding-citizenship-question-risks-bad-count-for-2020-census-experts-warn>.

⁵ U.S. Census Bureau, *Three Years to Go, Census Bureau Prepares for 2020 Census*, Mar. 31, 2017, <https://www.census.gov/newsroom/press-releases/2017/cb17-tps28.html>.

⁶ Gregory Wallace, *Census citizenship question under legal review*, CNN, Jan. 26, 2018, <https://www.cnn.com/2018/01/26/politics/census-bureau-citizenship/index.html>

⁷ Please note that this request applies to all emails, sent and received, on governmental email addresses, as well as to all emails, sent and received, on all other email addresses and accounts used by Department of Justice personnel to conduct official business.

Request for Expedited Processing

Campaign Legal Center requests expedited processing of this records request. 5 U.S.C. § 552(a)(6)(E); 28 C.F.R. 16.5(e)(1)(ii), (iv). CLC certifies that this is a true and correct statement detailing the basis for our request for expedited processing. We have filed this statement with the appropriate FOIA contacts.⁸

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.” 28 C.F.R. 16.5(e)(1)(ii); 5 U.S.C. § 552(a)(6)(E)(v)(II). Indeed, a final decision on the matter in question must be made by March 31, 2018. The public deserves access to these records before final decisions are made on this question of national importance. Further, the information requested involves “a matter of widespread and exceptional media interest,” and raises “possible questions about the government’s integrity that affect public confidence.” 28 C.F.R. 16.5(e)(1)(iv).

A. Request for Expedited Processing Under 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. 16.5(e)(1)(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. DOJ*, 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”).

CLC maintains a website⁹ that provides a wealth of editorial content about democracy law issues, including campaign finance, voting rights, redistricting, and ethics. CLC also publishes a regularly updated blog with original editorial and educational content,¹⁰ and communicates its research analysis through multiple social media platforms such as Facebook, Twitter, and Medium.¹¹ CLC also disseminates original editorial and educational content to the public through op-eds,¹²

⁸ *Find A FOIA Contact at DOJ*, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/oip/find-foia-contact-doj/list>.

⁹ Campaign Legal Center, www.campaignlegalcenter.org.

¹⁰ Blog, Campaign Legal Center, <http://www.campaignlegalcenter.org/news/262>.

¹¹ Campaign Legal Center, Facebook, <https://www.facebook.com/CampaignLegalCenter/>; Campaign Legal Center, Twitter, <https://twitter.com/CampaignLegal>; Campaign Legal Center, Medium, <https://medium.com/clc-blog>.

¹² *See e.g.*, Trevor Potter, *Donald Trump Hasn’t Solved Any of His Conflicts of Interest*, Wash. Post, Jan. 11, 2017, https://www.washingtonpost.com/posteverything/wp/2017/01/11/donald-trump-hasnt-solved-any-of-his-conflicts-of-interest/?utm_term=.0e80b538fb8f.

press releases,¹³ email newsletters, public reports,¹⁴ fact sheets,¹⁵ videos,¹⁶ and other materials. CLC staff is frequently interviewed for news stories.¹⁷ CLC additionally applies editorial skill to analyze and disseminate materials to other news media outlets, which regularly cite and rely upon CLC's work.

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 DOJ's controversial letter to the Census Bureau is a continuous source of significant news coverage and public interest since it has become public. It has garnered a great deal of public attention.¹⁸ As discussed above,

¹³ Press Releases, Campaign Legal Center, <http://www.campaignlegalcenter.org/news/286>.

¹⁴ See e.g., Make Democracy Count: Ending Partisan Gerrymandering, Campaign Legal Center (Aug. 10, 2016), <http://www.campaignlegalcenter.org/document/make-democracy-count-ending-partisan-gerrymandering>; Ruth Greenwood, Analysis: Partisan Gerrymandering in the 2016 Election, Campaign Legal Center (Jan. 9, 2017), <http://www.campaignlegalcenter.org/news/blog/analysis-partisan-gerrymandering-2016-election>; Funding the Presidential Nominating Conventions: How a Trickle of Private Money Turned Into a Flood, Campaign Legal Center (June 14, 2016), <http://www.campaignlegalcenter.org/document/funding-presidential-nominating-conventions-how-trickle-private-money-turned-flood>.

