
From: Gibson, Jake <Jake.Gibson@FOXNEWS.COM>
Sent: Tuesday, November 14, 2017 11:54 AM
To: Prior, Ian (OPA)
Cc: Flores, Sarah Isgur (OPA)
Subject: Re: Special Counsel back and forth

Got it.

On Nov 14, 2017, at 11:52 AM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

The AG did not say "it looks like there's not enough basis for a special counsel."

He said “ ‘looks like’ is not enough basis for a special counsel.”

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cell (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

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From: Singman, Brooke <brooke.singman@FOXNEWS.COM>
Sent: Tuesday, November 14, 2017 10:16 AM
To: Prior, Ian (OPA)
Subject: RE: **EMBARGOED UNTIL DELIVERY** OPENING STATEMENT OF ATTORNEY GENERAL SESSIONS BEFORE THE HOUSE JUDICIARY COMMITTEE

Thanks, Ian!

From: Prior, Ian (OPA) [mailto:lan.Prior@usdoj.gov]
Sent: Tuesday, November 14, 2017 10:13 AM
To: Prior, Ian (OPA) <lan.Prior@usdoj.gov>
Subject: **EMBARGOED UNTIL DELIVERY** OPENING STATEMENT OF ATTORNEY GENERAL SESSIONS BEFORE THE HOUSE JUDICIARY COMMITTEE

thx

Ian D. Prior

Principal Deputy Director of Public Affairs

Department of Justice

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For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

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FOR IMMEDIATE RELEASE

TUESDAY, NOVEMBER 14, 2017

OPENING STATEMENT OF ATTORNEY GENERAL SESSIONS BEFORE THE HOUSE JUDICIARY COMMITTEE

Washington, DC

Remarks as prepared for delivery

On my first day in this job, I spoke about the “critical role we at the Department play in maintaining and strengthening the rule of law, which forms the foundation for our liberty, our safety, and our prosperity. In this rule of law, we are blessed beyond all nations.

And at this Department, we must do all that we can to ensure that it is preserved and advanced. Such ideals transcend politics.”

From that day to today, we at the Department of Justice have worked to be faithful to that mission.

Let me share some things we have done: The President sent us an order to reduce crime and embrace that mission. The violent crime rate has risen, and the homicide rate has risen by more than 20 percent over the past two years.

After careful review, we have established a reinvigorated Project Safe Neighborhood program, as the foundational policy for public safety. It has been proven to get results. In its first seven years, PSN reduced violent crime overall by 4.1 percent, with case studies showing reductions in certain areas of up to 42 percent. We are also focusing on criminals with guns.

We have seen a 23 percent increase in gun prosecutions in the second quarter of this fiscal year. And I am honored to lead the superb men and women of the FBI, DEA, ATF, and US Marshals who work together every day with our state and local partners in this core crime fighting mission of the Department.

Last year, we saw a staggering 61 percent increase in the number of law enforcement officers killed in the line of duty because of a felony, and on average, more than 150 officers were assaulted every single day. These numbers are unacceptable. Fortunately, we have a President who understands this. President Trump directed us at the beginning to back our men and women in blue.

We are making it clear that we stand with our law enforcement partners 100 percent. They are the solution to crime, not the problem.

We have also protected the rule of law in our own Department. We have prohibited so-called third party settlements that were being used to bankroll outside interest groups.

We have settled civil cases regarding the Affordable Care Act's birth control mandate and settled the cases of many groups whose tax-exempt status was significantly and wrongly delayed by the Internal Revenue Service. We have also provided legal counsel to this administration in favor of ending several other unlawful policies.

This includes President Trump's order ending billions in funding for insurance companies that were not appropriated by Congress under the Affordable Care Act.

This action, which the House had filed a lawsuit to stop, put an end to one of the most dramatic erosions of the Congressional appropriations power in our history. We put an end to actions by the previous administration to circumvent Congress's duly passed immigration laws under the DACA policy. That policy gave individuals that were here illegally certificates of lawful status, work permits, and the right to participate in Social Security. We withdrew that unlawful policy, and now the issue is in the hands of Congress where it belongs.

We have filed briefs defending properly enacted state voter identification laws, lawful redistricting plans, religious liberty, and free speech on college campuses. In short, it is our mission to restore the American people's confidence in the Department of Justice by defending the rule of law and enforcing the laws as you have passed them. And it is a mission we are honored to undertake.

In response to letters from this committee and others, I have directed senior federal prosecutors to make recommendations as to whether any matters not currently under investigation should be opened, whether any matters currently under investigation require further resources, or whether any matters merit the appointment of a Special Counsel.

And, as you are also aware, the Department's Inspector General has an active review of allegations that FBI policies and procedures were not followed last year in a number of these matters you have raised.

And we will make such decisions without regard to politics, ideology, or bias.

As many of you know, the Department has a long-standing policy not to confirm or deny the existence of investigations. This policy can be frustrating, especially when there is great public concern or interest about a particular matter. But it enhances justice when we act under the law and with professional discipline.

This policy necessarily precludes any discussion on what cases I may be recused from because to do so would confirm existence of an underlying investigation. To the extent a matter comes to the attention of my office that may warrant consideration of recusal, I review the issue and consult with the appropriate Department ethics officials.

Lastly, I would like to address the false charges made about my previous testimony. My answers have never changed. I have always told the truth, and I have answered every question as I understood them and to the best of my recollection, as I will continue to do today.

I would like to address recent news reports regarding meetings during the campaign attended by George Papadopoulos and Carter Page, among others. Frankly, I had no recollection of this until I saw these news reports.

I do now recall the March 2016 meeting at Trump Hotel that Mr. Papadopoulos attended, but I have no clear recollection of the details of what he said during that meeting. After reading his account, and to the best of my recollection, I believe that I wanted to make clear to him that he was not authorized to represent the campaign with the Russian government, or any other foreign government, for that matter. But I did not recall this event, which occurred 18 months before my testimony of a few weeks ago, and would gladly have reported it.

As for Mr. Page, while I do not challenge his recollection, I have no memory of his presence at a dinner at the Capitol Hill Club or any passing conversation he may have had with me as he left.

All of you have been in a campaign. But most of you have not participated in a presidential campaign. And none of you had a part in the Trump campaign. It was a brilliant campaign in many ways. But it was a form of chaos every day from day one. We traveled all the time, sometimes to several places in one day. Sleep was in short supply.

And I was still a full-time Senator keeping a very full schedule during this time.

During this year, I have spent close to 20 hours testifying before Congress before today.

I have been asked to remember details from a year ago, such as who I saw on what day, in what meeting, and who said what when.

In all of my testimony, I can only do my best to answer all of your questions as I understand them and to the best of my memory. But I will not accept and reject accusations that I have ever lied under oath. That is a lie.

Let me be clear: I have at all times conducted myself honorably and in a manner consistent with the high standards and responsibilities of the Office of Attorney General. As I said before, my story has never changed. I have always told the truth, and I have answered every question to the best of my recollection as I will continue to do today.

With that, I am happy to take your questions.

#

AG

17-1285

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From: Murray, Andrew <Andrew.Murray@FOXNEWS.COM>
Sent: Monday, November 13, 2017 5:38 PM
To: Ehram, Lauren (OPA)
Cc: Flores, Sarah Isgur (OPA)
Subject: RE: AG Sessions: Why we've made restoring the rule of law our top priority

Thanks please let us know if he is available to join us for a LIVE interview on Wednesday.

Thanks in advance,

Andrew Murray
Producer, Politics
"Fox & Friends"
Fox News Channel
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New York, NY 10036
Office (b) (6)
Cell # (b) (6)
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FAX: (212) 301-3421
Email: andrew.murray@foxnews.com
@andrewmurray1

From: Ehram, Lauren (OPA) [mailto:Lauren.Ehram@usdoj.gov]
Sent: Monday, November 13, 2017 5:34 PM
To: Ehram, Lauren (OPA) <Lauren.Ehram@usdoj.gov>
Cc: Prior, Ian (OPA) <Ian.Prior@usdoj.gov>
Subject: AG Sessions: Why we've made restoring the rule of law our top priority

Good afternoon! I hope you'll take a moment to read this op-ed out today by Attorney General Jeff Sessions highlighting how the Department of Justice is serving the American people under this administration, by following the laws they have duly enacted, including:

- Taking action to keep America safe.
- Settling with Tea Party groups for unfair treatment by the IRS.
- Ending the use of gov't to bankroll third-party special interest groups or the friends of whomever is in power.
- Trusting our prosecutors again and letting them do their jobs.
- Rewarding those jurisdictions that assist federal law enforcement.
- Protecting First Amendment rights to free speech and religious liberty.

And we are just getting started!

Thank you,
Lauren

Lauren Ehram

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Attorney General Jeff Sessions: Why we've made restoring the rule of law our top priority

By Jeff Sessions

Fox News

<http://www.foxnews.com/opinion/2017/11/13/attorney-general-jeff-sessions-why-weve-made-restoring-rule-law-our-top-priority.html>

The rule of law is the foundation of our system of government. In the vision of our Founders, we have “a government of laws and not of men.”

Under President Trump’s strong leadership, the Department of Justice has made restoring the rule of law our top priority. Everything we do is guided by this principle.

Under the previous administration, parties who had been sued by the government and then settled the lawsuit were sometimes required to pay community organizations that were not even involved in the case or harmed by the defendant. That was not only wrong, but contrary to longstanding legal principles, and we have put a stop to it. Lawsuit settlements with the government should not be used to bankroll third-party special interest groups or the friends of whomever is in power. They should help compensate victims or go to the taxpayer. Now that is what they will do.

We are also trusting our prosecutors again and letting them do their jobs. The previous administration forced them to leave out important facts in drug cases to achieve sentences lighter than were required by the law. Federal drug prosecutions and sentences went down dramatically. Meanwhile drug deaths rose to unprecedented levels.

We have removed this restriction on our prosecutors and told them to target the most violent criminals. They have already achieved significant results, with charges for federal gun crimes up nearly a quarter.

Under this administration, the Department of Justice is serving the American people by following the laws they have duly enacted and we are just getting started.

The rule of law means abiding by all of our laws. Restoring the rule of law therefore requires enforcing our immigration laws.

We are rewarding those jurisdictions that assist federal law enforcement not those who refuse to, like “sanctuary” jurisdictions. Our law enforcement grants now have conditions to encourage our state and local partners to help us remove criminal aliens from this country. Politicians have no right to protect criminals or promote lawlessness.

Neither do those entrusted with classified information. Leaks break the public trust and threaten public safety. That is why we tripled the number of active investigations into leaks. We have already charged four people with unlawfully disclosing classified material or concealing contacts with foreign intelligence officers.

When necessary, we go to court to keep the American people safe, such as when we defend the president’s right to protect this country from security threats. We are defending the president’s clear legal right to stop the entry of those who cannot be adequately vetted. Numerous judges and two district courts have upheld the president’s travel ban, and we are confident that it will stand.

The Department cannot, however, defend illegal actions. That is why we advised the administration to end the previous administration’s unlawful Deferred Action for Childhood Arrivals policy, or DACA. This policy was contrary to our

immigration laws and did not have Congressional approval indeed, Congress rejected similar legislative proposals numerous times.

For the same reason, the Department has agreed to settlement terms with 469 Tea Party and other conservative groups whose tax-exempt applications were delayed by the IRS based on inappropriate criteria including conservative names and policy positions, and civil cases with 90 plaintiffs regarding the previous administration's contraception mandate. These cases never should have been necessary.

Religious liberty is an inalienable right, and at the president's direction, we issued legal guidance on how to properly interpret and apply legal protections for religious liberty. And it is not just freedom of worship: we do not give up our religious freedom when we are at work, when we interact with the federal government, or any other time we participate in society.

We do not give up our rights when we go to school, either. This Department is standing up for those whose rights have been violated on campus, including supporting a lawsuit by one young man who was punished for discussing his faith outside of his school's tiny "free speech zone." And we are examining a case where Asian-American students allege racial discrimination in one university's admissions.

In 1776, Thomas Paine wrote that "in free countries, the law ought to be king." Under this administration, the Department of Justice is serving the American people by following the laws they have duly enacted and we are just getting started.

Jeff Sessions is the Attorney General of the United States.

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From: Spinato, Eric <eric.spinato@FOXNEWS.COM>
Sent: Monday, November 13, 2017 5:37 PM
To: Ehram, Lauren (OPA)
Cc: Prior, Ian (OPA)
Subject: RE: AG Sessions: Why we've made restoring the rule of law our top priority

It would be great if he can join Maria Bartiromo this week or on her Sunday program
Thanks

From: Ehram, Lauren (OPA) [mailto:Lauren.Ehram@usdoj.gov]
Sent: Monday, November 13, 2017 5:34 PM
To: Ehram, Lauren (OPA) <Lauren.Ehram@usdoj.gov>
Cc: Prior, Ian (OPA) <Ian.Prior@usdoj.gov>
Subject: AG Sessions: Why we've made restoring the rule of law our top priority

Duplicative Material



From: Robbins, Christina <Christina.Robbins@FOXNEWS.COM>
Sent: Monday, November 13, 2017 5:31 PM
To: Prior, Ian (OPA)
Subject: Re: Fox News Opinion - Attorney General Jeff Sessions: Why we've made restoring the rule of law our top priority

I saw!
If he wants to come on and discuss - 1p hour this week - lemme know!

Sent from my iPhone

On Nov 13, 2017, at 4:48 PM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

ICYMI . . .

Attorney General Jeff Sessions: Why we've made restoring the rule of law our top priority

By Jeff Sessions

Fox News

<http://www.foxnews.com/opinion/2017/11/13/attorney-general-jeff-sessions-why-weve-made-restoring-rule-law-our-top-priority.html>

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The Department cannot, however, defend illegal actions. That is why we advised the administration to end the previous administration’s unlawful Deferred Action for Childhood Arrivals policy, or DACA. This policy was contrary to our immigration laws and did not have Congressional approval indeed, Congress rejected similar legislative proposals numerous times.

For the same reason, the Department has agreed to settlement terms with 469 Tea Party and other conservative groups whose tax-exempt applications were delayed by the IRS based on inappropriate criteria including conservative names and policy positions, and civil cases with 90 plaintiffs regarding the previous administration’s contraception mandate. These cases never should have been necessary.

Religious liberty is an inalienable right, and at the president’s direction, we issued legal guidance on how to properly interpret and apply legal protections for religious liberty. And it is not just freedom of worship: we do not give up our religious freedom when we are at work, when we interact with the federal government, or any other time we participate in society.

We do not give up our rights when we go to school, either. This Department is standing up for those whose rights have been violated on campus, including supporting a lawsuit by one young man who was punished for discussing his faith outside of his school’s tiny “free speech zone.” And we are examining a case where Asian-American students allege racial discrimination in one university’s admissions.

In 1776, Thomas Paine wrote that “in free countries, the law ought to be king.” Under this administration, the Department of Justice is serving the American people by following the laws they have duly enacted and we are just getting started.

Jeff Sessions is the Attorney General of the United States.

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cell (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

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From: Robbins, Christina <Christina.Robbins@FOXNEWS.COM>
Sent: Monday, November 6, 2017 3:07 PM
To: Prior, Ian (OPA)
Subject: RE: Interview request

Okay. sniff, sniff.

Christina Svolopoulos Robbins
Fox News Channel
Direct (b) (6)
Cell (b) (6)
Email: Christina.Robbins@FoxNews.com

From: Prior, Ian (OPA) [mailto:Ian.Prior@usdoj.gov]
Sent: Monday, November 06, 2017 3:06 PM
To: Robbins, Christina <Christina.Robbins@FOXNEWS.COM>
Subject: RE: Interview request

I think we'll pass again. But keep bugging me. Maybe we can get Rachel on again at some point

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cell (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Robbins, Christina [mailto:Christina.Robbins@FOXNEWS.COM]
Sent: Monday, November 6, 2017 12:36 PM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: RE: Interview request

Hi!
This is your weekly "reminding you this week" email ☺
Harris Faulkner will be in DC hosting her show on Thursday. Do you think the AG would be able to join her on set? 1p hour?

Christina Svolopoulos Robbins
Fox News Channel
Direct (b) (6)
Cel (b) (6)
Email: Christina.Robbins@FoxNews.com

From: Prior, Ian (OPA) [mailto:Ian.Prior@usdoj.gov]
Sent: Friday, October 27, 2017 1:23 PM

To: Robbins, Christina <Christina.Robbins@FOXNEWS.COM>

Subject: RE: Interview request

Ok remind me next week and we'll circle back

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Robbins, Christina [<mailto:Christina.Robbins@FOXNEWS.COM>]

Sent: Thursday, October 26, 2017 5:10 PM

To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>

Subject: Re: Interview request

Hi!

Yes, I'm working on Harris Faulkner's new show - 1p hour. It just started a few weeks ago. It's called "Out Numbered Overtime".

Oh - and Harris will be hosting from DC bureau on Nov. 9th - if the AG wants to come on set with her ;)

Christina Robbins

Sent from my iPhone

On Oct 26, 2017, at 4:50 PM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

Are you with a new show?

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cell (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Flores, Sarah Isgur (OPA)

Sent: Thursday, October 26, 2017 2:09 PM

To: Press <Press@jmd.usdoj.gov>

Cc: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Pettit, Mark T. (OPA) <mtpettit@jmd.usdoj.gov>

Subject: Re: Interview request

Weird that they don't have our email addresses? Ian maybe you should reach out just so we have their info for when we send releases and want to pitch packages?

On Oct 26, 2017, at 2:06 PM, Press <Press@jmd.usdoj.gov> wrote:

Thank you,

Katy Jo Richards
Media Affairs Intern
U.S. Department of Justice
Office of Public Affairs

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Grannum, Donovan [<mailto:Donovan.Grannum@FOXNEWS.COM>]

Sent: Thursday, October 26, 2017 2:02 PM

To: Press <Press@jmd.usdoj.gov>

Subject: Interview request

Good afternoon, Fox News Channel's Happening Now is requesting a live interview with Attorney General Jeff Sessions regarding the Justice Department settlements with Tea Party groups. Please call me a (b) (6) office or on my cell a (b) (6) so that we can make the necessary arrangements. I look forward to speaking with you soon.

Best,
Don Grannum
Fox News
(b) (6)

Trump DOJ settles lawsuits over Tea Party targeting by Obama IRS

<image001.png>

By **Brooke Singman, Fox News**

<image002.jpg>

The Justice Department settled lawsuits with Tea Party and other conservative groups who say they were unfairly targeted by the IRS, dating back to 2013, when this "Audit the IRS" rally took place in front of the U.S. Capitol (Reuters)

The Trump administration, after years of litigation, has settled lawsuits with Tea Party and other conservative groups who say they were unfairly targeted by the IRS under the Obama administration.

Attorney General Jeff Sessions announced early Thursday that the Justice Department had entered into settlements with Tea Party groups whose tax-exempt status was significantly delayed by the IRS dating back to 2013, “based solely on their viewpoint or ideology.”

The settlements involve payments to the plaintiffs and an apology from the IRS.

The targeting scandal drew heavy attention in 2013 when the IRS admitted it applied extra scrutiny to conservative groups applying for nonprofit status. Lois Lerner, then head of the Exempt Organizations unit responsible, became the public face of the scandal, though other IRS officials were involved as well.

Sessions said that groups with names involving “Tea Party” or “Patriots,” or those with specific policy positions concerning government spending, were subject to “inappropriate criteria” to “screen” applications.

JUDGE ORDERS IRS TO REVEAL WHO TOOK PART IN TEA PARTY TARGETING

Former IRS official Lois Lerner said in 2013 that the IRS' practice of applying extra scrutiny to conservative groups 'was wrong.' (AP)

“The IRS’s use of these criteria as a basis for heightened scrutiny was wrong and should never have occurred,” Sessions said in a statement Thursday. “It is improper for the IRS to single out groups for different treatment based on their names or ideological positions.”

While the IRS did not immediately respond to Fox News' request for comment, court documents show that the agency did offer an apology.

“The IRS admits that its treatment of Plaintiffs during the tax-exempt determination process, including screening their applications based on their names or policy positions, subjecting those applications to heightened scrutiny and inordinate delays, and demanding some Plaintiffs' information that TIGTA determined was unnecessary to the agency's determination of their tax-exempt status, was wrong,” the IRS said in court documents. “For such treatment, the IRS expresses its sincere apology.”

The Justice Department's settlement would pay the claims of each of the over 400 groups in the case. The attorneys for the groups said it was “a great day for the First Amendment,” but noted that day “was too long in coming.”

“The Government's generous settlement with the Class Plaintiffs fully vindicates their claims that the IRS targeted Tea Party and conservative groups based on their viewpoint,” lead counsel for the conservative groups, Eddie Greim, told Fox News in an email. “However, like Lois Lerner's stated apology back in 2013, any recent so-called 'apology' by the IRS has little value. That is because the Service continues to suggest that its targeting was really just ‘mismanagement.’”

Greim added: “This story was dismantled in our case. For taxpayers to be truly confident that the IRS has changed, it needs to be truthful about its past abuse of power.”

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Robbins, Christina

From: Robbins, Christina
Sent: Friday, October 27, 2017 3:44 PM
To: Prior, Ian (OPA)
Subject: Re: Interview request

Sounds good. Have a great weekend!

Sent from my iPhone

On Oct 27, 2017, at 1:22 PM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

duplicative material



Chuck Ross

From: Chuck Ross
Sent: Thursday, November 2, 2017 7:02 PM
To: Flores, Sarah Isgur (OPA)
Subject: Re: AG's interactions with George Papadopoulos

Got it, thank you

On Thursday, November 2, 2017, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

As a source familiar, there's no evidence that GP ever emailed then-Senator Sessions.

Sarah Isgur Flores

Director of Public Affairs

202.305.5808

From: Chuck Ross [mailto:chuck@dailycaller.com]
Sent: Thursday, November 2, 2017 4:11 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: Re: AG's interactions with George Papadopoulos

Ok, thanks very much.

And are y'all able to say whether or not Sessions received any emails from Papadopoulos?

On Thu, Nov 2, 2017 at 2:55 PM, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

Ken deleted his tweet and changed his story.

This is what I told him as a source familiar:

As a source familiar:

March 31 meeting:

It seems clear that the people who remember the conversation believed that Papadopoulos was proposing a prospective idea of using his "Russian contacts" to try to set up a meeting between Trump and Putin, which was immediately rejected by then-Senator Sessions. At the time, of course, Papadopoulos was some 29-year old that nobody had ever heard of and who struck people in the room as someone who didn't have a lot of credibility. As far as Sessions seemed to be concerned, when he shut down this idea of Papadopoulos engaging with Russia, that was the end of it and he moved the meeting along to other issues.

Further contact

Papadopoulos was a face around a table at that meeting and the Attorney General has no clear recollection of this person. He may have been at future Trump events that Sessions attended—including a dinner at the Capitol Hill Club with some members of the foreign policy committee over the summer--but Sessions doesn't recall any further interactions with him, including any phone calls or emails.

Testimony

The Attorney General has been entirely truthful and consistent on this matter. He had no knowledge of any conversations by anyone connected to the Trump campaign with any Russian or any foreign officials concerning any type of interference with any campaign or election in the United States. He was not aware of any continuous exchange of information during the campaign between Trump surrogates and intermediaries for Russian government as Senator Franken suggested. He never heard of anybody on the campaign collaborating with the Russians. And he was unaware of any surrogates from the campaign communicating with the Russians. Not only did he not know of any such activities, but when even the idea of such a future meeting surfaced, he personally rejected it.

The March 31 comments by this Papadopoulos person did not leave a lasting impression. The Attorney General immediately dismissed it and moved on.

On Nov 2, 2017, at 3:44 PM, Chuck Ross <chuck@dailycaller.com> wrote:

Hey Sarah,

Is there anything you guys can say on all of this? NBC's out now with a story saying that AG "now remembers" the Papadopoulos interaction.

They're saying that him remembering this now is a contradiction to his Oct. 18 testimony. Which, if you read it closely, AG kind of dodged the question about whether he had overhead conversations about meetings with Russians. He spoke only about collusion.

Anyway, not sure if you remember, but you confirmed for me back in August that AG does remember something along the lines of what I'd reported. But it was given with no attribution to Sessions or DOJ.

Could I get a statement or anything clarifying everything?

Best,

Chuck Ross

(b) (6)

On Mon, Oct 30, 2017 at 1:09 PM, Chuck Ross <chuck@dailycaller.com> wrote:

Ok, thanks very much

On Mon, Oct 30, 2017 at 1:06 PM, Flores, Sarah Isgur (OPA)
<Sarah.Isgur.Flores@usdoj.gov> wrote:

Funny! Was just rereading your story. No comment at this point--will let you know if that changes.

> On Oct 30, 2017, at 2:04 PM, Chuck Ross <chuck@dailycaller.com> wrote:

>

> Hey Sarah,

>

> Does AG Sessions have any comment on the George Papadopoulos news, specifically whether he was aware of any of his activities during the campaign?

>

> As I'd reported a while back, Papadopoulos brought up the idea of Trump meeting with Russians back during a March 31, 2016 meeting. I reported that Sessions shot down the idea. I'm wondering if he heard anything else from Papadopoulos or received any emails from him, etc.

>

> Thanks for any help,

> Chuck Ross

> The Daily Caller

(b) (6)

Gibson, Jake

From: Gibson, Jake
Sent: Thursday, November 2, 2017 4:24 PM
To: O'Malley, Devin (OPA)
Subject: RE: For Planning Purposes Only (Jane Doe)

Cool.

Thanks!

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Thursday, November 02, 2017 4:23 PM
To: Gibson, Jake
Subject: RE: For Planning Purposes Only (Jane Doe)

I'll give you a head start.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Gibson, Jake [mailto:Jake.Gibson@FOXNEWS.COM]
Sent: Thursday, November 2, 2017 4:17 PM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: RE: For Planning Purposes Only (Jane Doe)

Cool.

Thanks!

You will send filing to tight group?

And can you give a heads up?

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Thursday, November 02, 2017 4:15 PM
To: O'Malley, Devin (OPA)
Subject: RE: For Planning Purposes Only (Jane Doe)

Off the record, FPPO:

The filing is now planned for the opening of business hours tomorrow. I apologize for the many, many updates, but I feel this is a better alternative than springing this on you. Thank you for your patience.

Devin M. O'Malley

Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: O'Malley, Devin (OPA)
Sent: Thursday, November 2, 2017 2:28 PM
To: 'devin.omalley@usdoj.gov' <devin.omalley@usdoj.gov>
Subject: RE: For Planning Purposes Only (Jane Doe)

Off the record, FPPO:

I would expect something from me after 5:00 pm today.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: O'Malley, Devin (OPA)
Sent: Thursday, November 2, 2017 7:18 AM
To: 'devin.omalley@usdoj.gov' <devin.omalley@usdoj.gov>
Subject: RE: For Planning Purposes Only (Jane Doe)

Off the record, FPPO:

I expect to have something for you this afternoon. I will update you as to timing later this AM.

Thanks

Devin

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: O'Malley, Devin (OPA)
Sent: Wednesday, November 1, 2017 4:18 PM
To: 'devin.omalley@usdoj.gov' <devin.omalley@usdoj.gov>
Subject: RE: For Planning Purposes Only

Hi everyone

The following is still off the record, and for planning purposes only:

For logistical reasons, this will be delayed until tomorrow. I will be in touch with more details as soon as I am able.

Devin M. O'Malley

Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: O'Malley, Devin (OPA)
Sent: Wednesday, November 1, 2017 9:17 AM
To: 'devin.omalley@usdoj.gov' <devin.omalley@usdoj.gov>
Subject: For Planning Purposes Only

The following is off the record, and for planning purposes only:

The Department of Justice is likely to take action this afternoon related to the Jane Doe abortion case from last week.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

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O'Malley, Devin (OPA)

From: O'Malley, Devin (OPA)
Sent: Wednesday, November 1, 2017 9:26 AM
To: Gibson, Jake
Subject: RE: For Planning Purposes Only

Still don't have a good sense of that. Will keep you updated.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Gibson, Jake [mailto:Jake.Gibson@FOXNEWS.COM]
Sent: Wednesday, November 1, 2017 9:21 AM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: Re: For Planning Purposes Only

Uh oh.
What time?

On Nov 1, 2017, at 9:18 AM, O'Malley, Devin (OPA) <Devin.O'Malley@usdoj.gov> wrote:

The following is off the record, and for planning purposes only:

The Department of Justice is likely to take action this afternoon related to the Jane Doe abortion case from last week.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

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Singman, Brooke

From: Singman, Brooke
Sent: Tuesday, October 31, 2017 5:25 PM
To: Flores, Sarah Isgur (OPA); Prior, Ian (OPA)
Subject: RE: ATTORNEY GENERAL SESSIONS TO TRAVEL TO NEW YORK CITY TO GIVE REMARKS ABOUT DEFENDING OUR NATIONAL SECURITY

BOO. Okay.
Next time!

From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Tuesday, October 31, 2017 5:24 PM
To: Singman, Brooke <brooke.singman@FOXNEWS.COM>; Prior, Ian (OPA) <Ian.Prior@usdoj.gov>
Subject: RE: ATTORNEY GENERAL SESSIONS TO TRAVEL TO NEW YORK CITY TO GIVE REMARKS ABOUT DEFENDING OUR NATIONAL SECURITY

I will be! But sadly it's a super quick trip bc he has a speech in the afternoon back in DC!

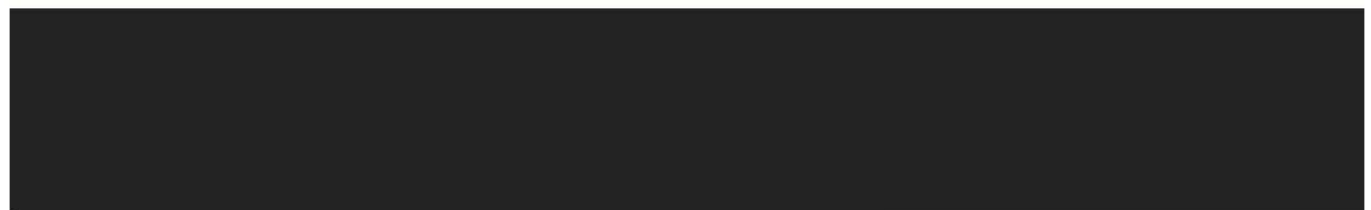
Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Singman, Brooke [mailto:brooke.singman@FOXNEWS.COM]
Sent: Tuesday, October 31, 2017 4:03 PM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: FW: ATTORNEY GENERAL SESSIONS TO TRAVEL TO NEW YORK CITY TO GIVE REMARKS ABOUT DEFENDING OUR NATIONAL SECURITY

Either of you going to be in NYC?!
Would love to meet.

Brooke

From: USDOJ-Office of Public Affairs [mailto:USDOJ-OfficeofPublicAffairs@public.govdelivery.com]
Sent: Tuesday, October 31, 2017 4:02 PM
To: Singman, Brooke <brooke.singman@FOXNEWS.COM>
Subject: ATTORNEY GENERAL SESSIONS TO TRAVEL TO NEW YORK CITY TO GIVE REMARKS ABOUT DEFENDING OUR NATIONAL SECURITY



FOR IMMEDIATE RELEASE
TUESDAY, OCTOBER 31, 2017

**ATTORNEY GENERAL SESSIONS TO TRAVEL TO NEW YORK CITY TO
GIVE REMARKS ABOUT DEFENDING OUR NATIONAL SECURITY**

******* MEDIA ADVISORY *******

WASHINGTON Attorney General Jeff Sessions will travel to New York, New York, on **Thursday, November 2, 2017**, to deliver remarks about defending our national security.

WHO

Attorney General Jeff Sessions

WHAT

Attorney General Jeff Sessions will travel to New York, New York to deliver remarks about defending our national security.

WHEN

9:30 a.m. EDT

United States Attorney's Office Southern District of New York
One St. Andrews Plaza
New York, NY 10007

OPEN PRESS





(Camera Preset: 8:45 a.m. // Final Access 9:15 a.m.)

NOTE: All media must RSVP and present government-issued photo I.D. (such as a driver's license) as well as valid media credentials. The RSVP and any inquiries regarding logistics should be directed to Kelly Laco in the Office of Public Affairs at (202) 305 5219 or kelly.laco@usdoj.gov. Please include the email address of the person(s) attending the event, so that we may reach them directly if details change.

#

AG

Do not reply to this message. If you have questions, please use the contacts in the message or call the Office of Public Affairs at 202 514 2007.

Follow us:    

This email was sent to brooke.singman@foxnews.com using GovDelivery, on behalf of [U.S. Department of Justice Office of Public Affairs](#) · 950

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O'Malley, Devin (OPA)

From: O'Malley, Devin (OPA)
Sent: Tuesday, October 31, 2017 12:46 PM
To: jessica.rosenthal@foxnews.com
Cc: Sutton, Sarah E. (OPA)
Subject: RE: media inquiry

Hi Jessica

DOJ declines comment on this matter as it involves pending litigation.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Press
Sent: Tuesday, October 31, 2017 12:09 PM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Cc: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Sutton, Sarah E. (OPA) <sesutton@jmd.usdoj.gov>
Subject: FW: media inquiry

Thank you,

Katy Jo Richards
Media Affairs Intern
U.S. Department of Justice
Office of Public Affairs
For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Rosenthal, Jessica [<mailto:jessica.rosenthal@FOXNEWS.COM>]
Sent: Tuesday, October 31, 2017 11:46 AM
To: Press <Press@jmd.usdoj.gov>
Subject: media inquiry

Hi there. Writing to ask if any of The Byrne Justice Grants have gone out to any cities yet... I understand they have not and wanted to ask if any have gone out yet and if not yet, why? Is it tied to the sanctuary city issue?

Also, I understand the latest ruling from a judge in Illinois was to issue a preliminary injunction against the withholding of the grant money...is that being followed or is DOJ still withholding the funding?

Thank you,

Jessica Rosenthal
Fox News Network LLC

West Coast Radio Correspondent

(b) (6) (office)

(b) (6) (cell)

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From: Flores, Sarah Isgur (OPA)
Sent: Monday, October 30, 2017 4:51 PM
To: Murray, Andrew
Subject: Re: AG SESESSIONS AVAILABLE TOMORROW ON THE APPREHENSION OF MUSTAFA AL-IMAM FOR HIS ROLE IN 2012 ATTACK IN BENGHAZI, LIBYA

Given news of the day, id better not:)

On Oct 30, 2017, at 4:39 PM, Murray, Andrew <Andrew.Murray@FOXNEWS.COM> wrote:

Can you appear in his place on other topics?

From: Flores, Sarah Isgur (OPA) [<mailto:Sarah.Isgur.Flores@usdoj.gov>]
Sent: Monday, October 30, 2017 4:38 PM
To: Murray, Andrew <Andrew.Murray@FOXNEWS.COM>
Cc: Prior, Ian (OPA) <Ian.Prior@usdoj.gov>
Subject: Re: AG SESESSIONS AVAILABLE TOMORROW ON THE APPREHENSION OF MUSTAFA AL-IMAM FOR HIS ROLE IN 2012 ATTACK IN BENGHAZI, LIBYA

Sorry--won't be able to discuss case since it's ongoing. So we'll pass.

On Oct 30, 2017, at 4:37 PM, Murray, Andrew <Andrew.Murray@FOXNEWS.COM> wrote:

Hi Sarah,

Please let us know if we can schedule Attorney General Sessions to appear on "Fox & Friends" tomorrow (Tuesday) for a LIVE interview on the capture of Mustafa al-imam for his role in 2012 attack in Benghazi, Libya.

Thanks in advance,

Andrew Murray
Producer, Politics
"Fox & Friends"
Fox News Channel
1211 Avenue of the Americas, 2nd Floor
New York, NY 10036
Office (b) (6)
Cell # (b) (6)
Cell # (b) (6)
FAX: (212) 301-3421
Email: andrew.murray@foxnews.com
@andrewmurray1

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From: Prior, Ian (OPA)
Sent: Monday, October 30, 2017 9:28 AM
To: Ian Mason
Cc: Flores, Sarah Isgur (OPA)
Subject: RE: Manafort Statement

No that's it

Ian D. Prior
Principal Deputy Director of Public Affairs Department of Justice
Office: 202.616.0911
Cell (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

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

From: Ian Mason [mailto:imason@breitbart.com]
Sent: Monday, October 30, 2017 9:27 AM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Cc: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: Re: Manafort Statement

I got one from Peter Carr that just acknowledges and links to the indictment. Is there another?

> On Oct 30, 2017, at 9:21 AM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

>

> Did you get the statement from Special Counsel's office?

>

> Ian D. Prior

> Principal Deputy Director of Public Affairs Department of Justice

> Office: 202.616.0911

> Cell (b) (6)

>

> For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

>

> -----Original Message-----

> From: Ian Mason [mailto:imason@breitbart.com]

> Sent: Monday, October 30, 2017 9:20 AM

> To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>; Prior, Ian
> (OPA) <IPrior@jmd.usdoj.gov>

> Subject: Manafort Statement

>

> Can we expect one from the DAG or the department later today?

>

> Thanks,

> Ian Mason

> Breitbart News

From: Prior, Ian (OPA)
Sent: Monday, October 30, 2017 7:57 AM
To: Singman, Brooke
Cc: Flores, Sarah Isgur (OPA)
Subject: Re: special counsel indictments guidance

Yep you should direct those to special counsel

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Cell (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

On Oct 30, 2017, at 7:07 AM, Singman, Brooke <brooke.singman@FOXNEWS.COM> wrote:

Good morning Sarah and Ian,

Hope you had a great weekend.

Do you have any guidance you can share on the potential indictments in the Mueller investigation? Is this something that will be announced? Or is there certain timing we can expect?
(and if these are questions that you can't answer and should be directed to special counsel press, disregard 😊)

Thanks,

Brooke Singman
Politics Reporter, Fox News Channel

(b) (6)

(b) (6)

Brooke.singman@foxnews.com

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From: Flores, Sarah Isgur (OPA)
Sent: Friday, October 27, 2017 9:17 PM
To: Conti, Andrew
Subject: RE: IMPT: LAURA INGRAM: FOX NEWS REQUEST

Not ignoring you! Waiting on some moving pieces—happy to chat over the weekend to fill you in if it can stay between us.

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Conti, Andrew [mailto:Andrew.conti@FOXNEWS.COM]
Sent: Friday, October 27, 2017 9:45 AM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: RE: IMPT: LAURA INGRAM: FOX NEWS REQUEST

we are going to meet a little later today. we very much appreciate your consideration on the launch of our show. we can either do the interview live in our dc bureau between 10p-11p et or we can work out a pretape time that works for everyone. The interview can also be via satellite. Tuesday would be great if that works for you. but we will try and make any day work based on the AG's busy schedule.

thanks

From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Thursday, October 26, 2017 8:59 PM
To: Conti, Andrew <Andrew.conti@FOXNEWS.COM>
Subject: RE: IMPT: LAURA INGRAM: FOX NEWS REQUEST

Working on this—thanks for reaching out!

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Conti, Andrew [mailto:Andrew.conti@FOXNEWS.COM]
Sent: Thursday, October 26, 2017 6:35 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: IMPT: LAURA INGRAM: FOX NEWS REQUEST

Hello Sarah,
Laura Ingraham is launching a new show called "The Ingraham Angle". The show begins on Monday, October 30. It's a live show, Monday through Friday, from 10p-11p ET on the Fox News Channel. I am checking to see if AG Sessions might be available to be one of our first guests on the new show. We can tape the interview earlier in the day if needed. We were very much hoping that possibly Monday, Oct 30 or Tuesday, Oct 31 would possibly work. We very much appreciate your consideration.
All the best,

Andrew Conti

Andrew P. Conti
Fox News Channel
(b) (6) - direct
(b) (6) - cell

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From: Conti, Andrew <Andrew.conti@FOXNEWS.COM>
Sent: Thursday, October 26, 2017 9:31 PM
To: Flores, Sarah Isgur (OPA)
Subject: RE: IMPT: LAURA INGRAM: FOX NEWS REQUEST

[Laura and everyone very much appreciates it! thanks you!](#)

From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Thursday, October 26, 2017 8:59 PM
To: Conti, Andrew <Andrew.conti@FOXNEWS.COM>
Subject: RE: IMPT: LAURA INGRAM: FOX NEWS REQUEST

duplicative material

From: Baier, Bret <bret.baier@FOXNEWS.COM>
Sent: Friday, October 27, 2017 8:33 PM
To: Flores, Sarah Isgur (OPA)
Cc: Koerber, Ashley
Subject: Re: Thank you

I'm sorry you feel that way. I control the time and planned to ask about opioids before the AG brought it up.

We knew that Russia and the questions about his involvement and questions on the Hill would not be included. But the warrant was a case back to 2014 and news today.

Ashley told me her communications. I thought news of the day would always be part of the equation. We are a news show. Any news show would have asked those questions.

Thanks for the interview.

We look forward to working with you going forward.

Sorry you feel this way.

I think it was a solid interview.

Have a good weekend.

Bret

Bret Baier
Chief Political Anchor, Fox News Channel
Executive Editor, "Special Report w/ Bret Baier"

On Oct 27, 2017, at 8:22 PM, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

Ashley represented to me that you were “fine with the topics [I] sent”, which were opioids, ACA settlements, and IRS settlements and specifically said that we were not interested in an interview about Russia-related matters. We spoke again this morning and she confirmed those topics again, which is why I then sent her a lot of material on those topics.

Based on those conversations, I also feel like it was highly unusual not to be told that 702 would be the lead in—a topic that had not been raised in any of my emails or calls with her. I would have happily agreed to that topic for what its worth—but I don't like to be blindsided and made to look unprepared in my job, as I'm sure you don't either.

As to your point about opioids, the AG brought up opioids when there was less than a minute left in the interview—and it was only referenced by him in that one answer, not you. In fact, you only had one question left after that. That would seem strange, again, given that that was the main topic that the interview that was agreed upon.

I appreciate the work that Ashley did on this for tonight but I will not be able to take her word on interviews from now on.