¹⁵ See e.g., Backgrounder: Record of Supreme Court Nominee Neil Gorsuch on Democracy Law, Campaign Legal Center (Feb. 2, 2017), <http://www.campaignlegalcenter.org/news/update/backgrounder-record-supreme-court-nominee-neil-gorsuch-democracy-law>.

¹⁶ See e.g., *Meet the Victims of Texas' Voter Photo ID Law*, Campaign Legal Center, Apr. 28, 2015, <http://www.campaignlegalcenter.org/news/press-releases/meet-victims-texas-voter-photo-id-law>.

¹⁷ Media Coverage, Campaign Legal Center, <http://www.campaignlegalcenter.org/news/241>.

¹⁸ See, e.g., Hansi Lo Wang, *Adding Citizenship Question Risks 'Bad Count' For 2020 Census, Experts Warn*, NPR, Jan. 10, 2018, <https://www.npr.org/2018/01/10/575145554/adding-citizenship-question-risks-bad-count-for-2020-census-experts-warn>; Justin Elliot, *Trump Justice Department Pushes for Citizenship Question on Census, Alarming Experts*, ProPublica Dec. 29, 2017, <https://www.propublica.org/article/trump-justice-department-pushes-for-citizenship-question-on-census-alarming-experts>; Priscilla Alvarez, *The Controversial Question DOJ Wants to Add to the U.S. Census*, The Atlantic, Jan. 10, 2018, <https://www.theatlantic.com/politics/archive/2018/01/the-controversial-question-doj-wants-to-add-to-the-us-census/550088/>; The Editorial Board, *Census 2020 Doesn't Need Citizenship Question*, USA Today, Jan. 8, 2018, <https://www.usatoday.com/story/opinion/2018/01/08/census-2020-no-citizenship-question-editorials-debates/1007921001/> (“Why does the administration want to ask the citizenship of every person in every home in America? The only plausible explanation is that it wants to depress participation among immigrant groups. That’s not a very good answer.”); Raul A. Reyes, *The Question That Could Sabotage The Census*, CNN, Jan. 2, 2018 (“[D]oes anyone seriously believe that Attorney General Jeff Sessions, head of the Department of Justice, is concerned about minority voting rights?”); Catherine Rampell, *The GOP Is Sabotaging This Sacred Mandate*, The Wash. Post, Jan. 4, 2018, <https://www.washingtonpost.com/opinions/tthe-gop-is-sabotaging-one-of-governments-most->

a final decision on 2020 Census questions must be made by March 31, 2018, when the Census must submit the questions to Congress. The public deserves access to the records discussing the DOJ's last-minute request before the matter is closed for debate.

B. Request for Expedited Processing Under 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(1)(iv)

CLC requests expedited processing because 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.” 28 C.F.R. § 16.5(e)(1)(iv). For the reasons discussed above, it is clear that whether the Census Bureau will include a citizenship question on the 2020 census is a question of enormous media and public interest that affects public confidence in the government. Indeed, it goes to the heart of the public’s confidence in our democratic system of government.

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 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). The requested records will provide the public with critical information.

As noted above, CLC is not filing this request to further its commercial interest. A fee waiver would further Congress’ 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 because 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). As noted above, 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).

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

sacred-mandates/2018/01/04/da27ad60-f197-11e7-b3bf-ab90a706e175_story.html?utm_term=.65f29aab81a0 (“Apparently not content to shortchange funding, the administration is also taking steps that will actively decrease participation [in the census]”); Anjana Ahuja, *When Census Takin Is A Recipe For Controversy*, Financial Times, Jan. 8, 2018, <https://www.ft.com/content/9cddb7d0-f456-11e7-a4c9-bbdefa4f210b>.

reach the public indirectly.” *Cause of Action v. FTC*, 799 F.3d 1108, 1125-26 (D.C. Cir. 2015). Courts have found that other organizations with functionally similar missions engaged in similar public education activities qualify as “representative[s] 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. DOD*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding nonprofit public interest group that published a biweekly email newsletter a news media requester); *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53-54 (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 interpreted broadly 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.’*” 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986), cited in *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989). Given the foregoing, there can be no doubt that CLC performs important functions as a “representative of the news media,” as defined by the relevant statute and regulations.

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 me and advise me of the cost of this request if processing costs exceed \$100. You can contact me at 202-856-7911 or at dlang@campaignlegalcenter.org.