S

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Baier, Bret [<mailto:bret.baier@FOXNEWS.COM>]
Sent: Friday, October 27, 2017 8:02 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Cc: Koerber, Ashley <Ashley.koerber@FOXNEWS.COM>
Subject: Thank you

Sarah -

Thanks for the time with the AG. And thank you for having us at DOJ. I'm sorry you didn't feel we prepared you for the question topics handled. I knew we would get to FISA - I was going to ask about opioids—but the AG brought it up twice before I asked.

I assumed JFK and FBI warrant were news of the day elements that you all would expect

I did not get to ACA or MS-13 but I do think it was a solid interview and Fair.
I hope you didn't feel otherwise. And I tried not to belabor things. Please thank the AG.

Have a great weekend

Sincerely,

Bret.

Bret Baier
Chief Political Anchor, Fox News Channel
Executive Editor, "Special Report w/ Bret Baier"

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From: Flores, Sarah Isgur (OPA)
Sent: Friday, October 27, 2017 8:29 PM
To: Doherty, Brian; Bream, Shannon
Cc: Prior, Ian (OPA)
Subject: RE: new adventures

Never annoying. I am waiting for an all clear that's above my head. I'm happy to discuss privately over the phone this weekend so you don't think I'm jerking you around.

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Doherty, Brian [mailto:Brian.Doherty@FOXNEWS.COM]
Sent: Friday, October 27, 2017 6:22 PM
To: Bream, Shannon <shannon.bream@FOXNEWS.COM>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Cc: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: RE: new adventures

Hi Sarah,
I'm leaving for the day now, but if there's movement on this, please let me know & I can get a crew assigned over the wknd for a Monday interview. Thank you & I hope we're not annoying you, we're just taking Calvin Coolidge's old adage, persistence, nothing in this world can take the place of persistence!
Have a great wknd!
Brian Doherty
(b) (6)

From: Bream, Shannon
Sent: Thursday, October 26, 2017 10:36 PM
To: Doherty, Brian <Brian.Doherty@FOXNEWS.COM>; Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov>
Cc: Prior, Ian (OPA) <Ian.Prior@usdoj.gov>
Subject: RE: new adventures

We're grateful for your efforts on this ;) Thank you!!

From: Doherty, Brian
Sent: Thursday, October 26, 2017 10:35 PM
To: Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov>
Cc: Bream, Shannon <shannon.bream@FOXNEWS.COM>; Prior, Ian (OPA) <Ian.Prior@usdoj.gov>
Subject: Re: new adventures

Terrific, let us know--we'll be ready to jump for a pretape in a swift manner--we're rather flexible for the AG's time.
Thanks,
Brian

Sent from my iPhone

On Oct 26, 2017, at 8:31 PM, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

I swear I'm working on this! Promise! AG said he wanted to do it at some point for sure—now need to check some other boxes like scheduling etc....

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Bream, Shannon [<mailto:shannon.bream@FOXNEWS.COM>]
Sent: Tuesday, October 24, 2017 4:39 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>; Doherty, Brian <Brian.Doherty@FOXNEWS.COM>
Cc: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: RE: new adventures

So, my dear colleague Bret has agree to let us jump in line if he doesn't do something with the Attorney General this week in hopes it would free General Sessions up to do something with us next week when we launch.

We'd be honored to have him as a week one guest!

Best,
Shannon

From: Flores, Sarah Isgur (OPA) [<mailto:Sarah.Isgur.Flores@usdoj.gov>]
Sent: Tuesday, October 17, 2017 7:04 PM
To: Doherty, Brian <Brian.Doherty@FOXNEWS.COM>; Bream, Shannon <shannon.bream@FOXNEWS.COM>
Cc: Prior, Ian (OPA) <ian.Prior@usdoj.gov>
Subject: RE: new adventures

Yes! For sure. Adding Ian the PDeputy here too so you can always bug him also😊

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Doherty, Brian [<mailto:Brian.Doherty@FOXNEWS.COM>]
Sent: Tuesday, October 17, 2017 11:34 AM
To: Bream, Shannon <shannon.bream@FOXNEWS.COM>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: RE: new adventures

OK, we'll wait behind Bret. <sigh.>

Just kidding, but this request is evergreen, so please revisit asap, as we'd ideally like for him to appear on day in the 1st 2 weeks, as we're trying to create a fantastic first impression on the audience & Shannon is a top level talent!

Thanks,

Brian

(b) (6)

From: Bream, Shannon
Sent: Monday, October 16, 2017 5:11 PM
To: Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov>
Subject: Re: new adventures

Hi, Sarah -

Forgive my delay (b) (6), slowly but surely!

I may try to do some friendly negotiating with Bret. ☐ We really want the AG in week one.

Thx for your quick response. Hope you are well over there!

Shannon

Shannon D. Bream
Chief Legal Correspondent
Fox News Channel

Sent from my iPhone

On Oct 13, 2017, at 6:42 PM, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

First, CONGRATS! This is so so so well deserved. You are fantastic and I am definitely going to be one of your most loyal viewers.

On AG interview, to be very honest, I owe Bret Baier the next one in line. But can I put you down for after that?

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Bream, Shannon [<mailto:shannon.bream@FOXNEWS.COM>]
Sent: Wednesday, October 11, 2017 11:53 AM
To: (b) (6); Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: new adventures

Hi, Sarah

I hope you are well in the midst of a relentlessly busy time!

I'm launching a new show on October 30th and would love to work on sitting down with the Attorney General for an interview. I first met him years ago during the SCOTUS confirmation hearings for Justice Sotomayor, and came to trust him as one of the "good guys" in DC.

I'll have a heavy focus on legal issues, and will continue to cover SCOTUS in my new role.

Let me know how we can make this happen ;)
Shannon

Shannon D. Bream
Chief Legal Correspondent
Fox News Channel

(b) (6)

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Doherty, Brian

From: Doherty, Brian
Sent: Tuesday, October 24, 2017 5:40 PM
To: Bream, Shannon; Flores, Sarah Isgur (OPA)
Cc: Prior, Ian (OPA)
Subject: RE: new adventures

Yes, we'd be most honored!

From: Bream, Shannon
Sent: Tuesday, October 24, 2017 4:39 PM
To: Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov>; Doherty, Brian <Brian.Doherty@FOXNEWS.COM>
Cc: Prior, Ian (OPA) <Ian.Prior@usdoj.gov>
Subject: RE: new adventures

duplicative material

Flores, Sarah Isgur (OPA)

From: Flores, Sarah Isgur (OPA)
Sent: Friday, October 27, 2017 6:21 PM
To: Koerber, Ashley
Cc: Jake.Gibson@FOXNEWS.COM
Subject: Re: Bret Baier tonight?

Nothing on any of the topics we discussed below--the AG had to bring opioids up himself. You can assume we won't be doing anything again with your show bc I don't feel like I was treated honestly. I asked several times about topics and this is not a good faith effort whatsoever.

On Oct 26, 2017, at 8:48 PM, Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov> wrote:

Talk to me about options for tomorrow? Namely could we do it here at DOJ? And we'd really like to talk about opioids, the IRS settlements, the ACA contraception mandate settlements. The Russia investigation stuff isn't something he will say much about either hes recused or he cant comment on whether theres an investigation--so if that will be the main thrust of the interview there's not much point.

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Koerber, Ashley [<mailto:Ashley.koerber@FOXNEWS.COM>]
Sent: Thursday, October 26, 2017 1:50 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: RE: Bret Baier tonight?

[We're open to ideas! Tonight actually won't work but maybe tomorrow or next week?](#)

From: Flores, Sarah Isgur (OPA) [<mailto:Sarah.Isgur.Flores@usdoj.gov>]
Sent: Thursday, October 26, 2017 1:49 PM
To: Koerber, Ashley <Ashley.koerber@FOXNEWS.COM>
Subject: Re: Bret Baier tonight?

On what issue?

On Oct 26, 2017, at 9:38 AM, Koerber, Ashley <Ashley.koerber@FOXNEWS.COM> wrote:

Hey! Any chance AG Sessions or Deputy AG Rosenstein is available to join Bret either tonight or sometime soon?

Ashley Koerber
Booking Producer

Special Report w/ Bret Baier
Fox News Channel - DC Bureau
(b) (6) (cell)

Sent from my iPhone

On Oct 24, 2017, at 15:54, Flores, Sarah Isgur (OPA)
<Sarah.Isgur.Flores@usdoj.gov> wrote:

I still want him on too! Let me check on Thursday....

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Koerber, Ashley [<mailto:Ashley.koerber@FOXNEWS.COM>]
Sent: Tuesday, October 24, 2017 1:41 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: RE: Bret Baier tonight?

Hey Sarah!

Just checking in to see if AG Sessions would be able to join Bret soon for an interview.

We're still interested in having him on Special Report.

We're open to ideas so let me know!

-Ashley

From: Flores, Sarah Isgur (OPA) [<mailto:Sarah.Isgur.Flores@usdoj.gov>]
Sent: Tuesday, October 03, 2017 5:47 PM
To: Koerber, Ashley <Ashley.koerber@FOXNEWS.COM>
Subject: RE: Bret Baier tonight?

Agreed! Id really really like to find something.

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Koerber, Ashley [<mailto:Ashley.koerber@FOXNEWS.COM>]
Sent: Tuesday, October 3, 2017 2:58 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: RE: Bret Baier tonight?

Hey Sarah!

I know we weren't able to make this happen. But Bret is still interested in interviewing the Attorney General at some point in the near future. Think we can set something up soon?

From: Flores, Sarah Isgur (OPA) [<mailto:Sarah.Isgur.Flores@usdoj.gov>]
Sent: Monday, October 02, 2017 8:57 AM
To: Koerber, Ashley <Ashley.koerber@FOXNEWS.COM>
Subject: RE: Bret Baier tonight?

Can I see what we know over the next couple hours and get back to you?

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Koerber, Ashley [<mailto:Ashley.koerber@FOXNEWS.COM>]
Sent: Monday, October 2, 2017 8:54 AM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: Bret Baier tonight?

Hi Sarah,

Would AG Sessions be available to join Bret tonight?

Please get back to me when you can - thanks!

-Ashley

Ashley Koerber
Booking Producer
Special Report w/ Bret Baier
Fox News Channel - DC Bureau
(b) (6) (cell)

Sent from my iPhone

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From: Flores, Sarah Isgur (OPA)
Sent: Friday, October 27, 2017 9:45 AM
To: Koerber, Ashley
Subject: Re: Bret Baier tonight?

Going to call you in a few

On Oct 27, 2017, at 8:51 AM, Koerber, Ashley <Ashley.koerber@FOXNEWS.COM> wrote:

Hey! We good?

Ashley Koerber
Booking Producer
Special Report w/ Bret Baier
Fox News Channel - DC Bureau
(b) (6) (cell)

Sent from my iPhone

On Oct 26, 2017, at 22:06, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

Can I give you final thumbs up tomorrow am?

On Oct 26, 2017, at 9:22 PM, Koerber, Ashley
<Ashley.koerber@FOXNEWS.COM> wrote:

Oh ok I see. You'd want the AG to be remote at DOJ.

Bret seemed fine with the topics you sent.

Let's definitely plan to do this and I'll get you a hit time tmrw morning. Then we can figure out where the AG will be from.

Ashley Koerber
Booking Producer
Special Report w/ Bret Baier
Fox News Channel - DC Bureau
(b) (6) (cell)

Sent from my iPhone

On Oct 26, 2017, at 21:15, Flores, Sarah Isgur (OPA)
<Sarah.Isgur.Flores@usdoj.gov> wrote:

We'd need to do it live—so in the 6pm hour. I could probably get him to Fox if we did it toward the end of the show. But what does Bret think about topics?

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Koerber, Ashley
[mailto:Ashley.koerber@FOXNEWS.COM]
Sent: Thursday, October 26, 2017 9:01 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: Re: Bret Baier tonight?

Hey! Bret's definitely interested. I just need to see if we can get a crew to DOJ.

What time were you thinking? And do you have a room at DOJ in mind?

If we can't get a crew, would the AG be opposed to coming to the studio?

Ashley Koerber
Booking Producer
Special Report w/ Bret Baier
Fox News Channel - DC Bureau
(b) (6) (cell)

Sent from my iPhone

On Oct 26, 2017, at 20:48, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

duplicative material



From: Flores, Sarah Isgur (OPA)
Sent: Friday, October 27, 2017 8:58 AM
To: Koerber, Ashley
Subject: Re: Bret Baier tonight?

Still waiting. Sorry--frustrating!

On Oct 27, 2017, at 8:51 AM, Koerber, Ashley <Ashley.koerber@FOXNEWS.COM> wrote:

1
duplicative material

From: Koerber, Ashley <Ashley.koerber@FOXNEWS.COM>
Sent: Thursday, October 26, 2017 10:07 PM
To: Flores, Sarah Isgur (OPA)
Subject: Re: Bret Baier tonight?

Yep 👍

Ashley Koerber
Booking Producer
Special Report w/ Bret Baier
Fox News Channel - DC Bureau
(b) (6) (cell)

Sent from my iPhone

On Oct 26, 2017, at 22:06, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

duplicative material

From: Koerber, Ashley <Ashley.koerber@FOXNEWS.COM>
Sent: Monday, October 2, 2017 8:57 AM
To: Flores, Sarah Isgur (OPA)
Subject: Re: Bret Baier tonight?

Yep, sounds good. Thanks!

Ashley Koerber
Booking Producer
Special Report w/ Bret Baier
Fox News Channel - DC Bureau
(b) (6) (cell)

Sent from my iPhone

On Oct 2, 2017, at 08:56, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

1
duplicative material

Hornbuckle, Wyn (OPA)

From: Hornbuckle, Wyn (OPA)
Sent: Friday, October 27, 2017 5:45 PM
To: Alex Pfeiffer
Cc: Prior, Ian (OPA)
Subject: RE: Bump stock question

I really don't have anything else to share, sorry

From: Alex Pfeiffer [mailto:pfeiffer@dailycaller.com]
Sent: Friday, October 27, 2017 5:38 PM
To: Hornbuckle, Wyn (OPA) <whornbuckle@jmd.usdoj.gov>
Cc: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: Re: Bump stock question

Can we chat on the phone?

On Fri, Oct 27, 2017 at 5:36 PM, Hornbuckle, Wyn (OPA) <Wyn.Hornbuckle@usdoj.gov> wrote:

That's all we have to say at the moment.

From: Alex Pfeiffer [mailto:pfeiffer@dailycaller.com]
Sent: Friday, October 27, 2017 5:18 PM
To: Hornbuckle, Wyn (OPA) <whornbuckle@jmd.usdoj.gov>
Cc: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: Re: Bump stock question

Reviewing its regulatory authority? Can you explain exactly what that means?

On Fri, Oct 27, 2017 at 5:09 PM, Hornbuckle, Wyn (OPA) <Wyn.Hornbuckle@usdoj.gov> wrote:

Hi Alex,
I can confirm that the Department of Justice is currently reviewing its regulatory authority in this space.
From: Alex Pfeiffer [mailto:pfeiffer@dailycaller.com]
Sent: Friday, October 27, 2017 4:53 PM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: Bump stock question

Hey Ian - Hope life is treating you well. Please read this portion of today's press briefing.

Q Hi. Sunday, it's going to be the one month anniversary of the Las Vegas shooting four weeks. The shooter enhanced the speed of his fire by using bump stocks. At first, you didn't want to comment on that, but I'm curious to know, does the President think the ATF should prohibit their sale? Is he going to ask them to? Does he think only Congress can do it? Or does think that bump stocks are not the problem and that there is no need to

MS. SANDERS: He has asked that that process be reviewed and we're waiting on some of the details of that to take place. But a decision hasn't been finalized on that. But we are looking at that and certainly under review.

Sarah has not responded to a question if she meant to say the ATF is reviewing whether to ban gun stocks. The ATF told me

to reach out to the DOJ.

So is the administration decision to allow the sale of bump stocks being reviewed? Is the ATF considering banning gun stocks?

Thanks,
Alex Pfeiffer
White House Correspondent
The Daily Caller

From: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>
Sent: Friday, October 27, 2017 1:41 PM
To: Laco, Kelly (OPA)
Subject: RE: Weekend

No worries at all! Thanks so much.

Jonathan Decker
Senior Booker, Fox and Friends
Jonathan.Decker@foxnews.com

(b) (6)

From: Laco, Kelly (OPA) [mailto:Kelly.Laco@usdoj.gov]
Sent: Friday, October 27, 2017 1:39 PM
To: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>
Subject: RE: Weekend

He won't be available this weekend. Sorry took so long to get back, needed to double check.

Thanks!

Kelly Laco
Office of Public Affairs
Department of Justice
Office: 202-353-0173
Cell (b) (6)

From: Decker, Jonathan [mailto:jonathan.decker@FOXNEWS.COM]
Sent: Friday, October 27, 2017 11:01 AM
To: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>
Subject: RE: Weekend

Hey any luck?

Thanks so much,

Jonathan Decker
Senior Booker, Fox and Friends
Jonathan.Decker@foxnews.com

(b) (6)

From: Laco, Kelly (OPA) [mailto:Kelly.Laco@usdoj.gov]
Sent: Thursday, October 26, 2017 4:38 PM
To: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>
Subject: RE: Weekend

I'm checking, will get back. Thanks.

Kelly Laco
Office of Public Affairs
Department of Justice
Office: 202-353-0173
Cell (b) (6)

From: Decker, Jonathan [<mailto:jonathan.decker@FOXNEWS.COM>]
Sent: Thursday, October 26, 2017 12:04 PM
To: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>
Subject: Weekend

Hey Kelly,
Would AG Sessions be available this weekend by chance to speak about the DOJ settlement?

Thanks so much,
JP

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From: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>
Sent: Thursday, October 26, 2017 4:37 PM
To: Laco, Kelly (OPA)
Subject: RE: Weekend

Thank you

Jonathan Decker
Senior Booker, Fox and Friends
Jonathan.Decker@foxnews.com

(b) (6)

From: Laco, Kelly (OPA) [mailto:Kelly.Laco@usdoj.gov]
Sent: Thursday, October 26, 2017 4:38 PM
To: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>
Subject: RE: Weekend

duplicative material

From: Koerber, Ashley <Ashley.koerber@FOXNEWS.COM>
Sent: Friday, October 27, 2017 12:26 PM
To: McGowan, Ashley L. (OPA)
Cc: Gibson, Jake; LeCroy, Lillian; Creighton, Kelly M (OPA); Flores, Sarah Isgur (OPA)
Subject: Re: SR at DOJ Tonight

Hi Ashley,

I'm working on getting you everyone else's info. Bu (b) (6) (sat truck operator) is on his way now...

(b) (6)

(b) (6)

(b) (6)

(b) (6)

Ashley Koerber
Booking Producer
Special Report w/ Bret Baier
Fox News Channel - DC Bureau
(b) (6) (cell)

Sent from my iPhone

On Oct 27, 2017, at 12:15, McGowan, Ashley L. (OPA) <Ashley.L.McGowan@usdoj.gov> wrote:

Good afternoon

So we can start the security process, as soon as possible please send Kelly Creighton (copied here) and me the following for everyone attending this evening:

- Full name
- Social security number
- Date of birth
- City/state of birth

Our office has previously had some difficulties opening encrypted information from Fox. If information can't be sent in an un-encrypted email, please call Kelly or me. Our main line is 202-514-2007 or my direct line is 202-514-5322.

Thanks very much,
Ashley

Ashley McGowan | Digital Communications Manager
Office of Public Affairs | U.S. Department of Justice
ashley.l.mcgowan@usdoj.gov (b) (6)
www.justice.gov    

From: Koerber, Ashley [<mailto:Ashley.koerber@FOXNEWS.COM>]
Sent: Friday, October 27, 2017 10:44 AM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Cc: Gibson, Jake <Jake.Gibson@FOXNEWS.COM>; McGowan, Ashley L. (OPA) <almcgowan@jmd.usdoj.gov>; LeCroy, Lillian <Lillian.LeCroy@FOXNEWS.COM>
Subject: SR at DOJ Tonight

Hello!

I just wanted to start a separate email chain on this. I'm looping in our assignment editor Lillian LeCroy. She can let you know everything we would need.

Thank you!

-Ashley

Ashley Koerber
Booking Producer
Special Report w/ Bret Baier
Fox News Channel DC Bureau
(b) (6) (cell)

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From: Gibson, Jake <Jake.Gibson@FOXNEWS.COM>
Sent: Friday, October 27, 2017 12:17 PM
To: McGowan, Ashley L. (OPA)
Cc: Koerber, Ashley; LeCroy, Lillian; Creighton, Kelly M (OPA); Flores, Sarah Isgur (OPA)
Subject: Re: SR at DOJ Tonight

I'd like to get out truck in the courtyard asap.
(b) (6) could come over within the hour...

Thanks much!

Sent from my iPhone

On Oct 27, 2017, at 12:15 PM, McGowan, Ashley L. (OPA) <Ashley.L.McGowan@usdoj.gov> wrote:

Duplicative Material

From: Spinato, Eric <eric.spinato@FOXNEWS.COM>
Sent: Friday, October 27, 2017 11:34 AM
To: Flores, Sarah Isgur (OPA)
Subject: Re: AG Sessions, with Maria Bartiromo this Sunday

Okay
Thanks for trying

Sent from my iPhone

On Oct 27, 2017, at 11:32 AM, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

Just emailing you. Looks like we can't do Sunday. Sorry! AG definitely wants to do it soon.

On Oct 27, 2017, at 11:22 AM, Spinato, Eric <eric.spinato@FOXNEWS.COM> wrote:

Hi !
Checking back with you
About Sunday
Thank you
Eric

Sent from my iPhone

On Oct 26, 2017, at 8:58 PM, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

This might work finally! Let me circle back tomorrow!

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Spinato, Eric [<mailto:eric.spinato@FOXNEWS.COM>]
Sent: Thursday, October 26, 2017 9:24 AM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Cc: Spinato, Eric <eric.spinato@FOXNEWS.COM>
Subject: AG Sessions, with Maria Bartiromo this Sunday

Hello, Sarah
Can AG Sessions join Maria live this Sunday, on her FNC program at 10am, to discuss
The settlement with Plaintiff groups, improperly targeted the IRS and the Opioids health concern.

The interview will be up to 10 minutes.

Thank you
Eric

Eric Spinato

Senior Story Editor, Fox Business Network

W (b) (6)

C (b) (6)

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From: Spinato, Eric <eric.spinato@FOXNEWS.COM>
Sent: Friday, October 27, 2017 7:39 AM
To: Flores, Sarah Isgur (OPA)
Subject: Re: AG Sessions, with Maria Bartiromo this Sunday

Great !
Keep me posted

Sent from my iPhone

On Oct 26, 2017, at 8:58 PM, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

duplicative material

From: Flores, Sarah Isgur (OPA)
Sent: Friday, October 27, 2017 10:59 AM
To: Koerber, Ashley
Subject: Re: If Bret wants to read (the attachment is not for republication or reporting)

Sounds great! This will be fun!

On Oct 27, 2017, at 10:52 AM, Koerber, Ashley <Ashley.koerber@FOXNEWS.COM> wrote:

Hey! Looped you all in on a separate email re: technical stuff.
And he's been into doing remote shows lately. We did the show from the White House on Tuesday and from Cap Hill yesterday. It just gives our viewers a different look. And it would be an in-person interview.

From: Flores, Sarah Isgur (OPA) [<mailto:Sarah.Isgur.Flores@usdoj.gov>]
Sent: Friday, October 27, 2017 10:42 AM
To: Koerber, Ashley <Ashley.koerber@FOXNEWS.COM>
Cc: Gibson, Jake <Jake.Gibson@FOXNEWS.COM>; McGowan, Ashley L. (OPA) <Ashley.L.McGowan@usdoj.gov>
Subject: Re: If Bret wants to read (the attachment is not for republication or reporting)

I am--what all does this entail? And I'm adding Ashley who will be able to know more on the technical side. We have a room on the 7th floor that we usually do live hits for.

Can I ask why he wants to do it from doj? Is it will be about Russia?

On Oct 27, 2017, at 10:37 AM, Koerber, Ashley <Ashley.koerber@FOXNEWS.COM> wrote:

Thanks!

So Bret actually wants to anchor the show from DOJ tonight. But my assignment desk says we need DOJ permission to do so.
Are you the right person to talk to about that?

From: Flores, Sarah Isgur (OPA) [<mailto:Sarah.Isgur.Flores@usdoj.gov>]
Sent: Friday, October 27, 2017 10:29 AM
To: Koerber, Ashley <Ashley.koerber@FOXNEWS.COM>; Gibson, Jake <Jake.Gibson@FOXNEWS.COM>
Subject: If Bret wants to read (the attachment is not for republication or reporting)

These are some accomplishments we highlighted at heritage yesterday attached.

Heritage speech--last third on nationwide injunctions made some news too (including some paragraphs below): <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-heritage-foundation-s-legal-strategy-forum>

Irs release: <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-announces-department-justice-has-settled-plaintiff-groups>

As you all know well, some judges have failed to respect our representatives and Congress and the Executive Branch. One particularly striking example was the federal judge in Brooklyn who heard argument on a challenge to the federal government's wind down of DACA.

That is a straightforward question of law. But rather than address that question, the court said the government "can't come into court to espouse a position that is heartless." Not unlawful, but "heartless."

With respect: it is emphatically not the province or duty of courts to say whether a policy is compassionate. That is for the people and our elected representatives to decide. The court's role is to say what the law is.

A judge's comments on policy like this are highly offensive, and disrespectful of the Legislative and Executive Branches. Judges have the solemn responsibility to examine the law impartially. The Judiciary is not a superior or policy-setting branch. It is co-equal. Those who ignore this duty and follow their own policy views erode the rule of law and create bad precedents and, importantly, undermine the public respect necessary for the courts to function properly.

This is especially problematic when district courts take the dramatic step of issuing activist nationwide injunctions—orders that block the entire United States government from enforcing a statute or a presidential policy nationwide. Scholars have not found a single example of any judge issuing this type of extreme remedy before the 1960s. But today, more and more judges are issuing these lawless nationwide injunctions and in effect single judges are making themselves super-legislators for the entire United States. We have nearly 600 federal district judges in the United States—each with the ability to issue one of these overreaching nationwide orders.

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From: Gibson, Jake <Jake.Gibson@FOXNEWS.COM>
Sent: Friday, October 27, 2017 10:40 AM
To: Koerber, Ashley
Cc: Flores, Sarah Isgur (OPA)
Subject: Re: If Bret wants to read (the attachment is not for republication or reporting)

I think the only place that might work is from the 7h floor conference room...

Unless we could bring a sat truck into the courtyard... or very nearby and cable in...

On Oct 27, 2017, at 10:35 AM, Koerber, Ashley <Ashley.koerber@FOXNEWS.COM> wrote:

duplicative material



Department of Justice

"We are in the midst of a multi-front battle: an increase in violent crime, a rise in vicious gang activity, an opioid epidemic that is taking an American life every ten minutes, and threats from terrorism—combined with a culture in which family and discipline seem to be eroding further and a disturbing disrespect for the rule of law." —Attorney General Jeff Sessions

2017 ACCOMPLISHMENTS AND DIRECTIVES

Rule of Law

"We inherited from our Founders—and have advanced—an unsurpassed legal heritage, which is the foundation of our freedom, safety, and prosperity. As the Attorney General, it is my duty to ensure that the laws of the United States are enforced and that the Constitutional order is upheld. No greater good can be done for the overall health and well-being of our Republic than preserving and strengthening the impartial rule of law."

Religious Liberty

"Our government must serve every American alike and give each the equal protection of the law. Government may not discriminate against people because of their religion—whether in rulemaking or in enforcement of the law, or in employment, grant making, or contracting, or in any other action. And it is not only government that must live up to this principle: The Civil Rights Act prevents employers from discriminating on the basis of religion too."

Free Speech on College Campus

"Under President Trump's strong leadership, this Department of Justice is doing its part to protect this right. We will enforce federal law and protect the Constitutional right to free expression. For example, we recently filed a Statement of Interest in two campus free speech cases, and we will be filing more in the weeks and months to come."

Civil Rights

"So I pledge to you: As long as I am Attorney General, the Department of Justice will continue to protect the civil rights of all American—and we will not tolerate the targeting of any community in our country."

Opioids

"Today, we are facing the deadliest drug crisis in American history. These trends are shocking and the numbers tell us a lot—but they aren't just numbers. They represent moms and dads, brothers and sisters, neighbors and friends. And make no mistake combatting this poison is a top priority for President Trump and his administration, and you can be sure that we are taking action to address it."

Immigration

"Under the President's leadership, this administration has made great progress in the last few months toward establishing a lawful and constitutional immigration system. This makes us safer and more secure."

Violent Crime

"Our goal is not to fill up the courts or fill up the prisons. Our goal is not to manage crime or merely to punish crime. Our goal is to reduce crime, just as President Trump directed us to do. Our goal is to make every community safer—especially the most vulnerable."

National Security

"While the threats we face are diverse and evolving, terrorist ideologies have one thing in common: their disregard for the dignity of human life and they share an obsession with forcing everyone into their twisted ideology. And the terrorists know they can't persuade people using reason, so they use coercion and intimidation. They seek acquiescence and inaction. But they will fail. We will not yield. We will never yield our freedom, our moral autonomy, or our country."



Department of Justice

RULE OF LAW

"We inherited from our Founders—and have advanced—an unsurpassed legal heritage, which is the foundation of our freedom, safety, and prosperity. As the Attorney General, it is my duty to ensure that the laws of the United States are enforced and that the Constitutional order is upheld. No greater good can be done for the overall health and well-being of our Republic than preserving and strengthening the impartial rule of law."

—Attorney General Jeff Sessions on the rescension of Deferred Action for Childhood Arrivals policy

Prohibited Settlement Payments to Third Parties

Under the last Administration, the Department of Justice repeatedly required settling parties to pay settlement funds to third party organizations that were not directly involved in the litigation or harmed by the defendant's conduct. The Attorney General ended this practice to ensure that any settlement funds should go first to the victims and then to the American people—and not to third-party special interest groups.

Withdrew Title IX Guidance and Title VII Memo

The Attorney General withdrew previous policies that inappropriately expanded Title IX and Title VII to include protections on the basis of gender identity that Congress had not provided for in law. The Attorney General is committed to ensuring the proper interpretation and enforcement of the law and to its protections for all students, including LGBTQ students.

Ended Deferred Action for Childhood Arrivals Policy

The Attorney General announced that the program known as DACA was being rescinded as an unconstitutional exercise of authority by the Executive Branch that amounted to an open-ended circumvention of our immigration laws.

Ended Payments under Affordable Care Act for Cost-Sharing Reductions

The Attorney General provided legal guidance that the cost-sharing payments issued to insurers were not authorized under the Affordable Care Act and usurped Congress' spending power under the Constitution. On October 25, 2017, a District Judge in the Northern District of California ruled against a motion that would force the Trump Administration to pay the subsidies.

Regulatory Reform

In addition to evaluating existing regulations for repeal—like those done via "subregulatory" documents—the Department of Justice will be seeking to adopt policies around guidance documents and cost-benefit analysis.



Department of Justice

RELIGIOUS LIBERTY

"Our freedom as citizens has always been inextricably linked with our religious freedom as a people. It has protected both the freedom to worship and the freedom not to believe. Every American has a right to believe, worship, and exercise their faith. The protections for this right, enshrined in our Constitution and laws, serve to declare and protect this important part of our heritage."

—Attorney General Jeff Sessions on federal protections for religious liberty

Guidance on Protections for Religious Liberty under Federal Law

The Attorney General issued a memorandum to all executive departments and agencies summarizing 20 principles of religious liberty and providing an appendix with interpretive guidance of federal law protections for religious liberty to support those principles.

***Masterpiece Cake Shop, Ltd. v. Colorado Civil Rights Commission* Supreme Court Brief**

The Department of Justice filed a brief at the Supreme Court arguing that a baker could not be unconstitutionally required to participate in a ceremony by creating a custom cake that would violate his sincerely held religious beliefs.

Affordable Care Act Contraceptive Mandate Settlement Agreements

The Department of Justice settled lawsuits with 87 plaintiffs who brought suits claiming that the contraceptive mandate in the Affordable Care Act was an unlawful burden on their religious liberty.



Department of Justice

FREE SPEECH ON COLLEGE CAMPUS

"A national recommitment to free speech on campus and to ensuring First Amendment rights is long overdue. Which is why, starting today, the Department of Justice will do its part in this struggle. We will enforce federal law, defend free speech, and protect students' free expression."

—Attorney General Jeff Sessions on statement of interest filed in Uzuegbunam v. Preczewski

Uzuegbunam v. Preczewski

Students at Georgia Gwinnett College have challenged a school policy that prohibits speech that "disturbs the ... comfort of person(s)," even when a student has obtained prior authorization from campus officials to speak in one of the two small "free-speech zones" that totaled 0.0015% of the campus. The students argue that the school has endorsed a heckler's veto to silence their speech. The Department of Justice filed a Statement of Interest arguing that the plaintiff's claims represented violations of their First and Fourteenth Amendment rights.

Shaw v. Burke

Kevin Shaw, a student at Pierce College, has challenged the constitutionality of a policy that effectively bans all free expression on campus outside a 616 square-foot "Free Speech Area." Additionally, the college maintains unpublished rules governing free speech, which students are not made aware of until they obtain a permit application. The Department of Justice filed a Statement of Interest arguing that the college's speech restricting policies amount to an unconstitutional prior restraint that chills free expression and do not constitute valid time, place, and manner restrictions.



Department of Justice

CIVIL RIGHTS

"So I pledge to you: As long as I am Attorney General, the Department of Justice will continue to protect the civil rights of all Americans—and we will not tolerate the targeting of any community in our country."

—Attorney General Jeff Sessions at the 2017 Hate Crimes Summit

Reviewing University's Admission Policies and Practices

The Department of Justice's Civil Rights Division received and is reviewing a complaint by a coalition of more than 60 Asian-American associations that alleges racial discrimination against Asian-Americans in a university's admission policy and practice.

Assisting in Kedarie Johnson Murder and Hate Crimes Targeting Transgender Persons

The Department of Justice sent an experienced federal hate crimes lawyer to assist in the prosecution a man charged with murdering transgender high school student Kedarie Johnson in Burlington, Iowa. In a separate matter, the Department of Justice received a guilty plea from and secured a 49-year sentence for a Mississippi man who targeted and murdered a victim because of their gender identity. This was the first case prosecuted under the Hate Crimes Prevention Act involving a victim targeted because of gender identity.

First-of-its-kind Prosecution under Hate Crimes Prevention Act

The Department of Justice received a guilty plea from and secured a 49-year sentence for a Mississippi man who targeted and murdered a victim because of their gender identity. This was the first case prosecuted under the Hate Crimes Prevention Act involving a victim targeted because of gender identity.

Prosecuting Transnational Human Trafficking Cases and Protecting the Victims

In April 2017 the Department convicted eight members of an international criminal organization, known as the Rendon-Reyes Trafficking Organization, on federal charges arising from their scheme to force young women and girls from Mexico and Latin America into prostitution. For over a decade, the defendants smuggled their victims into the United States, then used force, threats of force, fraud, deception, and coercion to compel them to engage in prostitution for the defendants' profit, generating criminal proceeds which the defendants laundered back to Mexico. This is just one example of the Department's commitment to fight human trafficking.



Department of Justice

COMBATTING THE OPIOID CRISIS

"Today, we are facing the deadliest drug crisis in American history. These trends are shocking and the numbers tell us a lot—but they aren't just numbers. They represent moms and dads, brothers and sisters, neighbors and friends. And make no mistake combatting this poison is a top priority for President Trump and his administration, and you can be sure that we are taking action to address it."

-Attorney General Jeff Sessions announcing \$59 Million in grants to combat opioid epidemic

Created the Opioid Fraud and Detection Unit

The Attorney General announced the formation of the Opioid Fraud and Abuse Detection Unit, a new Department of Justice program to utilize data to help combat the devastating opioid crisis.

"This sort of data analytics team can tell us important information about prescription opioids—like which physicians are writing opioid prescriptions at a rate that far exceeds their peers; how many of a doctor's patients died within 60 days of an opioid prescription . . . [and] pharmacies that are dispensing disproportionately large amounts of opioids." – Attorney General Jeff Sessions, August 2, 2017

Opioid Healthcare Fraud Prosecutors Pilot Program

The Attorney General assigned 12 experienced Assistant United States Attorneys to opioid "hot-spots" for three year terms to focus solely on investigating and prosecuting health care fraud related to prescription opioids, including pill mill schemes and pharmacies that unlawfully divert or dispense prescription opioids.

"These prosecutors, working with FBI, DEA, HHS, as well as our state and local partners, will help us target and prosecute these doctors, pharmacies, and medical providers who are furthering this epidemic to line their pockets." – Attorney General Jeff Sessions, August 2, 2017

AlphaBay Takedown

The Attorney General announced the seizure of the largest criminal marketplace on the Internet, AlphaBay, which was used to sell deadly illegal drugs, stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other computer hacking tools, firearms, and toxic chemicals throughout the world.

Health Care Fraud Takedown

The Attorney General announced the largest ever health care fraud enforcement action, involving 412 charged defendants across 41 federal districts, including 115 doctors, nurses and other licensed medical professionals, for their alleged participation in health care fraud schemes involving approximately \$1.3 billion in false billings. Of those charged, over 120 defendants, including doctors, were charged for their roles in prescribing and distributing opioids and other dangerous narcotics.

"Too many trusted medical professionals like doctors, nurses, and pharmacists have chosen to violate their oaths and put greed ahead of their patients . . . Their actions not only enrich themselves often at the expense of taxpayers but also feed addictions and cause addictions to start. The consequences are real: emergency rooms, jail cells, futures lost, and graveyards." – Attorney General Jeff Sessions, July 13, 2017



Department of Justice

RESTORING THE RULE OF LAW TO OUR IMMIGRATION SYSTEM

"We are a people of compassion and we are a people of law. But there is nothing compassionate about the failure to enforce immigration laws. Enforcing the law saves lives, protects communities and taxpayers, and prevents human suffering. Failure to enforce the laws in the past has put our nation at risk of crime, violence and even terrorism. The compassionate thing is to end the lawlessness, enforce our laws, and, if Congress chooses to make changes to those laws, to do so through the process set forth by our Founders in a way that advances the interest of the nation." Attorney General Jeff Sessions, September 5, 2017

Ending Taxpayer-Funded Grants to Sanctuary Jurisdictions

The Attorney General announced new conditions for Edward Byrne Memorial Justice Assistance Grants that will increase information sharing between federal, state, and local law enforcement and ensuring public safety.

"So-called 'sanctuary' policies make all of us less safe because they intentionally undermine our laws and protect illegal aliens who have committed crimes. . . . As part of accomplishing the Department of Justice's top priority of reducing violent crime, we must encourage these 'sanctuary' jurisdictions to change their policies and partner with federal law enforcement to remove criminals. This is what the American people should be able to expect from their cities and states, and these long overdue requirements will help us take down MS-13 and other violent transnational gangs, and make our country safer." Attorney General Jeff Sessions, July 25, 2017

Surge of Immigration Judges to Detention Facilities

Following the President's Executive Order, over 100 immigration judges were sent to Department of Homeland Security detention facilities across the country, including along the southern border. Those judges completed 2,700 more cases than the number of cases they would have completed at their home courts. Press Release, "Justice Department Releases Statistics on the Impact of the Immigration Judge Surge," October 4, 2017

Supporting Asylum Reform

In a speech before EOIR, the Attorney General advocated for the need for asylum reform, including increasing the threshold standard of proof in "credible fear" interviews and closing other loopholes that cause delay and abuse.

"Unfortunately, this system is currently subject to rampant abuse and fraud. . . . The surge in trials, hearings, appeals, bond proceedings has been overwhelming. . . . We can turnaround this crisis under President Trump's leadership. What we cannot do—what we must not do—is continue to let our generosity be abused, we cannot capitulate to lawlessness and allow the very foundation of law upon which our country depends to be further undermined." Attorney General Jeff Sessions, October 12, 2017

Supporting State and Local Jurisdictions that Assist Federal Immigration Law Enforcement

The Department is supporting the State of Texas in a lawsuit filed by Texas cities trying to block a state law to prohibit localities from preventing information sharing with federal immigration officials.

"The Department of Justice fully supports Texas's effort and is participating in this lawsuit because of the strong federal interest in facilitating the state and local cooperation that is critical in enforcing our nation's immigration laws." Attorney General Jeff Sessions, June 23, 2017



Department of Justice

VIOLENT CRIME

"Our goal is not to fill up the courts or fill up the prisons. Our goal is not to manage crime or merely to punish crime. Our goal is to reduce crime, just as President Trump directed us to do. Our goal is to make every community safer—especially the most vulnerable."

—Attorney General Jeff Sessions at the Major Cities Chiefs Association 2017 Fall Meeting

Expanding Project Safe Neighborhoods

The Attorney General announced the expansion of Project Safe Neighborhoods, which encourages U.S. Attorneys' offices to work with the communities they serve to develop customized crime reduction strategies. One study showed that in its first 7 years, PSN reduced violent crime overall by 4.1 percent with case studies showing reductions in certain areas of up to 42 percent.

MS-13 Designation at International Association of Chiefs of Police Conference

MS-13 is one the most violent and ruthless gangs on the streets today. The Attorney General designated MS-13 as a priority for our Organized Crime Drug Enforcement Task Forces, allowing our federal law enforcement to utilize an expanded toolkit in its efforts to dismantle the organization.

Department Charging and Sentencing Policy

The Attorney General returned to longstanding DOJ charging policy for our federal prosecutors, trusting them once again and directing them to once again charge the most serious, readily provable offense. He also directed prosecutors to focus on taking illegal guns off of our streets. Since then, there has been a 23 percent increase in the number of criminals charged with unlawful possession of a firearm.



Department of Justice

NATIONAL SECURITY

"While the threats we face are diverse and evolving, terrorist ideologies have one thing in common: their disregard for the dignity of human life and they share an obsession with forcing everyone into their twisted ideology. And the terrorists know they can't persuade people using reason, so they use coercion and intimidation. They seek acquiescence and inaction. But they will fail. We will not yield. We will never yield our freedom, our moral autonomy, or our country."

—Attorney General Jeff Sessions at the 16th Anniversary of the September 11 Terrorist Attacks

Trump v. International Refugee Assistance Project; Trump v. Hawaii Supreme Court Brief

The Department of Justice defended the President's lawful Executive Order—a vital tool to protect our national security and ensure that we know who is coming into our country.

Preventing Leaks of Classified Materials Threatening National Security

The Attorney General and the Director of National Intelligence announced new efforts by National Insider Threat Task Force to stop the staggering number of leaks undermining the ability of our government to protect this country.

Supporting the Reauthorization of Title VII of the Foreign Intelligence Surveillance Act

The Attorney General has urged Congress to promptly reauthorize, in clean and permanent form, Title VII of the Foreign Intelligence Surveillance Act, which allows the Intelligence Community, under a robust regime of oversight by all three branches of Government, to collect vital information about international terrorists, cyber actors, individuals and entities engaged in the proliferation of weapons of mass destruction and other important foreign intelligence targets located outside the United States..

**ATTORNEY GENERAL JEFF SESSIONS ANNOUNCES DEPARTMENT OF JUSTICE HAS
SETTLED WITH PLAINTIFF GROUPS IMPROPERLY TARGETED BY IRS**

WASHINGTON – Attorney General Jeff Sessions announced today that the Department of Justice has entered into settlements, pending approval by the district courts, in two cases brought by groups whose tax-exempt status was significantly delayed by the Internal Revenue Service based on inappropriate criteria. The first case, *Linchpins of Liberty v. United States*, comprised claims brought by 41 plaintiffs, and the second case, *NorCal Tea Party Patriots v. Internal Revenue Service*, was a class action suit that included 428 members. Attorney General Sessions released the following statement about the cases:

“Chief Justice John Marshall wrote ‘that the power to tax involves the power to destroy ... [is] not to be denied.’ And it should also be without question that our First Amendment prohibits the federal government from treating groups differently based solely on their viewpoint or ideology.”

“But it is now clear that during the last Administration, the IRS began using inappropriate criteria to screen applications for 501(c) status. These criteria included names such as “Tea Party,” “Patriots,” or “9/12” or policy positions concerning government spending or taxes, education of the public to “make America a better place to live,” or statements criticizing how the country was being run. It is also clear these criteria disproportionately impacted conservative groups.”

“As a result of these criteria, the IRS transferred hundreds of applications to a specifically designated group of IRS agents for additional levels of review, questioning and delay. In many instances, the IRS then requested highly sensitive information from applicants, such as donor information, that was not needed to make a determination of tax-exempt status.”

“The IRS’s use of these criteria as a basis for heightened scrutiny was wrong and should never have occurred. It is improper for the IRS to single out groups for different treatment based on their names or ideological positions. Any entitlement to tax exemption should be based on the activities of the organization and whether they fulfill requirements of the law, not the policy positions adopted by members or the name chosen to reflect those views.”

“There is no excuse for this conduct. Hundreds of organizations were affected by these actions, and they deserve an apology from the IRS. We hope that today’s settlement makes clear that this abuse of power will not be tolerated.”

[*Linchpins of Liberty, et al., v. United States of America, et al.*, No. 1:13-cv-00777-RBW in the United States District Court for the District of Columbia]

[*NorCal Tea Party Patriots v. Internal Revenue Service, et al.*, No. 1:13-cv-00341 in the United States District Court for the Southern District of Ohio]

###

Singman, Brooke

From: Singman, Brooke
Sent: Friday, October 27, 2017 10:12 AM
To: Flores, Sarah Isgur (OPA)
Cc: Prior, Ian (OPA)
Subject: Re: Fox News request - DAG Rosenstein, and calls for Mueller to resign

Okay! Sorry- thank you. I have Friday brain! Thank you for your quick response!

Sent from my iPhone

On Oct 27, 2017, at 10:11 AM, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

Ah! That makes sense. Well decline on that. I think rod has answered that to some extent in interviews before.

On Oct 27, 2017, at 10:10 AM, Singman, Brooke <brooke.singman@FOXNEWS.COM> wrote:

Reached out to Special Counsel thank you.

Would love to go over facts on that case. I think I misstated... apologies!

Question is about Mr. Rosenstein's relationship with Mueller...I know the Deputy AG appointed Mueller as Special Counsel, but based on the "new revelations" and concerns about Mueller's integrity/ ability to run investigation, does DOJ have any comment on the deputy attorney general's choice in picking Mueller to lead the independent investigation??

And would DOJ comment on whether you feel Mueller can continue to lead the investigation?

(that looks like a jumbled up request if you want to call me I'm on my ce (b) (6) [REDACTED])

From: Flores, Sarah Isgur (OPA) [<mailto:Sarah.Isgur.Flores@usdoj.gov>]
Sent: Friday, October 27, 2017 10:04 AM
To: Singman, Brooke <brooke.singman@FOXNEWS.COM>
Cc: Prior, Ian (OPA) <Ian.Prior@usdoj.gov>
Subject: Re: Fox News request - DAG Rosenstein, and calls for Mueller to resign

On Mueller, you'll need to reach out to the special counsels office.

On rod, can we go over facts on that? The case he was involved in didn't exist until 2013-- so not sure what the question is.

On Oct 27, 2017, at 10:01 AM, Singman, Brooke <brooke.singman@FOXNEWS.COM>

wrote:

Hi Sarah and Ian,

Looking for comment...

There have been calls this week from Republicans for Special Counsel Mueller to resign. The concerns come amid new revelations surrounding the Russia bribery case which involved a subsidiary of Uranium One, preceding the controversial Uranium One approval. Republicans are pointing to the fact that Mueller was Director of the FBI at the time of that case.

Other concerns that have been raised this week are pointing to Mueller's apparent relationship with former FBI Director James Comey.

There are also suggestions that the special counsel would lead the investigation to in a direction to distract from the politicization of the FBI in handling of Russia matters.

Do you have any comment to whether Mueller would resign from his post to lead this investigation? Or any comment to his fitness to lead this investigation with integrity?

Also now there are questions about Deputy Attorney General Rosenstein, his role as U.S. attorney during the Russia bribery case.

Do you have any comment on Deputy Attorney General Rosenstein's role in that case and his relationship with Special Counsel Mueller?

Deadline is 11:15a EST.

Thank you,

Brooke Singman
Politics Reporter, Fox News Channel

(b) (6)

(b) (6)

Brooke.singman@foxnews.com

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defect.

O'Malley, Devin (OPA)

From: O'Malley, Devin (OPA)
Sent: Thursday, October 26, 2017 11:01 PM
To: Dhorowitz@crtv.com
Subject: Jane Doe

Hi Daniel

I wanted to touch base since you reached out to my colleague, Ian. I don't have anything to report to you right now re: the Jane Doe case, but I will certainly keep you in the loop if we move on anything.

Please don't hesitate to call or email if you need anything.

Thanks

Devin

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Flores, Sarah Isgur (OPA)
Sent: Thursday, October 26, 2017 8:56 PM
To: Murray, Andrew
Cc: Prior, Ian (OPA)
Subject: RE: Interview with Brian Kilmeade in FNC DC bureau Tomorrow (Friday)?

Sorry we missed this! Next time!

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Murray, Andrew [mailto:Andrew.Murray@FOXNEWS.COM]
Sent: Thursday, October 26, 2017 9:45 AM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Cc: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: Interview with Brian Kilmeade in FNC DC bureau Tomorrow (Friday)?

Hi Sarah,

Brian Kilmeade will be hosting "Fox & Friends" tomorrow (Friday) from our DC bureau. Please let us know if Attorney General Sessions is available to appear with him for an in-person, one-on-one discussion, LIVE at 7:30am ET or 8:30am ET.

Thanks in advance,

Andrew Murray
Producer, Politics
"Fox & Friends"
Fox News Channel
1211 Avenue of the Americas, 2nd Floor
New York, NY 10036
Office (b) (6)
Cell # (b) (6)
Cell # (b) (6)
FAX: (212) 301-3421
Email: andrew.murray@foxnews.com
@andrewmurray1

From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Monday, October 23, 2017 11:43 AM
To: Murray, Andrew <Andrew.Murray@FOXNEWS.COM>
Cc: Prior, Ian (OPA) <Ian.Prior@usdoj.gov>
Subject: Re: Interview with "Fox & Friends" Tomorrow (Tuesday) morning about MS-13?

We'll pass tomorrow--but let's do it again soon!

On Oct 23, 2017, at 11:41 AM, Murray, Andrew <Andrew.Murray@FOXNEWS.COM> wrote:

Hi Sarah,

Please let us know if Attorney General Sessions is available to appear on "Fox & Friends" for a LIVE interview about his speech to the International Association of Chiefs of Police and make an announcement on plans to combat MS-13.

Thanks in advance,

Andrew Murray
Producer, Politics
"Fox & Friends"
Fox News Channel
1211 Avenue of the Americas, 2nd Floor
New York, NY 10036
Office (b) (6)
Cell # (b) (6)
Cell # (b) (6)
FAX: (212) 301-3421
Email: andrew.murray@foxnews.com
@andrewmurray1

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From: Flores, Sarah Isgur (OPA)
Sent: Monday, October 23, 2017 11:43 AM
To: Murray, Andrew
Cc: Prior, Ian (OPA)
Subject: Re: Interview with "Fox & Friends" Tomorrow (Tuesday) morning about MS-13?

We'll pass tomorrow--but let's do it again soon!

On Oct 23, 2017, at 11:41 AM, Murray, Andrew <Andrew.Murray@FOXNEWS.COM> wrote:

duplicative material

Laco, Kelly (OPA)

From: Laco, Kelly (OPA)
Sent: Thursday, October 26, 2017 4:01 PM
To: Gitt, Tamara
Cc: (b) (6)
Subject: RE: RSVP: ATTORNEY GENERAL SESSIONS TO TRAVEL TO JOHN F. KENNEDY INTERNATIONAL AIRPORT TO DISCUSS TRUMP ADMINISTRATION EFFORTS TO COMBAT OPIOID CRISIS

Camera must be in place by 8:45am for a K9 sweep. Cameras can begin to arrive at 8am.

Kelly Laco

Office of Public Affairs
Department of Justice
Office: 202-353-0173
Cell (b) (6)

From: Gitt, Tamara [mailto:tamara.gitt@FOXNEWS.COM]
Sent: Thursday, October 26, 2017 3:55 PM
To: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>
Cc: (b) (6)
Subject: RE: RSVP: ATTORNEY GENERAL SESSIONS TO TRAVEL TO JOHN F. KENNEDY INTERNATIONAL AIRPORT TO DISCUSS TRUMP ADMINISTRATION EFFORTS TO COMBAT OPIOID CRISIS

Great...thank you! And do we have to be preset by 8:45 or is that just when it opens up for us to set up?

From: Laco, Kelly (OPA) [mailto:Kelly.Laco@usdoj.gov]
Sent: Thursday, October 26, 2017 3:45 PM
To: Gitt, Tamara
Cc: (b) (6)
Subject: RE: RSVP: ATTORNEY GENERAL SESSIONS TO TRAVEL TO JOHN F. KENNEDY INTERNATIONAL AIRPORT TO DISCUSS TRUMP ADMINISTRATION EFFORTS TO COMBAT OPIOID CRISIS

Yes, there is a visitor parking lot onsite. I will send an email w/ more details later. Thanks.

Kelly Laco

Office of Public Affairs
Department of Justice
Office: 202-353-0173
Cell (b) (6)

From: Gitt, Tamara [mailto:tamara.gitt@FOXNEWS.COM]
Sent: Thursday, October 26, 2017 3:38 PM
To: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>
Cc: (b) (6)
Subject: RSVP: ATTORNEY GENERAL SESSIONS TO TRAVEL TO JOHN F. KENNEDY INTERNATIONAL AIRPORT TO DISCUSS TRUMP ADMINISTRATION EFFORTS TO COMBAT OPIOID CRISIS

Hi Kelly,

I would like to RSVP for myself and my camerama (b) (6) for tomorrow's event with AG Sessions. I will be the best contact person if any details change and can be reached by email at tamara.gitt@foxnews.com or by cell (b) (6) (bu (b) (6) is cc'd on this email as well). My only logistical question, at this moment, is will there be parking available nearby?

Thank you,
Tamara

Tamara Gitt
Fox News Channel
1211 Avenue of the Americas, 18th Floor
New York, NY 10036

(b) (6)

(b) (6)

Subject: ATTORNEY GENERAL SESSIONS TO TRAVEL TO JOHN F. KENNEDY INTERNATIONAL AIRPORT TO DISCUSS TRUMP ADMINISTRATION EFFORTS TO COMBAT OPIOID CRISIS

Reply-To: USDOJ-OfficeofPublicAffairs@public.govdelivery.com

FOR IMMEDIATE RELEASE
THURSDAY, OCTOBER 26, 2017

ATTORNEY GENERAL SESSIONS TO TRAVEL TO JOHN F. KENNEDY INTERNATIONAL AIRPORT TO DISCUSS TRUMP ADMINISTRATION EFFORTS TO COMBAT OPIOID CRISIS

******* MEDIA ADVISORY *******

WASHINGTON Attorney General Jeff Sessions will travel to John F. Kennedy International Airport on **Friday, October 27, 2017**, to discuss Trump Administration efforts to combat the opioid crisis.

WHO

Attorney General Jeff Sessions

WHAT

Attorney General Jeff Sessions will travel to John F. Kennedy International Airport to discuss Trump Administration efforts to combat the opioid crisis.

WHEN

9:45 a.m. EDT

Port Authority Conference Room
John F. Kennedy International Airport
Building 14
Jamaica, New York 11430

OPEN PRESS

(Camera Preset: 8:45 a.m. // Final Access 9:30 a.m.)

NOTE: All media must RSVP and present government-issued photo I.D. (such as a driver's license) as well as valid media credentials. The RSVP and any inquiries regarding logistics should be directed to Kelly Laco in the Office of Public Affairs at (202) 305 5219 or kelly.laco@usdoj.gov. Please include the email address of the person(s) attending the event, so that we may reach them directly if details change. **Please RSVP by 11:00 p.m. EDT on Thursday, October 26, 2017.**

#

AG

Do not reply to this message. If you have questions, please use the contacts in the message or call the Office of Public Affairs at 202 514 2007.

||

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Prior, Ian (OPA)

From: Prior, Ian (OPA)
Sent: Thursday, October 26, 2017 7:35 AM
To: Ian Mason
Subject: Re: ** EMBARGOED UNTIL 8 A.M. ON 10/26 **ATTORNEY GENERAL JEFF SESSIONS ANNOUNCES DEPARTMENT OF JUSTICE HAS SETTLED WITH PLAINTIFF GROUPS IMPROPERLY TARGETED BY IRS

Should be filed with court will try.

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

On Oct 25, 2017, at 11:02 PM, Ian Mason <imason@breitbart.com> wrote:

Anything coming on the terms of the settlement?

Original Message
From: "Prior, Ian (OPA)" <Ian.Prior@usdoj.gov>
Sent: Wednesday, October 25, 2017 9:18pm
To: "Prior, Ian (OPA)" <Ian.Prior@usdoj.gov>
Subject: ** EMBARGOED UNTIL 8 A.M. ON 10/26 **ATTORNEY GENERAL JEFF SESSIONS ANNOUNCES DEPARTMENT OF JUSTICE HAS SETTLED WITH PLAINTIFF GROUPS IMPROPERLY TARGETED BY IRS

Thank you

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

The United States Department of Justice



**ATTORNEY GENERAL JEFF SESSIONS ANNOUNCES
DEPARTMENT OF JUSTICE HAS SETTLED WITH PLAINTIFF
GROUPS IMPROPERLY TARGETED BY IRS**

WASHINGTON Attorney General Jeff Sessions announced today that the Department of Justice has entered into settlements, pending approval by the district courts, in two cases brought by groups whose tax exempt status was significantly delayed by the Internal Revenue Service based on inappropriate criteria. The first case, *Linchpins of Liberty v. United States*, comprised claims brought by 41 plaintiffs, and the second case, *NorCal Tea Party Patriots v. Internal Revenue Service*, was a class action suit that included 428 members. Attorney General Sessions released the following statement about the cases:

“Chief Justice John Marshall wrote ‘that the power to tax involves the power to destroy ... [is] not to be denied.’ And it should also be without question that our First Amendment prohibits the federal government from treating groups differently based solely on their viewpoint or ideology.”

“But it is now clear that during the last Administration, the IRS began using inappropriate criteria to screen applications for 501(c) status. These criteria included names such as “Tea Party,” “Patriots,” or “9/12” or policy positions concerning government spending or taxes, education of the public to “make America a better place to live,” or statements criticizing how the country was being run. It is also clear these criteria disproportionately impacted conservative groups.”

“As a result of these criteria, the IRS transferred hundreds of applications to a specifically designated group of IRS agents for additional levels of review, questioning and delay. In many instances, the IRS then requested highly sensitive information from applicants, such as donor information, that was not needed to make a determination of tax exempt status.”

“The IRS’s use of these criteria as a basis for heightened scrutiny was wrong and should never have occurred. It is improper for the IRS to single out groups for different treatment based on their names or ideological positions. Any entitlement to tax exemption should be based on the activities of the organization and whether they fulfill requirements of the law, not the policy positions adopted by members or the name chosen to reflect those views.”

“There is no excuse for this conduct. Hundreds of organizations were affected by these actions, and they deserve an apology from the IRS. We hope that today’s settlement makes clear that this abuse of power will not be tolerated.”

[*Linchpins of Liberty, et al., v. United States of America, et al.*, No. 1:13 cv 00777 RBW in the United States District Court for the District of Columbia]

[*NorCal Tea Party Patriots v. Internal Revenue Service, et al.*, No. 1:13 cv 00341 in the United States District Court for the Southern District of Ohio]

#

AG

17 1200

Do not reply to this message. If you have questions, please use the contacts in the message or call the Office of Public Affairs at 202 514 2007.

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From: Flores, Sarah Isgur (OPA)
Sent: Wednesday, October 25, 2017 9:31 PM
To: Gibson, Jake
Cc: Prior, Ian (OPA)
Subject: Re: Does this make sense to you?

Yes but it's going to be difficult to act on. Not unusual for a consultant to subcontract.

On Oct 25, 2017, at 5:44 PM, Gibson, Jake <Jake.Gibson@FOXNEWS.COM> wrote:

<https://lawnewz.com/high-profile/breaking-fec-complaint-says-clinton-campaign-dnc-violated-law-over-trump-dossier/>

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Nestande, Francesca

From: Nestande, Francesca
Sent: Wednesday, October 25, 2017 8:45 PM
To: Prior, Ian (OPA)
Subject: Re: Department of Justice Statement re: Congressional Requests to Speak with Confidential Informant in Mikerin Case

Thanks!

Francesca Nestande

(b) (6)

On Oct 25, 2017, at 8:43 PM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

Attributable to me:

“As of tonight, the Department of Justice has authorized the informant to disclose to the Chairmen and Ranking Members of the Senate Committee on the Judiciary, the House Committee on Oversight and Government Reform, and the House Permanent Select Committee on Intelligence, as well as one member of each of their staffs, any information or documents he has concerning alleged corruption or bribery involving transactions in the uranium market, including but not limited to anything related to Vadim Mikerin, Rosatom, Tenex, Uranium One, or the Clinton Foundation.”

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

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From: Moni, Alyssa <Alyssa.Moni@FOXNEWS.COM>
Sent: Wednesday, October 25, 2017 8:13 PM
To: Flores, Sarah Isgur (OPA)
Subject: RE: Hannity Fox News Tonight or Tomorrow?

Uranium one and the FBI informant being allowed to speak with Congress.

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

From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Wednesday, October 25, 2017 8:14 PM
To: Moni, Alyssa <Alyssa.Moni@FOXNEWS.COM>
Subject: Re: Hannity Fox News Tonight or Tomorrow?

Which story?

> On Oct 25, 2017, at 8:13 PM, Moni, Alyssa <Alyssa.Moni@FOXNEWS.COM> wrote:

>

> Also my team wanted me to mention to you, even it is next week, Sean was asking to get you in the mix for this so please let me know if you become available at any point.

> It is a very important story to our audience so any information you can come on to discuss we would appreciate it.

> Thank you again!

>

> -----Original Message-----

> From: Moni, Alyssa

> Sent: Wednesday, October 25, 2017 8:11 PM

> To: 'Flores, Sarah Isgur (OPA)' <Sarah.Isgur.Flores@usdoj.gov>

> Subject: RE: Hannity Fox News Tonight or Tomorrow?

>

> Thanks for getting back to me.

>

> -----Original Message-----

> From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]

> Sent: Wednesday, October 25, 2017 8:12 PM

> To: Moni, Alyssa <Alyssa.Moni@FOXNEWS.COM>

> Subject: Re: Hannity Fox News Tonight or Tomorrow?

>

> I'll pass this time. Thanks for thinking of me!

>

>> On Oct 25, 2017, at 8:07 PM, Moni, Alyssa <Alyssa.Moni@FOXNEWS.COM> wrote:

>>

>> Hi Sarah-

>> It's Alyssa from Hannity at Fox.

>> Can you join us for an interview tonight or tomorrow live in the 9pm et?

>> Thank you!

>> Alyssa

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From: Maltas, Mike <Mike.Maltas@FOXNEWS.COM>
Sent: Wednesday, October 25, 2017 5:32 PM
To: VanderBush, Emily; Will Montague
Cc: Laco, Kelly (OPA)
Subject: RE: Fox News RSVP: AG Sessions remarks at Heritage Fdtn, Oct 26 - UPDATE

Hi Emily: need to change our photog RSVP to Will Montague (he's cc'd here).
Thanks

From: VanderBush, Emily [mailto:Emily.VanderBush@heritage.org]
Sent: Wednesday, October 25, 2017 4:25 PM
To: Maltas, Mike
Subject: RE: Fox News RSVP: AG Sessions remarks at Heritage Fdtn, Oct 26

Hi Mike,

Thanks for the RSVP. Preset is at 11am. Let me know if you need any additional information, otherwise I have Stephen on the RSVP list.

Thanks!

Emily VanderBush

Communications Manager, Institute for Constitutional Government
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002

(b) (6)
heritage.org

From: Maltas, Mike [mailto:Mike.Maltas@FOXNEWS.COM]
Sent: Wednesday, October 25, 2017 4:15 PM
To: VanderBush, Emily <Emily.VanderBush@heritage.org>; Kelly.Laco@usdoj.gov
Subject: Fox News RSVP: AG Sessions remarks at Heritage Fdtn, Oct 26

Attn: Emily VanderBush, Kelly Laco

Fox News would like to RSVP for photo (b) (6) for AG Jeff Sessions remarks on "Constitutional principles and the rule of law" Thursday at the Heritage Foundation, Lehrman Auditorium, 214 Massachusetts Avenue Northeast. I gather Preset is 1100 for the 1215 event. Please clarify: Is that preset complete by 1100, or starting at that time?

Kanicka (for any changes to logistics) can be reached via our desk email DC.Desk@foxnews.com

Thank you

Mike Maltas
Fox News
400 N. Capitol St., NW
Washington, DC 20002
Office (b) (6)

Cell (b) (6)
Mike.maltas@foxnews.com

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Gibson, Jake

From: Gibson, Jake
Sent: Wednesday, October 25, 2017 5:22 PM
To: Flores, Sarah Isgur (OPA)
Subject: WHITE HOUSE STATEMENT ON JANE DOE

From Sarah Sanders

We're prevented by court order from discussing the relevant facts of this case, but the Administration had planned to file an emergency stay application in the Supreme Court this morning.

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From: Singman, Brooke <brooke.singman@FOXNEWS.COM>
Sent: Wednesday, October 25, 2017 12:41 PM
To: Prior, Ian (OPA); Flores, Sarah Isgur (OPA)
Subject: Fox News request - Grassley call for special counsel

Hi Ian and Sarah,

Does DOJ have a comment for Chuck Grassley's calls for a special counsel to investigate the Uranium One deal?

Deadline is ASAP preferably before 1:30p.

Thank you!

Brooke Singman
Politics Reporter, Fox News Channel

(b) (6)

(b) (6)

Brooke.singman@foxnews.com

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From: Gibson, Jake <Jake.Gibson@FOXNEWS.COM>
Sent: Wednesday, October 25, 2017 12:31 PM
To: Emily.VanderBush@heritage.org
Cc: Laco, Kelly (OPA)
Subject: RSVP

I'd like to attend the AG's speech at Heritage tomorrow.

Thanks,

Jake Gibson
Department of Justice and Federal Law Enforcement Producer
Fox News Washington
Cell (b) (6)
Cell (b) (6)
Jake.Gibson@foxnews.com
@JakeBGibson

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From: Laco, Kelly (OPA)
Sent: Wednesday, October 25, 2017 7:38 AM
To: Gibson, Jake
Subject: Re: RSVP for Justice awards

Got it!

Sent from my iPhone

> On Oct 25, 2017, at 7:20 AM, Gibson, Jake <Jake.Gibson@FOXNEWS.COM> wrote:

>

> I would like to attend.

> Thanks.

>

>

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>

From: Singman, Brooke <brooke.singman@FOXNEWS.COM>
Sent: Tuesday, October 24, 2017 8:41 PM
To: Prior, Ian (OPA)
Subject: Re: Manafort?

"Decline to comment"

Thank you!

Sent from my iPhone

On Oct 24, 2017, at 8:40 PM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

You should reach out to SDNY.

Thx

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Cell (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

On Oct 24, 2017, at 8:22 PM, Singman, Brooke <brooke.singman@FOXNEWS.COM> wrote:

Hi..

Manafort being investigated by NY attorney's office for money laundering?

Any guidance would be helpful!

Brooke

Sent from my iPhone

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attachments that does not relate to the official business of Fox News or Fox Business must not be taken to have been sent or endorsed by either of them. No representation is made that this email or its attachments are without defect.

From: Beth Schular <bschular@crtv.com>
Sent: Tuesday, October 24, 2017 6:17 PM
To: Prior, Ian (OPA)
Cc: Pettit, Mark T. (OPA)
Subject: Re: CRTV media inquiry: AG Sessions at Values Voter Summit

Hi Ian,

Circling back to this is there any window of time we could get with the Attorney General in the next couple of weeks?

Thank you!

Beth
CRTV Video Producer

(b) (6)

From: "Prior, Ian (OPA)" <Ian.Prior@usdoj.gov>
Date: Thursday, October 12, 2017 at 9:38 PM
To: Beth Schular <bschular@crtv.com>
Subject: Re: CRTV media inquiry: AG Sessions at Values Voter Summit

Will have to look into it. Next two weeks are packed but circle back end of October?

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Cell (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

On Oct 12, 2017, at 9:23 PM, Beth Schular <bschular@crtv.com> wrote:

Hi Ian,

Thank you for your response. Could we arrange another time for an interview with the Attorney General, at a location/time of his convenience?

Is there an opening in his schedule in the next few weeks?

Thank you!
Beth Schular
(b) (6)
www.crtv.com

Get [Outlook for iOS](#)

From: Prior, Ian (OPA) <Ian.Prior@usdoj.gov>
Sent: Thursday, October 12, 2017 8:40:33 PM
To: Beth Schular
Cc: Pettit, Mark T. (OPA)
Subject: Fwd: CRTV media inquiry: AG Sessions at Values Voter Summit

Hi Beth, I think we will pass on this. He will not be at the summit.

Thanks.

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Cell (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

Begin forwarded message:

From: Press <Press@jmd.usdoj.gov>
Date: October 12, 2017 at 5:54:48 PM EDT
To: "Flores, Sarah Isgur (OPA)" <siflores@jmd.usdoj.gov>, "Prior, Ian (OPA)" <IPrior@jmd.usdoj.gov>
Cc: "Pettit, Mark T. (OPA)" <mtpettit@jmd.usdoj.gov>
Subject: FW: CRTV media inquiry: AG Sessions at Values Voter Summit

CRTV following up.

Thank you - Kristen

From: Beth Schular [<mailto:bschular@crtv.com>]
Sent: Thursday, October 12, 2017 5:45 PM
To: Press <Press@jmd.usdoj.gov>
Cc: Alicia Hesse <ahesse@crtv.com>
Subject: Re: CRTV media inquiry: AG Sessions at Values Voter Summit

Good Evening,

Checking in on my media request for a quick interview with the Attorney General either before or after he speaks at the Values Voter Summit. We'd also like to ask him about his recent statement that the Asylum system is "subject to rampant abuse and fraud".

We'll be at the conference and would only need a few minutes of his time.

Thanking you in advance for your speedy reply.

Sincerely,

Beth Schular
CRTV

(b) (6)

From: Beth Schular <bschular@crtv.com>
Date: Tuesday, October 10, 2017 at 10:00 PM
To: "Press@usdoj.gov" <Press@usdoj.gov>
Cc: Alicia Hesse <ahesse@crtv.com>
Subject: CRTV media inquiry: AG Sessions at Values Voter Summit

Good Evening,

I'm writing from CRTV on behalf of our White House Correspondent, Jon Miller, who's very eager to get a few minutes with Attorney General Jeff Sessions either before or after he speaks at the Values Voter Summit this weekend. Specifically, Jon would like to ask the Attorney General about The White House's new list of immigration priorities, and also how, as a former Senator, what he thinks is needed to get the immigration plan passed by Congress.

CRTV is an online digital media platform hosting programs by Mark Levin, Michelle Malkin, Steven Crowder, and more.

We plan to be at the conference and would love to get even just a few minutes of the Attorney General's time while he is there. Please let us know what time works best.

Thank you in advance for your consideration!

Sincerely,
Beth Schular

(b) (6)

www.CRTV.com

Beth Schular

From: Beth Schular
Sent: Friday, October 13, 2017 9:43 AM
To: Prior, Ian (OPA)
Subject: Re: CRTV media inquiry: AG Sessions at Values Voter Summit

Absolutely, will do!

Beth

From: "Prior, Ian (OPA)" <Ian.Prior@usdoj.gov>
Date: Thursday, October 12, 2017 at 9:38 PM
To: Beth Schular <bschular@crtv.com>
Subject: Re: CRTV media inquiry: AG Sessions at Values Voter Summit

duplicative material

Pappas, Alex

From: Pappas, Alex
Sent: Tuesday, October 24, 2017 3:02 PM
To: Prior, Ian (OPA); Flores, Sarah Isgur (OPA)
Subject: RE: Comment on Goodlatte/Stop Settlement Slush Funds Act of 2017

Thanks Ian

From: Prior, Ian (OPA) [mailto:ian.prior@usdoj.gov]
Sent: Tuesday, October 24, 2017 3:01 PM
To: Pappas, Alex; Flores, Sarah Isgur (OPA)
Subject: RE: Comment on Goodlatte/Stop Settlement Slush Funds Act of 2017

Yeah, I think the AG's statement pretty directly addresses the question:

"When the federal government settles a case against a corporate wrongdoer, any settlement funds should go first to the victims and then to the American people— not to bankroll third-party special interest groups or the political friends of whoever is in power," said Attorney General Jeff Sessions. "Unfortunately, in recent years the Department of Justice has sometimes required or encouraged defendants to make these payments to third parties as a condition of settlement. With this directive, we are ending this practice and ensuring that settlement funds are only used to compensate victims, redress harm, and punish and deter unlawful conduct."

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Pappas, Alex [mailto:Alex.Pappas@FOXNEWS.COM]
Sent: Tuesday, October 24, 2017 2:38 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Cc: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: RE: Comment on Goodlatte/Stop Settlement Slush Funds Act of 2017

Thanks!

From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Tuesday, October 24, 2017 2:39 PM
To: Pappas, Alex
Cc: Prior, Ian (OPA)
Subject: RE: Comment on Goodlatte/Stop Settlement Slush Funds Act of 2017

Adding Ian to start I'd point you to this release we did several months ago:
<https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-ends-third-party-settlement-practice>

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Pappas, Alex [<mailto:Alex.Pappas@FOXNEWS.COM>]
Sent: Tuesday, October 24, 2017 2:36 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: Comment on Goodlatte/Stop Settlement Slush Funds Act of 2017

Sarah,

Do you know if DOJ will have any comment on Rep. Goodlatte's Stop Settlement Slush Funds Act of 2017 and the emails that showed the Obama DOJ officials working to make sure conservative groups didn't receive settlement money?

Thanks,

--

Alex Pappas
Politics reporter
FoxNews.com

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From: Prior, Ian (OPA)
Sent: Tuesday, October 24, 2017 1:38 PM
To: Gibson, Jake
Subject: Re: statement on Congressional investigation

<http://www.washingtonexaminer.com/house-to-investigate-justice-departments-handling-of-hillary-clinton-email-scandal/article/2638429>

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Cell (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

On Oct 24, 2017, at 1:37 PM, Gibson, Jake <Jake.Gibson@FOXNEWS.COM> wrote:

Which congressional investigation?
This is about Gowdy right?
Not Grassley...

On Oct 24, 2017, at 1:14 PM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

Attributable to me:

"We will fully cooperate with this important Congressional investigation consistent with the Department's law enforcement and national security responsibilities. Likewise, we will continue to cooperate with the Department of Justice Inspector General's ongoing investigation into the allegations of misconduct with respect to the previous administration's handling of the Clinton email investigation."

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cell (b) (6)

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Singman, Brooke

From: Singman, Brooke
Sent: Monday, October 23, 2017 12:10 PM
To: Prior, Ian (OPA)
Cc: Flores, Sarah Isgur (OPA)
Subject: RE: Tony Podesta & FARA

Great. I'll poke around but if you can help iron these details out, that would be great.

Thank you!

From: Prior, Ian (OPA) [mailto:ian.prior@usdoj.gov]
Sent: Monday, October 23, 2017 12:10 PM
To: Singman, Brooke <brooke.singman@FOXNEWS.COM>
Cc: Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov>
Subject: Re: Tony Podesta & FARA

Looking into it but should be accessible at
www.fara.gov by using search tool

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Ce (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

On Oct 23, 2017, at 12:08 PM, Singman, Brooke <brooke.singman@FOXNEWS.COM> wrote:

Congress says that the Podesta Group filed under FARA for their dealings with ECFMU in April.
Media reports say they filed under FARA only after news reports disclosed financial info regarding their dealings with ECFMU
But Podesta Group is telling me that they filed five years ago...

Do you know who is right here?! If anyone?!

From: Singman, Brooke
Sent: Monday, October 23, 2017 11:26 AM
To: 'Prior, Ian (OPA)' <ian.prior@usdoj.gov>; Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov>
Subject: Tony Podesta & FARA

Hi Ian and Sarah,

Is there any way you can tell me if and when Tony Podesta, or the Podesta Group, registered under

FARA?

The recent reports of the special counsel investigation suggest that they could be in violation of FARA, after registering too late, or not registering at all...

On background or on record is fine... Just looking for some guidance here.

Deadline is 12:30p EST.

Thank you!

Brooke Singman
Politics Reporter, Fox News Channel

(b) (6)

(b) (6)

Brooke.singman@foxnews.com

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From: Flores, Sarah Isgur (OPA)
Sent: Sunday, October 22, 2017 9:44 PM
To: Jake.Gibson@FOXNEWS.COM
Cc: Prior, Ian (OPA)
Subject: Fwd: Sessions refuses to lift gag order on informant in Clinton-Russia probe - YouTube

This says "sessions refuses" from something he's clearly recused from. Can you have them change this asap?

>
> <https://m.youtube.com/watch?v=z3FWeRgjaRw>
>
>
> Sent from my iPhone

Prior, Ian (OPA)

From: Prior, Ian (OPA)
Sent: Friday, October 20, 2017 12:31 PM
To: Jake Gibson
Subject: Tweet forwarded by @iprior1177

Three cabinet secretaries (Hargan, Shulkin, Acosta) present for Christie opioids commission meeting. Deputy AG Rod Rosenstein, too <https://t.co/yEmbvKMxuz>

Original Tweet: <https://twitter.com/levfacher/status/921398229606043648>

Sent via TweetDeck

From: Pappas, Alex <Alex.Pappas@FOXNEWS.COM>
Sent: Friday, October 20, 2017 12:23 PM
To: Carr, Peter (OPA)
Subject: Question for Special Counsel team

Peter,

Two attorneys have published separate stories recently questioning the past tactics used by Special Counsel Mueller and members of his team. We are going to write a story at FoxNews.com about these comments. Would anyone there like to respond to them?

<http://news.wgbh.org/2017/10/17/silvergate-how-robert-mueller-tried-entrap-me>

<http://thehill.com/opinion/white-house/356253-judging-by-muellers-staffing-choices-he-may-not-be-very-interested-in>

Thanks,

Alex Pappas

--

Alex Pappas
Politics reporter
FoxNews.com

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Prior, Ian (OPA)

From: Prior, Ian (OPA)
Sent: Thursday, October 19, 2017 3:50 PM
To: Jake Gibson

<https://www.justice.gov/criminal-fraud/fcpa/cases/vadim-mikerein>

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

Singman, Brooke

From: Singman, Brooke
Sent: Thursday, October 19, 2017 3:18 PM
To: Prior, Ian (OPA); Flores, Sarah Isgur (OPA)
Subject: RE: Fox News request re: NDA

Thank you, Ian.

From: Prior, Ian (OPA) [mailto:ian.prior@usdoj.gov]
Sent: Thursday, October 19, 2017 3:15 PM
To: Singman, Brooke <brooke.singman@FOXNEWS.COM>; Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov>
Subject: RE: Fox News request re: NDA

"We are in receipt of the letter and are reviewing it."

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Singman, Brooke [mailto:brooke.singman@FOXNEWS.COM]
Sent: Thursday, October 19, 2017 12:53 PM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: Fox News request re: NDA

Hi,

Sen. Grassley sent the attorney general a letter yesterday asking to lift a possible non-disclosure agreement on the confidential FBI informant during the Uranium One probe... the witness was asked by the FBI to sign an NDA. Grassley has asked for a copy of the NDA by Nov. 1, and an answer to whether the DOJ will release the witness from the agreement...

Any comment on this?

Deadline is 2p EST.

Thank you!

Brooke Singman
Politics Reporter, Fox News Channel
(b) (6)
(b) (6)
Brooke.singman@foxnews.com

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Gibson, Jake

From: Gibson, Jake
Sent: Thursday, October 19, 2017 2:08 PM
To: Prior, Ian (OPA)
Subject: FW: Senate Judiciary Chairman Chuck Grassley Seeks Information from FBI Informant in Uranium One Probe

[Any comment or action on this?](#)



FOR IMMEDIATE RELEASE

Thursday, October 19, 2017

Grassley Seeks Information from FBI Informant in Uranium One Probe
Reported Justice Department Gag Orders Prevent Accountability of Controversial Obama-Era Deal with Russian Entities

WASHINGTON Senate Judiciary Committee Chairman Chuck Grassley (R Iowa) is calling on the Justice Department to lift a reported non disclosure agreement preventing a former FBI confidential informant from speaking to Congress about the handling of a criminal probe linked to a controversial deal that ceded ownership of U.S. uranium assets to the Russian government. Despite an ongoing criminal investigation into officials working for subsidiaries of Rosatom, the Russian government entity seeking to acquire ownership of U.S. uranium, the Obama Administration approved the deal. The Justice Department has reportedly threatened to prosecute the informant if he discloses details of his involvement in the investigation.

“The Executive Branch does not have the authority to use non disclosure agreements to avoid Congressional scrutiny. If the FBI is allowed to contract itself out of Congressional oversight, it would seriously undermine our Constitutional system of checks and balances. The Justice Department needs to work with the Committee to ensure that witnesses are free to speak without fear, intimidation or retaliation from law enforcement. Witnesses who want to talk to Congress should not be gagged and threatened with prosecution for talking. If that has happened, senior DOJ leadership needs to fix it and release the witness from the gag order,” Grassley said.

According to recent [news reports](#), a U.S. businessman turned confidential informant documented bribes, extortion and money laundering by Russian entities that were attempting to secure U.S. government approval of a deal to acquire Uranium One, which reportedly owned 20 percent of American uranium assets at the time. According to the news reports, the informant has information regarding payments made by Russian executives to a U.S. entity that supported President Bill Clinton’s foundation. In 2010, despite an ongoing criminal investigation into officials working for Rosatom subsidiaries, the Obama Administration

approved the takeover of Uranium One.

Last week, Grassley asked several federal agencies involved in approving the deal whether they had any knowledge of the ongoing criminal investigation and all communications relating to donations made to the Clinton Foundation by interested parties in the transaction. Those agencies include the [Justice Department](#) and [State Department](#).

Grassley has previously [raised concerns](#) about the use of non disclosure agreements by the federal government, specifically, the Justice Department and FBI, as a means of avoiding congressional oversight.

Grassley sent a letter Wednesday to the [Justice Department](#) asking for a copy of any reported non disclosure agreement and calling for it to be lifted. Grassley also sent a [letter to the attorney representing the confidential informant](#) seeking an interview.

Those letters follow:

October 18, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable Jeff Sessions
Attorney General
United States Department of Justice
Washington, D.C. 20220

Dear Attorney General Sessions:

On October 12, 2017, I wrote to several agencies, including the Department of Justice, regarding the Uranium One/Rosatom transaction that was approved by the Committee on Foreign Investment in the United States (CFIUS) during the Obama administration. In that letter, I noted that the Department had an ongoing criminal investigation into Rosatom officials during the CFIUS approval process and asked, among other things, whether CFIUS was informed of that criminal matter.

On October 18, 2017, *The Hill* reported that “[a]n American businessman . . . worked for years undercover as an FBI confidential witness” to assist in the Department’s criminal investigation.^[1] According to the reporting, the confidential witness “was asked by the FBI to sign a nondisclosure agreement (NDA) that prevents him from revealing what he knows to Congress.”^[2] Further, the witness’ attorney said, “the Obama Justice Department threatened him with loss of freedom. They said they would bring a criminal case against him for violating an NDA.”^[3]

These restrictions appear to improperly prevent the individual from making critical, good faith disclosures to Congress of potential wrongdoing. They also purport to limit the Committee’s access to information it needs to fulfill its constitutional responsibility of oversight. This Committee has oversight jurisdiction of the Justice Department, and if this NDA does in fact exist, it hinders the Committee’s ability to do its job. Accordingly, please provide a copy of the NDA by November 1, 2017. In addition, should the NDA exist, I request that you release him from it and pledge not to engage in any form of retaliation against him for good faith communications with Congress.

Should you have further questions, please contact Josh Flynn Brown or DeLisa Lay of my Committee staff at (202) 224 5225.

Sincerely,

Charles E. Grassley
Chairman
Committee on the Judiciary

October 18, 2017

VIA ELECTRONIC TRANSMISSION

Ms. Victoria Toensing
diGenova & Toensing, LLP
1776 K Street NW
Washington, DC 20006

Dear Ms. Toensing:

On October 12, 2017, I wrote to several agencies, including the Department of Justice, regarding the Uranium One/Rosatom transaction that was approved by the Committee on Foreign Investment in the United States (CFIUS) during the Obama administration. In that letter, I noted that the Department had an ongoing criminal investigation into Rosatom officials during the CFIUS approval process and asked, among other things, whether CFIUS was informed of that criminal matter.

On October 18, 2017, *The Hill* reported that you represent a confidential informant used by the FBI during its criminal investigation into Rosatom employees connected to the CFIUS transaction.^[4] Reporting indicates that “the informant’s work was crucial to the government’s ability to crack a multimillion dollar racketeering scheme by Russian nuclear officials on U.S. soil” and that the scheme involved “bribery, kickbacks, money laundering, and extortion.”^[5] Further, the reporting indicates that your client can testify that “FBI agents made comments to him suggesting political pressure was exerted during the Justice Department probe” and “that there was specific evidence that could have scuttled approval of the Uranium One deal.”^[6]

It appears that your client possesses unique information about the Uranium One/Rosatom transaction and how the Justice Department handled the criminal investigation into the Russian criminal conspiracy. Such information is critical to the Committee’s oversight of the Justice Department and its ongoing inquiry into the manner in which CFIUS approved the transaction. Accordingly, the Committee requests to interview your client. Please contact Committee staff by October 25, 2017, to arrange the interview.

Thank you for your attention to this important matter.

Sincerely,

Charles E. Grassley
Chairman
Committee on the Judiciary



[\[1\]](#) John Solomon and Alison Spann, *FBI informant blocked from telling Congress about Russia nuclear corruption case, lawyer says*, The Hill (Oct. 18, 2017).

[\[2\]](#) *Id.*

[\[3\]](#) *Id.*

[\[4\]](#) John Solomon and Alison Spann, *FBI informant blocked from telling Congress about Russia nuclear corruption case, lawyer says*, The Hill (Oct. 18, 2017).

[\[5\]](#) *Id.*

[\[6\]](#) *Id.*

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From: Flores, Sarah Isgur (OPA)
Sent: Thursday, October 19, 2017 12:30 PM
To: Jake.Gibson@FOXNEWS.COM
Cc: Prior, Ian (OPA)
Subject: Fwd: ATTORNEY GENERAL JEFF SESSIONS DELIVERS REMARKS TO THE OKLAHOMA SHERIFFS' ASSOCIATION

He's in rare form today. Not sure if y'all have a camera here but he told a funny off script story about a Berkeley intern at DOJ and free speech.

Begin forwarded message:

From: USDOJ-Office of Public Affairs <USDOJ-OfficeofPublicAffairs@public.govdelivery.com>
Date: October 19, 2017 at 11:19:52 AM CDT
To: <sarah.isgur.flores@usdoj.gov>
Subject: ATTORNEY GENERAL JEFF SESSIONS DELIVERS REMARKS TO THE OKLAHOMA SHERIFFS' ASSOCIATION
Reply-To: <USDOJ-OfficeofPublicAffairs@public.govdelivery.com>

Thank you, Jonathan for that introduction, and, more importantly, thank you for your leadership with the National Sheriffs

http://links.govdelivery.com:80/track?type=click&enid=ZWFzPTEmbWFpbGluZ2lkPTlwMTcxMDE5Ljc5NjU1NTMxJm1lc3NhZ2VpZD1NREltUFJELUJVTC0yMDE3MTAxOS43OTY1NTUzMSZkYXRhYmFzZWlkPTEwMDEmc2VyaWFsPTE3MjU1MzIxJmVtYWlsaWQ9c2FyYWguaXNndXluZmxvcmVzQHVzZG9qLmdvdiZ1c2VyaWQ9c2FyYWguaXNndXluZmxvcmVzQHVzZG9qLmdvdiZmbD0mZXh0cmE9TXVsdGI2YXJpYXRISWQ9JiYm&&100&&https://www.justice.gov/?utm_medium=email&utm_source=govdelivery
FOR IMMEDIATE RELEASE

THURSDAY, OCTOBER 19, 2017

ATTORNEY GENERAL JEFF SESSIONS DELIVERS REMARKS TO THE OKLAHOMA SHERIFFS' ASSOCIATION

Midwest City, OK

"But it seems to me that we don't have a sentencing problem; we have a crime problem. If we want to bring down our prison population then we should bring down crime.

So what should we do? What has been proven to work?

In 1984 I had been a federal prosecutor for six years when Congress passed the Sentencing Reform Act. This law instituted mandatory minimum sentences, sentencing guidelines, truth in sentencing, and ended federal parole. I was a prosecutor before this law, and I was a prosecutor after it went into effect. It's clear to me that it worked. We saw crime rates cut in half, neighborhoods revitalized, and general law and order restored on our streets."

Remarks below as prepared for delivery

Thank you, Jonathan for that introduction, and, more importantly, thank you for your leadership with the National Sheriffs Association.

I also want to thank Lieutenant Governor Lamb, my friend Congressman Cole and our U.S. Attorneys for being here. All three of Oklahoma's U.S. Attorneys are here: Mark Yancey, from the Western District, Brian Kuester of the Eastern District, and Trent Shores from the Northern District. Brian and Trent were just confirmed by the U.S. Senate in September: congratulations.

I am here on behalf of President Trump to thank all of our law enforcement officers for their dedication and service. President Trump ran for office as a law-and-order candidate; now he is governing as a law-and-order president. He is a proud and unequivocal supporter of law enforcement.

I know firsthand the important work that each of you do. I was a federal prosecutor for 14 years, and during that time, I was blessed to partner every day with federal, state, and local law enforcement officers to protect the rights of all individuals.

There is nothing I am more proud of than what we accomplished in our district.

I know that each of you has that same kind of impact in your communities.

But today we are fighting a multi-front battle: an increase in violent crime, a rise in vicious gangs, an opioid epidemic, threats from terrorism, combined with a culture in which family and discipline seem to be eroding further and a disturbing disrespect for the rule of law.

After decreasing for nearly 20 years because of the hard but necessary work our country started in the 1980s, violent crime is back with a vengeance. In 2016, the nationwide homicide rate increased by another 7.9 percent, resulting in a total surge of more than 20 percent since 2014. Not a little

matter.

As homicide deaths have gone up, drug overdose deaths have gone up even faster. Preliminary data show that more than 60,000 Americans died from drug overdoses in 2016.

Not only is that the highest drug-related death toll in our history, but it is also the fastest increase in drug deaths we've ever seen. That's more than the population of Midwest City dead in just one year. For Americans under the age of 50, drug overdoses are now the leading cause of death.

Oklahoma isn't immune to these problems. This wonderful state suffered a 40 percent increase in murders between 2014 and 2016, and the number of drug overdose deaths has surged by more than 67 percent in the last decade.

And yet, despite the national surge in violent crime and the record number of drug deaths over the last two years, there is a move to even lighter sentences. We must be careful here. Federal prison population is down 15 percent - the average sentence is down 19 percent. Crime is up.

Sometimes it is prudent to review sentences and determine if some might be too harsh or too light. For example, I led the effort with my then-colleague Senator Durbin to reduce the sentencing disparity between crack and powder cocaine from 100 to 1 all the way down to 18 to 1. That was the right thing to do.

But I'm afraid we don't have a sentencing problem; we have a crime problem. If we want to bring down our prison population then we should bring down crime.

So what should we do? What has been proven to work?

In 1984 I had been a federal prosecutor for six years when Congress passed the Sentencing Reform Act. This law instituted mandatory minimum sentences, sentencing guidelines, truth in sentencing, and ended federal parole. I was a prosecutor before this law, and I was a prosecutor after it went into effect. It's clear to me that it worked. We saw crime rates cut in half, neighborhoods revitalized, and general law and order restored on our streets.

Why did it work? Most people obey the law. They have no desire to inflict violence on their neighbors or traffick deadly drugs to suffering addicts. They want to be safe. No, most crimes are committed by a relatively few number of criminals. Putting them behind bars makes us safer.

Experienced law enforcement officers like you understand that.

You are the thin blue line that stands between law-abiding people and criminals. You protect our families, our communities, and our country from drugs and violence. Every American benefits from that work, and the vast majority of our country appreciates what you do.

But some would undermine this support by portraying law enforcement officers as the enemy.

But we've seen a shocking and unacceptable level of violence toward police officers in this country.

Earlier this week, the FBI released its annual report on violence against police officers. The report showed a more than 60 percent increase last year in the number of officers feloniously killed in the line of duty. It also shows a 14 percent increase in the number of officers assaulted on duty. According to the report, 150 officers were assaulted every day on average last year.

Sadly, the violence has continued. In August, six officers were shot across the country in a single night. Just a few weeks before, Officer Miosotis Familia, a 12-year veteran of the NYPD and mother of three, was gunned down in cold blood by an assassin while sitting in her police van. She was just doing her job.

Oklahoma has already lost five law enforcement officers this year. Officer Justin Terney of the Tecumseh Police Department lost his life after being shot during a routine traffic stop. Deputy Sheriff David Wade from the Logan County Sheriff's Office was serving an eviction notice when a man opened fire on him.

We also remember Corporal Stephen Jenkins of the Oklahoma Department of Corrections, Officer Nathan Graves of the Sac and Fox Nation Police, and Lieutenant Heath Meyer of the Oklahoma Highway Patrol, who also lost their lives on duty this year.

We pray for our lost brothers and sisters, we do all we can to support their grieving family and friends, and we vow to do all in our power to further our resolve to protect, respect, and preserve law enforcement.

At Officer Familia's funeral, NYPD Commissioner James O'Neill said it well: "cops are regular people who believe in the possibility of making this a safer world. That's why we run toward danger, when others run away."

You deserve the support and respect of every American, and I'm here today on behalf of President Trump and the Department of Justice to say thank you. I am proud to stand with you. The Department of Justice is proud to stand with you. We have your back. We understand one thing, criminals are the problem, law officers are the solution.

And this President stands with you not just rhetorically but in thought, word, and deed.

President Trump sent the Department of Justice three executive orders after I was sworn in. He sent us the 'back the blue' order to support our law enforcement at all levels. The second made it our objective to "reduce crime" across the country. And the third requires us to dismantle transnational criminal organizations. We embrace those charges.

And when we fulfill his first order by supporting you we also fulfill our second order reducing crime.

In order to fulfill these important goals set by our President, I changed the charging policy for our federal prosecutors, trusting them once again and directing them to once again charge the most serious, readily provable offense.

Further, I ordered our prosecutors to focus on taking illegal guns off of our streets. Since then, we have seen a 23 percent increase in the number of criminals charged with unlawful possession of a firearm. That makes all of us safer especially law enforcement officers conducting searches and arrests and going into dangerous situations.

Since the beginning of the year, the Department has secured convictions against more than 1,200 members of gangs, cartels, and their subsidiaries.

We know that you are our strongest ally, our greatest resource, and you deserve our support.

That's why, in July, we reinstituted our equitable sharing program: so that criminals will not be permitted to profit from their crimes. As you know well, civil asset forfeiture is a key tool that helps law enforcement defund organized crime, take back ill-gotten gains, and prevent new crimes from being committed. It weakens the criminals and the cartels. Civil asset forfeiture takes the material support of the criminals and instead makes it the material support of law enforcement. In departments across this country, funds that were once used to take lives are now being used to save lives.

For this program to be effective we need public confidence; we need a strong leadership tone and closer coordination of forfeiture activities at all levels of the Department. That's why, earlier this week, I directed Deputy Attorney General Rosenstein to appoint a Director of Asset Forfeiture Accountability to oversee all aspects of the Department's asset forfeiture program to ensure no errors or overreach.

I want this director to begin work immediately on priority initiatives and recommendations like modernizing the National Asset Forfeiture Strategic Plan, updating the Asset Forfeiture Program's policy guidance and implementing a simpler reporting structure.

I believe it is important to have senior level accountability in the Department of the day-to-day workings of the asset forfeiture program as well as senior-level authority to ensure that this program continues in an accountable and responsible way to help law enforcement officers do their jobs.

Helping law enforcement do their jobs, helping the police get better, and celebrating the noble, honorable, essential and challenging work of our law enforcement communities will always be a top priority of President Trump and this Department of Justice. We will always seek to affirm the critical and historic role of sheriffs in our society and we will not participate in anything that would give the slightest comfort to radicals who promote agendas that preach hostility rather than respect for police.

And so, once again, I want to thank you all for answering the call to serve and protect our country.

We have your back and you have our thanks.

Thank you, and God bless you.

#

AG

17-1166

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Prior, Ian (OPA)

From: Prior, Ian (OPA)
Sent: Thursday, October 19, 2017 10:22 AM
To: Singman, Brooke
Cc: O'Malley, Devin (OPA)
Subject: RE: New Day (CNN) – Sen. Dick Durbin (AG Sessions Testimony)

“The Department of Justice wants nothing more than for local jurisdictions to comply with federal immigration law. If Senator Durbin is in agreement with that, we encourage him to share his thoughts with the City of Chicago.”

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Singman, Brooke [mailto:brooke.singman@FOXNEWS.COM]
Sent: Thursday, October 19, 2017 9:42 AM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Cc: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: RE: New Day (CNN) Sen. Dick Durbin (AG Sessions Testimony)

Thank you!
Will take a look.

Any comment on this, in the meantime?

From: Prior, Ian (OPA) [mailto:ian.prior@usdoj.gov]
Sent: Thursday, October 19, 2017 9:39 AM
To: Singman, Brooke <brooke.singman@FOXNEWS.COM>
Cc: O'Malley, Devin (OPA) <Devin.O'Malley@usdoj.gov>
Subject: FW: New Day (CNN) Sen. Dick Durbin (AG Sessions Testimony)

Did Durbin just say that Chicago should comply with ICE detainer requests?

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Comms Alert <CommsAlert@gop.com>

Sent: Thursday, October 19, 2017 8:45:33 AM

Subject: New Day (CNN) Sen. Dick Durbin (AG Sessions Testimony)

New Day (CNN) – Sen. Dick Durbin (AG Sessions Testimony)

<http://mms.tveyes.com/transcript.asp?>

[StationID=100&DateTime=10/19/2017%208:34:12%20AM&playclip=true](http://mms.tveyes.com/transcript.asp?StationID=100&DateTime=10/19/2017%208:34:12%20AM&playclip=true)

ALISYN CAMEROTA: joining us now is senator dick durbin. was that a satisfying experience of interviewing did you get what you wanted?

SEN. DICK DURBIN: of course not. if i thought sessions was sitting there instead of attorney general sessions. i asked the attorney general, did you have any conversation with the attorney general of the state of texas before you made the decision to repeal the daca program. that was not an executive privilege issue, but he refused to answer. he said that was part of my work product. what is he talking about? everything we are discussing was part of his work product as attorney general. he really dodged a lot of questions yesterday.

CAMEROTA: what do you do about that?

SEN. DURBIN: nothing can you do. let the american people be the judge, and if he is concealing what people think they should know -- and this was his first visit as attorney general.

CAMEROTA: one of the things he did disclose interestingly was when asked whether or not the u.s. is doing enough to stop russian meddling, and he did not call it a hoax as his boss sometimes does, he said, no, he doesn't think the u.s. has its arms around this problem because it's so complicated. what do you take away from that?

SEN. DURBIN: i take the evidence accumulated about the involvement of the russians in the last campaign makes it a point now that nobody is debating. there was a moment, i guess, that certain people, including the president were in full denial that the russians had anything to do with the last election, and finally it reaches a point where you can't ignore the evidence. they are actively engaged in trying to undermine the election procedures, and what they did in the last campaign can be minor league compared to what they can do in the future. certainly no impact on actual votes casts.

CAMEROTA: what about the fact that the attorney general doesn't know what to do about it, and thinks it's such a complicated issue and doesn't know how to prevent future?

SEN. DURBIN: when the number one law enforcement person in america throws his hands up and says i am not sure which way to turn, that's a cause for concern. starting with the intelligence agencies and the department of justice start coming forward with initiatives that will deal with it. for example, this is a small but important thing. john mccain has joined others in this effort to try and make sure there's a disclosure when people buy ads online as to the course of the ads. we do it when it comes to radio, tv, print, and why wouldn't we do it on social media. if the russians are buying ads, the american people have a right to know it.

CAMEROTA: there are federal funds and whether or not they should go to chicago, say, to fight crime in

chicago. as you know, there's a push by the trump white house to keep federal funds to going from cities like chicago that declare themselves sanctuary cities. let me play a moment of this for the viewers.

SEN. DURBIN (CLIP): you want to cut off federal funds for the city and come here and criticize the murder rate.

AG JEFF SESSIONS (CLIP): i have increased the number of atf agents to prosecute gun crimes in chicago by 12, which is more than any other city, i believe. i do not want to not have grants go to chicago, but we need their support. when somebody is arrested in the jail that's due to be deported we ask that they call us.

CAMEROTA: what about his argument there, senator? he's saying that when somebody is already in jail, an undocumented immigrant, why wouldn't local law enforcement be able to call i.c.e. or the feds to be able to deport the person in jail?

SEN. DURBIN: there's nothing stopping the immigration authorities from coming forward and working with law enforcement authorities in chicago with the proper legal approach. the fear we have and the concern we have are trying to take this responsibility of immigration policing and giving it to the chicago police. our superintendent said this is not the result of undocumented immigrants. when it comes to the issue i am afraid the attorney general thinks every issue is about undocumented people in the country. this is not. this is an issue where he is cutting off federal funds that we need in chicago to fight the murders and gun violence taking place on the streets, and we need his cooperation and not his efforts to stop us.

CAMEROTA: just on the one specific point that he was making about once somebody is in jail for committing a crime of some kind, can the locals turn them over to i.c.e.? on that, you are -- he seems to be saying that they are not doing that right now, and so you are saying you would not disagree with them, the chicago locals being able to do that?

SEN. DURBIN: the i.c.e. officers know what the legal options are. they can't just generally say tell us everybody with a hispanic surname so we can run a background check and see if somebody is undocumented. if they have the legal documents to prove that this individual has violated our immigration laws, so be it. we will comply with it. this notion we are going to turn the chicago police department into a branch of the immigration services, it's not going to happen. and leaders say it will have a reverse effect. people will be reluctant to work with the police department in the solution of solving crime.

CAMEROTA: what will happen with the funds?

SEN. DURBIN: i don't know. the attorney general is trying to stop us and we are in court fighting him. we qualify for the funds but need them to fight gun violence and the attorney not stand in the way.

CAMEROTA: dick durbin, thank you for bg on "new day."

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Nestande, Francesca

From: Nestande, Francesca
Sent: Wednesday, October 18, 2017 4:07 PM
To: Flores, Sarah Isgur (OPA)
Subject: RE: Hannity Request For Comment

Thank you!!

From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Wednesday, October 18, 2017 4:04 PM
To: Nestande, Francesca <Francesca.Nestande@FOXNEWS.COM>
Subject: RE: Hannity Request For Comment

Per longstanding Department policy, we don't comment on the existence or course of investigations.

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Nestande, Francesca [mailto:Francesca.Nestande@FOXNEWS.COM]
Sent: Wednesday, October 18, 2017 4:01 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: RE: Hannity Request For Comment

Do they have any comment or plan to investigate/ talk to Assange?

From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Wednesday, October 18, 2017 4:01 PM
To: Nestande, Francesca <Francesca.Nestande@FOXNEWS.COM>
Subject: RE: Hannity Request For Comment

Is there a specific question?

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Nestande, Francesca [mailto:Francesca.Nestande@FOXNEWS.COM]
Sent: Wednesday, October 18, 2017 3:26 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: RE: Hannity Request For Comment

Copy- we are hoping Mr. Andrew McCabe and Mr. Rod Rosenstein can each give a comment to the story below.

We are taping at 5P ET so a comment by 430P ET would be appreciated.

<http://thehill.com/policy/national-security/355749-fbi-uncovered-russian-bribery-plot-before-obama-administration>

Thank you,
Francesca

From: Flores, Sarah Isgur (OPA) [<mailto:Sarah.Isgur.Flores@usdoj.gov>]
Sent: Wednesday, October 18, 2017 3:25 PM
To: Nestande, Francesca <Francesca.Nestande@FOXNEWS.COM>
Subject: Re: Hannity Request For Comment

Yes I am. Peter works for special counsel and no longer has that email. What's the question?

On Oct 18, 2017, at 3:01 PM, Nestande, Francesca <Francesca.Nestande@FOXNEWS.COM> wrote:

Hi all- Circling back on the note below to see if someone can help me with this looking for an answer ASAP.

From: Nestande, Francesca
Sent: Wednesday, October 18, 2017 11:01 AM
To: 'Sarah.Isgur.Flores@usdoj.gov' <Sarah.Isgur.Flores@usdoj.gov>
Subject: Hannity Request For Comment

Hi Sarah- I need to request a comment from Rod Rosenstein. Are you the correct person to put this request into?

Thanks!
Francesca

Francesca Nestande •Hannity • Fox News Channel

1211 AVENUE OF THE AMERICAS | 18th FL • NEW YORK, NY 10036 • (W (b) (6) • (C (b) (6)

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From: Prior, Ian (OPA)
Sent: Wednesday, October 18, 2017 4:02 PM
To: Ian Mason
Subject: this could be big

Take a look at this exchange that no one is reporting it seems to indicate that Grassley and Feinstein have been briefed on something that would completely push back on Franken's narrative about meeting with Russia, but can't disclose

Could be a good story/headline

thank you. >> i want to say something center for -- something senator feinstein and i know. he provided some specific information, i think would result senator franken's concerns about the attorney general. we are not at liberty to say something given to us in secured briefing. after the briefing, the ranking member and i wrote to the fbi and requested the fbi give the full committee, alternative members of this committee, to know what the two of us over the briefing. the fbi did not do that. now that we have conflicts could have been avoided if the fbi would have been more transparent with the oversight of this committee. we will adjourn now -- >> a senator has not have an opportunity. sen. grassley: to have not, i announced -- for the benefit of sessions.

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Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cell (b) (6)

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From: Prior, Ian (OPA)
Sent: Wednesday, October 18, 2017 3:59 PM
To: Jake Gibson
Subject: here is the exchange

thank you. >> i want to say something center for -- something senator feinstein and i know. he provided some specific information, i think would result senator franken's concerns about the attorney general. we are not at liberty to say something given to us in secured briefing. after the briefing, the ranking member and i wrote to the fbi and requested the fbi give the full committee, alternative members of this committee, to know what the two of us over the briefing. the fbi did not do that. now that we have conflicts could have been avoided if the fbi would have been more transparent with the oversight of this committee. we will adjourn now -- >> a senator has not have an opportunity. sen. grassley: to have not, i announced -- for the benefit of sessions.

http://mms.tveyes.com/PlaybackPortal.aspx?SavedEditID_78ad4a12-2a1e-47a7-a9ea-5256edf18056

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cell (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Murray, Andrew <Andrew.Murray@FOXNEWS.COM>
Sent: Wednesday, October 18, 2017 3:58 PM
To: Flores, Sarah Isgur (OPA)
Subject: RE: Attorney General Sessions Available for "Fox & Friends" tomorrow (Thursday)?

Sounds good.

From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Wednesday, October 18, 2017 3:59 PM
To: Murray, Andrew <Andrew.Murray@FOXNEWS.COM>
Subject: RE: Attorney General Sessions Available for "Fox & Friends" tomorrow (Thursday)?

I'd love to normally—but I'm traveling with him this week (we leave early in the am). Next time?

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Murray, Andrew [mailto:Andrew.Murray@FOXNEWS.COM]
Sent: Wednesday, October 18, 2017 3:27 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: RE: Attorney General Sessions Available for "Fox & Friends" tomorrow (Thursday)?

Would you be interested in appearing on the show in his place?

From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Wednesday, October 18, 2017 3:26 PM
To: Murray, Andrew <Andrew.Murray@FOXNEWS.COM>
Subject: Re: Attorney General Sessions Available for "Fox & Friends" tomorrow (Thursday)?

We'll pass. Thanks!

On Oct 18, 2017, at 11:29 AM, Murray, Andrew <Andrew.Murray@FOXNEWS.COM> wrote:

Hi Sarah,

Please let us know if Attorney General Sessions is available to appear on "Fox & Friends" tomorrow (Thursday) morning to discuss the Senate hearing today.

Thanks in advance,

Andrew Murray
Producer, Politics
"Fox & Friends"
Fox News Channel
1211 Avenue of the Americas, 2nd Floor
New York, NY 10036

Office (b) (6)
Cell # (b) (6)
Cell # (b) (6)
FAX: (212) 301-3421
Email: andrew.murray@foxnews.com
@andrewmurray1

From: Murray, Andrew
Sent: Thursday, September 21, 2017 12:02 AM
To: Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov>
Cc: Fleming, Taylor <Taylor.Fleming@FOXNEWS.COM>; Hadden, Gavin <Gavin.Hadden@FOXNEWS.COM>
Subject: Attorney General Sessions

Hi Sarah,

I will be out of the office for the next few weeks, if the Attorney General does have time for us during that time, please let producer Taylor Fleming know.

Thanks in advance,

Andrew Murray
Producer, Politics
"Fox & Friends"
Fox News Channel
[1211 Avenue of the Americas, 2nd Floor](#)
[New York, NY 10036](#)
Office (b) (6)
Cell # (b) (6)
Cell # (b) (6)
FAX: [\(212\) 301-3421](tel:(212)301-3421)
Email: andrew.murray@foxnews.com
@andrewmurray1

On Sep 5, 2017, at 10:09 AM, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

I'll get back to y'all later today

On Sep 5, 2017, at 9:45 AM, Murray, Andrew <Andrew.Murray@FOXNEWS.COM> wrote:

Hi Sarah,

Please let us know if we can schedule Attorney General Sessions to appear on "Fox & Friends" tomorrow (Wednesday) for a LIVE 5-7 minute discussion on DACA between 6am -9am ET.

Thanks in advance,

Andrew Murray
Producer, Politics
"Fox & Friends"
Fox News Channel
1211 Avenue of the Americas, 2nd Floor
New York, NY 10036
Office (b) (6)
Cell # (b) (6)
Cell # (b) (6)
FAX: (212) 301-3421
Email: andrew.murray@foxnews.com
@andrewmurray1

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Neil Munro

From: Neil Munro
Sent: Wednesday, October 18, 2017 2:27 PM
To: Prior, Ian (OPA)
Subject: Re: Good fact-checking on hearings. I'll use the transgender material...

Thanks

On Oct 18, 2017, at 2:23 PM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

Will do, thx.

FYI the Zarda stuff is sexual orientation, not transgender.

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Neil Munro [<mailto:nmunro@breitbart.com>]
Sent: Wednesday, October 18, 2017 2:13 PM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: Good fact-checking on hearings. I'll use the transgender material...

Ian,

I cover the immigration and transgender beats for Breitbart, while Ian leads coverage from the DoJ.

That means there is some overlap.

But if you guys want to talk about transgender developments, please also call me.

https://www.google.com/search?source=hp&q=site%3Abreitbart.com+munro+transgender+&oq=site%3Abreitbart.com+munro+transgender+&gs_l=psy-ab.12...1056.10880.0.13410.40.30.0.0.0.266.3587.0j21j3.24.0....0...1.1.64.psy-ab..16.3.497.0..0j35i39k1j0i131k1j0i20i264k1.0.goFf-OZdODY

Thanks,

Neil Munro
Breitbart

(b) (6)

Ian Mason

From: Ian Mason
Sent: Wednesday, October 18, 2017 2:05 PM
To: Prior, Ian (OPA)
Subject: RE: any interest in doing a story about Dems embarrassing themselves at oversight hearing? Have 4-5 examples

OK 1 and 4 I've got covered. I'll try and get someone on 3.

Original Message

From: "Prior, Ian (OPA)" <Ian.Prior@usdoj.gov>
Sent: Wednesday, October 18, 2017 2:04pm
To: "Ian Mason" <imason@breitbart.com>
Subject: RE: any interest in doing a story about Dems embarrassing themselves at oversight hearing? Have 4 5 examples

1. Blumenthal claiming special counsel requested interview not true (here is transcript of the back and forth http://mms.tveyes.com/transcript.asp?StationID_180&DateTime_10/18/2017%2013:27:36%20PM&playclip_true)
2. Attached Whitehouse complains about letters not getting responses to letters. We have responded to 9 out of 15 letters and 3 of the 9 letters he referenced.
3. Feinstein claimed we switched position on the Zarda case not true. The last admin also filed motions recognizes that Title VII did not protect sexual orientation (attached)
4. Franken claimed we couldn't comment on the truth of that 7/21 WAPO story. Not true I sent that around earlier.

Feel free to reference how DOJ was batting back these claims with real time fact checking showing they were wrong

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Ian Mason [mailto:imason@breitbart.com]
Sent: Wednesday, October 18, 2017 1:57 PM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: RE: any interest in doing a story about Dems embarrassing themselves at oversight hearing? Have 4-5 examples

About to file one on Russia stuff generally. Then do one specifically on the Mueller situation. Which are these?

And yes, up for any examples.

Original Message

From: "Prior, Ian (OPA)" <Ian.Prior@usdoj.gov>
Sent: Wednesday, October 18, 2017 1:50pm
To: "Ian Mason" <imason@breitbart.com>
Subject: any interest in doing a story about Dems embarrassing themselves at oversight hearing? Have 4 5 examples

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice

Office: 202.616.0911

Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

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

)	
PETER J. TERVEER,)	
)	Civil Action No. 12-1290 (CKK)
Plaintiff,)	
)	ECF
v.)	
)	
JAMES H. BILLINGTON, Librarian,)	
Library of Congress,)	
)	
Defendant.)	
)	

DEFENDANT’S RENEWED MOTION TO DISMISS

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendant James H. Billington, Librarian, Library of Congress (“Library”), by and through undersigned counsel, respectfully moves to dismiss the above-captioned case for lack of subject matter jurisdiction and for failure to state a claim. Plaintiff Peter J. TerVeer brings this action pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C § 2000e, *et seq.*; the Due Process and Equal Protection Clauses of the Fifth Amendment of the United States Constitution; the Library of Congress Act, 2 U.S.C. § 140; and the Library’s regulations and policies regarding non-discrimination and the prevention of harassment. Plaintiff’s Complaint should be dismissed in its entirety with prejudice for the following reasons:¹

¹ The Court may consider each of the documents attached to this motion in deciding the motion to dismiss, and without converting it to a motion for summary judgment, because each document is either incorporated by reference in the Complaint, or is a Library of Congress regulation. A court may consider “the facts alleged in the complaint, documents attached as exhibits or incorporated by reference in the complaint,” as well as “documents upon which the plaintiff’s complaint necessarily relies even if the document is produced not by the plaintiff in the complaint but by the defendant in a motion to dismiss.” *Ward v. D.C. Dep’t of Youth Rehab. Servs.*, 768 F. Supp. 2d 117, 119 (D.D.C. 2011) (internal quotations and citations omitted). It is

Gibson, Jake

From: Gibson, Jake
Sent: Wednesday, October 18, 2017 1:45 PM
To: Prior, Ian (OPA)
Cc: Flores, Sarah Isgur (OPA)
Subject: Re: Sen. Blumenthal's claim that special counsel has reached out to DOJ to interview AG

Copy

On Oct 18, 2017, at 1:39 PM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

Not true.

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Ce (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

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Ehrsam, Lauren (OPA)

From: Ehrsam, Lauren (OPA)
Sent: Wednesday, October 18, 2017 11:03 AM
To: Ksiazek, Whitney
Cc: Sutton, Sarah E. (OPA)
Subject: RE: Crew v. Trump

Brett Shumate is arguing. Thank you!

From: Navas, Nicole (OPA)
Sent: Wednesday, October 18, 2017 10:50 AM
To: Ksiazek, Whitney <Whitney.Ksiazek@FOXNEWS.COM>
Cc: Ehrsam, Lauren (OPA) <lehrsam@jmd.usdoj.gov>
Subject: Re: Crew v. Trump

Hi Whitney,
Added my colleague to advise as I am no longer handling Civil Division matters. I am now assigned the Department's Criminal Division.

Thank you,

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)
(b) (6) (cell)
Nicole.Navas@usdoj.gov

On Oct 18, 2017, at 10:09 AM, Ksiazek, Whitney <Whitney.Ksiazek@FOXNEWS.COM> wrote:

Hello,
Do you happen to know who from DOJ is representing Trump in the emoluments case in SDNY court today?

Whitney Ksiazek
Field Producer
Fox News Channel
(b) (6)

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taken to have been sent or endorsed by either of them. No representation is made that this email or its attachments are without defect.

Gibson, Jake

From: Gibson, Jake
Sent: Wednesday, October 18, 2017 10:20 AM
To: Prior, Ian (OPA)
Subject: Re: Department of Justice Statement on District Court of Hawaii's Ruling in State of Hawaii, et. al v. Donald Trump

Copy that

Sent from my iPhone

On Oct 18, 2017, at 10:14 AM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

Still evaluating options

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

On Oct 18, 2017, at 10:13 AM, Gibson, Jake <Jake.Gibson@FOXNEWS.COM> wrote:

Okay...

Is the DOJ planning to ask the Supreme Court for an expedited review of Judge Watson's decision on the travel ban, or will the government pursue the normal appeals process through the 9th Circuit?

On Oct 18, 2017, at 9:26 AM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

Same statement applies

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Gibson, Jake [<mailto:Jake.Gibson@FOXNEWS.COM>]
Sent: Wednesday, October 18, 2017 9:23 AM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: Re: Department of Justice Statement on District Court of Hawaii's Ruling in State of Hawaii, et. al v. Donald Trump

Another one...

Second judge rules against latest travel ban, saying Trump's own words show it was aimed at Muslims

A federal judge in Maryland early Wednesday issued a second halt on the latest version of President Trump's travel ban, asserting that the president's own comments on the campaign trail and on Twitter convinced him that the directive was akin to an unconstitutional Muslim ban.

U.S. District Judge Theodore D. Chuang issued a somewhat less complete halt on the ban than his counterpart in Hawaii did a day earlier, blocking the administration from enforcing the directive only on those who lacked a "bona fide" relationship with a person or entity in the U.S., such as family members or some type of professional or other engagement in the United States.

Sent from my iPhone

On Oct 17, 2017, at 4:08 PM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

Attributable to me:

"Today's ruling is incorrect, fails to properly respect the separation of powers, and has the potential to cause serious negative consequences for our national security. The Department of Justice will appeal in an expeditious manner, continue to fight for the implementation of the President's order, and exercise our duties to protect the American people."

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

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Gibson, Jake

From: Gibson, Jake
Sent: Tuesday, October 17, 2017 3:23 PM
To: Flores, Sarah Isgur (OPA); Prior, Ian (OPA)
Subject: DOJ reax?

HAWAII BLOCKS THIRD TRUMP TRAVEL BAN

HONOLULU – Today federal district Judge Derrick K. Watson ordered a nationwide injunction against President Donald Trump’s third travel ban. The President’s September 24, 2017 proclamation, creating an indefinite ban on travel that targeted an overwhelmingly Muslim population, was set to go into effect [at 6:01 pm HST today](#).

Attorney General Doug Chin issued the following statement: “This is the third time Hawaii has gone to court to stop President Trump from issuing a travel ban that discriminates against people based on their nation of origin or religion. Today is another victory for the rule of law. We stand ready to defend it.”

Today’s order provides in part:

Professional athletes mirror the federal government in this respect: they operate within a set of rules, and when one among them forsakes those rules in favor of his own, problems ensue. And so it goes with EO-3.

*

EO-3 suffers from precisely the same maladies as its predecessor: it lacks sufficient findings that the entry of more than 150 million nationals from six specified countries would be “detrimental to the interests of the United States” ... [a]nd EO-3 plainly discriminates based on nationality.

*

By indefinitely and categorically suspending immigration from the six countries challenged by Plaintiffs, EO-3... like its predecessor, thus “runs afoul” of the INA provision “that prohibit[s] nationality-based discrimination” in the issuance of immigrant visas.

*

National security and the protection of our borders is unquestionably also of significant public interest. Although national security interests are legitimate objectives of the highest order, they cannot justify the public’s harms when the President has wielded his authority unlawfully. In carefully weighing the harms, the equities tip in Plaintiffs’ favor. “The public interest is served by ‘curtailing unlawful executive action.’

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Lajeunesse, William

From: Lajeunesse, William
Sent: Tuesday, October 17, 2017 1:13 PM
To: O'Malley, Devin (OPA)
Cc: Lajeunesse, William
Subject: Devin - two things

Devin,

Hey – can you give me any color / detail on how the capture of Brian Terry's fugitive / killer went in Mexico? All I was told it was in Chihuahua.

Extradition could take how long?

Finally, on a related note, what is AG Sessions doing about the long standing request from the House Oversight Committee for documents over which President Obama claimed executive privilege? As you may know, some members of the Terry family believe this new Republican administration should live up to the promise of President Trump to get them the answers they seek and reveal how high up, and how deep knowledge of the operation went.

I believe former Oversight chairman Jason Chaffetz said Attorney General Sessions told him he was 'not going to pursue' the Fast and Furious matter.

Can you clarify?

Thx – LMK what you can help me with.
William La Jeunesse
Fox News Channel
National Correspondent
Los Angeles Bureau

(b) (6)

(b) (6)

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Flores, Sarah Isgur (OPA)

From: Flores, Sarah Isgur (OPA)
Sent: Tuesday, October 17, 2017 8:03 AM
To: Spinato, Eric
Subject: Re: Friday

We'll be on travel thurs-mon unfortunately

On Oct 17, 2017, at 7:06 AM, Spinato, Eric <eric.spinato@FOXNEWS.COM> wrote:

Hello, Sarah

We might be hosting our show from our DC bureau this Friday.
If we do, can AG Sessions join Maria on-set, or via remote

I look forward to hear from you

Thank you
Eric

Eric Spinato

Senior Story Editor, Fox Business Network
W 212-601-2399
C (b) (6)

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Sutton, Sarah E. (OPA)

From: Sutton, Sarah E. (OPA)
Sent: Monday, October 16, 2017 11:05 PM
To: Gibson, Jake
Cc: Press
Subject: Re: Rsvp for Tuesday am news conf

Thanks!

Sent from my iPhone

> On Oct 16, 2017, at 11:00 PM, Gibson, Jake <Jake.Gibson@FOXNEWS.COM> wrote:

>

>

> I plan on attending.

> Thanks much.

>

>

> Jake Gibson

> Fox News Washington

(b) (6)

>

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>

Sutton, Sarah E. (OPA)

From: Sutton, Sarah E. (OPA)
Sent: Monday, October 16, 2017 10:13 PM
To: (b) (6); Maltas, Mike
Cc: Press
Subject: RE: Fox News RSVP: Dep AG Rosenstein, Law Enforcement Actions announcement, Tues., Oct 17

Awesome, thanks!

From: (b) (6)
Sent: Monday, October 16, 2017 4:53 PM
To: Maltas, Mike <Mike.Maltas@FOXNEWS.COM>
Cc: Sutton, Sarah E. (OPA) <sesutton@jmd.usdoj.gov>; Press <Press@jmd.usdoj.gov>
Subject: Re: Fox News RSVP: Dep AG Rosenstein, Law Enforcement Actions announcement, Tues., Oct 17

Got it. Thanks!

(b) (6)

PHOTOJOURNALIST
FOX NEWS CHANNEL DC
(b) (6)

On Oct 16, 2017, at 4:51 PM, Maltas, Mike <Mike.Maltas@FOXNEWS.COM> wrote:

Our photog for tomorrow's event is (b) (6) (cc'd). He'll be on site and ready to setup up at 0900.

Thanks

From: Sutton, Sarah E. (OPA) [<mailto:Sarah.E.Sutton@usdoj.gov>]
Sent: Monday, October 16, 2017 2:43 PM
To: Maltas, Mike; Press
Subject: RE: Fox News RSVP: Dep AG Rosenstein, Law Enforcement Actions announcement, Tues., Oct 17

Thanks!

From: Maltas, Mike [<mailto:Mike.Maltas@FOXNEWS.COM>]
Sent: Monday, October 16, 2017 12:24 PM
To: Press <Press@jmd.usdoj.gov>; Sutton, Sarah E. (OPA) <sesutton@jmd.usdoj.gov>
Subject: Fox News RSVP: Dep AG Rosenstein, Law Enforcement Actions announcement, Tues., Oct 17

Fox News would like to RSVP to send a photog to Tuesday's event at DOJ announcing law enforcement actions. We'll send over a specific name later on this afternoon.

Thank you.

DEPUTY ATTORNEY GENERAL ROSENSTEIN AND OTHER LAW ENFORCEMENT OFFICIALS TO ANNOUNCE LAW ENFORCEMENT ACTIONS

*******MEDIA ADVISORY*******

WASHINGTON – Deputy Attorney General Rod J. Rosenstein and other law enforcement officials will hold a press conference **TUESDAY, OCTOBER 17, 2017 at 10:00 a.m. EDT** to announce a major milestone to stop deadly fentanyl and other opiate substances from entering the United States.

WHO:

Deputy Attorney General Rod J. Rosenstein
Acting Assistant Attorney General Kenneth A. Blanco of the Criminal Division
Acting DEA Administrator Robert W. Patterson
Acting ICE Deputy Director Peter T. Edge
Representative of the Royal Canadian Mounted Police
U.S. Attorney Christopher C. Myers for the District of North Dakota
U.S. Attorney D. Michael Hurst Jr. for the Southern District of Mississippi
U.S. Attorney Billy J. Williams for the District of Oregon

WHEN:

TUESDAY, OCTOBER 17, 2017
10:00 a.m. EDT

WHERE:

Department of Justice
Seventh Floor Conference Room
950 Pennsylvania Ave, NW
Washington, DC 20530

OPEN PRESS

NOTE: Please RSVP to press@usdoj.gov and Sarah Sutton at sarah.e.sutton@usdoj.gov. **All media must present a government-issued photo I.D. (such as a driver's license) as well as valid media credentials.** Media must enter the building at the visitor's entrance on Constitution Avenue between Ninth and Tenth Streets. Media may begin arriving as early as 9:00 a.m. EDT and cameras must be pre set by 9:45 a.m. EDT. This announcement will be **LIVESTREAMED** at [justice.gov/live](https://www.justice.gov/live). Questions regarding logistics should be directed to the Office of Public Affairs at 202 514 2007.