Withholding of Documents

If the Department determines that any of the requested documents are exempt from disclosure, please provide a *Vaughn* index describing any such document(s) or parts of document(s) withheld; and the justification for withholding any document(s) or any part of any document(s), including the specific exemption claimed and the consequences of providing the withheld information. *See Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973); *Mead Data Central, Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977) (“we require that when an agency seeks to withhold information it must provide a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply”); *King v. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (“A withholding agency must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information”). For any document or record for which an exemption is claimed, please disclose any reasonably segregable non-exempt portion of the requested document or record. 5 U.S.C. § 552(b).

Conclusion

Pursuant to Department regulations, CLC expects notification of a decision on its request for expedited processing within ten days, 28 C.F.R. 16.5(e)(4). Even if expedited processing should be rejected, CLC expects a response to this Request within twenty working days, as required by statute. 5 U.S.C. § 552(a)(6)(A).

Thank you for your prompt attention to this matter. Where possible, please send the requested records electronically to dlang@campaignlegalcenter.org. Please furnish all applicable paper records to: Danielle Lang, Campaign Legal Center, 1411 K Street NW, Suite 1400, Washington, DC 20005. If you have any questions, please contact me by email or by telephone at 202-856-7911.

Sincerely,

s/ Danielle M. Lang

Danielle Lang
Senior Counsel*—Voting Rights & Redistricting
Campaign Legal Center
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*Admitted in New York and California only; practice limited to U.S. courts and federal agencies

EXHIBIT 2



Civil Rights Division

NDH:ANF:RG3
18-00145-F

Freedom of Information/Privacy Acts Branch - BCIN
950 Pennsylvania Avenue, NW
Washington, DC 20530

Via Electronic Mail Only

2/28/2018

Danielle M. Lang, Esq.
The Campaign Legal Center
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Washington, DC 20005
dlang@campaignlegalcenter.org

Dear Ms. Lang:

This is in further response to your February 1, 2018, Freedom of Information Act request seeking access to “all records pertaining to Arthur E. Gary’s December 12, 2017 request to the Census Bureau to add a Citizenship question to the 2020 Census Questionnaire.”

After review of the responsive documents, I have determined that access to the documents should be denied pursuant to 5 U.S.C. § 552(b)(5) since the records are intra-agency memorandum containing privileged pre-decisional deliberative material and attorney work product material. Although we have considered a discretionary release of the information, we have determined that the withheld information is not appropriate for such disclosure at this time.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

I hope the Civil Rights Division has been of some assistance to you in this matter.

Sincerely,

Nelson D. Hermilla

Nelson D. Hermilla, Chief
Freedom of Information/Privacy Acts Branch
Civil Rights Division

EXHIBIT 3



Director, Office of Information Policy
U.S. Department of Justice
Suite 11050
1425 New York Avenue N.W.
Washington, D.C. 20530-0001

Via U.S. Mail and the FOIAonline portal

March 27, 2018

Freedom of Information Act Administrative Appeal (18-00145-F)

We write on behalf of the Campaign Legal Center (“CLC”) to appeal the February 28, 2018 denial of CLC’s February 1, 2018 Freedom of Information Act (“FOIA”) request to the Civil Rights Division of the Department of Justice, which was assigned 18-00145-F. CLC believes it is unlikely that there is not a single responsive document to our request that is not covered by 5 U.S.C. § 552(b)(5).

On February 1, 2018, CLC submitted this FOIA request to the Civil Rights Division for all documents from January 20, 2017 to the present within the following categories:

- Any documents to, from, or mentioning Dr. Ron Jarmin or Dr. Enrique Lamas;
- Any documents containing the following phrases: “2020 census,” “long form,” “citizenship question,” “question regarding citizenship,” “ACS,” “American Community Survey,” “citizen voting age population,” or “CVAP.”

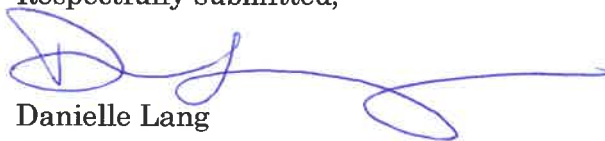
See Ex. A. On February 28, we received a denial from the Civil Rights Division asserting that *all* responsive documents are “intra-agency memorandum containing privileged pre-decisional deliberative material and attorney work product material” that are exempt under 5. U.S.C. § 552(b)(5). *See Ex. B.*