#

Mike Maltas
Fox News
400 N. Capitol St., NW
Washington, DC 20002
Offic (b) (6)
Cel (b) (6)
Mike.maltas@foxnews.com

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From: Prior, Ian (OPA)
Sent: Friday, October 13, 2017 7:35 PM
To: Ian Mason
Cc: O'Malley, Devin (OPA); Flores, Sarah Isgur (OPA)
Subject: Re: Comment on Judicial Watch FOIA

Ok thx.

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Cell (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

On Oct 13, 2017, at 7:03 PM, Ian Mason <imason@breitbart.com> wrote:

Actually Ian, no rush. Tomorrow's fine.

On Oct 13, 2017, at 6:19 PM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

Deadline?

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Cell (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

On Oct 13, 2017, at 5:15 PM, Ian Mason <imason@breitbart.com> wrote:

Hey Team,

Can I get anything on background about how typical it is for the DOJ to find more responsive documents to a FOIA after initially not finding them?

This is in light of this: <https://www.judicialwatch.org/press-room/press-releases/fbi-finds-30-pages-clinton-lynch-tarmac-meeting-documents-wants-six-weeks-turn-docs/> which I'm sure you've seen.

Does any of this indicate the FBI is "stonewalling" or "out of control?"

Thanks,
Ian Mason
Breitbart News

Ian Mason

From: Ian Mason
Sent: Friday, October 13, 2017 1:51 PM
To: Alder Reid, Lauren (EOIR)
Cc: O'Malley, Devin (OPA)
Subject: RE: Request for Otero County Processing Center Docket Records

Thanks so much Lauren. Would it possible also, for these continuances, to get the initial hearing dates, the dates on which they were continued, and the dates to which they were continued?

Original Message

From: "Alder Reid, Lauren (EOIR)" <Lauren.Alder.Reid@usdoj.gov>
Sent: Friday, October 13, 2017 1:24pm
To: "Ian Mason" <imason@breitbart.com>
Cc: "O'Malley, Devin (OPA)" <Devin.O'Malley@usdoj.gov>
Subject: RE: Request for Otero County Processing Center Docket Records

Hi Ian

Below are the numbers for IJ Denise Slavin in Otero from 09/04/17 until 09/22/17. Please let me know if we can be of additional assistance.

Best,
Lauren

48 continuances

- 6 alien released from detention
- 1 alien to file for asylum
- 11 alien to seek representation
- 1 "data entry error"
- 2 alien initiated a DHS application process
- 8 IJ completion prior to hearing
- 1 insufficient time to complete hearing
- 1 interpreter not ordered
- 2 - MC to IC
- 3 "other request"
- 2 "other operational factors"
- 9 alien/rep more time
- 1 DHS more time
- 1 supplement asylum applications

- 3 - order of removal
- 1 relief granted
- 1 voluntary departure granted

From: Ian Mason [mailto:imason@breitbart.com]
Sent: Tuesday, October 10, 2017 2:59 PM
To: Alder Reid, Lauren (EOIR) <Lauren.AlderReid@EOIR.USDOJ.GOV>
Cc: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>

Subject: RE: Request for Otero County Processing Center Docket Records

Lauren,

No worries. Really appreciate it.

Thanks again,

Ian

Original Message

From: "Alder Reid, Lauren (EOIR)" <Lauren.Alder.Reid@usdoj.gov>

Sent: Tuesday, October 10, 2017 2:54pm

To: "Ian Mason" <imason@breitbart.com>

Cc: "O'Malley, Devin (OPA)" <Devin.O'Malley@usdoj.gov>

Subject: RE: Request for Otero County Processing Center Docket Records

Hi Ian.

I am still waiting on some data, but wanted to let you know I have not forgotten about you.

Best,

Lauren

From: Ian Mason [<mailto:imason@breitbart.com>]

Sent: Friday, October 06, 2017 3:30 PM

To: Alder Reid, Lauren (EOIR) <Lauren.AlderReid@EOIR.USDOJ.GOV>

Cc: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>

Subject: RE: Request for Otero County Processing Center Docket Records

All the detailees would be good eventually but most pressing is Judge Denise Slavin from Baltimore.

Thanks again,

Ian

Original Message

From: "Alder Reid, Lauren (EOIR)" <Lauren.Alder.Reid@usdoj.gov>

Sent: Friday, October 6, 2017 3:24pm

To: "Ian Mason" <imason@breitbart.com>

Cc: "O'Malley, Devin (OPA)" <Devin.O'Malley@usdoj.gov>

Subject: RE: Request for Otero County Processing Center Docket Records

Hi again, Ian.

I am working on getting this data for you, but wanted to ask one more point for clarification because you mentioned earlier reporting and have such a specific timeframe. Are there any particular immigration judges of interest? If I narrow the scope, I can get something back to you a bit more quickly.

Best,

Lauren

From: Ian Mason [<mailto:imason@breitbart.com>]

Sent: Thursday, October 05, 2017 8:45 PM

To: Alder Reid, Lauren (EOIR) <Lauren.AlderReid@EOIR.USDOJ.GOV>

Cc: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>

Subject: Re: Request for Otero County Processing Center Docket Records

Wonderful. Thanks so much.

Original Message

From: "Alder Reid, Lauren (EOIR)" <Lauren.Alder.Reid@usdoj.gov>

Sent: Thursday, October 5, 2017 8:40pm

To: "Ian Mason" <imason@breitbart.com>
Cc: "O'Malley, Devin (OPA)" <Devin.O'Malley@usdoj.gov>
Subject: Re: Request for Otero County Processing Center Docket Records

Sure I will be back in touch when I have the data.

On Oct 5, 2017, at 8:28 PM, Ian Mason <imason@breitbart.com> wrote:

That;s correct Lauren. Thank you again.

Original Message

From: "Alder Reid, Lauren (EOIR)" <Lauren.Alder.Reid@usdoj.gov>
Sent: Thursday, October 5, 2017 7:53pm
To: "O'Malley, Devin (OPA)" <Devin.O'Malley@usdoj.gov>
Cc: "Ian Mason" <imason@breitbart.com>
Subject: Re: Request for Otero County Processing Center Docket Records

Hi Ian.

I will look into this for you and respond with the information as soon as I can.

One clarification so I can get you what you are seeking by decision type, do you mean completions, motion decisions, and other determinations?

Best,
Lauren

On Oct 5, 2017, at 7:36 PM, O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov> wrote:

Hey Ian-

I've looped in Lauren at EOIR who can help with this particular request. I'm happy to answer any follow up you have with re: to the data.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353-8763
Cel (b) (6)

From: Ian Mason [<mailto:imason@breitbart.com>]
Sent: Thursday, October 5, 2017 7:27 PM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: Request for Otero County Processing Center Docket Records

Devin,

In light of some recent reporting on the detailing of immigration judges to the southern border, I was hoping to get a few EOIR hearing records.

Specifically, I'm looking for the number of cases on the docket at the Otero County Processing Center in New Mexico for the dates Sept. 4th to Sept. 22nd of this year. If I could have these cases listed by decision type and broken down by the immigration judge to which they were assigned, that would be ideal.

Thank you very much,
Ian Mason
Breitbart News
(b) (6)

Alex Pfeiffer

From: Alex Pfeiffer
Sent: Friday, October 13, 2017 12:19 PM
To: O'Malley, Devin (OPA)
Subject: Re: ICYMI: DACA Recipient Attempts to Smuggle Illegal Aliens Across Border

thanks

On Fri, Oct 13, 2017 at 10:45 AM, O'Malley, Devin (OPA) <Devin.O'Malley@usdoj.gov> wrote:

https://www.cbp.gov/newsroom/local_media_release/laredo_sector_border_patrol_agents_arrest_juvenile_smugglers

Laredo Sector Border Patrol Agents Arrest Juvenile Smugglers

Release Date:

October 12, 2017

LAREDO, Texas On October 4, 2017, Border Patrol agents arrested a juvenile attempting to smuggle two illegal aliens. Agents at the Border Patrol Checkpoint on Interstate Highway 35 encountered a passenger vehicle at the primary inspection lane. The driver was questioned regarding his immigration status and was referred for further inspection after a Border Patrol canine alerted to the presence of concealed humans and/or narcotics. After further inspection, Border Patrol agents discovered two adult male subjects concealed in the trunk of the vehicle. An immigration inspection of the two subjects revealed that they were both from the country of Brazil. The driver, a juvenile, was identified as a National from the country of Guatemala and a recipient of the Deferred Action for Childhood Arrivals (DACA) in 2016. All subjects were processed for removal proceedings.

The second event took place on October 7, 2017, when Border Patrol agents arrested a juvenile attempting to smuggle one illegal alien. Agents at the Border Patrol Checkpoint on Interstate Highway 35 encountered a passenger vehicle at the primary inspection lane. After further inspection, Border Patrol agents discovered one adult male subject concealed in the trunk of the vehicle. An immigration inspection of the subject revealed that he was from the country of Mexico. driver, a juvenile, was identified as a National from the country of Mexico and a recipient of the Deferred Action for Childhood Arrivals (DACA). All subjects were processed for removal proceedings.

As a result of their arrests, the juvenile drivers were processed for removal proceedings as a violation of the DACA conditions.

To report suspicious activity such as alien and/or drug smuggling, contact the Laredo Sector Border Patrol toll free telephone number at [1-800-343-1994](tel:1-800-343-1994)

Devin M. O'Malley

Department of Justice

Office of Public Affairs

Office: [\(202\) 353 8763](tel:(202)3538763)

Ce (b) (6)

O'Malley, Devin (OPA)

From: O'Malley, Devin (OPA)
Sent: Friday, October 13, 2017 11:14 AM
To: Gibson, Jake
Subject: RE: Do you think there's any appetite for TV to cover this?

Don't think there's any video. Washington Times is reporting there were multiple incidents in the same week:
<https://www.washingtontimes.com/news/2017/oct/12/two-dreamers-caught-smuggling-illegal-immigrants-u/>

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353-8763
Cel (b) (6)

From: Gibson, Jake [mailto:Jake.Gibson@FOXNEWS.COM]
Sent: Friday, October 13, 2017 10:47 AM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: Re: Do you think there's any appetite for TV to cover this?

Definitely on the net.
Maybe on Fox and Friends or Hannity.

Lemme get thru this Wray speech and we can talk about it.

Any video of the incident?

On Oct 13, 2017, at 10:42 AM, O'Malley, Devin (OPA) <Devin.O'Malley@usdoj.gov> wrote:

<https://www.cbp.gov/newsroom/local-media-release/laredo-sector-border-patrol-agents-arrest-juvenile-smugglers>

Laredo Sector Border Patrol Agents Arrest Juvenile Smugglers

Release Date:
October 12, 2017

LAREDO, Texas On October 4, 2017, Border Patrol agents arrested a juvenile attempting to smuggle two illegal aliens. Agents at the Border Patrol Checkpoint on Interstate Highway 35 encountered a passenger vehicle at the primary inspection lane. The driver was questioned regarding his immigration status and was referred for further inspection after a Border Patrol canine alerted to the presence of concealed humans and/or narcotics. After further inspection, Border

Patrol agents discovered two adult male subjects concealed in the trunk of the vehicle. An immigration inspection of the two subjects revealed that they were both from the country of Brazil. The driver, a juvenile, was identified as a National from the country of Guatemala and a recipient of the Deferred Action for Childhood Arrivals (DACA) in 2016. All subjects were processed for removal proceedings.

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As a result of their arrests, the juvenile drivers were processed for removal proceedings as a violation of the DACA conditions.

To report suspicious activity such as alien and/or drug smuggling, contact the Laredo Sector Border Patrol toll free telephone number at 1-800-343-1994.

Devin M. O'Malley

Department of Justice

Office of Public Affairs

Office: (202) 353-8763

Cel (b) (6)

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O'Malley, Devin (OPA)

From: O'Malley, Devin (OPA)
Sent: Friday, October 13, 2017 10:46 AM
To: Ian Mason
Subject: ICYMI: DACA Recipient Attempts to Smuggle Illegal Aliens Across Border

https://www.cbp.gov/newsroom/local_media_release/laredo_sector_border_patrol_agents_arrest_juvenile_smugglers

Laredo Sector Border Patrol Agents Arrest Juvenile Smugglers

Release Date:

October 12, 2017

LAREDO, Texas On October 4, 2017, Border Patrol agents arrested a juvenile attempting to smuggle two illegal aliens. Agents at the Border Patrol Checkpoint on Interstate Highway 35 encountered a passenger vehicle at the primary inspection lane. The driver was questioned regarding his immigration status and was referred for further inspection after a Border Patrol canine alerted to the presence of concealed humans and/or narcotics. After further inspection, Border Patrol agents discovered two adult male subjects concealed in the trunk of the vehicle. An immigration inspection of the two subjects revealed that they were both from the country of Brazil. The driver, a juvenile, was identified as a National from the country of Guatemala and a recipient of the Deferred Action for Childhood Arrivals (DACA) in 2016. All subjects were processed for removal proceedings.

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As a result of their arrests, the juvenile drivers were processed for removal proceedings as a violation of the DACA conditions.

To report suspicious activity such as alien and/or drug smuggling, contact the Laredo Sector Border Patrol toll free telephone number at 1-800-343-1994

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Laco, Kelly (OPA)
Sent: Friday, October 13, 2017 7:52 AM
To: Nicoletti, Christofer
Cc: Decker, Jonathan; Woodhull, Lauren; Osmanski, Julie
Subject: Re: ATTORNEY GENERAL JEFF SESSIONS DELIVERS REMARKS TO THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Hi thanks so much for the quick response, I appreciate it!

Sent from my iPhone

On Oct 13, 2017, at 7:43 AM, Nicoletti, Christofer <Christofer.Nicoletti@FOXNEWS.COM> wrote:

Good Morning Kelly,

We're looking forward to having the Attorney General on we plan on discussing healthcare and immigration. The hit will be 8:30A ET.

Thank you, and we so appreciate the Attorney General making time for us this morning.

Sincerely
Chris

From: Laco, Kelly (OPA) [<mailto:Kelly.Laco@usdoj.gov>]
Sent: Friday, October 13, 2017 7:39 AM
To: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>
Cc: Woodhull, Lauren <Lauren.woodhull@FOXNEWS.COM>; Nicoletti, Christofer <Christofer.Nicoletti@FOXNEWS.COM>; Osmanski, Julie <julie.osmanski@FOXNEWS.COM>
Subject: Re: ATTORNEY GENERAL JEFF SESSIONS DELIVERS REMARKS TO THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Hi all--could you please send over this morning's topics? And the exact planned hit time for the AG?

Thanks so much!

Sent from my iPhone

On Oct 12, 2017, at 5:36 PM, Decker, Jonathan <jonathan.decker@FOXNEWS.COM> wrote:

Hey Sarah and Kelly,
I've cc'd the overnight and AM producers if you have any questions don't hesitate to ask.
Thanks again,

AM CONTACTS:

Kelly May,

She can be reached after 4AM a (b) (6) Kelly.May@foxnews.com

GreenRoom

(b) (6)

Jonathan Decker
Senior Booker, Fox and Friends
Jonathan.Decker@foxnews.com

(b) (6)

From: Flores, Sarah Isgur (OPA) [<mailto:Sarah.Isgur.Flores@usdoj.gov>]
Sent: Thursday, October 12, 2017 3:09 PM
To: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>
Subject: FW: ATTORNEY GENERAL JEFF SESSIONS DELIVERS REMARKS TO THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Can you pass along to producers as well—this was the speech today on the crisis in the asylum review system!

The [asylum] system is being gamed. The credible fear process was intended to be a lifeline for persons facing serious persecution. But it has become an easy ticket to illegal entry into the United States.

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: USDOJ-Office of Public Affairs [<mailto:USDOJ-OfficeofPublicAffairs@public.govdelivery.com>]
Sent: Thursday, October 12, 2017 10:11 AM
To: Flores, Sarah Isgur (OPA) <siflores@imd.usdoj.gov>
Subject: ATTORNEY GENERAL JEFF SESSIONS DELIVERS REMARKS TO THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW



FOR IMMEDIATE RELEASE
THURSDAY, OCTOBER 12, 2017

**ATTORNEY GENERAL JEFF SESSIONS DELIVERS REMARKS
TO THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

Falls Church, Virginia

Remarks as prepared for delivery

Thank you for that introduction, James. James has been doing a fabulous job here. He understands these issues and knows exactly why we are here today. And thank you to you all. You are at the center of the work we need to do to fix our immigration system along with our partners at Homeland Security. So thank you all for being here today.

A nation that cannot control its own borders is not a nation at all.

The immigration laws that Congress has enacted are some of the most generous in the world. Indeed, we will soon reach the highest level of non-native born Americans in our history. But again and again, we have failed to properly enforce those laws. The American people have rightly gotten frustrated as our system itself has deteriorated.

But with the election of President Trump, we have seen a significant improvement. This is very exciting because we can do so much more. It is essential that we do. And you play a key role.

And that is why I am here today. We have a crisis at our borders and we intend to fix it. A great nation cannot allow this disgrace any longer.

Though illegal border entries are down as much as 50 percent, large numbers continue to break in avoiding required screenings and entering ahead of those dutifully following the rules and waiting their turn.

It is not only inequitable, illegal, and costly, it is extremely dangerous not to know who is entering our country.

Today, it is estimated that over 11 million people in the United States are here illegally. That's more than the population of Georgia—our eighth most populous state.

How did this happen? How did we get here?

Over the last 30 years, there have been many reasons for this failure. I'd like to talk about just one—the fraud and abuse in our asylum system.

Over the years, Congress has rationally passed legislation designed to create an efficient and fair procedure to properly admit persons and expedite the removal of aliens who enter the United States illegally. Obviously, the U.S. cannot provide a jury trial every time an immigrant is caught illegally entering the country nor was it ever intended.

But also over the years, smart attorneys have exploited loopholes in the law, court rulings, and lack of resources to substantially undermine the intent of Congress.

They have been able to do so because this expedited removal contains an exception. For aliens who have an actual, legitimate fear of returning to their homeland, he or she can seek asylum.

This is an important exception. We have a generous asylum policy that is meant to protect those who, through no fault of their own, cannot co-exist in their home country no matter where they go because of persecution based on fundamental things like their religion or nationality. Unfortunately, this system is currently subject to rampant abuse and fraud. And as this system becomes overloaded with fake claims, it cannot deal effectively with just claims. The surge in trials, hearings, appeals, bond proceedings has been overwhelming.

This is how it works. The Department of Homeland Security is tasked in the first instance with evaluating whether an apprehended alien's claim of fear is credible. If DHS finds that it may be, the applicant is placed in removal proceedings and allowed to present an asylum claim to an immigration judge.

If, however, DHS finds that the alien does not have a credible fear, the alien can still get an immigration judge to review that determination. In effect, those who would otherwise be subject to expedited removal get two chances to establish that their fear is credible.

But in 2009, the previous Administration began to allow most aliens who passed an initial credible fear review to be released from custody into the United States pending a full hearing. These changes—and case law that has expanded the concept of asylum well beyond Congressional intent—created even more incentives for illegal aliens to come here and claim a fear of return.

The consequences are just what you'd expect. Claims of fear to return have skyrocketed, and the percentage of claims that are genuinely meritorious are down.

The system is being abused to the detriment of the rule of law, sound public policy, public safety, and of just claims. This, of course, undermines the system and frustrates officers who work to make dangerous arrests in remote areas. Saying a few simple words is now transforming a straightforward arrest and immediate return into a probable release and a hearing—if the alien shows for the hearing.

Here are the shocking statistics: in 2009, DHS conducted more than 5,000 credible fear reviews. By 2016, that number had increased to 94,000. The number of these aliens placed in removal proceedings went from fewer than 4,000 in 2009 to more than 73,000 by 2016—nearly a 19-fold increase—overwhelming the system and leaving those with just claims buried.

The increase has been especially pronounced and abused at the border. From 2009 to 2016, the credible fear claims at the border went from approximately 3,000 cases to more than 69,000.

All told the Executive Office for Immigration Review has over 600,000 cases pending—tripled from 2009.

And the adjudication process is broken as well. DHS found a credible fear in 88 percent of claims adjudicated. That means an alien entering the United States illegally has an 88 percent chance to avoid expedited removal simply by claiming a fear of return.

But even more telling, half of those that pass that screening—the very people who say they came here seeking asylum—never even file an asylum application once they are in the United States. This suggests they knew their asylum claims lacked merit and that their claim of fear was simply a ruse to enter the country illegally.

Not surprisingly, many of those who are released into the United States after their credible fear determination from DHS simply disappear and never show up at their immigration hearings. Last year, there were 700 percent more removal orders issued in absentia for cases that began with a credible fear claim than in 2009. In fact, removal orders issued in absentia in all immigration cases have doubled since 2012—with nearly 40,000 in the 2017 fiscal year.

The system is being gamed. The credible fear process was intended to be a lifeline for persons facing serious persecution. But it has become an easy ticket to illegal entry into the United States.

Anecdotally, we know there is significant fraud in the “credible fear” process, and much of that originates from, or is abetted by, the smugglers on which many aliens entering illegally rely. One case exemplifies this problem: Ahmed Dhakane, who pleaded guilty to two counts of making false statements on his application for asylum.

Dhakane also ran a human smuggling operation. As the Christian Science Monitor reported:

Dhakane provided false passports and other forged travel documents. In addition, according to his federal court file, he bribed Brazilian immigration officials and instructed his customers how to make false asylum claims once they arrived in the [United States].

They reported that at least five of his clients were supporters or members of Somali terror groups.

We also have dirty immigration lawyers who are encouraging their otherwise unlawfully present clients to make false claims of asylum providing them with the magic words needed to trigger the credible fear process.

In a December 2015 GAO report, it was noted that: “As of March 2014, a joint fraud investigation led by the U.S. Attorney’s Office for the Southern District of New York, resulted in charges against 30 defendants, including 8 attorneys, for their alleged participation in immigration fraud schemes.” Nearly 4,000

individuals who were connected to these attorneys and preparers have been granted asylum.

Our asylum laws are meant to protect those who because of characteristics like their race, religion, nationality, or political opinions cannot find protection in their home countries. They were never intended to provide asylum to all those who fear generalized violence, crime, personal vendettas, or a lack of job prospects. Yet, vague, insubstantial, and subjective claims have swamped our system.

Under current practice, there is no cost or risk for those who make a baseless asylum claim. There is no fee associated with an asylum application, and the applicant routinely is provided work authorization once an application has been pending at least six months, regardless of the merit of the application.

Current case law requires a court hearing on every asylum application, even if it is obviously without merit. Denying an asylum application is difficult to prove—and so it seldom happens. There is no way to reasonably investigate the claims of an asylum claimant in their own country. And flawed confidentiality provisions inhibit investigations into possible fraud schemes.

That's why there's a common, fatalistic refrain you'll hear from immigration judges and immigration enforcement that "the case isn't over until the alien wins." There are almost no costs, but potentially many rewards, for filing a meritless asylum application.

This is a compassionate country—and lawfully admits more immigrants than any country in the world. But we must recognize that our generous system is being terribly abused. As one immigration judge recently told me about the credible fear process, "any adjudicatory system with a grant rate of nearly 90 percent is inherently flawed."

The President Trump understands this is a crisis. And so do the American people.

The President promised voters he would return this country to a lawful system of immigration during his campaign and he is going to deliver. His priorities are mainstream and common sense. And—whether it's an end to sanctuary city policies or an e-verification system to ensure lawful employment—they are supported by the vast majority of Americans.

Congress must pass the legislative priorities President Trump announced this week, which included significant asylum reform, swift border returns, and enhanced interior enforcement.

We can impose and enforce penalties for baseless or fraudulent asylum applications and expand the use of expedited removal. We can elevate the threshold standard of proof in credible fear interviews. We can expand the ability to return asylum seekers to safe third countries. We can close loopholes and clarify our asylum laws to ensure that they help those they were intended to help.

We can turnaround this crisis under President Trump's leadership.

What we cannot do—what we must not do—is continue to let our generosity be abused, we cannot capitulate to lawlessness and allow the very foundation of law upon which our country depends to be further undermined.

Thank you.

#

AG

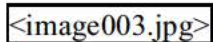
17-1141

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Decker, Jonathan

From: Decker, Jonathan
Sent: Thursday, October 12, 2017 3:09 PM
To: Flores, Sarah Isgur (OPA)
Subject: RE: ATTORNEY GENERAL JEFF SESSIONS DELIVERS REMARKS TO THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Yes will do that now.

Jonathan Decker
Senior Booker, Fox and Friends
Jonathan.Decker@foxnews.com

(b) (6)

From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Thursday, October 12, 2017 3:09 PM
To: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>
Subject: FW: ATTORNEY GENERAL JEFF SESSIONS DELIVERS REMARKS TO THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

duplicative material

Laco, Kelly (OPA)

From: Laco, Kelly (OPA)
Sent: Friday, October 13, 2017 7:51 AM
To: May, Kelly
Cc: Woodhull, Lauren; Nicoletti, Christofer; Osmanski, Julie
Subject: Re: Topics this morn

Thanks! Just heard from them.

Sent from my iPhone

> On Oct 13, 2017, at 7:44 AM, May, Kelly <Kelly.May@FOXNEWS.COM> wrote:

>

> Morning Kelly!

>

> Looping in our overnight team now.

>

> -----Original Message-----

> From: Laco, Kelly (OPA) [mailto:Kelly.Laco@usdoj.gov]

> Sent: Friday, October 13, 2017 7:27 AM

> To: May, Kelly <Kelly.May@FOXNEWS.COM>

> Subject: Topics this morn

>

> Hi Kelly--wondering if you could send over the topics for this morn and the exact hit time for the AG on F&F?

>

> Thanks!

>

> Sent from my iPhone

>

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>

Ian Mason

From: Ian Mason
Sent: Thursday, October 12, 2017 10:10 PM
To: O'Malley, Devin (OPA)
Subject: Re: Info

Wonderful. Thanks again.

> On Oct 12, 2017, at 9:44 PM, O'Malley, Devin (OPA) <Devin.O'Malley@usdoj.gov> wrote:
>
> O'Malley

O'Malley, Devin (OPA)

From: O'Malley, Devin (OPA)
Sent: Thursday, October 12, 2017 9:44 PM
To: Ian Mason
Subject: Info

Attributable to an EOIR official:

“For years, the immigration court system has failed to address systemic issues that add unnecessary time to a respondent’s case and put undue stress on the pending caseload. Every adjudicatory system has goals, benchmarks, or metrics to ensure that cases are handled in an efficient, timely manner that does not compromise due process. The Executive Office for Immigration Review already has numerous case completion goals imposed by statute or Congressional recommendation, and is developing additional benchmarks for immigration courts to assist in properly managing cases, increase productivity, and reduce the pending caseload.”

On deep background:

EOIR’s mission is to adjudicate immigration cases in a careful and timely manner; its responsibility is to provide expeditious application of the nation’s immigration laws (all of this is on EOIR website). The current average processing time for a non detained case is more than 850 days.

Off the record I think it would be nice if someone pointed out that the two sentences above don’t jive with one another.

Here is background on state court performance standards: [http://www.ncsc.org/Topics/CourtManagement/Performance Measurement/Resource Guide.aspx](http://www.ncsc.org/Topics/CourtManagement/PerformanceMeasurement/ResourceGuide.aspx)

Devin M. O’Malley

Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Spinato, Eric <eric.spinato@FOXNEWS.COM>
Sent: Thursday, October 12, 2017 5:37 PM
To: Flores, Sarah Isgur (OPA)
Subject: Do you have an idea when Maria will be able to interview AG Sessions

For either of her Fox programs?
Thank you
Eric

Sent from my iPhone

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee. If you are not the addressee indicated in this message (or responsible for delivery of the message to the addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of Fox News or Fox Business must not be taken to have been sent or endorsed by either of them. No representation is made that this email or its attachments are without defect.

Laco, Kelly (OPA)

From: Laco, Kelly (OPA)
Sent: Thursday, October 12, 2017 4:22 PM
To: Decker, Jonathan; Flores, Sarah Isgur (OPA)
Cc: Prior, Ian (OPA)
Subject: RE: tomororw will work after all

Perfect, thanks.

Kelly Laco
Office of Public Affairs
Department of Justice
Office: 202-353-0173
Cell (b) (6)

From: Decker, Jonathan [mailto:jonathan.decker@FOXNEWS.COM]
Sent: Thursday, October 12, 2017 4:17 PM
To: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Cc: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: RE: tomororw will work after all

Team is confirmed looks like just one shooter this time

(b) (6). He can be reached a (b) (6)

Jonathan Decker
Senior Booker, Fox and Friends
Jonathan.Decker@foxnews.com
(b) (6)

From: Laco, Kelly (OPA) [mailto:Kelly.Laco@usdoj.gov]
Sent: Thursday, October 12, 2017 3:43 PM
To: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>; Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov>
Cc: Prior, Ian (OPA) <Ian.Prior@usdoj.gov>
Subject: RE: tomororw will work after all

Thanks Jonathan I will just need the full names of the crew members planning to come tomorrow morning. They should arrive at our Visitor's Center on Constitution Ave NW between 9th and 10th street (with valid Gov-issued ID) between 7:30 and 7:45am tomorrow. I will pick them up from the Visitor's Center and bring them up to our 7th floor to set up ahead of the interview. Let me know if you have any questions, thanks!

Kelly Laco
Office of Public Affairs
Department of Justice
Office: 202-353-0173
Cell (b) (6)

From: Decker, Jonathan [mailto:jonathan.decker@FOXNEWS.COM]
Sent: Thursday, October 12, 2017 3:12 PM

To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Cc: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>; Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: RE: tomorrow will work after all

Great! Thank you again this is great!

Jonathan Decker
Senior Booker, Fox and Friends
Jonathan.Decker@foxnews.com

(b) (6)

From: Flores, Sarah Isgur (OPA) [<mailto:Sarah.Isgur.Flores@usdoj.gov>]
Sent: Thursday, October 12, 2017 3:12 PM
To: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>
Cc: Laco, Kelly (OPA) <Kelly.Laco@usdoj.gov>; Prior, Ian (OPA) <Ian.Prior@usdoj.gov>
Subject: RE: tomorrow will work after all

Adding Kelly from my team. We normally do these in our 7th floor press area she can get the camera crew in etc.

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Decker, Jonathan [<mailto:jonathan.decker@FOXNEWS.COM>]
Sent: Thursday, October 12, 2017 3:08 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: RE: tomorrow will work after all

Perfect confirmed for 08:30 From?

Jonathan Decker
Senior Booker, Fox and Friends
Jonathan.Decker@foxnews.com

(b) (6)

From: Flores, Sarah Isgur (OPA) [<mailto:Sarah.Isgur.Flores@usdoj.gov>]
Sent: Thursday, October 12, 2017 3:08 PM
To: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>
Subject: RE: tomorrow will work after all

Yes 830 would definitely work.

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Decker, Jonathan [<mailto:jonathan.decker@FOXNEWS.COM>]
Sent: Thursday, October 12, 2017 3:06 PM

To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>

Subject: RE: tomororw will work after all

Okay would 0830 AM work? We want to make sure we give him enough time.

Jonathan Decker

Senior Booker, Fox and Friends

Jonathan.Decker@foxnews.com

(b) (6)

From: Flores, Sarah Isgur (OPA) [<mailto:Sarah.Isgur.Flores@usdoj.gov>]

Sent: Thursday, October 12, 2017 2:54 PM

To: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>

Subject: RE: tomororw will work after all

No, the AG.

Sarah Isgur Flores

Director of Public Affairs

202.305.5808

From: Decker, Jonathan [<mailto:jonathan.decker@FOXNEWS.COM>]

Sent: Thursday, October 12, 2017 2:52 PM

To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>

Subject: RE: tomororw will work after all

GREAT! Would this be for you?

Jonathan Decker

Senior Booker, Fox and Friends

Jonathan.Decker@foxnews.com

(b) (6)

From: Flores, Sarah Isgur (OPA) [<mailto:Sarah.Isgur.Flores@usdoj.gov>]

Sent: Thursday, October 12, 2017 2:51 PM

To: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>

Subject: tomororw will work after all

But I'll need to work on a time now would 8:15am be out of the question?

Sarah Isgur Flores

Director of Public Affairs

202.305.5808

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Business must not be taken to have been sent or endorsed by either of them. No representation is made that this email or its attachments are without defect.

Flores, Sarah Isgur (OPA)

From: Flores, Sarah Isgur (OPA)
Sent: Thursday, October 12, 2017 3:07 PM
To: Decker, Jonathan
Subject: RE: tomororw will work after all

At the moment, 815 is the earliest option. I'm trying to reach the scheduler to see if I can move things...but I assume she's doing something crazy like eating lunch ha!

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Decker, Jonathan [mailto:jonathan.decker@FOXNEWS.COM]
Sent: Thursday, October 12, 2017 2:58 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: RE: tomororw will work after all

07:15 would be to early right?

Jonathan Decker
Senior Booker, Fox and Friends
Jonathan.Decker@foxnews.com

(b) (6)

From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Thursday, October 12, 2017 2:54 PM
To: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>
Subject: RE: tomororw will work after all

duplicative material

From: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>
Sent: Thursday, October 12, 2017 2:55 PM
To: Flores, Sarah Isgur (OPA)
Subject: RE: tomorow will work after all

Fantastic! Let me check right now one sec.

Jonathan Decker
Senior Booker, Fox and Friends
Jonathan.Decker@foxnews.com

(b) (6)

From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Thursday, October 12, 2017 2:54 PM
To: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>
Subject: RE: tomorow will work after all

duplicative material

mboyle

From: mboyle
Sent: Thursday, October 12, 2017 2:34 PM
To: Prior, Ian (OPA)
Cc: O'Malley, Devin (OPA); Ian Mason
Subject: Re: ATTORNEY GENERAL JEFF SESSIONS DELIVERS REMARKS TO THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Yes we do!

Sent from my iPhone

On Oct 12, 2017, at 10:35 AM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

You're the best. Still need to grab that lunch

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: mboyle [<mailto:mboyle@breitbart.com>]
Sent: Thursday, October 12, 2017 10:33 AM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Cc: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>; Ian Mason <imason@breitbart.com>
Subject: Re: ATTORNEY GENERAL JEFF SESSIONS DELIVERS REMARKS TO THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Yes ian can you do a story on it

Sent from my iPhone

On Oct 12, 2017, at 10:26 AM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

Hey were trying to get some good lift on this anything you guys can do (Drudge maybe) would be awesome!

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: USDOJ-Office of Public Affairs [<mailto:USDOJ-OfficeofPublicAffairs@public.govdelivery.com>]

Sent: Thursday, October 12, 2017 10:11 AM

To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>

Subject: ATTORNEY GENERAL JEFF SESSIONS DELIVERS REMARKS TO THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

The United States Department of Justice



FOR IMMEDIATE RELEASE
THURSDAY, OCTOBER 12, 2017

**ATTORNEY GENERAL JEFF SESSIONS DELIVERS
REMARKS TO THE EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW**

Falls Church, Virginia

Remarks as prepared for delivery

Thank you for that introduction, James. James has been doing a fabulous job here. He understands these issues and knows exactly why we are here today. And thank you to you all. You are at the center of the work we need to do to fix our immigration system along with our partners at Homeland Security. So thank you all for being here today.

A nation that cannot control its own borders is not a nation at all.

The immigration laws that Congress has enacted are some of the most generous in the world. Indeed, we will soon reach the highest level of non-native born Americans in our history. But again and again, we have failed to properly enforce those laws. The American people have rightly gotten frustrated as our system itself has deteriorated.

But with the election of President Trump, we have seen a significant improvement. This is very exciting because we can do so much more. It is essential that we do. And you play a key role.

And that is why I am here today. We have a crisis at our borders and we intend to fix it. A great nation cannot allow this disgrace any longer.

Though illegal border entries are down as much as 50 percent, large numbers continue to break in avoiding required screenings and entering ahead of those dutifully following the rules and waiting their turn.

It is not only inequitable, illegal, and costly, it is extremely dangerous not to know who is entering our country.

Today, it is estimated that over 11 million people in the United States are here illegally. That's more than the population of Georgia — our eighth most populous state.

How did this happen? How did we get here?

Over the last 30 years, there have been many reasons for this failure. I'd like to talk about just one — the fraud and abuse in our asylum system.

Over the years, Congress has rationally passed legislation designed to create an efficient and fair procedure to properly admit persons and expedite the removal of aliens who enter the United States illegally. Obviously, the U.S. cannot provide a jury trial every time an immigrant is caught illegally entering the country nor was it ever intended.

But also over the years, smart attorneys have exploited loopholes in the law, court rulings, and lack of resources to substantially undermine the intent of Congress.

They have been able to do so because this expedited removal contains an exception. For aliens who have an actual, legitimate fear of returning to their homeland, he or she can seek asylum.

This is an important exception. We have a generous asylum policy that is meant to protect those who, through no fault of their own, cannot co-exist in their home country no matter where they go because of persecution based on fundamental things like their religion or nationality. Unfortunately, this system is currently subject to rampant abuse and fraud. And as this system becomes overloaded with fake claims, it cannot deal effectively with just claims. The surge in trials, hearings, appeals, bond proceedings has been overwhelming.

This is how it works. The Department of Homeland Security is tasked in the first instance with evaluating whether an apprehended alien's claim of fear is credible. If DHS finds that it may be, the applicant is placed in removal proceedings and allowed to present an asylum claim to an immigration judge.

If, however, DHS finds that the alien does not have a credible fear, the alien can still get an immigration judge to review that determination. In effect, those who would otherwise be subject to expedited removal get two chances to establish that their fear is credible.

But in 2009, the previous Administration began to allow most aliens who passed an initial credible fear review to be released from custody into the United States pending a full hearing. These changes — and case law that

has expanded the concept of asylum well beyond Congressional intent created even more incentives for illegal aliens to come here and claim a fear of return.

The consequences are just what you'd expect. Claims of fear to return have skyrocketed, and the percentage of claims that are genuinely meritorious are down.

The system is being abused to the detriment of the rule of law, sound public policy, public safety, and of just claims. This, of course, undermines the system and frustrates officers who work to make dangerous arrests in remote areas. Saying a few simple words is now transforming a straightforward arrest and immediate return into a probable release and a hearing if the alien shows for the hearing.

Here are the shocking statistics: in 2009, DHS conducted more than 5,000 credible fear reviews. By 2016, that number had increased to 94,000. The number of these aliens placed in removal proceedings went from fewer than 4,000 in 2009 to more than 73,000 by 2016 nearly a 19-fold increase overwhelming the system and leaving those with just claims buried.

The increase has been especially pronounced and abused at the border. From 2009 to 2016, the credible fear claims at the border went from approximately 3,000 cases to more than 69,000.

All told the Executive Office for Immigration Review has over 600,000 cases pending tripled from 2009.

And the adjudication process is broken as well. DHS found a credible fear in 88 percent of claims adjudicated. That means an alien entering the United States illegally has an 88 percent chance to avoid expedited removal simply by claiming a fear of return.

But even more telling, half of those that pass that screening the very people who say they came here seeking asylum never even file an asylum application once they are in the United States. This suggests they knew their asylum claims lacked merit and that their claim of fear was simply a ruse to enter the country illegally.

Not surprisingly, many of those who are released into the United States after their credible fear determination from DHS simply disappear and never show up at their immigration hearings. Last year, there were 700 percent more removal orders issued in absentia for cases that began with a credible fear claim than in 2009. In fact, removal orders issued in absentia in all immigration cases have doubled since 2012 with nearly 40,000 in the 2017 fiscal year.

The system is being gamed. The credible fear process was intended to be a lifeline for persons facing serious persecution. But it has become an easy ticket to illegal entry into the United States.

Anecdotally, we know there is significant fraud in the "credible fear"

process, and much of that originates from, or is abetted by, the smugglers on which many aliens entering illegally rely. One case exemplifies this problem: Ahmed Dhakane, who pleaded guilty to two counts of making false statements on his application for asylum.

Dhakane also ran a human smuggling operation. As the Christian Science Monitor reported:

Dhakane provided false passports and other forged travel documents. In addition, according to his federal court file, he bribed Brazilian immigration officials and instructed his customers how to make false asylum claims once they arrived in the [United States].

They reported that at least five of his clients were supporters or members of Somali terror groups.

We also have dirty immigration lawyers who are encouraging their otherwise unlawfully present clients to make false claims of asylum providing them with the magic words needed to trigger the credible fear process.

In a December 2015 GAO report, it was noted that: “As of March 2014, a joint fraud investigation led by the U.S. Attorney's Office for the Southern District of New York, resulted in charges against 30 defendants, including 8 attorneys, for their alleged participation in immigration fraud schemes.” Nearly 4,000 individuals who were connected to these attorneys and preparers have been granted asylum.

Our asylum laws are meant to protect those who because of characteristics like their race, religion, nationality, or political opinions cannot find protection in their home countries. They were never intended to provide asylum to all those who fear generalized violence, crime, personal vendettas, or a lack of job prospects. Yet, vague, insubstantial, and subjective claims have swamped our system.

Under current practice, there is no cost or risk for those who make a baseless asylum claim. There is no fee associated with an asylum application, and the applicant routinely is provided work authorization once an application has been pending at least six months, regardless of the merit of the application.

Current case law requires a court hearing on every asylum application, even if it is obviously without merit. Denying an asylum application is difficult to prove and so it seldom happens. There is no way to reasonably investigate the claims of an asylum claimant in their own country. And flawed confidentiality provisions inhibit investigations into possible fraud schemes.

That's why there's a common, fatalistic refrain you'll hear from immigration judges and immigration enforcement that “the case isn't over until the alien wins.” There are almost no costs, but potentially many rewards, for filing a meritless asylum application.

This is a compassionate country and lawfully admits more immigrants than any country in the world. But we must recognize that our generous system is being terribly abused. As one immigration judge recently told me about the credible fear process, “any adjudicatory system with a grant rate of nearly 90 percent is inherently flawed.”

The President Trump understands this is a crisis. And so do the American people.

The President promised voters he would return this country to a lawful system of immigration during his campaign and he is going to deliver. His priorities are mainstream and common sense. And whether it’s an end to sanctuary city policies or an e-verification system to ensure lawful employment they are supported by the vast majority of Americans.

Congress must pass the legislative priorities President Trump announced this week, which included significant asylum reform, swift border returns, and enhanced interior enforcement.

We can impose and enforce penalties for baseless or fraudulent asylum applications and expand the use of expedited removal. We can elevate the threshold standard of proof in credible fear interviews. We can expand the ability to return asylum seekers to safe third countries. We can close loopholes and clarify our asylum laws to ensure that they help those they were intended to help.

We can turnaround this crisis under President Trump’s leadership.

What we cannot do what we must not do is continue to let our generosity be abused, we cannot capitulate to lawlessness and allow the very foundation of law upon which our country depends to be further undermined.

Thank you.

#

AG

17-1141

Do not reply to this message. If you have questions, please use the contacts in the message or call the Office of Public Affairs at 202-514-2007.

Follow us:    

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From: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>
Sent: Thursday, October 12, 2017 12:35 PM
To: Flores, Sarah Isgur (OPA)
Subject: RE: WH said no

Bummer so the White House said know to you all coming on? Just want to clarify for the Executive producers. That includes you? Any specific reasons? I'll reach out also.

Jonathan Decker
Senior Booker, Fox and Friends
Jonathan.Decker@foxnews.com

(b) (6)

From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Thursday, October 12, 2017 12:33 PM
To: Decker, Jonathan <jonathan.decker@FOXNEWS.COM>
Subject: WH said no

Sorry...feel free to prevail on them yourself. Regardless—we'd like to do it another time for sure.

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

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Ian Mason

From: Ian Mason
Sent: Thursday, October 12, 2017 9:57 AM
To: O'Malley, Devin (OPA)
Subject: Re: ***EMBARGOED UNTIL 10:00 am 10/12*** Remarks of Attorney General Jeff Sessions to the Executive Office for Immigration Review

Thanks very much

On Oct 12, 2017, at 9:32 AM, O'Malley, Devin (OPA) <Devin.O'Malley@usdoj.gov> wrote:

Flagging for you

Sent from my iPhone

Begin forwarded message:

From: "Prior, Ian (OPA)" <IPrior@jmd.usdoj.gov>
Date: October 12, 2017 at 9:26:31 AM EDT
To: "Prior, Ian (OPA)" <IPrior@jmd.usdoj.gov>
Subject: ***EMBARGOED UNTIL 10:00 am 10/12*** Remarks of Attorney General Jeff Sessions to the Executive Office for Immigration Review

Please see attached speech embargoed until 10:00 am today.

Thank you.

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Ce (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

<Remarks of Attorney General Jeff Sessions to the Executive Office for Immigration Review.docx>

Remarks of Attorney General Jeff Sessions to the Executive Office for Immigration Review

Washington, D.C.

October 12, 2017

Thank you for that introduction, James. James has been doing a fabulous job here. He understands these issues and knows exactly why we are here today. And thank you to you all. You are at the center of the work we need to do to fix our immigration system along with our partners at Homeland Security. So thank you all for being here today.

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Today, it is estimated that over 11 million people in the United States are here illegally. That's more than the population of Georgia — our eighth most populous state.

How did this happen? How did we get here?

Over the last 30 years, there have been many reasons for this failure. I'd like to talk about just one — the fraud and abuse in our asylum system.

Over the years, Congress has rationally passed legislation designed to create an efficient and fair procedure to properly admit persons and expedite the removal of aliens who enter the United States illegally. Obviously, the U.S. cannot provide a jury trial every time an immigrant is caught illegally entering the country nor was it ever intended.

But also over the years, smart attorneys have exploited loopholes in the law, court rulings, and lack of resources to substantially undermine the intent of Congress.

They have been able to do so because this expedited removal contains an exception. For aliens who have an actual, legitimate fear of returning to their homeland, he or she can seek asylum.

This is an important exception. We have a generous asylum policy that is meant to protect those who, through no fault of their own, cannot co-exist in their home country no matter where they go because of persecution based on fundamental things like their religion or nationality. Unfortunately, this system is currently subject to rampant abuse and fraud. And as this system becomes overloaded with fake claims, it cannot deal effectively with just claims. The surge in trials, hearings, appeals, bond proceedings has been overwhelming.

This is how it works. The Department of Homeland Security is tasked in the first instance with evaluating whether an apprehended alien's claim of fear is credible. If DHS finds that it may be, the applicant is placed in removal proceedings and allowed to present an asylum claim to an immigration judge.

If, however, DHS finds that the alien does not have a credible fear, the alien can still get an immigration judge to review that determination. In effect, those who would otherwise be subject to expedited removal get two chances to establish that their fear is credible.

But in 2009, the previous Administration began to allow most aliens who passed an initial credible fear review to be released from custody into the United States pending a full hearing. These changes and case law that has expanded the concept of asylum well beyond Congressional intent created even more incentives for illegal aliens to come here and claim a fear of return.

The consequences are just what you'd expect. Claims of fear to return have skyrocketed, and the percentage of claims that are genuinely meritorious are down.

The system is being abused to the detriment of the rule of law, sound public policy, public safety, and of just claims. This, of course, undermines the system and frustrates officers who work to make dangerous arrests in remote areas. Saying a few simple words is now transforming a straightforward arrest and immediate return into a probable release and a hearing if the alien shows for the hearing.

Here are the shocking statistics: in 2009, DHS conducted more than 5,000 credible fear reviews. By 2016, that number had increased to 94,000. The number of these aliens placed in removal proceedings went from fewer than 4,000 in 2009 to more than 73,000 by 2016 nearly a 19-fold increase overwhelming the system and leaving those with just claims buried.

The increase has been especially pronounced and abused at the border. From 2009 to 2016, the credible fear claims at the border went from approximately 3,000 cases to more than 69,000.

All told the Executive Office for Immigration Review has over 600,000 cases pending tripled from 2009.

And the adjudication process is broken as well. DHS found a credible fear in 88 percent of claims adjudicated. That means an alien entering the United States illegally has an 88 percent chance to avoid expedited removal simply by claiming a fear of return.

But even more telling, half of those that pass that screening the very people who say they came here seeking asylum never even file an asylum application once they are in the United States. This suggests they knew their asylum claims lacked merit and that their claim of fear was simply a ruse to enter the country illegally.

Not surprisingly, many of those who are released into the United States after their credible fear determination from DHS simply disappear and never show up at their immigration hearings. Last year, there were 700 percent more removal orders issued in absentia for cases that began with a credible fear claim than in 2009. In fact, removal orders issued in absentia in all immigration cases have doubled since 2012 with nearly 40,000 in the 2017 fiscal year.

The system is being gamed. The credible fear process was intended to be a lifeline for persons facing serious persecution. But it has become an easy ticket to illegal entry into the United States.

Anecdotally, we know there is significant fraud in the “credible fear” process, and much of that originates from, or is abetted by, the smugglers on which many aliens entering illegally rely. One case exemplifies this problem: Ahmed Dhakane, who pleaded guilty to two counts of making false statements on his application for asylum.

Dhakane also ran a human smuggling operation. As the Christian Science Monitor reported:

Dhakane provided false passports and other forged travel documents. In addition, according to his federal court file, he bribed Brazilian immigration officials and instructed his customers how to make false asylum claims once they arrived in the [United States].

They reported that at least five of his clients were supporters or members of Somali terror groups.

We also have dirty immigration lawyers who are encouraging their otherwise unlawfully present clients to make false claims of asylum providing them with the magic words needed to trigger the credible fear process.

In a December 2015 GAO report, it was noted that: “As of March 2014, a joint fraud investigation led by the U.S. Attorney's Office for the Southern District of New York, resulted in charges against 30 defendants, including 8 attorneys, for their alleged participation in immigration fraud schemes.” Nearly 4,000 individuals who were connected to these attorneys and preparers have been granted asylum.

Our asylum laws are meant to protect those who because of characteristics like their race, religion, nationality, or political opinions cannot find protection in their home countries. They were never intended to provide asylum to all those who fear generalized violence, crime, personal vendettas, or a lack of job prospects. Yet, vague, insubstantial, and subjective claims have swamped our system.

Under current practice, there is no cost or risk for those who make a baseless asylum claim. There is no fee associated with an asylum application, and the applicant routinely is provided work authorization once an application has been pending at least six months, regardless of the merit of the application.

Current case law requires a court hearing on every asylum application, even if it is obviously without merit. Denying an asylum application is difficult to prove and so it seldom happens. There is no way to reasonably investigate the claims of an asylum claimant in their own country. And flawed confidentiality provisions inhibit investigations into possible fraud schemes.

That's why there's a common, fatalistic refrain you'll hear from immigration judges and immigration enforcement that “the case isn't over until the alien wins.” There are almost no costs, but potentially many rewards, for filing a meritless asylum application.

This is a compassionate country and lawfully admits more immigrants than any country in the world. But we must recognize that our generous system is being terribly abused. As one immigration judge recently told me about the credible fear process, “any adjudicatory system with a grant rate of nearly 90 percent is inherently flawed.”

The President Trump understands this is a crisis. And so do the American people.

The President promised voters he would return this country to a lawful system of immigration during his campaign and he is going to deliver. His priorities are mainstream and common sense. And whether it’s an end to sanctuary city policies or an e-verification system to ensure lawful employment they are supported by the vast majority of Americans.

Congress must pass the legislative priorities President Trump announced this week, which included significant asylum reform, swift border returns, and enhanced interior enforcement.

We can impose and enforce penalties for baseless or fraudulent asylum applications and expand the use of expedited removal. We can elevate the threshold standard of proof in credible fear interviews. We can expand the ability to return asylum seekers to safe third countries. We can close loopholes and clarify our asylum laws to ensure that they help those they were intended to help.

We can turnaround this crisis under President Trump’s leadership.

What we cannot do what we must not do is continue to let our generosity be abused, we cannot capitulate to lawlessness and allow the very foundation of law upon which our country depends to be further undermined.

Thank you.

Gibson, Jake

From: Gibson, Jake
Sent: Thursday, October 12, 2017 9:55 AM
To: O'Malley, Devin (OPA)
Cc: Prior, Ian (OPA)
Subject: Re: Think tv will pick up 1373 story?

They did
I'm in lobby at 5107
Can u come down and get me?

Sent from my iPhone

> On Oct 12, 2017, at 8:40 AM, O'Malley, Devin (OPA) <Devin.O'Malley@usdoj.gov> wrote:
>
>
>
> Sent from my iPhone

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee. If you are not the addressee indicated in this message (or responsible for delivery of the message to the addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of Fox News or Fox Business must not be taken to have been sent or endorsed by either of them. No representation is made that this email or its attachments are without defect.

Prior, Ian (OPA)

From: Prior, Ian (OPA)
Sent: Thursday, October 12, 2017 8:48 AM
To: Tenney, Garrett; O'Malley, Devin (OPA)
Subject: Re: Sanctuary City update question

Driving can you call my cell?

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

On Oct 12, 2017, at 8:47 AM, Tenney, Garrett <Garrett.Tenney@foxnews.com> wrote:

Hi Ian,

I got your release from Jake and will be going on the air with it this next hour. I wanted to see if you could clarify how these latest actions play into the ruling issued by a federal judge in Illinois last month, blocking DOJ from withholding funds?

Thanks, Ian.
Garrett

Garrett Tenney
Correspondent
Fox News Channel | Washington D.C. Bureau
(b) (6)
Garrett.Tenney@FoxNews.com
Twitter: @Garrett_FoxNews

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Gibson, Jake

From: Gibson, Jake
Sent: Wednesday, October 11, 2017 11:09 PM
To: O'Malley, Devin (OPA)
Cc: Prior, Ian (OPA)
Subject: Re: **EMBARGOED UNTIL 9:00 am EDT TOMORROW** 1373 Compliance

Understood.

We'll get it on the net first to be sure.

It's just depends on the news tomorrow... whether or not they get it onto TV before 0915.

I will push for it.

Thanks.

Sent from my iPhone

On Oct 11, 2017, at 11:05 PM, O'Malley, Devin (OPA) <Devin.O'Malley@usdoj.gov> wrote:

9:15 am

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353-8763
Cel (b) (6)

From: Gibson, Jake [<mailto:Jake.Gibson@FOXNEWS.COM>]
Sent: Wednesday, October 11, 2017 11:05 PM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Cc: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: Re: **EMBARGOED UNTIL 9:00 am EDT TOMORROW** 1373 Compliance

What time are u releasing to all?

On Oct 11, 2017, at 10:37 PM, O'Malley, Devin (OPA) <Devin.O'Malley@usdoj.gov> wrote:

Hi Jake-

Per earlier convos, please find the 1373 compliance release and letters attached, embargoed until 9:00 am tomorrow.

Let me know if you have any questions.

No immigration court backgrounder tomorrow AM, FYI.

Devin

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353-8763
Cel (b) (6)

<Chicago 1373 Compliance Determination Letter 10-11-17 - FINAL.PDF>
<Connecticut 1373 Compliance Determination Letter 10-11-17 - FINAL.PDF>
<Cook County 1373 Compliance Determination Letter 10-11-17 - FINAL.PDF>
<Milwaukee 1373 Compliance Determination Letter 10-11-17 - FINAL.PDF>
<New Orleans 1373 Compliance Determination Letter 10-11-17 - FINAL.PDF>
<New York 1373 Compliance Determination Letter 10-11-17 - FINAL.PDF>
<Philadelphia 1373 Compliance Determination Letter 10-11-17 - FINAL.PDF>
<171011 DOJ Provides Last Chance for Cities to Show 1373 Compliance.pdf>

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DEPARTMENT OF JUSTICE PROVIDES LAST CHANCE FOR CITIES TO SHOW 1373 COMPLIANCE

The Justice Department today responded to seven jurisdictions following a preliminary assessment of the jurisdictions' compliance with 8 U.S.C. 1373. These jurisdictions were identified in a May 2016 report by the Department of Justice's Inspector General as having laws that potentially violate 8 U.S.C. 1373.

The following jurisdictions have preliminarily been found to have laws, policies, or practices that may violate 8 U.S.C. 1373:

- Cook County, Illinois;
- Chicago, Illinois;
- New Orleans, Louisiana;
- New York, New York; and
- Philadelphia, Pennsylvania.

The Department found no evidence that the following jurisdictions are currently out of compliance with 8 U.S.C. 1373:

- Milwaukee, Wisconsin; and
- the State of Connecticut.

The Department also previously sent letters to the following jurisdictions notifying them that the Department found no evidence that they are currently out of compliance with 8 U.S.C. 1373:

- Clark County, Nevada; and
- Miami-Dade County, Florida.

Jurisdictions that were found to have possible violations of 8 U.S.C. 1373 will have until October 27, 2017 to provide additional evidence that the interpretation and application of their laws, policies, or practices comply with the statute.

“Jurisdictions that adopt so-called ‘sanctuary policies’ also adopt the view that the protection of criminal aliens is more important than the protection of law-abiding citizens and of the rule of law,” said Attorney General Jeff Sessions. “I commend the Milwaukee County Sheriff’s Office and the State of Connecticut on their commitment to complying with Section 1373, and I urge all jurisdictions found to be out of compliance in this preliminary review to reconsider their policies that undermine the safety of their residents. We urge jurisdictions to not only comply with Section 1373 but to establish sensible and effective partnerships to properly process criminal aliens.”



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

October 11, 2017

Eddie T. Johnson
Chicago Superintendent of Police
3510 S Michigan Avenue
Chicago, IL 60653-1020

Dear Superintendent Johnson,

Your FY 2016 Byrne JAG grant award required you to comply with 8 U.S.C. § 1373; to undertake a review to validate your jurisdiction's compliance with 8 U.S.C. § 1373; and to submit documentation, including an official legal opinion from counsel, adequately supporting the validation. Thank you for your recent submission. The Department of Justice has reviewed your submission, all attached documentation, and your jurisdiction's laws, policies, and practices relating to compliance with section 1373, to the extent they were provided or are readily available.

This letter is to inform you that, based on a preliminary review, the Department has determined that your jurisdiction appears to have laws, policies, or practices that violate 8 U.S.C. § 1373. These laws, policies, or practices include, but may not be limited to:

- Municipal Code of Chicago § 2-173-042. Under this section, no agency nor agent shall "expend their time responding to [U.S. Immigration and Customs Enforcement ("ICE")] inquiries or communicating with ICE regarding a person's custody status or release date." The Department has determined that this section restricts the sharing of information regarding immigration status in violation of 8 U.S.C. § 1373(a).

Additionally, based on this preliminary review, the Department has noted that the following laws, policies or practices may violate 8 U.S.C. § 1373, depending on how your jurisdiction interprets and applies them. These laws, policies, or practices include, but may not be limited to:

- Municipal Code of Chicago § 2-173-020. Under this section, no agent nor agency shall "assist in the investigation of the citizenship or immigration status of any person." On its face, the Department has determined that this section appears to restrict Chicago police officers' ability to "assist" federal immigration officers by sharing information regarding immigration status with the federal officers. This section, however, allows information

sharing when “required by . . . federal regulation.” In order to comply with 8 U.S.C. § 1373, the Department has determined that Chicago would need to certify that, under this ordinance, section 1373 is treated as a “regulation” (even though it is a federal statute), and that Chicago interprets and applies this section to not restrict Chicago officers and employees from sharing information regarding citizenship and immigration status with federal immigration officers. The Department is thus requesting that Chicago certify that it has communicated this interpretation to its officers and employees. If Chicago cannot provide this certification, the Department has determined that this provision violates section 1373(a).

- Municipal Code of Chicago § 2-173-020. Under this section, no agent nor agency “shall request information about” the “immigration status of any person” unless “required by . . . federal regulation.” Under 8 U.S.C. § 1373(b)(1), however, Chicago may not “in any way restrict” the “requesting” of “information regarding . . . immigration status” from federal immigration officers. On its face, the Department has determined that this section appears to bar Chicago officers from requesting information regarding immigration status from federal immigration officers. In order to comply with 8 U.S.C. § 1373, the Department has determined that Chicago would need to certify that it interprets and applies this section to not restrict Chicago officers and employees from requesting information regarding immigration status from federal immigration officers. The Department has also determined that Chicago would need to certify that it has communicated this interpretation to its officers and employees. If Chicago cannot provide this certification, the Department has determined that this provision violates section 1373(b).
- Municipal Code of Chicago § 2-173-030. Under this section, no agent nor agency “shall disclose information regarding the citizenship or immigration status of any person,” except “as otherwise provided under applicable federal law.” In order to comply with 8 U.S.C. § 1373, the Department has determined that Chicago would need to certify that it interprets and applies this section to not restrict Chicago officers and employees from sharing information regarding citizenship and immigration status with federal immigration officials. The Department has also determined that Chicago would need to certify that it has communicated this interpretation to its officers and employees. If Chicago cannot provide this certification, the Department has determined that this provision violates section 1373(a).

Your jurisdiction may submit a response to this preliminary assessment, as well as any additional evidence you would like the Department to consider, before it reaches its final determination. Please submit all additional documentation by October 27, 2017. Once the Department has had an opportunity to review your submission, the Department will notify you of its final determination.

This letter reflects the Department's preliminary assessment of your jurisdiction's compliance with 8 U.S.C. § 1373. This letter does not constitute final agency action and nothing in this letter creates any right or benefit enforceable at law against the United States. Additionally, as the United States continues to collect information about your jurisdiction, it reserves the right to identify additional bases of potential violations of 8 U.S.C. § 1373.

Sincerely,

A handwritten signature in black ink that reads "Alan R. Hanson". The signature is written in a cursive style with a large, stylized "A" and "H".

Alan Hanson
Acting Assistant Attorney General



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

October 11, 2017

Ben Barnes
Criminal Justice Policy and Planning Division
Office of Policy and Management
450 Capitol Avenue
Hartford, CT 06106-1308

Dear Mr. Barnes,

Thank you for your recent submission regarding your compliance with 8 U.S.C. § 1373, further to the terms of your FY 2016 Byrne JAG grant award from the Department of Justice. Your submission was very helpful and informative.

Based on the materials you have provided, the Department has found no evidence that the State of Connecticut is currently out of compliance with section 1373. As a reminder, complying with section 1373 is an ongoing requirement that the Department of Justice will continue to monitor.

Sincerely,

A handwritten signature in black ink that reads "Alan R. Hanson".

Alan Hanson
Acting Assistant Attorney General



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

October 11, 2017

Toni Preckwinkle
President
Cook County Board of Commissioners
118 N. Clark St.
Room 537
Chicago, IL 60602

Dear Commissioner Preckwinkle,

Your FY 2016 Byrne JAG grant award required you to comply with 8 U.S.C. § 1373; to undertake a review to validate your jurisdiction's compliance with 8 U.S.C. § 1373; and to submit documentation, including an official legal opinion from counsel, adequately supporting the validation. Thank you for your recent submission. The Department of Justice has reviewed your submission, all attached documentation, and your jurisdiction's laws, policies, and practices relating to compliance with section 1373, to the extent they were provided or are readily available.

This letter is to inform you that, based on a preliminary review, the Department has determined that your jurisdiction appears to have laws, policies, or practices that violate 8 U.S.C. § 1373. These laws, policies, or practices include, but may not be limited to:

- Cook County Code of Ordinances § 46-37. Under this section, Cook County personnel "shall not expend their time responding to [U.S. Immigration and Customs Enforcement ("ICE")] inquiries or communicating with ICE regarding individuals' incarceration status or release dates while on duty." The Department has determined that this section prohibits the Sheriff of Cook County from honoring a request from ICE seeking advance notice before Cook County releases an alien. The Department has also determined that this section restricts the sharing of information regarding immigration status in violation of 8 U.S.C. § 1373(a).

Additionally, based on this preliminary review, the Department has noted that the following laws, policies or practices may violate 8 U.S.C. § 1373, depending on how your jurisdiction interprets and applies them. These laws, policies, or practices include, but may not be limited to:

- County Resolution 07-R-240. This resolution provides that the Cook County Sheriff's Office shall not "assist in the investigation of the citizenship or immigration status of any person." On its face, the Department has determined that this section appears to restrict Cook County officers' ability to "assist" federal immigration officers by sharing information regarding immigration status with the officers. This section, however, allows information sharing when "required by law." In order to comply with 8 U.S.C. § 1373, the Department has determined that Cook County would need to certify that it interprets and applies this section to allow Cook County officers and employees to share information regarding citizenship and immigration status with federal immigration officers. The Department has also determined that Cook County would need to certify that it has communicated this interpretation to its officers and employees. If Cook County cannot provide this certification, the Department has determined that this provision violates section 1373(a).
- County Resolution 07-R-270. This resolution provides that the Cook County Sheriff's Office shall not "make inquiries into immigration status for the sole purpose of determining whether an individual has violated the civil immigration laws." Under 8 U.S.C. § 1373(b)(1), however, Cook County may not "in any way restrict" the "requesting" of "information regarding . . . immigration status" from federal immigration officers. On its face, the Department has determined that this section appears to bar Cook County officers' from requesting information regarding immigration status from federal immigration officers. In order to comply with 8 U.S.C. § 1373, the Department has determined that Cook County would need to certify that it interprets and applies this section not to restrict Cook County officers and employees from requesting information regarding immigration status from federal immigration officers. The Department has also determined that Cook County would need to certify that it has communicated this interpretation to its officers and employees. If Cook County cannot provide this certification, the Department has determined that this provision violates section 1373(b).

Your jurisdiction may submit a response to this preliminary assessment, as well as any additional evidence you would like the Department to consider, before it reaches its final determination. Please submit all additional documentation by October 27, 2017. Once the Department has had an opportunity to review your submission, the Department will notify you of its final determination.

This letter reflects the Department's preliminary assessment of your jurisdiction's compliance with 8 U.S.C. § 1373. This letter does not constitute final agency action and nothing in this letter creates any right or benefit enforceable at law against the United States. Additionally, as the United States continues to collect information about your jurisdiction, it reserves the right to identify additional bases of potential violations of 8 U.S.C. § 1373.

Sincerely,

A handwritten signature in black ink that reads "Alan R. Hanson". The signature is written in a cursive, flowing style.

Alan Hanson
Acting Assistant Attorney General



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

October 11, 2017

The Honorable Christopher Abele
County Executive
Milwaukee County
901 N. 9th Street
Milwaukee, WI 53233-1427

Dear County Executive Abele,

Thank you for your recent submission regarding your compliance with 8 U.S.C. § 1373, further to the terms of your FY 2016 Byrne JAG grant award from the Department of Justice. Your submission was very helpful and informative.

Based on the materials you provided, the Department has found no evidence that Milwaukee County is currently out of compliance with section 1373. In so finding, the Department has determined that Milwaukee County Board of Supervisors Resolution 12-135 restricts the sharing of release date information in contravention of section 1373. However, based on the evidence currently available to the Department, its understanding is that the Milwaukee County Sheriff's Office has exercised its lawful authority not to follow this Resolution. As a reminder, complying with section 1373 is an ongoing requirement that the Department of Justice will continue to monitor.

Sincerely,

A handwritten signature in black ink that reads "Alan R. Hanson".

Alan Hanson
Acting Assistant Attorney General



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

October 11, 2017

The Honorable Mitchell Landrieu
City of New Orleans
Criminal Justice Coordination
1300 Perdido Street, Room 8E15
New Orleans, LA 70112-2112

Dear Mayor Mitchell Landrieu,

Your FY 2016 Byrne JAG grant award required you to comply with 8 U.S.C. § 1373; to undertake a review to validate your jurisdiction's compliance with 8 U.S.C. § 1373; and to submit documentation, including an official legal opinion from counsel, adequately supporting the validation. Thank you for your recent submission. The Department of Justice has reviewed your submission, all attached documentation, and your jurisdiction's laws, policies, and practices relating to compliance with section 1373, to the extent they were provided or are readily available.

This letter is to inform you that, based on a preliminary review, the Department has determined that the following laws policies, or practices may violate 8 U.S.C. § 1373, depending on how your jurisdiction interprets and applies them. These laws, policies, or practices include, but may not be limited to:

- New Orleans Police Department Operations Manual Chapter 41:6:1. Section 3 of the Operations Manual states that police officers "shall not make inquiries into an individual's immigration status, except as authorized by this Chapter." Under 8 U.S.C. § 1373(b)(1), however, New Orleans may not "in any way restrict" the "requesting" of "information regarding . . . immigration status" from federal immigration officers. On its face, the Department has determined that this section appears to bar New Orleans officers from requesting information regarding immigration status from federal immigration officers. In order to comply with 8 U.S.C. § 1373, the Department has determined that New Orleans would need to certify that it interprets and applies this section to not restrict New Orleans officers and employees from requesting information regarding immigration status from federal immigration officers. The Department has also determined that New Orleans would need to certify that it has

communicated this interpretation to its officers and employees. If New Orleans cannot provide this certification, the Department has determined that this provision violates section 1373(b).¹

Your jurisdiction may submit a response to this preliminary assessment, as well as any additional evidence you would like the Department to consider, before it reaches its final determination. Please submit all additional documentation by October 27, 2017. Once the Department has had an opportunity to review your submission, the Department will notify you of its final determination.

This letter reflects the Department's preliminary assessment of your jurisdiction's compliance with 8 U.S.C. § 1373. This letter does not constitute final agency action and nothing in this letter creates any right or benefit enforceable at law against the United States. Additionally, as the United States continues to collect information about your jurisdiction, it reserves the right to identify additional bases of potential violations of 8 U.S.C. § 1373.

Sincerely,

A handwritten signature in black ink that reads "Alan R. Hanson". The signature is fluid and cursive, with the first name "Alan" and last name "Hanson" being clearly legible, and the middle initial "R." in between.

Alan Hanson
Acting Assistant Attorney General

¹ To the extent this policy was adopted in response to the consent decree entered into between the United States and the City of New Orleans, the consent decree should not be read to require any policy not in compliance with 8 U.S.C. § 1373 or any other federal law. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 388 (1992); *United States v. International Broth. of Teamsters*, 931 F.2d 177, 189 (2d Cir. 1991).



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

October 11, 2017

Elizabeth Glazer
Director
New York City Mayor's Office of Criminal Justice
1 Centre Street, Room 1012N
New York, NY 10007-1602

Dear Ms. Glazer,

Your FY 2016 Byrne JAG grant award required you to comply with 8 U.S.C. § 1373; to undertake a review to validate your jurisdiction's compliance with 8 U.S.C. § 1373; and to submit documentation, including an official legal opinion from counsel, adequately supporting the validation. Thank you for your recent submission. The Department of Justice has reviewed your submission, all attached documentation, and your jurisdiction's laws, policies, and practices relating to compliance with section 1373, to the extent they were provided or are readily available.

This letter is to inform you that, based on a preliminary review, the Department has determined that your jurisdiction appears to have laws, policies, or practices that violate 8 U.S.C. § 1373. These laws, policies, or practices include, but may not be limited to:

- Executive Order No. 41. Section 4 of the Executive Order states that police officers "shall not inquire about a person's immigration status unless investigating illegal activity other than mere status as an undocumented alien." Under 8 U.S.C. § 1373(b)(1), however, New York may not "in any way restrict" the "requesting" of "information regarding . . . immigration status" from federal immigration officers. On its face, the Department has determined that the Executive Order appears to bar New York officers from requesting information regarding immigration status from federal immigration officers. In order to comply with 8 U.S.C. § 1373, the Department has determined that New York would need to certify that it interprets and applies this section to not restrict New York officers and employees from requesting information regarding immigration status from federal immigration officers. The Department has also determined that New York would need to certify that it has communicated this interpretation to its officers and employees. If New York cannot provide this certification, the Department has determined that this provision violates section 1373(b).

- Executive Order No. 41. Section 2 of the Executive Order states that New York officers and employees “shall [not] disclose confidential information,” which is defined to include “immigration status.” Section 2(b) and (e) contain a few exceptions, including when “disclosure is required by law.” In order to comply with 8 U.S.C. § 1373, the Department has determined that New York would need to certify that it interprets and applies this Order to not restrict New York officers and employees from sharing information regarding immigration status with federal immigration officers. The Department has also determined that New York would need to certify that it has communicated this interpretation to its officers and employees. If New York cannot provide this certification, the Department has determined that this provision violates section 1373(a).
- New York Administrative Code § 9-131. Section 9-131(b) states that New York City Department of Corrections may not “honor a civil immigration detainer . . . by notifying federal immigration authorities of [a] person’s release,” except in certain limited circumstances.¹ Section 9-131(d) states that this law shall not be construed to “prohibit any city agency from cooperating with federal immigration authorities when required under federal law.” It also states that this law shall not be construed to “create any . . . duty or obligation in conflict with any federal . . . law.” In order to comply with 8 U.S.C. § 1373, the Department has determined that New York would need to certify that it interprets and applies Section 9-131(b) and (d) to not restrict New York officers from sharing information regarding immigration status with federal immigration officers, including information regarding the date and time of an alien’s release from custody. The Department has also determined that New York would need to certify that it has communicated this interpretation to its officers and employees. If New York cannot provide this certification, the Department has determined that this provision violates section 1373(a).
- New York Administrative Code § 9-131. Section 9-131(h)(1) states that New York City Department of Corrections personnel shall not “expend time while on duty or department resources . . . in response to federal immigration inquiries or in communicating with federal immigration authorities regarding any person’s incarceration status, release dates, court appearance dates, or any other information related to persons in the department’s custody, other than information related to a person’s citizenship or immigration status,” except where certain exceptions apply. As discussed above, section 9-131(d) states that this law shall not be construed to “prohibit any city agency from cooperating with federal immigration authorities when required under federal law.” It also states that this law


¹ An ICE detainer form ordinarily requests that a jurisdiction (1) provide advance notice of the alien’s release; and (2) maintain custody of the alien for up to 48 hours beyond the scheduled time of release. The Department is not relying on New York’s restriction of the latter form of cooperation in this preliminary assessment.

shall not be construed to “create any . . . duty or obligation in conflict with any federal . . . law.” In order to comply with 8 U.S.C. § 1373, the Department has determined that New York would need to certify that it interprets and applies Section 9-131(h) and (d) to not restrict New York officers from sharing information regarding immigration status with federal immigration officers, including information regarding an alien’s incarceration status and release date and time. The Department has also determined that New York would need to certify that it has communicated this interpretation to its officers and employees. If New York cannot provide this certification, the Department has determined that this provision violates section 1373(a).

Your jurisdiction may submit a response to this preliminary assessment, as well as any additional evidence you would like the Department to consider, before it reaches its final determination. Please submit all additional documentation by October 27, 2017. Once the Department has had an opportunity to review your submission, the Department will notify you of its final determination.

This letter reflects the Department’s preliminary assessment of your jurisdiction’s compliance with 8 U.S.C. § 1373. This letter does not constitute final agency action and nothing in this letter creates any right or benefit enforceable at law against the United States. Additionally, as the United States continues to collect information about your jurisdiction, it reserves the right to identify additional bases of potential violations of 8 U.S.C. § 1373.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan R. Hanson". The signature is fluid and cursive, with the first name "Alan" and last name "Hanson" clearly legible, and "R." as a middle initial.

Alan Hanson
Acting Assistant Attorney General



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

October 11, 2017

The Honorable Jim Kenney
City of Philadelphia
1401 JFK Blvd., Room 1430
Philadelphia, PA 19102-1687

Dear Mayor Kenney,

Your FY 2016 Byrne JAG grant award, required you to comply with 8 U.S.C. § 1373; to undertake a review to validate your jurisdiction's compliance with 8 U.S.C. § 1373; and to submit documentation, including an official legal opinion from counsel, adequately supporting the validation. Thank you for your recent submission. The Department of Justice has reviewed your submission, all attached documentation, and your jurisdiction's laws, policies, and practices relating to compliance with section 1373, to the extent they were provided or are readily available.

This letter is to inform you that, based on a preliminary review, the Department has determined that your jurisdiction appears to have laws, policies, or practices that violate 8 U.S.C. § 1373. These laws, policies, or practices include, but may not be limited to:

- Executive Order No. 5-16. Section 1 of the Executive Order states that notice of a person's release from custody shall not be provided, "unless such person is being released after conviction for a first or second degree felony involving violence and the detainer is supported by a judicial warrant."¹ The Department has determined that this section restricts the sharing of information regarding immigration status in violation of 8 U.S.C. § 1373(a).
- Police Commissioner Memorandum No. 01-06. Section III.C of the Memorandum states that "immigrants who are victims of crimes will not have their status as an immigrant transmitted in any manner." The Department has determined that this Memorandum restricts the sharing of information regarding immigration status in violation of 8 U.S.C.

¹An ICE detainer form ordinarily requests that a jurisdiction (1) provide advance notice of the alien's release; and (2) maintain custody of the alien for up to 48 hours beyond the scheduled time of release. The Department is not relying on Philadelphia's restriction of the latter form of cooperation in this preliminary assessment.

§ 1373(a). It is not the Department of Justice’s nor the Department of Homeland Security’s policy or practice to request information from state and local jurisdictions regarding the immigration status of victims. There are, however, instances where the Department finds that requesting this information could be appropriate, such as where a person is both a perpetrator and a victim.

Additionally, based on this preliminary review, the Department has noted that the following laws, policies or practices may violate 8 U.S.C. § 1373, depending on how your jurisdiction interprets and applies them. These laws, policies, or practices include, but may not be limited to:

- Executive Order No. 8-09. Section 2(b) of the Executive Order states that police officers “shall not . . . inquire about a person’s immigration status,” unless certain limited exceptions apply. Under 8 U.S.C. § 1373(b)(1), however, Philadelphia may not “in any way restrict” the “requesting” of “information regarding . . . immigration status” from federal immigration officers. On its face, the Department has determined that the Executive Order appears to bar Philadelphia officers from requesting information regarding immigration status from federal immigration officers. In order to comply with 8 U.S.C. § 1373, the Department has determined that Philadelphia would need to certify that it interprets and applies this Executive Order to not restrict Philadelphia officers and employees from requesting information regarding immigration status from federal immigration officers. The Department is thus requesting Philadelphia to certify that it has communicated this interpretation to its officers and employees. If Philadelphia cannot provide this certification, the Department has determined that this provision violates section 1373(b).
- Executive Order No. 8-09. Section 3 of the Executive Order states that Philadelphia officers and employees “shall [not] disclose” information “relating to an individual’s immigration status.” Section 3(b)(2), however, allows disclosure when “required by law.” In order to comply with 8 U.S.C. § 1373, the Department has determined that Philadelphia would need to certify that it interprets and applies this Executive Order to not restrict Philadelphia officers from sharing information regarding immigration status with federal immigration officers. The Department has also determined that Philadelphia would need to certify that it has communicated this interpretation to its officers and employees. If Philadelphia cannot provide this certification, the Department has determined that this provision violates section 1373(a).
- Police Commissioner Memorandum No. 01-06. Section III.A of the Memorandum states that officers shall not transmit “information relating to an immigrant” unless “required by law” or certain other exceptions apply. In order to comply with 8 U.S.C. § 1373, the Department has determined that Philadelphia would need to certify that it interprets and applies this policy to not restrict Philadelphia officers and employees from sharing

information regarding immigration status with federal immigration officers. The Department has also determined that Philadelphia would need to certify that it has communicated this interpretation to its officers and employees. If Philadelphia cannot provide this certification, the Department has determined that this provision violates section 1373(a).

Your jurisdiction may submit a response to this preliminary assessment, as well as any additional evidence you would like the Department to consider, before it reaches its final determination. Please submit all additional documentation by October 27, 2017. Once the Department has had an opportunity to review your submission, the Department will notify you of its final determination.

This letter reflects the Department's preliminary assessment of your jurisdiction's compliance with 8 U.S.C. § 1373. This letter does not constitute final agency action and nothing in this letter creates any right or benefit enforceable at law against the United States. Additionally, as the United States continues to collect information about your jurisdiction, it reserves the right to identify additional bases of potential violations of 8 U.S.C. § 1373.

Sincerely,

A handwritten signature in black ink that reads "Alan R. Hanson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Alan Hanson
Acting Assistant Attorney General

Yaron, Eldad

From: Yaron, Eldad
Sent: Wednesday, October 11, 2017 7:51 PM
To: Flores, Sarah Isgur (OPA)
Subject: Re: QUICK UPDATE

You are too kind thanks so much e.

On Oct 11, 2017, at 19:13, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

Wow! That's awesome!! All my favorite people on one show this works out very well for me☺

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Yaron, Eldad [<mailto:Eldad.Yaron@FOXNEWS.COM>]
Sent: Wednesday, October 11, 2017 7:04 PM
To: Yaron, Eldad <Eldad.Yaron@FOXNEWS.COM>
Subject: QUICK UPDATE

Hi there, just a quick note to let you know that I recently joined **Tucker Carlson Tonight** at FOX. Looking forward to staying in touch with you!

Best,
E.

Eldad Yaron
Tucker Carlson Tonight
FOX News Channel
(b) (6) office
(b) (6)
Eldad.Yaron@FOXNews.com

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Berger, Judson

From: Berger, Judson
Sent: Wednesday, October 11, 2017 7:15 PM
To: Prior, Ian (OPA)
Subject: RE: Fox News question on Weinstein

I definitely will

From: Prior, Ian (OPA) [mailto:ian.prior@usdoj.gov]
Sent: Wednesday, October 11, 2017 7:15 PM
To: Berger, Judson <Judson.Berger@FOXNEWS.COM>
Subject: Re: Fox News question on Weinstein

Talk to Jake Gibson though

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

On Oct 11, 2017, at 7:12 PM, Berger, Judson <Judson.Berger@FOXNEWS.COM> wrote:

Thanks Ian.

From: Prior, Ian (OPA) [mailto:ian.prior@usdoj.gov]
Sent: Wednesday, October 11, 2017 7:11 PM
To: Berger, Judson <Judson.Berger@FOXNEWS.COM>
Subject: Re: Fox News question on Weinstein

Hey Judd,

The Department of Justice generally does not confirm, deny, or otherwise comment on the existence of an investigation.

Thx

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

On Oct 11, 2017, at 6:59 PM, Berger, Judson <Judson.Berger@FOXNEWS.COM> wrote:

Mr. Prior,

Good evening, this is Judd at FoxNews.com. Sorry to bug late, but can you confirm whether DOJ/FBI has opened an investigation into Harvey Weinstein.

Seeing a report crossing just now claiming this. Any details you can provide would be helpful. Thank you much.

Judson Berger
Senior Politics Editor, FoxNews.com
(b) (6)
@juddberger

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Peter Hasson

From: Peter Hasson
Sent: Wednesday, October 11, 2017 7:14 PM
To: Flores, Sarah Isgur (OPA)
Subject: Re: FBI investigating Harvey Weinstein?

I had a hunch that would be the case. Thanks, Sarah.

Peter Hasson
Associate Editor
The Daily Caller

(b) (6)

On Wed, Oct 11, 2017 at 7:07 PM, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:
We don't confirm or deny investigations.

Off the record--i am nearly certain I can waive you off this.

On Oct 11, 2017, at 7:05 PM, Peter Hasson <hasson@dailycaller.com> wrote:

Hi Sarah, The Daily Mail is [reporting](#) that the FBI is opening a probe into Harvey Weinstein at the order of the Attorney General. Can the DOJ confirm/deny this?
Thanks so much.

Peter Hasson
Associate Editor
The Daily Caller

(b) (6)

Prior, Ian (OPA)

From: Prior, Ian (OPA)
Sent: Wednesday, October 11, 2017 5:51 PM
To: Herridge, Catherine
Cc: Gibson, Jake
Subject: RE: house intel subpoenas/Gregory Brower/Dossier

You can use my name

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Herridge, Catherine [mailto:Catherine.Herridge@FOXNEWS.COM]
Sent: Wednesday, October 11, 2017 5:14 PM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Cc: Gibson, Jake <Jake.Gibson@FOXNEWS.COM>
Subject: RE: house intel subpoenas/Gregory Brower/Dossier

Thank you Ian Is this on the record from you or a Justice Department spokesman.
Appreciated.

From: Prior, Ian (OPA) [<mailto:Ian.Prior@usdoj.gov>]
Sent: Wednesday, October 11, 2017 5:01 PM
To: Herridge, Catherine <Catherine.Herridge@FOXNEWS.COM>
Cc: Gibson, Jake <Jake.Gibson@FOXNEWS.COM>
Subject: RE: house intel subpoenas/Gregory Brower/Dossier

"The materials requested involve extremely sensitive law enforcement information. We have been working with the committee and have had a productive dialogue with an aim towards ensuring it gets what it needs while addressing our concerns."

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Herridge, Catherine [<mailto:Catherine.Herridge@FOXNEWS.COM>]
Sent: Wednesday, October 11, 2017 10:12 AM

To: Mckee, Susan T. (DO) (FBI) <stmckee@fbi.gov>; Andrew.Ames@ic.fbi.gov; Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Cc: Herridge, Catherine <Catherine.Herridge@FOXNEWS.COM>; Gibson, Jake <Jake.Gibson@FOXNEWS.COM>
Subject: house intel subpoenas/Gregory Brower/Dossier

Good morning,

We are working on a story today, and hope you can help or provide guidance.

House intelligence committee has issued 8 requests since March to the FBI and DOJ for information about/related to the Steele Dossier, including its underlying sources, who financed the project, and to what extent it was relied upon by FBI to obtain surveillance warrants. As you know Senator Judiciary is voicing similar complaints, and Senate intelligence leadership said last week they have run into a wall on the dossier and cannot determine its credibility.

Our contacts express frustration with the head of congressional affairs Gregory Brower, former US attorney, who was appointed by former Director Comey in March, and is reported to remain close to the former Director.

On what basis is the FBI and DOJ withholding the records?

How is the decision not to provide records consistent with congressional oversight?

Is Mr. Brower's impartiality in anyway limited by his association/connection with former Director Comey?

Thank you in advance.

Catherine V. Herridge

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Maltas, Mike

From: Maltas, Mike
Sent: Wednesday, October 11, 2017 5:09 PM
To: O'Malley, Devin (OPA)
Cc: Joost, Nathali (b) (6); Richards, Katy Jo. (OPA)
Subject: RE: Fox News Inquiry: AG Sessions Fall CHURCH Thursday

Well – now hearing this went pool to CBS...thanks anyway!

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Wednesday, October 11, 2017 4:58 PM
To: Maltas, Mike
Cc: Joost, Nathalie (b) (6); Richards, Katy Jo. (OPA)
Subject: RE: Fox News Inquiry: AG Sessions Fall CHURCH Thursday

Awesome, thank you.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Maltas, Mike [mailto:Mike.Maltas@FOXNEWS.COM]
Sent: Wednesday, October 11, 2017 4:57 PM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Cc: Joost, Nathalie <Nathalie.Joost@FOXNEWS.COM (b) (6)>
Subject: RE: Fox News Inquiry: AG Sessions Fall CHURCH Thursday

Devin – our photog for this will b (b) (6) (cc'd). We plan to be on site at 0900 to set-up. Please confirm this timeline works.
Thanks

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Wednesday, October 11, 2017 11:24 AM
To: Maltas, Mike
Subject: RE: Fox News Inquiry: AG Sessions Fall CHURCH Thursday

Thanks

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Maltas, Mike [mailto:Mike.Maltas@FOXNEWS.COM]
Sent: Wednesday, October 11, 2017 11:20 AM

To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: RE: Fox News Inquiry: AG Sessions Fall CHurch Thursday

Got it, we'd like to RSVP for a camera please (will send name later today). Jake Gibson is sending in his own RSVP.
Thanks

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Wednesday, October 11, 2017 11:00 AM
To: Maltas, Mike
Subject: RE: Fox News Inquiry: AG Sessions Fall CHurch Thursday

No, we screwed up on the advisory and had pool language in there from last week. No pool.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Maltas, Mike [mailto:Mike.Maltas@FOXNEWS.COM]
Sent: Wednesday, October 11, 2017 10:58 AM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: Fox News Inquiry: AG Sessions Fall CHurch Thursday

Hi Devin,

Before sending RSVP for this, wondering is it slated to be a mandated cam pool. Thanks

ATTORNEY GENERAL JEFF SESSIONS TO DELIVER REMARKS ON THE CRISIS FACING OUR ASYLUM SYSTEM
***** MEDIA ADVISORY *****

WASHINGTON - Attorney General Jeff Sessions will travel to the Executive Office for Immigration Review to deliver remarks about the crisis facing our asylum system on THURSDAY, OCTOBER 12, 2017.

WHO:
Attorney General Jeff Sessions

WHAT:
Will deliver remarks on the crisis facing our asylum system.

WHEN:
THURSDAY, OCTOBER 12, 2017
10:00 a.m. EDT

WHERE:
Executive Office for Immigration Review
5107 Leesburg Pike
Falls Church, VA 22041

OPEN PRESS

(Camera Pool Preset by for K9 Sweep: 9:00 a.m. EDT // Final Access: 9:15 a.m. EDT)

NOTE: All media must RSVP and present government-issued photo I.D. (such as a driver's license) as well as valid media credentials. The RSVP and any inquiries regarding logistics should be directed to Devin O'Malley in the Office of Public Affairs at (202) 514-2007 or devin.omalley@usdoj.gov. Please include the email address of the person(s) attending the event, so that we may reach them directly if details change.

###

AG

Do not reply to this message. If you have questions, please use the contacts in the message or call the Office of Public Affairs at 202-514-2007.

Mike Maltas

Fox News

400 N. Capitol St., NW

Washington, DC 20002

Offic (b) (6)

Cel (b) (6)

Mike.maltas@foxnews.com

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Prior, Ian (OPA)

From: Prior, Ian (OPA)
Sent: Wednesday, October 11, 2017 4:55 PM
To: Jake.Gibson@FOXNEWS.COM
Subject: Response
Attachments: OIP Final Response_10.10.17.pdf; ATT00001.htm

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Cell: (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530 0001

Telephone: (202) 514-3642

October 10, 2017

Bradley Moss
The James Madison Project
1250 Connecticut Ave, NW, Suite 200
Washington, DC 20010
FOIA@JamesMadisonProject.org

Re: DOJ-2017-004078 (AG)
DOJ-2017-004102 (DAG)
DOJ-2017-004103 (ASG)
D.D.C. No 17-cv-1392
DRC:ACS

Mr. Moss:

This responds to your May 12, 2017, Freedom of Information Act (FOIA) request seeking records since January 1, 2016, memorializing discussions regarding (1) whether President Donald Trump is or ever was a target of, subject of, or material witness to any investigation, and (2) whether President Trump should be advised of such information. This response is made on behalf of the Offices of the Attorney General, Deputy Attorney General, and Associate Attorney General.

Please be advised that this Office can neither confirm nor deny the existence of any records responsive to your request. The existence or non-existence of such records is protected pursuant to Exemption 7(A) of the FOIA, 5 U.S.C. § 552(b)(7)(A), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2012). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have questions regarding this response, please contact Anjali Motgi of the Department's Civil Division, Federal Programs Branch, at 202-305-0879.

Sincerely,

A handwritten signature in black ink that reads "Daniel Castellano".

Daniel R. Castellano
Senior Attorney

Prior, Ian (OPA)

From: Prior, Ian (OPA)
Sent: Wednesday, October 11, 2017 4:55 PM
To: Jake.Gibson@FOXNEWS.COM
Subject: Foia
Attachments: 01. Initial Request (5.12.17).pdf; ATT00001.htm

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Cell: (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

The James Madison Project
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20010

(202) 498-0011
(202) 330-5610 fax

E-Mail: FOIA@JamesMadisonProject.org
<http://www.JamesMadisonProject.org>

May 12, 2017

VIA E-MAIL

Laurie Day
Chief, Initial Request Staff
Office of the Attorney General
Department of Justice
1425 New York Avenue, NW
Washington, D.C. 20530-0001

Re: FOIA Request

Dear Ms. Day:

This is a request on behalf of The James Madison Project (“JMP”) and Josh Gerstein (“Mr. Gerstein”)(hereinafter referred to jointly as “the Requesters”) under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*

On May 9, 2017, FBI Director James Comey (“Director Comey”) was informed that, by order of President Donald J. Trump (“President Trump”), he had been terminated and removed from office, effective immediately. <http://edition.cnn.com/2017/05/09/politics/james-comey-fbi-trump-white-out/index.html> (last accessed May 9, 2017). In his letter to Director Comey, President Trump specifically stated that Director Comey had informed him on three separate occasions that he (President Trump) was not under investigation. <https://apps.washingtonpost.com/g/documents/politics/fbi-director-james-b-comeys-termination-letters-from-the-white-house-attorney-general/2430/> (last accessed May 12, 2017). In an interview with NBC News, President Trump further clarified that he had three separate conversations with Director Comey in which Director Comey allegedly stated that President Trump was not under investigation.

In his description of the events, President Trump stated that he initiated a phone call with Director Comey that proceeded as follows:

I actually asked him if I were under investigation, Trump said, noting that he spoke with Comey once over dinner and twice by phone.

I said, if it's possible would you let me know, am I under investigation? He said,

“Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.”

James Madison, 1822

“You are not under investigation.”

<http://www.nbcnews.com/news/us-news/trump-reveals-he-asked-omey-whether-he-was-under-investigation-n757821> (last accessed May 12, 2017).

The Requesters seek copies of records created, received and/or maintained by the Office of the Attorney General (“AG”), the Office of the Deputy Attorney General (“DAG”), and/or the Office of the Associate Attorney General (“AAG”), including cross-references. Specifically, the Requesters are seeking:

- 1) Any records memorializing discussions between Department of Justice (“DOJ”) staff and Federal Bureau of Investigation (“FBI”) staff regarding whether President Trump is or ever was a target of, subject of or material witness to any investigation; and
- 2) Any records memorializing disclosures to President Trump or any White House staff regarding whether President Trump is or ever was a target of, subject of or material witness to any investigation;
- 3) Any records memorializing discussion among DOJ staff regarding the appropriateness of informing President Trump if he is or ever was a target of, subject of or material witness to any investigation; and
- 4) Any records memorizing discussion between DOJ staff and FBI staff regarding the appropriateness of informing President Trump if he is or ever was a target of, subject of or material witness to any investigation.

The AG, the DAG, and the AAG should construe “DOJ staff”, “FBI staff” and “White House staff” to encompass Government civilian employees, political appointees, Constitutional officers, and contract staff. The scope of the searches should include, but not be limited to, e-mail communications on unclassified and classified systems, as well as records stored on individual hard drives and/or shared drives.

The AG, the DAG and the AAG can limit the timeframe of their searches from January 1, 2016, up until the date upon which the DOJ components begin conducting searches for responsive records. The scope of the searches should not be limited to AG-originated, DAG-originated, or AAG-originated records and should be construed to include records that are currently in the possession of a U.S. Government contractor for purposes of records management.

The Requesters are pre-emptively waiving any objection to the redaction of the names of any U.S. Government officials below a GS-14 position or whom otherwise were not acting in a supervisory position. The Requesters similarly waive any objection to redactions of the names of

any U.S. Government contractors in a position of authority similar to that of a GS-13 series civilian employee or below.

In terms of all other third parties who work or worked for the U.S. Government and whose names appear in records responsive to this request, the Requesters submits that the privacy interests of those individuals have been diminished by virtue of their involvement in one or more of the U.S. Government functions described above as falling within the scope of this request. There is a recognized inverse relationship between the position of authority that a government employee holds and the strength of that employee's privacy interests. See Stern v. FBI, 737 F.2d 84, 92 (D.C. Cir. 1984); Jefferson v. Dep't of Justice, 2003 U.S. Dist. LEXIS 26782, *11 (D.D.C. Nov. 14, 2003); see also Perlman v. Dep't of Justice, 312 F.3d 100, 107-109 (2d. Cir. 2002)(setting forth five factors to consider in weighing government employee's privacy interests against public interest in disclosure, including employee's rank and whether information sheds light on a government activity).

The work performed by these third parties was part of their official responsibilities on behalf of the U.S. Government and was not of a personal nature. They served in a position of trust and authority to, among other things, determine whether it was appropriate to inform the President of the United States about the extent to which he is or ever was "under investigation". Given that responsive records memorializing the work they performed will shed light on government activity, it would be reasonable to conclude that the relevant third parties' respective (and diminished) privacy interests are outweighed by the public interest in disclosure of the information indexed to their name.

We are requesting a waiver of or, at a minimum, a reduction in fees. The Requesters qualify in their own respective rights for designation as representatives of the news media.

JMP is a non-partisan organization dedicating to promoting government accountability and the reduction of secrecy. <http://jamesmadisonproject.org/> (last accessed May 9, 2017). The organization is a frequent FOIA requester and litigator and Federal agencies routinely and regularly grant JMP fee waivers. Mr. Gerstein is chief investigative reporter for Politico. <http://www.politico.com/staff/josh-gerstein> (last accessed December 22, 2016).

The Requesters have the ability to disseminate information on a wide scale and intend to use information obtained through this FOIA request in an original work, particularly through news articles written by Mr. Gerstein. According to 5 U.S.C. § 552(a)(4)(A)(ii),

the term 'a representative of the news media' means any person or 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.

The Requesters can demonstrate their intent and ability to publish or otherwise disseminate information to the public. See Nat'l Security Archive v. Dep't of Defense, 880 F.2d 1381, 1386 (D.C. Cir. 1989). Mr. Gerstein in particular maintains the ability to publish articles explaining the content of any responsive records received as part of this request. In the event that fees are ultimately assessed, do not incur expenses beyond \$25 without first contacting our office for authorization.

Relying upon the same reasons we provided above outlining a public interest in disclosure of responsive records, we are also requesting expedited processing. FOIA permits expedited processing when a "compelling need" exists. 5 U.S.C. § 552(a)(6)(E)(v). Specifically, "compelling need" means "with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity." *Id.* at § 552(a)(6)(E)(v)(II). Given the existence of a pending FBI investigation into alleged collusion between President Trump's campaign and the Russian Government, as well as two separate Congressional investigations, there is a compelling and immediate need to clarify whether in fact Director Comey in possible conflict with existing DOJ procedures informed President Trump about the extent to which he was (or was not) under investigation.

If you deny all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. We request that any documents or records produced in response to this request be provided in electronic (soft-copy) form wherever possible. Acceptable formats are .pdf, .jpg, .gif, .tif. Please provide soft-copy records by email or on a CD if email is not feasible. However, the Requesters do not agree to pay an additional fee to receive records on a CD, and in the instance that such a fee is required, the Requesters will accept a paper copy of responsive records.

Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact me at (202) 907-7945 or via e-mail at Brad@MarkZaid.com.

Sincerely,

/s/

Bradley P. Moss

Prior, Ian (OPA)

From: Prior, Ian (OPA)
Sent: Wednesday, October 11, 2017 3:05 PM
To: Gibson, Jake
Subject: RE: Help please

When faced with a FOIA request that would call for records, if they existed, about an alleged ongoing FBI investigation, the scope and specifics of which have not been publicly acknowledged, the FBI routinely refuses to either confirm or deny the existence of any records that is, the FBI issues a *Glomar* response.

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Gibson, Jake [mailto:Jake.Gibson@FOXNEWS.COM]
Sent: Wednesday, October 11, 2017 3:01 PM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: RE: Help please

Okay...
Coming down now.

From: Prior, Ian (OPA) [mailto:Ian.Prior@usdoj.gov]
Sent: Wednesday, October 11, 2017 3:00 PM
To: Gibson, Jake
Subject: RE: Help please

Ok swing by

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Gibson, Jake [mailto:Jake.Gibson@FOXNEWS.COM]
Sent: Wednesday, October 11, 2017 2:59 PM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: RE: Help please

yes

From: Prior, Ian (OPA) [<mailto:Ian.Prior@usdoj.gov>]
Sent: Wednesday, October 11, 2017 2:58 PM
To: Gibson, Jake; Flores, Sarah Isgur (OPA)
Subject: RE: Help please

Are you in the building?

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cell (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Gibson, Jake [<mailto:Jake.Gibson@FOXNEWS.COM>]
Sent: Wednesday, October 11, 2017 2:54 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>; Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: Help please

Hi there...

Can you provide this letter responding to the politico
FOIA please?

Thanks

<http://www.politico.com/blogs/under-the-radar/2017/10/11/doj-response-trump-russia-investigation-243671>

The Justice Department is refusing to confirm whether President Donald Trump was or was not ever a target or subject of the ongoing probe into alleged Russian meddling in the presidential campaign, despite Trump's public claims that he was repeatedly given such assurances by former FBI Director James Comey.

In [a letter](#) Tuesday responding to a Freedom of Information Act lawsuit brought by a POLITICO reporter, a Justice Department lawyer said the agency won't hand over any records that would confirm Trump's status in any investigation.

Jake Gibson
Department of Justice and Federal Law Enforcement Producer
Fox News Washington
Cell (b) (6)
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Jake.Gibson@foxnews.com
@JakeBGibson

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Gibson, Jake

From: Gibson, Jake
Sent: Wednesday, October 11, 2017 2:38 PM
To: O'Malley, Devin (OPA)
Subject: RE: RSVP

Oh.. yeah, sure... I could do that.

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Wednesday, October 11, 2017 2:37 PM
To: Gibson, Jake
Subject: RE: RSVP

Sorry...it would be in falls church

Sent from my iPhone

On Oct 11, 2017, at 2:36 PM, Gibson, Jake <Jake.Gibson@FOXNEWS.COM> wrote:

Right... but Sessions is in Falls Church at 10am?
I'd have to leave here at like 0930 at the latest.

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Wednesday, October 11, 2017 2:34 PM
To: Gibson, Jake
Subject: RE: RSVP

9:00 or 9:15 am

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Gibson, Jake [mailto:Jake.Gibson@FOXNEWS.COM]
Sent: Wednesday, October 11, 2017 2:32 PM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Cc: Richards, Katy Jo. (OPA) <kjrichards@jmd.usdoj.gov>
Subject: RE: RSVP

Sure... I'd definitely be interested... But when?
If it's before 0900 I probably wouldn't be able to make it.

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Wednesday, October 11, 2017 2:31 PM

To: Gibson, Jake
Cc: Richards, Katy Jo. (OPA)
Subject: RE: RSVP

Thanks, Jake. Any interest in an immigration court backgrounder tomorrow AM? As a refresher. Trying to gauge appetite from our reporters covering.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Gibson, Jake [<mailto:Jake.Gibson@FOXNEWS.COM>]
Sent: Wednesday, October 11, 2017 2:29 PM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: RSVP

I plan on attending.
Thanks much.

ATTORNEY GENERAL JEFF SESSIONS TO DELIVER REMARKS ON THE CRISIS FACING OUR ASYLUM SYSTEM

******* MEDIA ADVISORY *******

WASHINGTON Attorney General Jeff Sessions will travel to the Executive Office for Immigration Review to deliver remarks about the crisis facing our asylum system on **THURSDAY, OCTOBER 12, 2017**.

WHO:
Attorney General Jeff Sessions

WHAT:
Will deliver remarks on the crisis facing our asylum system.

WHEN:
THURSDAY, OCTOBER 12, 2017
10:00 a.m. EDT

WHERE:
Executive Office for Immigration Review
5107 Leesburg Pike
Falls Church, VA 22041

OPEN PRESS
(Camera Pool Preset by for K9 Sweep: 9:00 a.m. EDT // Final Access: 9:15 a.m. EDT)

NOTE: All media must RSVP and present government-issued photo I.D. (such as a driver's license) as well as valid media credentials. The RSVP and any inquiries regarding logistics should be directed to Devin O'Malley in the Office of Public Affairs at (202) 514-2007 or devin.omalley@usdoj.gov. Please include the email address of the person(s) attending the event, so that we may reach them directly if details change.

#

Jake Gibson
Department of Justice and Federal Law Enforcement Producer
Fox News Washington
Cell (b) (6)
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Jake.Gibson@foxnews.com
@JakeBGibson

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O'Malley, Devin (OPA)

From: O'Malley, Devin (OPA)
Sent: Monday, October 9, 2017 3:51 PM
To: taylor.fleming@foxnews.com; jonathan.decker@foxnews.com;
shavon.white@foxnews.com
Subject: FW: DOJ Sex Harassment Initiative
Attachments: 171001_SHI_Backgrounder.pdf

Hi guys

Sorry to spam all of you, but wanted to make sure this got in the right hands in case you might consider covering it this week.

Thanks

Devin

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: O'Malley, Devin (OPA)
Sent: Monday, October 9, 2017 3:48 PM
To: 'andrew.murray@foxnews.com' <andrew.murray@foxnews.com>
Cc: 'Gibson, Jake' <Jake.Gibson@FOXNEWS.COM>
Subject: DOJ Sex Harassment Initiative

Hi Andrew

I wanted to flag a few things for you in wake of the Harvey Weinstein stories from the past week.

First, DOJ's Civil Rights Division rolled out a Sex Harassment Initiative. Press release can be found [here](#), and I've also attached a backgrounder.

CNN did a [write up](#) on the day we announced it.

Finally, the Free Beacon took an interesting angle on the story as national Democrats are seeing who can be the quickest to flee a serial womanizer, it's the DOJ who is assuming the lead in this fight. Check it out [here](#).

Please let me know if this is something you'd be interested in covering tomorrow on FOX & Friends, and if you have any questions for me.

Thanks

Devin

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

THE DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION'S
SEX HARASSMENT INITIATIVE

The following can be used on background, attributable to a Department of Justice official:

- The Fair Housing Act (FHA) prohibits discrimination in housing based on race, color, religion, sex, familial status, national origin, and disability. This includes sexually harassing tenants or prospective tenants, which is a form of sex discrimination.
- The FHA prohibits providers of housing, or others with power over a tenant's housing, from engaging in sex harassment. This can include:
 - landlords,
 - property managers,
 - maintenance workers,
 - security guards, and
 - other employees and representatives of rental property owners.
- The following are examples of unwanted behavior by a housing provider that could constitute sex harassment:
 - Pervasive commenting on a tenant's body or looks
 - Exposing themselves, showing a tenant pornography, or talking about sex to the tenant
 - Saying they would only rent housing if a home seeker engaged in sexual acts
 - Threatening to evict a tenant if they didn't engage in sexual acts
 - Saying they would only make repairs if a tenant engaged in sexual acts
 - Touching a tenant without consent
 - Repeatedly entering a tenant's home without notice or permission and with no legitimate reason
- It is rare that women who experience sexual harassment by a landlord or prospective landlord know that such conduct may violate federal law or report the harassment to the Department of Justice. However, individuals may report the conduct to a legal services provider, to local law enforcement, or to others.
- The Sex Harassment Initiative creates a reporting pipeline for those who have experienced sexual harassment to reach out and report misconduct to those that can help, including the Department of Justice. That pipeline consists of an innovative collaboration with local law enforcement, legal services providers, and public housing authorities.
- The Sex Harassment Initiative is an effort carried out by the Civil Rights Division's Housing and Civil Enforcement Section – the DOJ unit with primary responsibility for combatting sex harassment in housing.
- Since January alone, the Department has resolved four major cases involving sex harassment in housing. [This page](#) lists some of DOJ's most recent sex harassment cases.
- The Civil Rights Division's Senior Counsel for Innovation is also implementing the Division's "idea incubator program" – Concept Lab. The Concept Lab team working on the Sex Harassment Initiative will apply leading innovation management methods such as design thinking and lean startup.
- The Sex Harassment Initiative is being piloted in Washington, D.C. and western Virginia.
- Anyone who may be experiencing sex harassment in housing can contact DOJ in the following ways:
 - Email: fairhousing@usdoj.gov
 - Phone: 1-844-380-6178; TTY: 202-305-1882
 - They can also contact the Department of Housing and Urban Development at: 1-800-669-9777

McCarton, Anne

From: McCarton, Anne
Sent: Monday, October 9, 2017 2:30 PM
To: Flores, Sarah Isgur (OPA)
Cc: Prior, Ian (OPA)
Subject: RE: Lou Dobbs Tonight

That would be terrific.
Many thanks!

Anne McCarton

Senior Booker

Lou Dobbs Tonight

Fox Business Network

New York, New York

W (b) (6) M (b) (6)

Anne.McCarton@foxnews.com



From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Monday, October 09, 2017 2:30 PM
To: McCarton, Anne <Anne.McCarton@FOXNEWS.COM>
Cc: Prior, Ian (OPA) <Ian.Prior@usdoj.gov>
Subject: Re: Lou Dobbs Tonight

Appreciate it! He can't do tonight but perhaps we can look for another time.

On Oct 9, 2017, at 2:28 PM, McCarton, Anne <Anne.McCarton@FOXNEWS.COM> wrote:

Hello Sarah and Ian:

Greetings from *Lou Dobbs Tonight*.

Nice to e-meet you. I am the new booker for the Show.

Any chance Attorney General Sessions could join Lou this evening to discuss Immigration in the 7pm hour.

Many thanks.

I look forward to working with you... this request falls under the "it can't hurt to ask" category!!

Anne McCarton

Senior Booker

Lou Dobbs Tonight

Fox Business Network

New York, New York

W (b) (6) M (b) (6)

Anne.McCarton@foxnews.com

<image001.png><image002.png>

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O'Malley, Devin (OPA)

From: O'Malley, Devin (OPA)
Sent: Friday, October 6, 2017 11:01 AM
To: Mears, William
Subject: RE: ***Embargoed until 11:30*** Religious Liberty Documents

Haha sounds good! Let me know if you need anything else.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Mears, William [mailto:William.Mears@FOXNEWS.COM]
Sent: Friday, October 6, 2017 10:54 AM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: RE: ***Embargoed until 11:30*** Religious Liberty Documents

Oh sorry I was on the 9am call.
There is also an HHS call on the contraception coverage exceptions under the new guidance.
Getting my conference calls mixed up!

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Friday, October 06, 2017 10:38 AM
To: Mears, William <William.Mears@FOXNEWS.COM>
Subject: RE: ***Embargoed until 11:30*** Religious Liberty Documents

It was at 9:00 am. I don't think there are any other scheduled calls, but let me find out.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Mears, William [mailto:William.Mears@FOXNEWS.COM]
Sent: Friday, October 6, 2017 10:27 AM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: RE: ***Embargoed until 11:30*** Religious Liberty Documents

Hi Devin, can you remind me again when this call will be? I plan to be on it...

From: "O'Malley, Devin (OPA)" <Devin.O'Malley@usdoj.gov>

Date: October 6, 2017 at 8:20:11 AM EDT
To: "O'Malley, Devin (OPA)" <Devin.O'Malley@usdoj.gov>
Cc: "Prior, Ian (OPA)" <Ian.Prior@usdoj.gov>
Subject: ***Embargoed until 11:30*** Religious Liberty Documents

Please find attached the following, all of which are embargoed until 11:30 am.

Religious Liberty Guidance
Religious Liberty Guidance Implementation Memo
Religious Liberty Guidance Press Release
Religious Liberty Guidance Backgrounder (the information in the backgrounder can be attributed to "Justice Department officials" or "Justice Department briefing materials.")

Thank you reminder that the call in information is:

(b) (6)

(b) (6)

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

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Office of the Attorney General

Washington, D.C. 20530

October 6, 2017

MEMORANDUM FOR ALL EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: THE ATTORNEY GENERAL 

SUBJECT: Federal Law Protections for Religious Liberty

The President has instructed me to issue guidance interpreting religious liberty protections in federal law, as appropriate. Exec. Order No. 13798 § 4, 82 Fed. Reg. 21675 (May 4, 2017). Consistent with that instruction, I am issuing this memorandum and appendix to guide all administrative agencies and executive departments in the execution of federal law.

Principles of Religious Liberty

Religious liberty is a foundational principle of enduring importance in America, enshrined in our Constitution and other sources of federal law. As James Madison explained in his Memorial and Remonstrance Against Religious Assessments, the free exercise of religion “is in its nature an unalienable right” because the duty owed to one’s Creator “is precedent, both in order of time and in degree of obligation, to the claims of Civil Society.”¹ Religious liberty is not merely a right to personal religious beliefs or even to worship in a sacred place. It also encompasses religious observance and practice. Except in the narrowest circumstances, no one should be forced to choose between living out his or her faith and complying with the law. Therefore, to the greatest extent practicable and permitted by law, religious observance and practice should be reasonably accommodated in all government activity, including employment, contracting, and programming. The following twenty principles should guide administrative agencies and executive departments in carrying out this task. These principles should be understood and interpreted in light of the legal analysis set forth in the appendix to this memorandum.

1. The freedom of religion is a fundamental right of paramount importance, expressly protected by federal law.

Religious liberty is enshrined in the text of our Constitution and in numerous federal statutes. It encompasses the right of all Americans to exercise their religion freely, without being coerced to join an established church or to satisfy a religious test as a qualification for public office. It also encompasses the right of all Americans to express their religious beliefs, subject to the same narrow limits that apply to all forms of speech. In the United States, the free exercise of religion is not a mere policy preference to be traded against other policy preferences. It is a fundamental right.

¹ James Madison, Memorial and Remonstrance Against Religious Assessments (June 20, 1785), in 5 THE FOUNDERS’ CONSTITUTION 82 (Philip B. Kurland & Ralph Lerner eds., 1987).

2. The free exercise of religion includes the right to *act or abstain from action* in accordance with one's religious beliefs.

The Free Exercise Clause protects not just the right to believe or the right to worship; it protects the right to perform or abstain from performing certain physical acts in accordance with one's beliefs. Federal statutes, including the Religious Freedom Restoration Act of 1993 ("RFRA"), support that protection, broadly defining the exercise of religion to encompass all aspects of observance and practice, whether or not central to, or required by, a particular religious faith.

3. The freedom of religion extends to persons *and* organizations.

The Free Exercise Clause protects not just persons, but persons collectively exercising their religion through churches or other religious denominations, religious organizations, schools, private associations, and even businesses.

4. Americans do not give up their freedom of religion by participating in the marketplace, partaking of the public square, or interacting with government.

Constitutional protections for religious liberty are not conditioned upon the willingness of a religious person or organization to remain separate from civil society. Although the application of the relevant protections may differ in different contexts, individuals and organizations do not give up their religious-liberty protections by providing or receiving social services, education, or healthcare; by seeking to earn or earning a living; by employing others to do the same; by receiving government grants or contracts; or by otherwise interacting with federal, state, or local governments.

5. Government may not restrict acts or abstentions because of the beliefs they display.

To avoid the very sort of religious persecution and intolerance that led to the founding of the United States, the Free Exercise Clause of the Constitution protects against government actions that target religious conduct. Except in rare circumstances, government may not treat the same conduct as lawful when undertaken for secular reasons but unlawful when undertaken for religious reasons. For example, government may not attempt to target religious persons or conduct by allowing the distribution of political leaflets in a park but forbidding the distribution of religious leaflets in the same park.

6. Government may not target religious individuals or entities for special disabilities based on their religion.

Much as government may not restrict actions only because of religious belief, government may not target persons or individuals because of their religion. Government may not exclude religious organizations as such from secular aid programs, at least when the aid is not being used for explicitly religious activities such as worship or proselytization. For example, the Supreme Court has held that if government provides reimbursement for scrap tires to replace child playground surfaces, it may not deny participation in that program to religious schools. Nor may

government deny religious schools—including schools whose curricula and activities include religious elements—the right to participate in a voucher program, so long as the aid reaches the schools through independent decisions of parents.

7. Government may not target religious individuals or entities through discriminatory enforcement of neutral, generally applicable laws.

Although government generally may subject religious persons and organizations to neutral, generally applicable laws—e.g., across-the-board criminal prohibitions or certain time, place, and manner restrictions on speech—government may not apply such laws in a discriminatory way. For instance, the Internal Revenue Service may not enforce the Johnson Amendment—which prohibits 501(c)(3) non-profit organizations from intervening in a political campaign on behalf of a candidate—against a religious non-profit organization under circumstances in which it would not enforce the amendment against a secular non-profit organization. Likewise, the National Park Service may not require religious groups to obtain permits to hand out fliers in a park if it does not require similarly situated secular groups to do so, and no federal agency tasked with issuing permits for land use may deny a permit to an Islamic Center seeking to build a mosque when the agency has granted, or would grant, a permit to similarly situated secular organizations or religious groups.

8. Government may not officially favor or disfavor particular religious groups.

Together, the Free Exercise Clause and the Establishment Clause prohibit government from officially preferring one religious group to another. This principle of denominational neutrality means, for example, that government cannot selectively impose regulatory burdens on some denominations but not others. It likewise cannot favor some religious groups for participation in the Combined Federal Campaign over others based on the groups' religious beliefs.

9. Government may not interfere with the autonomy of a religious organization.

Together, the Free Exercise Clause and the Establishment Clause also restrict governmental interference in intra-denominational disputes about doctrine, discipline, or qualifications for ministry or membership. For example, government may not impose its nondiscrimination rules to require Catholic seminaries or Orthodox Jewish yeshivas to accept female priests or rabbis.

10. The Religious Freedom Restoration Act of 1993 prohibits the federal government from substantially burdening any aspect of religious observance or practice, unless imposition of that burden on a particular religious adherent satisfies strict scrutiny.

RFRA prohibits the federal government from substantially burdening a person's exercise of religion, unless the federal government demonstrates that application of such burden to the religious adherent is the least restrictive means of achieving a compelling governmental interest. RFRA applies to all actions by federal administrative agencies, including rulemaking, adjudication or other enforcement actions, and grant or contract distribution and administration.

11. RFRA's protection extends not just to individuals, but also to organizations, associations, and at least some for-profit corporations.

RFRA protects the exercise of religion by individuals and by corporations, companies, associations, firms, partnerships, societies, and joint stock companies. For example, the Supreme Court has held that Hobby Lobby, a closely held, for-profit corporation with more than 500 stores and 13,000 employees, is protected by RFRA.

12. RFRA does not permit the federal government to second-guess the reasonableness of a religious belief.

RFRA applies to all sincerely held religious beliefs, whether or not central to, or mandated by, a particular religious organization or tradition. Religious adherents will often be required to draw lines in the application of their religious beliefs, and government is not competent to assess the reasonableness of such lines drawn, nor would it be appropriate for government to do so. Thus, for example, a government agency may not second-guess the determination of a factory worker that, consistent with his religious precepts, he can work on a line producing steel that might someday make its way into armaments but cannot work on a line producing the armaments themselves. Nor may the Department of Health and Human Services second-guess the determination of a religious employer that providing contraceptive coverage to its employees would make the employer complicit in wrongdoing in violation of the organization's religious precepts.

13. A governmental action substantially burdens an exercise of religion under RFRA if it bans an aspect of an adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice.

Because the government cannot second-guess the reasonableness of a religious belief or the adherent's assessment of the religious connection between the government mandate and the underlying religious belief, the substantial burden test focuses on the extent of governmental compulsion involved. In general, a government action that bans an aspect of an adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice, will qualify as a substantial burden on the exercise of religion. For example, a Bureau of Prisons regulation that bans a devout Muslim from growing even a half-inch beard in accordance with his religious beliefs substantially burdens his religious practice. Likewise, a Département of Health and Human Services regulation requiring employers to provide insurance coverage for contraceptive drugs in violation of their religious beliefs or face significant fines substantially burdens their religious practice, and a law that conditions receipt of significant government benefits on willingness to work on Saturday substantially burdens the religious practice of those who, as a matter of religious observance or practice, do not work on that day. But a law that infringes, even severely, an aspect of an adherent's religious observance or practice that the adherent himself regards as unimportant or inconsequential imposes no substantial burden on that adherent. And a law that regulates only the government's internal affairs and does not involve any governmental compulsion on the religious adherent likewise imposes no substantial burden.

14. The strict scrutiny standard applicable to RFRA is exceptionally demanding.

Once a religious adherent has identified a substantial burden on his or her religious belief, the federal government can impose that burden on the adherent only if it is the least restrictive means of achieving a compelling governmental interest. Only those interests of the highest order can outweigh legitimate claims to the free exercise of religion, and such interests must be evaluated not in broad generalities but as applied to the particular adherent. Even if the federal government could show the necessary interest, it would also have to show that its chosen restriction on free exercise is the least restrictive means of achieving that interest. That analysis requires the government to show that it cannot accommodate the religious adherent while achieving its interest through a viable alternative, which may include, in certain circumstances, expenditure of additional funds, modification of existing exemptions, or creation of a new program.

15. RFRA applies even where a religious adherent seeks an exemption from a legal obligation requiring the adherent to confer benefits on third parties.

Although burdens imposed on third parties are relevant to RFRA analysis, the fact that an exemption would deprive a third party of a benefit does not categorically render an exemption unavailable. Once an adherent identifies a substantial burden on his or her religious exercise, RFRA requires the federal government to establish that denial of an accommodation or exemption to that adherent is the least restrictive means of achieving a compelling governmental interest.

16. Title VII of the Civil Rights Act of 1964, as amended, prohibits covered employers from discriminating against individuals on the basis of their religion.

Employers covered by Title VII may not fail or refuse to hire, discharge, or discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of that individual's religion. Such employers also may not classify their employees or applicants in a way that would deprive or tend to deprive any individual of employment opportunities because of the individual's religion. This protection applies regardless of whether the individual is a member of a religious majority or minority. But the protection does not apply in the same way to religious employers, who have certain constitutional and statutory protections for religious hiring decisions.

17. Title VII's protection extends to discrimination on the basis of religious observance or practice as well as belief, unless the employer cannot reasonably accommodate such observance or practice without undue hardship on the business.

Title VII defines "religion" broadly to include all aspects of religious observance or practice, except when an employer can establish that a particular aspect of such observance or practice cannot reasonably be accommodated without undue hardship to the business. For example, covered employers are required to adjust employee work schedules for Sabbath observance, religious holidays, and other religious observances, unless doing so would create an undue hardship, such as materially compromising operations or violating a collective bargaining agreement. Title VII might also require an employer to modify a no-head-coverings policy to allow a Jewish employee to wear a yarmulke or a Muslim employee to wear a headscarf. An

employer who contends that it cannot reasonably accommodate a religious observance or practice must establish undue hardship on its business with specificity; it cannot rely on assumptions about hardships that might result from an accommodation.

18. The Clinton Guidelines on Religious Exercise and Religious Expression in the Federal Workplace provide useful examples for private employers of reasonable accommodations for religious observance and practice in the workplace.

President Clinton issued Guidelines on Religious Exercise and Religious Expression in the Federal Workplace (“Clinton Guidelines”) explaining that federal employees may keep religious materials on their private desks and read them during breaks; discuss their religious views with other employees, subject to the same limitations as other forms of employee expression; display religious messages on clothing or wear religious medallions; and invite others to attend worship services at their churches, except to the extent that such speech becomes excessive or harassing. The Clinton Guidelines have the force of an Executive Order, and they also provide useful guidance to private employers about ways in which religious observance and practice can reasonably be accommodated in the workplace.

19. Religious employers are entitled to employ only persons whose beliefs and conduct are consistent with the employers’ religious precepts.

Constitutional and statutory protections apply to certain religious hiring decisions. Religious corporations, associations, educational institutions, and societies—that is, entities that are organized for religious purposes and engage in activity consistent with, and in furtherance of, such purposes—have an express statutory exemption from Title VII’s prohibition on religious discrimination in employment. Under that exemption, religious organizations may choose to employ only persons whose beliefs and conduct are consistent with the organizations’ religious precepts. For example, a Lutheran secondary school may choose to employ only practicing Lutherans, only practicing Christians, or only those willing to adhere to a code of conduct consistent with the precepts of the Lutheran community sponsoring the school. Indeed, even in the absence of the Title VII exemption, religious employers might be able to claim a similar right under RFRA or the Religion Clauses of the Constitution.

20. As a general matter, the federal government may not condition receipt of a federal grant or contract on the effective relinquishment of a religious organization’s hiring exemptions or attributes of its religious character.

Religious organizations are entitled to compete on equal footing for federal financial assistance used to support government programs. Such organizations generally may not be required to alter their religious character to participate in a government program, nor to cease engaging in explicitly religious activities outside the program, nor effectively to relinquish their federal statutory protections for religious hiring decisions.

Guidance for Implementing Religious Liberty Principles

Agencies must pay keen attention, in everything they do, to the foregoing principles of religious liberty.

Agencies As Employers

Administrative agencies should review their current policies and practices to ensure that they comply with all applicable federal laws and policies regarding accommodation for religious observance and practice in the federal workplace, and all agencies must observe such laws going forward. In particular, all agencies should review the Guidelines on Religious Exercise and Religious Expression in the Federal Workplace, which President Clinton issued on August 14, 1997, to ensure that they are following those Guidelines. All agencies should also consider practical steps to improve safeguards for religious liberty in the federal workplace, including through subject-matter experts who can answer questions about religious nondiscrimination rules, information websites that employees may access to learn more about their religious accommodation rights, and training for all employees about federal protections for religious observance and practice in the workplace.

Agencies Engaged in Rulemaking

In formulating rules, regulations, and policies, administrative agencies should also proactively consider potential burdens on the exercise of religion and possible accommodations of those burdens. Agencies should consider designating an officer to review proposed rules with religious accommodation in mind or developing some other process to do so. In developing that process, agencies should consider drawing upon the expertise of the White House Office of Faith-Based and Neighborhood Partnerships to identify concerns about the effect of potential agency action on religious exercise. Regardless of the process chosen, agencies should ensure that they review all proposed rules, regulations, and policies that have the potential to have an effect on religious liberty for compliance with the principles of religious liberty outlined in this memorandum and appendix before finalizing those rules, regulations, or policies. The Office of Legal Policy will also review any proposed agency or executive action upon which the Department's comments, opinion, or concurrence are sought, *see, e.g.*, Exec. Order 12250 § 1-2, 45 Fed. Reg. 72995 (Nov. 2, 1980), to ensure that such action complies with the principles of religious liberty outlined in this memorandum and appendix. The Department will not concur in any proposed action that does not comply with federal law protections for religious liberty as interpreted in this memorandum and appendix, and it will transmit any concerns it has about the proposed action to the agency or the Office of Management and Budget as appropriate. If, despite these internal reviews, a member of the public identifies a significant concern about a prospective rule's compliance with federal protections governing religious liberty during a period for public comment on the rule, the agency should carefully consider and respond to that request in its decision. *See Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1203 (2015). In appropriate circumstances, an agency might explain that it will consider requests for accommodations on a case-by-case basis rather than in the rule itself, but the agency should provide a reasoned basis for that approach.

Agencies Engaged in Enforcement Actions

Much like administrative agencies engaged in rulemaking, agencies considering potential enforcement actions should consider whether such actions are consistent with federal protections for religious liberty. In particular, agencies should remember that RFRA applies to agency enforcement just as it applies to every other governmental action. An agency should consider RFRA when setting agency-wide enforcement rules and priorities, as well as when making decisions to pursue or continue any particular enforcement action, and when formulating any generally applicable rules announced in an agency adjudication.

Agencies should remember that discriminatory enforcement of an otherwise nondiscriminatory law can also violate the Constitution. Thus, agencies may not target or single out religious organizations or religious conduct for disadvantageous treatment in enforcement priorities or actions. The President identified one area where this could be a problem in Executive Order 13798, when he directed the Secretary of the Treasury, to the extent permitted by law, not to take any “adverse action against any individual, house of worship, or other religious organization on the basis that such individual or organization speaks or has spoken about moral or political issues from a religious perspective, where speech of *similar character*” from a non-religious perspective has not been treated as participation or intervention in a political campaign. Exec. Order No. 13798, § 2, 82 Fed. Reg. at 21675. But the requirement of nondiscrimination toward religious organizations and conduct applies across the enforcement activities of the Executive Branch, including within the enforcement components of the Department of Justice.

Agencies Engaged in Contracting and Distribution of Grants

Agencies also must not discriminate against religious organizations in their contracting or grant-making activities. Religious organizations should be given the opportunity to compete for government grants or contracts and participate in government programs on an equal basis with nonreligious organizations. Absent unusual circumstances, agencies should not condition receipt of a government contract or grant on the effective relinquishment of a religious organization’s Section 702 exemption for religious hiring practices, or any other constitutional or statutory protection for religious organizations. In particular, agencies should not attempt through conditions on grants or contracts to meddle in the internal governance affairs of religious organizations or to limit those organizations’ otherwise protected activities.

* * *

Any questions about this memorandum or the appendix should be addressed to the Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue N.W., Washington, D.C. 20530, phone (202) 514-4601.

APPENDIX

Although not an exhaustive treatment of all federal protections for religious liberty, this appendix summarizes the key constitutional and federal statutory protections for religious liberty and sets forth the legal basis for the religious liberty principles described in the foregoing memorandum.

Constitutional Protections

The people, acting through their Constitution, have singled out religious liberty as deserving of unique protection. In the original version of the Constitution, the people agreed that “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.” U.S. Const., art. VI, cl. 3. The people then amended the Constitution during the First Congress to clarify that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. I, cl. 1. Those protections have been incorporated against the States. *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15 (1947) (Establishment Clause); *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (Free Exercise Clause).

A. Free Exercise Clause

The Free Exercise Clause recognizes and guarantees Americans the “right to believe and profess whatever religious doctrine [they] desire[.]” *Empl’t Div. v. Smith*, 494 U.S. 872, 877 (1990). Government may not attempt to *regulate* religious beliefs, *compel* religious beliefs, or *punish* religious beliefs. *See id.*; *see also Sherbert v. Verner*, 374 U.S. 398, 402 (1963); *Torcaso v. Watkins*, 367 U.S. 488, 492–93, 495 (1961); *United States v. Ballard*, 322 U.S. 78, 86 (1944). It may not lend its power to one side in intra-denominational disputes about dogma, authority, discipline, or qualifications for ministry or membership. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 185 (2012); *Smith*, 494 U.S. at 877; *Serbian Eastern Orthodox Diocese v. Milivojevic*, 426 U.S. 696, 724–25 (1976); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 451 (1969); *Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church*, 344 U.S. 94, 116, 120–21 (1952). It may not discriminate against or impose special burdens upon individuals because of their religious beliefs or status. *Smith*, 494 U.S. at 877; *McDaniel v. Paty*, 435 U.S. 618, 627 (1978). And with the exception of certain historical limits on the freedom of speech, government may not punish or otherwise harass churches, church officials, or religious adherents for speaking on religious topics or sharing their religious beliefs. *See Widmar v. Vincent*, 454 U.S. 263, 269 (1981); *see also U.S. Const., amend. I, cl. 3*. The Constitution’s protection against government regulation of religious belief is absolute; it is not subject to limitation or balancing against the interests of the government. *Smith*, 494 U.S. at 877; *Sherbert*, 374 U.S. at 402; *see also West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”).

The Free Exercise Clause protects beliefs rooted in religion, even if such beliefs are not mandated by a particular religious organization or shared among adherents of a particular religious

tradition. *Frazee v. Illinois Dept. of Emp't Sec.*, 489 U.S. 829, 833–34 (1989). As the Supreme Court has repeatedly counseled, “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Church of the Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520, 531 (1993) (internal quotation marks omitted). They must merely be “sincerely held.” *Frazee*, 489 U.S. at 834.

Importantly, the protection of the Free Exercise Clause also extends to acts undertaken in accordance with such sincerely-held beliefs. That conclusion flows from the plain text of the First Amendment, which guarantees the freedom to “exercise” religion, not just the freedom to “believe” in religion. See *Smith*, 494 U.S. at 877; see also *Thomas*, 450 U.S. at 716; *Paty*, 435 U.S. at 627; *Sherbert*, 374 U.S. at 403–04; *Wisconsin v. Yoder*, 406 U.S. 205, 219–20 (1972). Moreover, no other interpretation would actually guarantee the freedom of belief that Americans have so long regarded as central to individual liberty. Many, if not most, religious beliefs require external observance and practice through physical acts or abstention from acts. The tie between physical acts and religious beliefs may be readily apparent (e.g., attendance at a worship service) or not (e.g., service to one’s community at a soup kitchen or a decision to close one’s business on a particular day of the week). The “exercise of religion” encompasses all aspects of religious observance and practice. And because individuals may act collectively through associations and organizations, it encompasses the exercise of religion by such entities as well. See, e.g., *Hosanna-Tabor*, 565 U.S. at 199; *Church of the Lukumi Babalu Aye*, 508 U.S. at 525–26, 547; see also *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2770, 2772–73 (2014) (even a closely held for-profit corporation may exercise religion if operated in accordance with asserted religious principles).

As with most constitutional protections, however, the protection afforded to Americans by the Free Exercise Clause for physical acts is not absolute, *Smith*, 491 U.S. at 878–79, and the Supreme Court has identified certain principles to guide the analysis of the scope of that protection. First, government may not restrict “acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display,” *id.* at 877, nor “target the religious for special disabilities based on their religious status,” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. ___, ___ (2017) (slip op. at 6) (internal quotation marks omitted), for it was precisely such “historical instances of religious persecution and intolerance that gave concern to those who drafted the Free Exercise Clause.” *Church of the Lukumi Babalu Aye*, 508 U.S. at 532 (internal quotation marks omitted). The Free Exercise Clause protects against “indirect coercion or penalties on the free exercise of religion” just as surely as it protects against “outright prohibitions” on religious exercise. *Trinity Lutheran*, 582 U.S. at ___ (slip op. at 11) (internal quotation marks omitted). “It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege.” *Id.* (quoting *Sherbert*, 374 U.S. at 404).

Because a law cannot have as its official “object or purpose . . . the suppression of religion or religious conduct,” courts must “survey meticulously” the text and operation of a law to ensure that it is actually neutral and of general applicability. *Church of the Lukumi Babalu Aye*, 508 U.S. at 533–34 (internal quotation marks omitted). A law is not neutral if it singles out particular religious conduct for adverse treatment; treats the same conduct as lawful when undertaken for secular reasons but unlawful when undertaken for religious reasons; visits “gratuitous restrictions

on religious conduct”; or “accomplishes . . . a ‘religious gerrymander,’ an impermissible attempt to target [certain individuals] and their religious practices.” *Id.* at 533–35, 538 (internal quotation marks omitted). A law is not generally applicable if “in a selective manner [it] impose[s] burdens only on conduct motivated by religious belief,” *id.* at 543, including by “fail[ing] to prohibit nonreligious conduct that endangers [its] interests in a similar or greater degree than . . . does” the prohibited conduct, *id.*, or enables, expressly or de facto, “a system of individualized exemptions,” as discussed in *Smith*, 494 U.S. at 884; see also *Church of the Lukumi Babalu Aye*, 508 U.S. at 537.

“Neutrality and general applicability are interrelated, . . . [and] failure to satisfy one requirement is a likely indication that the other has not been satisfied.” *Id.* at 531. For example, a law that disqualifies a religious person or organization from a right to compete for a public benefit—including a grant or contract—because of the person’s religious character is neither neutral nor generally applicable. See *Trinity Lutheran*, 582 U.S. at ___–___ (slip op. at 9–11). Likewise, a law that selectively prohibits the killing of animals for religious reasons and fails to prohibit the killing of animals for many nonreligious reasons, or that selectively prohibits a business from refusing to stock a product for religious reasons but fails to prohibit such refusal for myriad commercial reasons, is neither neutral, nor generally applicable. See *Church of the Lukumi Babalu Aye*, 508 U.S. at 533–36, 542–45. Nonetheless, the requirements of neutral and general applicability are separate, and any law burdening religious practice that fails one or both must be subjected to strict scrutiny, *id.* at 546.

Second, even a neutral, generally applicable law is subject to strict scrutiny under this Clause if it restricts the free exercise of religion and another constitutionally protected liberty, such as the freedom of speech or association, or the right to control the upbringing of one’s children. See *Smith*, 494 U.S. at 881–82; *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1295–97 (10th Cir. 2004). Many Free Exercise cases fall in this category. For example, a law that seeks to compel a private person’s speech or expression contrary to his or her religious beliefs implicates both the freedoms of speech and free exercise. See, e.g., *Wooley v. Maynard*, 430 U.S. 705, 707–08 (1977) (challenge by Jehovah’s Witnesses to requirement that state license plates display the motto “Live Free or Die”); *Axson-Flynn*, 356 F.3d at 1280 (challenge by Mormon student to University requirement that student actors use profanity and take God’s name in vain during classroom acting exercises). A law taxing or prohibiting door-to-door solicitation, at least as applied to individuals distributing religious literature and seeking contributions, likewise implicates the freedoms of speech and free exercise. *Murdock v. Pennsylvania*, 319 U.S. 105, 108–09 (1943) (challenge by Jehovah’s Witnesses to tax on canvassing or soliciting); *Cantwell*, 310 U.S. at 307 (same). A law requiring children to receive certain education, contrary to the religious beliefs of their parents, implicates both the parents’ right to the care, custody, and control of their children and to free exercise. *Yoder*, 406 U.S. at 227–29 (challenge by Amish parents to law requiring high school attendance).

Strict scrutiny is the “most rigorous” form of scrutiny identified by the Supreme Court. *Church of the Lukumi Babalu Aye*, 508 U.S. at 546; see also *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997) (“Requiring a State to demonstrate a compelling interest and show that it has adopted the least restrictive means of achieving that interest is the most demanding test known to constitutional law.”). It is the same standard applied to governmental classifications based on race, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007), and

restrictions on the freedom of speech, *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2228 (2015). See *Church of the Lukumi Babalu Aye*, 508 U.S. at 546–47. Under this level of scrutiny, government must establish that a challenged law “advance[s] interests of the highest order” and is “narrowly tailored in pursuit of those interests.” *Id.* at 546 (internal quotation marks omitted). “[O]nly in rare cases” will a law survive this level of scrutiny. *Id.*

Of course, even when a law is neutral and generally applicable, government may run afoul of the Free Exercise Clause if it interprets or applies the law in a manner that discriminates against religious observance and practice. See, e.g., *Church of the Lukumi Babalu Aye*, 508 U.S. at 537 (government discriminatorily interpreted an ordinance prohibiting the unnecessary killing of animals as prohibiting only killing of animals for religious reasons); *Fowler v. Rhode Island*, 345 U.S. 67, 69–70 (1953) (government discriminatorily enforced ordinance prohibiting meetings in public parks against only certain religious groups). The Free Exercise Clause, much like the Free Speech Clause, requires equal treatment of religious adherents. See *Trinity Lutheran*, 582 U.S. at ___ (slip op. at 6); cf. *Good News Club v. Milford Central Sch.*, 533 U.S. 98, 114 (2001) (recognizing that Establishment Clause does not justify discrimination against religious clubs seeking use of public meeting spaces); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 837, 841 (1995) (recognizing that Establishment Clause does not justify discrimination against religious student newspaper’s participation in neutral reimbursement program). That is true regardless of whether the discriminatory application is initiated by the government itself or by private requests or complaints. See, e.g., *Fowler*, 345 U.S. at 69; *Niemotko v. Maryland*, 340 U.S. 268, 272 (1951).

B. Establishment Clause

The Establishment Clause, too, protects religious liberty. It prohibits government from establishing a religion and coercing Americans to follow it. See *Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811, 1819–20 (2014); *Good News Club*, 533 U.S. at 115. It restricts government from interfering in the internal governance or ecclesiastical decisions of a religious organization. *Hosanna-Tabor*, 565 U.S. at 188–89. And it prohibits government from officially favoring or disfavoring particular religious groups as such or officially advocating particular religious points of view. See *Galloway*, 134 S. Ct. at 1824; *Larson v. Valente*, 456 U.S. 228, 244–46 (1982). Indeed, “a significant factor in upholding governmental programs in the face of Establishment Clause attack is their *neutrality* towards religion.” *Rosenberger*, 515 U.S. at 839 (emphasis added). That “guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse.” *Id.* Thus, religious adherents and organizations may, like nonreligious adherents and organizations, receive indirect financial aid through independent choice, or, in certain circumstances, direct financial aid through a secular-aid program. See, e.g., *Trinity Lutheran*, 582 U.S. at ___ (slip op. at 6) (scrap tire program); *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002) (voucher program).

C. Religious Test Clause

Finally, the Religious Test Clause, though rarely invoked, provides a critical guarantee to religious adherents that they may serve in American public life. The Clause reflects the judgment

of the Framers that a diversity of religious viewpoints in government would enhance the liberty of all Americans. And after the Religion Clauses were incorporated against the States, the Supreme Court shared this view, rejecting a Tennessee law that “establishe[d] as a condition of office the willingness to eschew certain protected religious practices.” *Paty*, 435 U.S. at 632 (Brennan, J., and Marshall, J., concurring in judgment); *see also id.* at 629 (plurality op.) (“[T]he American experience provides no persuasive support for the fear that clergymen in public office will be less careful of anti-establishment interests or less faithful to their oaths of civil office than their unordained counterparts.”).

Statutory Protections

Recognizing the centrality of religious liberty to our nation, Congress has buttressed these constitutional rights with statutory protections for religious observance and practice. These protections can be found in, among other statutes, the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb *et seq.*; the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc *et seq.*; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*; and the American Indian Religious Freedom Act, 42 U.S.C. § 1996. Such protections ensure not only that government tolerates religious observance and practice, but that it embraces religious adherents as full members of society, able to contribute through employment, use of public accommodations, and participation in government programs. The considered judgment of the United States is that we are stronger through accommodation of religion than segregation or isolation of it.

A. Religious Freedom Restoration Act of 1993 (RFRA)

The Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb *et seq.*, prohibits the federal government from “substantially burden[ing] a person’s exercise of religion” unless “it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” *Id.* § 2000bb-1(a), (b). The Act applies even where the burden arises out of a “rule of general applicability” passed without animus or discriminatory intent. *See id.* § 2000bb-1(a). It applies to “any exercise of religion, whether or not compelled by, or central to, a system of religious belief,” *see* §§ 2000bb-2(4), 2000cc-5(7), and covers “individuals” as well as “corporations, companies, associations, firms, partnerships, societies, and joint stock companies,” 1 U.S.C. § 1, including for-profit, closely-held corporations like those involved in *Hobby Lobby*, 134 S. Ct. at 2768.

Subject to the exceptions identified below, a law “substantially burden[s] a person’s exercise of religion,” 42 U.S.C. § 2000bb-1, if it bans an aspect of the adherent’s religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice, *see Sherbert*, 374 U.S. at 405–06. The “threat of criminal sanction” will satisfy these principles, even when, as in *Yoder*, the prospective punishment is a mere \$5 fine. 406 U.S. at 208, 218. And the denial of, or condition on the receipt of, government benefits may substantially burden the exercise of religion under these principles. *Sherbert*, 374 U.S. at 405–06; *see also Hobbie v. Unemployment Appeals Comm’n of Fla.*, 480 U.S. 136, 141 (1987); *Thomas*, 450 U.S. at 717–18. But a law that infringes, even severely, an aspect of an adherent’s religious observance or practice that the adherent himself

regards as unimportant or inconsequential imposes no substantial burden on that adherent. And a law that regulates only the government's internal affairs and does not involve any governmental compulsion on the religious adherent likewise imposes no substantial burden. *See, e.g., Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 448–49 (1988); *Bowen v. Roy*, 476 U.S. 693, 699–700 (1986).

As with claims under the Free Exercise Clause, RFRA does not permit a court to inquire into the reasonableness of a religious belief, including into the adherent's assessment of the religious connection between a belief asserted and what the government forbids, requires, or prevents. *Hobby Lobby*, 134 S. Ct. at 2778. If the proffered belief is sincere, it is not the place of the government or a court to second-guess it. *Id.* A good illustration of the point is *Thomas v. Review Board of Indiana Employment Security Division*—one of the *Sherbert* line of cases, whose analytical test Congress sought, through RFRA, to restore, 42 U.S.C. § 2000bb. There, the Supreme Court concluded that the denial of unemployment benefits was a substantial burden on the sincerely held religious beliefs of a Jehovah's Witness who had quit his job after he was transferred from a department producing sheet steel that could be used for military armaments to a department producing turrets for military tanks. *Thomas*, 450 U.S. at 716–18. In doing so, the Court rejected the lower court's inquiry into "what [the claimant's] belief was and what the religious basis of his belief was," noting that no one had challenged the sincerity of the claimant's religious beliefs and that "[c]ourts should not undertake to dissect religious beliefs because the believer admits that he is struggling with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ." *Id.* at 714–15 (internal quotation marks omitted). The Court likewise rejected the lower court's comparison of the claimant's views to those of other Jehovah's Witnesses, noting that "[i]ntrafaith differences of that kind are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences." *Id.* at 715. The Supreme Court reinforced this reasoning in *Hobby Lobby*, rejecting the argument that "the connection between what the objecting parties [were required to] do (provide health-insurance coverage for four methods of contraception that may operate after the fertilization of an egg) and the end that they [found] to be morally wrong (destruction of an embryo) [wa]s simply too attenuated." 134 S. Ct. at 2777. The Court explained that the plaintiff corporations had a sincerely-held religious belief that provision of the coverage was morally wrong, and it was "not for us to say that their religious beliefs are mistaken or insubstantial." *Id.* at 2779.

Government bears a heavy burden to justify a substantial burden on the exercise of religion. "[O]nly those interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion." *Thomas*, 450 U.S. at 718 (quoting *Yoder*, 406 U.S. at 215). Such interests include, for example, the "fundamental, overriding interest in eradicating racial discrimination in education—discrimination that prevailed, with official approval, for the first 165 years of this Nation's history," *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983), and the interest in ensuring the "mandatory and continuous participation" that is "indispensable to the fiscal vitality of the social security system," *United States v. Lee*, 455 U.S. 252, 258–59 (1982). But "broadly formulated interests justifying the general applicability of government mandates" are insufficient. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006). The government must establish a compelling interest to deny an accommodation to the particular claimant. *Id.* at 430, 435–38. For example, the military may have a compelling interest in its

uniform and grooming policy to ensure military readiness and protect our national security, but it does not necessarily follow that those interests would justify denying a particular soldier's request for an accommodation from the uniform and grooming policy. *See, e.g.,* Secretary of the Army, Army Directive 2017-03, Policy for Brigade-Level Approval of Certain Requests for Religious Accommodation (2017) (recognizing the "successful examples of Soldiers currently serving with" an accommodation for "the wear of a hijab; the wear of a beard; and the wear of a turban or underturban/patka, with uncut beard and uncut hair" and providing for a reasonable accommodation of these practices in the Army). The military would have to show that it has a compelling interest in denying that particular accommodation. An asserted compelling interest in denying an accommodation to a particular claimant is undermined by evidence that exemptions or accommodations have been granted for other interests. *See O Centro*, 546 U.S. at 433, 436–37; *see also Hobby Lobby*, 134 S. Ct. at 2780.

The compelling-interest requirement applies even where the accommodation sought is "an exemption from a legal obligation requiring [the claimant] to confer benefits on third parties." *Hobby Lobby*, 134 S. Ct. at 2781 n.37. Although "in applying RFRA 'courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries,'" the Supreme Court has explained that almost any governmental regulation could be reframed as a legal obligation requiring a claimant to confer benefits on third parties. *Id.* (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005)). As nothing in the text of RFRA admits of an exception for laws requiring a claimant to confer benefits on third parties, 42 U.S.C. § 2000bb-1, and such an exception would have the potential to swallow the rule, the Supreme Court has rejected the proposition that RFRA accommodations are categorically unavailable for laws requiring claimants to confer benefits on third parties. *Hobby Lobby*, 134 S. Ct. at 2781 n.37.

Even if the government can identify a compelling interest, the government must also show that denial of an accommodation is the least restrictive means of serving that compelling governmental interest. This standard is "exceptionally demanding." *Hobby Lobby*, 134 S. Ct. at 2780. It requires the government to show that it cannot accommodate the religious adherent while achieving its interest through a viable alternative, which may include, in certain circumstances, expenditure of additional funds, modification of existing exemptions, or creation of a new program. *Id.* at 2781. Indeed, the existence of exemptions for other individuals or entities that could be expanded to accommodate the claimant, while still serving the government's stated interests, will generally defeat a RFRA defense, as the government bears the burden to establish that no accommodation is viable. *See id.* at 2781–82.

B. Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)

Although Congress's leadership in adopting RFRA led many States to pass analogous statutes, Congress recognized the unique threat to religious liberty posed by certain categories of state action and passed the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) to address them. RLUIPA extends a standard analogous to RFRA to state and local government actions regulating land use and institutionalized persons where "the substantial burden is imposed in a program or activity that receives Federal financial assistance" or "the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes." 42 U.S.C. §§ 2000cc(a)(2), 2000cc-1(b).

RLUIPA's protections must "be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by [RLUIPA] and the Constitution." *Id.* § 2000cc-3(g). RLUIPA applies to "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," *id.* § 2000cc-5(7)(A), and treats "[t]he use, building, or conversion of real property for the purpose of religious exercise" as the "religious exercise of the person or entity that uses or intends to use the property for that purpose," *id.* § 2000cc-5(7)(B). Like RFRA, RLUIPA prohibits government from substantially burdening an exercise of religion unless imposition of the burden on the religious adherent is the least restrictive means of furthering a compelling governmental interest. *See id.* § 2000cc-1(a). That standard "may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise." *Id.* § 2000cc-3(c); *cf. Holt v. Hobbs*, 135 S. Ct. 853, 860, 864–65 (2015).

With respect to land use in particular, RLUIPA also requires that government not "treat[] a religious assembly or institution on less than equal terms with a nonreligious assembly or institution," 42 U.S.C. § 2000cc(b)(1), "impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination," *id.* § 2000cc(b)(2), or "impose or implement a land use regulation that (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction," *id.* § 2000cc(b)(3). A claimant need not show a substantial burden on the exercise of religion to enforce these antidiscrimination and equal terms provisions listed in § 2000cc(b). *See id.* § 2000cc(b); *see also Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 262–64 (3d Cir. 2007), *cert. denied*, 553 U.S. 1065 (2008). Although most RLUIPA cases involve places of worship like churches, mosques, synagogues, and temples, the law applies more broadly to religious schools, religious camps, religious retreat centers, and religious social service facilities. Letter from U.S. Dep't of Justice Civil Rights Division to State, County, and Municipal Officials re: The Religious Land Use and Institutionalized Persons Act (Dec. 15, 2016).

C. Other Civil Rights Laws

To incorporate religious adherents fully into society, Congress has recognized that it is not enough to limit governmental action that substantially burdens the exercise of religion. It must also root out public and private discrimination based on religion. Religious discrimination stood alongside discrimination based on race, color, and national origin, as an evil to be addressed in the Civil Rights Act of 1964, and Congress has continued to legislate against such discrimination over time. Today, the United States Code includes specific prohibitions on religious discrimination in places of public accommodation, 42 U.S.C. § 2000a; in public facilities, *id.* § 2000b; in public education, *id.* § 2000c-6; in employment, *id.* §§ 2000e, 2000e-2, 2000e-16; in the sale or rental of housing, *id.* § 3604; in the provision of certain real-estate transaction or brokerage services, *id.* §§ 3605, 3606; in federal jury service, 28 U.S.C. § 1862; in access to limited open forums for speech, 20 U.S.C. § 4071; and in participation in or receipt of benefits from various federally-funded programs, 15 U.S.C. § 3151; 20 U.S.C. §§ 1066c(d), 1071(a)(2), 1087-4, 7231d(b)(2), 7914; 31 U.S.C. § 6711(b)(3); 42 U.S.C. §§ 290cc-33(a)(2), 300w-7(a)(2), 300x-57(a)(2), 300x-65(f), 604a(g), 708(a)(2), 5057(c), 5151(a), 5309(a), 6727(a), 9858l(a)(2), 10406(2)(B), 10504(a), 10604(e), 12635(c)(1), 12832, 13791(g)(3), 13925(b)(13)(A).

Invidious religious discrimination may be directed at religion in general, at a particular religious belief, or at particular aspects of religious observance and practice. *See, e.g., Church of the Lukumi Babalu Aye*, 508 U.S. at 532–33. A law drawn to prohibit a specific religious practice may discriminate just as severely against a religious group as a law drawn to prohibit the religion itself. *See id.* No one would doubt that a law prohibiting the sale and consumption of Kosher meat would discriminate against Jewish people. True equality may also require, depending on the applicable statutes, an awareness of, and willingness reasonably to accommodate, religious observance and practice. Indeed, the denial of reasonable accommodations may be little more than cover for discrimination against a particular religious belief or religion in general and is counter to the general determination of Congress that the United States is best served by the participation of religious adherents in society, not their withdrawal from it.

1. Employment

i. Protections for Religious Employees

Protections for religious individuals in employment are the most obvious example of Congress’s instruction that religious observance and practice be reasonably accommodated, not marginalized. In Title VII of the Civil Rights Act, Congress declared it an unlawful employment practice for a covered employer to (1) “fail or refuse to hire or to discharge any individual, or otherwise . . . discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . religion,” as well as (2) to “limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s . . . religion.” 42 U.S.C. § 2000e-2(a); *see also* 42 U.S.C. § 2000e-16(a) (applying Title VII to certain federal-sector employers); 3 U.S.C. § 411(a) (applying Title VII employment in the Executive Office of the President). The protection applies “regardless of whether the discrimination is directed against [members of religious] majorities or minorities.” *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 71–72 (1977).

After several courts had held that employers did not violate Title VII when they discharged employees for refusing to work on their Sabbath, Congress amended Title VII to define “[r]eligion” broadly to include “all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.” 42 U.S.C. § 2000e(j); *Hardison*, 432 U.S. at 74 n.9. Congress thus made clear that discrimination on the basis of religion includes discrimination on the basis of any aspect of an employee’s religious observance or practice, at least where such observance or practice can be reasonably accommodated without undue hardship.

Title VII’s reasonable accommodation requirement is meaningful. As an initial matter, it requires an employer to consider what adjustment or modification to its policies would effectively address the employee’s concern, for “[a]n *ineffective* modification or adjustment will not *accommodate*” a person’s religious observance or practice, within the ordinary meaning of that word. *See U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 400 (2002) (considering the ordinary

meaning in the context of an ADA claim). Although there is no obligation to provide an employee with his or her preferred reasonable accommodation, *see Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 68 (1986), an employer may justify a refusal to accommodate only by showing that “an undue hardship [on its business] would *in fact* result from *each available* alternative method of accommodation.” 29 C.F.R. § 1605.2(c)(1) (emphasis added). “A mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship.” *Id.* Likewise, the fact that an accommodation may grant the religious employee a preference is not evidence of undue hardship as, “[b]y definition, any special ‘accommodation’ requires the employer to treat an employee . . . differently, *i.e.*, preferentially.” *U.S. Airways*, 535 U.S. at 397; *see also E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2034 (2015) (“Title VII does not demand mere neutrality with regard to religious practices—that they may be treated no worse than other practices. Rather, it gives them favored treatment.”).

Title VII does not, however, require accommodation at all costs. As noted above, an employer is not required to accommodate a religious observance or practice if it would pose an undue hardship on its business. An accommodation might pose an “undue hardship,” for example, if it would require the employer to breach an otherwise valid collective bargaining agreement, *see, e.g., Hardison*, 432 U.S. at 79, or carve out a special exception to a seniority system, *id.* at 83; *see also U.S. Airways*, 535 U.S. at 403. Likewise, an accommodation might pose an “undue hardship” if it would impose “more than a de minimis cost” on the business, such as in the case of a company where weekend work is “essential to [the] business” and many employees have religious observances that would prohibit them from working on the weekends, so that accommodations for all such employees would result in significant overtime costs for the employer. *Hardison*, 432 U.S. at 80, 84 & n.15. In general, though, Title VII expects positive results for society from a cooperative process between an employer and its employee “in the search for an acceptable reconciliation of the needs of the employee’s religion and the exigencies of the employer’s business.” *Philbrook*, 479 U.S. at 69 (internal quotations omitted).

The area of religious speech and expression is a useful example of reasonable accommodation. Where speech or expression is part of a person’s religious observance and practice, it falls within the scope of Title VII. *See* 42 U.S.C. §§ 2000e, 2000e-2. Speech or expression outside of the scope of an individual’s employment can almost always be accommodated without undue hardship to a business. Speech or expression within the scope of an individual’s employment, during work hours, or in the workplace may, depending upon the facts and circumstances, be reasonably accommodated. *Cf. Abercrombie*, 135 S. Ct. at 2032.

The federal government’s approach to free exercise in the federal workplace provides useful guidance on such reasonable accommodations. For example, under the Guidelines issued by President Clinton, the federal government permits a federal employee to “keep a Bible or Koran on her private desk and read it during breaks”; to discuss his religious views with other employees, subject “to the same rules of order as apply to other employee expression”; to display religious messages on clothing or wear religious medallions visible to others; and to hand out religious tracts to other employees or invite them to attend worship services at the employee’s church, except to the extent that such speech becomes excessive or harassing. Guidelines on Religious Exercise and Religious Expression in the Federal Workplace, § 1(A), Aug. 14, 1997 (hereinafter “Clinton

Guidelines”). The Clinton Guidelines have the force of an Executive Order. *See Legal Effectiveness of a Presidential Directive, as Compared to an Executive Order*, 24 Op. O.L.C. 29, 29 (2000) (“[T]here is no substantive difference in the legal effectiveness of an executive order and a presidential directive that is styled other than as an executive order.”); *see also* Memorandum from President William J. Clinton to the Heads of Executive Departments and Agencies (Aug. 14, 1997) (“All civilian executive branch agencies, officials, and employees must follow these Guidelines carefully.”). The successful experience of the federal government in applying the Clinton Guidelines over the last twenty years is evidence that religious speech and expression can be reasonably accommodated in the workplace without exposing an employer to liability under workplace harassment laws.

Time off for religious holidays is also often an area of concern. The observance of religious holidays is an “aspect[] of religious observance and practice” and is therefore protected by Title VII. 42 U.S.C. §§ 2000e, 2000e-2. Examples of reasonable accommodations for that practice could include a change of job assignments or lateral transfer to a position whose schedule does not conflict with the employee’s religious holidays, 29 C.F.R. § 1605.2(d)(1)(iii); a voluntary work schedule swap with another employee, *id.* § 1065.2(d)(1)(i); or a flexible scheduling scheme that allows employees to arrive or leave early, use floating or optional holidays for religious holidays, or make up time lost on another day, *id.* § 1065.2(d)(1)(ii). Again, the federal government has demonstrated reasonable accommodation through its own practice: Congress has created a flexible scheduling scheme for federal employees, which allows employees to take compensatory time off for religious observances, 5 U.S.C. § 5550a, and the Clinton Guidelines make clear that “[a]n agency must adjust work schedules to accommodate an employee’s religious observance—for example, Sabbath or religious holiday observance—if an adequate substitute is available, or if the employee’s absence would not otherwise impose an undue burden on the agency,” Clinton Guidelines § 1(C). If an employer regularly permits accommodation in work scheduling for secular conflicts and denies such accommodation for religious conflicts, “such an arrangement would display a discrimination against religious practices that is the antithesis of reasonableness.” *Philbrook*, 479 U.S. at 71.

Except for certain exceptions discussed in the next section, Title VII’s protection against disparate treatment, 42 U.S.C. § 2000e-2(a)(1), is implicated *any time* religious observance or practice is a motivating factor in an employer’s covered decision. *Abercrombie*, 135 S. Ct. at 2033. That is true even when an employer acts without actual knowledge of the need for an accommodation from a neutral policy but with “an unsubstantiated suspicion” of the same. *Id.* at 2034.

ii. Protections for Religious Employers

Congress has acknowledged, however, that religion sometimes *is* an appropriate factor in employment decisions, and it has limited Title VII’s scope accordingly. Thus, for example, where religion “is a bona fide occupational qualification reasonably necessary to the normal operation of [a] particular business or enterprise,” employers may hire and employ individuals based on their religion. 42 U.S.C. § 2000e-2(e)(1). Likewise, where educational institutions are “owned, supported, controlled or managed, [in whole or in substantial part] by a particular religion or by a particular religious corporation, association, or society” or direct their curriculum “toward the

propagation of a particular religion,” such institutions may hire and employ individuals of a particular religion. *Id.* And “a religious corporation, association, educational institution, or society” may employ “individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.” *Id.* § 2000e-1(a); *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 335–36 (1987).

Because Title VII defines “religion” broadly to include “all aspects of religious observance and practice, as well as belief,” 42 U.S.C. § 2000e(j), these exemptions include decisions “to employ only persons whose beliefs and conduct are consistent with the employer’s religious precepts.” *Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991); *see also Killinger v. Samford Univ.*, 113 F.3d 196, 198–200 (11th Cir. 1997). For example, in *Little*, the Third Circuit held that the exemption applied to a Catholic school’s decision to fire a divorced Protestant teacher who, though having agreed to abide by a code of conduct shaped by the doctrines of the Catholic Church, married a baptized Catholic without first pursuing the official annulment process of the Church. 929 F.2d at 946, 951.

Section 702 broadly exempts from its reach religious corporations, associations, educational institutions, and societies. The statute’s terms do not limit this exemption to non-profit organizations, to organizations that carry on only religious activities, or to organizations established by a church or formally affiliated therewith. *See* Civil Rights Act of 1964, § 702(a), *codified at* 42 U.S.C. § 2000e-1(a); *see also Hobby Lobby*, 134 S. Ct. at 2773–74; *Corp. of Presiding Bishop*, 483 U.S. at 335–36. The exemption applies whenever the organization is “religious,” which means that it is organized for religious purposes and engages in activity consistent with, and in furtherance of, such purposes. *Br. of Amicus Curiae the U.S. Supp. Appellee, Spencer v. World Vision, Inc.*, No. 08-35532 (9th Cir. 2008). Thus, the exemption applies not just to religious denominations and houses of worship, but to religious colleges, charitable organizations like the Salvation Army and World Vision International, and many more. In that way, it is consistent with other broad protections for religious entities in federal law, including, for example, the exemption of religious entities from many of the requirements under the Americans with Disabilities Act. *See* 28 C.F.R. app. C; 56 Fed. Reg. 35544, 35554 (July 26, 1991) (explaining that “[t]he ADA’s exemption of religious organizations and religious entities controlled by religious organizations is very broad, encompassing a wide variety of situations”).

In addition to these explicit exemptions, religious organizations may be entitled to additional exemptions from discrimination laws. *See, e.g., Hosanna-Tabor*, 565 U.S. at 180, 188–90. For example, a religious organization might conclude that it cannot employ an individual who fails faithfully to adhere to the organization’s religious tenets, either because doing so might itself inhibit the organization’s exercise of religion or because it might dilute an expressive message. *Cf. Boy Scouts of Am. v. Dale*, 530 U.S. 640, 649–55 (2000). Both constitutional and statutory issues arise when governments seek to regulate such decisions.

As a constitutional matter, religious organizations’ decisions are protected from governmental interference to the extent they relate to ecclesiastical or internal governance matters. *Hosanna-Tabor*, 565 U.S. at 180, 188–90. It is beyond dispute that “it would violate the First Amendment for courts to apply [employment discrimination] laws to compel the ordination of

women by the Catholic Church or by an Orthodox Jewish seminary.” *Id.* at 188. The same is true for other employees who “minister to the faithful,” including those who are not themselves the head of the religious congregation and who are not engaged solely in religious functions. *Id.* at 188, 190, 194–95; *see also* Br. of Amicus Curiae the U.S. Supp. Appellee, *Spencer v. World Vision, Inc.*, No. 08-35532 (9th Cir. 2008) (noting that the First Amendment protects “the right to employ staff who share the religious organization’s religious beliefs”).

Even if a particular associational decision could be construed to fall outside this protection, the government would likely still have to show that any interference with the religious organization’s associational rights is justified under strict scrutiny. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (infringements on expressive association are subject to strict scrutiny); *Smith*, 494 U.S. at 882 (“[I]t is easy to envision a case in which a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns.”). The government may be able to meet that standard with respect to race discrimination, *see Bob Jones Univ.*, 461 U.S. at 604, but may not be able to with respect to other forms of discrimination. For example, at least one court has held that forced inclusion of women into a mosque’s religious men’s meeting would violate the freedom of expressive association. *Donaldson v. Farrakhan*, 762 N.E.2d 835, 840–41 (Mass. 2002). The Supreme Court has also held that the government’s interest in addressing sexual-orientation discrimination is not sufficiently compelling to justify an infringement on the expressive association rights of a private organization. *Boy Scouts*, 530 U.S. at 659.

As a statutory matter, RFRA too might require an exemption or accommodation for religious organizations from antidiscrimination laws. For example, “prohibiting religious organizations from hiring only coreligionists can ‘impose a significant burden on their exercise of religion, even as applied to employees in programs that must, by law, refrain from specifically religious activities.’” *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act*, 31 Op. O.L.C. 162, 172 (2007) (quoting *Direct Aid to Faith-Based Organizations Under the Charitable Choice Provisions of the Community Solutions Act of 2001*, 25 Op. O.L.C. 129, 132 (2001)); *see also Corp. of Presiding Bishop*, 483 U.S. at 336 (noting that it would be “a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court w[ould] consider religious” in applying a nondiscrimination provision that applied only to secular, but not religious, activities). If an organization establishes the existence of such a burden, the government must establish that imposing such burden on the organization is the least restrictive means of achieving a compelling governmental interest. That is a demanding standard and thus, even where Congress has not expressly exempted religious organizations from its antidiscrimination laws—as it has in other contexts, *see, e.g.*, 42 U.S.C. §§ 3607 (Fair Housing Act), 12187 (Americans with Disabilities Act)—RFRA might require such an exemption.

2. Government Programs

Protections for religious organizations likewise exist in government contracts, grants, and other programs. Recognizing that religious organizations can make important contributions to government programs, *see, e.g.*, 22 U.S.C. § 7601(19), Congress has expressly permitted religious organizations to participate in numerous such programs on an equal basis with secular

organizations, *see, e.g.*, 42 U.S.C. §§ 290kk-1, 300x-65 604a, 629i. Where Congress has not expressly so provided, the President has made clear that “[t]he Nation’s social service capacity will benefit if all eligible organizations, including faith-based and other neighborhood organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs.” Exec. Order No. 13559, § 1, 75 Fed. Reg. 71319, 71319 (Nov. 17, 2010) (amending Exec. Order No. 13279, 67 Fed. Reg. 77141 (2002)). To that end, no organization may be “discriminated against on the basis of religion or religious belief in the administration or distribution of Federal financial assistance under social service programs.” *Id.* “Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization)” are eligible to participate in such programs, so long as they conduct such activities outside of the programs directly funded by the federal government and at a separate time and location. *Id.*

The President has assured religious organizations that they are “eligible to compete for Federal financial assistance used to support social service programs and to participate fully in the social services programs supported with Federal financial assistance without impairing their independence, autonomy, expression outside the programs in question, or religious character.” *See id.*; *see also* 42 U.S.C. § 290kk-1(e) (similar statutory assurance). Religious organizations that apply for or participate in such programs may continue to carry out their mission, “including the definition, development, practice, and expression of . . . religious beliefs,” so long as they do not use any “direct Federal financial assistance” received “to support or engage in any explicitly religious activities” such as worship, religious instruction, or proselytization. Exec. Order No. 13559, § 1. They may also “use their facilities to provide social services supported with Federal financial assistance, without removing or altering religious art, icons, scriptures, or other symbols from these facilities,” and they may continue to “retain religious terms” in their names, select “board members on a religious basis, and include religious references in . . . mission statements and other chartering or governing documents.” *Id.*

With respect to government contracts in particular, Executive Order 13279, 67 Fed. Reg. 77141 (Dec. 12, 2002), confirms that the independence and autonomy promised to religious organizations include independence and autonomy in religious hiring. Specifically, it provides that the employment nondiscrimination requirements in Section 202 of Executive Order 11246, which normally apply to government contracts, do “not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.” Exec. Order No. 13279, § 4, *amending* Exec. Order No. 11246, § 204(c), 30 Fed. Reg. 12319, 12935 (Sept. 24, 1965).

Because the religious hiring protection in Executive Order 13279 parallels the Section 702 exemption in Title VII, it should be interpreted to protect the decision “to employ only persons whose beliefs and conduct are consistent with the employer’s religious precepts.” *