On March 22, I spoke to Mr. Hermilla, the Chief of the Freedom of Information/Privacy Acts Branch of the Civil Rights Division, on the phone. I requested a *Vaughn* index of the responsive documents so that my office could analyze whether this blanket withholding of documents is proper under Exemption 5. He denied my request. CLC believes that it is unlikely that there are no responsive documents whatsoever that are not covered by the Exemption 5. For example, communications from individuals outside of the government to Department employees

would not be covered by the “inter-agency or intra-agency” exemption. 5 U.S.C. § 552(b)(5). See *Department of the Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1 (2001). Likewise, it appears that the decision on this matter was made by the division in December 2017. Therefore, any subsequent documents are not “predecisional.” *Mapother v. DOJ*, 3 F.3d 1533, 1537 (D.C. Cir. 1993) (“[T]he deliberative process privilege protects materials that are both predecisional and deliberative.”). Moreover, the Department bears the burden to show that the responsive documents meet the requirements of the deliberative process privilege. *Coastal States Gas Corp. v. DOE*, 617 F.2d 854, 866 (D.C. Cir. 1980). The blanket denial CLC received in this matter does not meet that burden. Absent a *Vaughn* index, we cannot accept the Department’s blanket claim of privilege.

We hereby appeal the denial of our request and the withholding, under 5 U.S.C. § 552(b)(5), of all responsive documents and renew our request for a *Vaughn* index.

Respectfully submitted,



Danielle Lang
Senior Counsel
Voting Rights & Redistricting
Campaign Legal Center
1411 K Street NW, Suite 1400
Washington, DC 20005

CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

I. (a) PLAINTIFFS (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)	ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION <small>(PLACE AN x IN ONE BOX ONLY)</small> <input type="radio"/> 1 U.S. Government Plaintiff <input type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES <small>(PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)</small> FOR DIVERSITY CASES ONLY! <table style="width: 100%; border: none;"> <thead> <tr> <th style="text-align: left;"></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th style="text-align: left;"></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
	PTF	DFT		PTF	DFT																				
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

IV. CASE ASSIGNMENT AND NATURE OF SUIT**(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)**

<input type="radio"/> A. Antitrust 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Medical Malpractice 365 Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review 151 Medicare Act <u>Social Security</u> 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) <u>Other Statutes</u> 891 Agricultural Acts 893 Environmental Matters 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
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<input type="radio"/> E. General Civil (Other)	<input type="radio"/> F. Pro Se General Civil
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<u>Real Property</u> 210 Land Condemnation 220 Foreclosure 230 Rent, Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property <u>Personal Property</u> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	<u>Bankruptcy</u> 422 Appeal 27 USC 158 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Conditions 560 Civil Detainee – Conditions of Confinement <u>Property Rights</u> 820 Copyrights 830 Patent 835 Patent – Abbreviated New Drug Application 840 Trademark	<u>Federal Tax Suits</u> 870 Taxes (US plaintiff or defendant) 871 IRS-Third Party 26 USC 7609 <u>Forfeiture/Penalty</u> 625 Drug Related Seizure of Property 21 USC 881 690 Other <u>Other Statutes</u> 375 False Claims Act 376 Qui Tam (31 USC 3729(a)) 400 State Reapportionment 430 Banks & Banking 450 Commerce/ICC Rates/etc. 460 Deportation	462 Naturalization Application 465 Other Immigration Actions 470 Racketeer Influenced & Corrupt Organization 480 Consumer Credit 490 Cable/Satellite TV 850 Securities/Commodities/Exchange 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes 890 Other Statutory Actions (if not administrative agency review or Privacy Act)
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<input type="radio"/> G. Habeas Corpus/ 2255 530 Habeas Corpus – General 510 Motion/Vacate Sentence 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act 895 Freedom of Information Act 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 740 Labor Railway Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) 441 Voting (if not Voting Rights Act) 443 Housing/Accommodations 440 Other Civil Rights 445 Americans w/Disabilities – Employment 446 Americans w/Disabilities – Other 448 Education	<input type="radio"/> M. Contract 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholder's Suits 190 Other Contracts 195 Contract Product Liability 196 Franchise	<input type="radio"/> N. Three-Judge Court 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
☐ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multi-district Litigation
☐ 7 Appeal to District Judge from Mag. Judge
☐ 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$	Check YES only if demanded in complaint JURY DEMAND: YES NO
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES NO	If yes, please complete related case form

DATE: _____	SIGNATURE OF ATTORNEY OF RECORD _____
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

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

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

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

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk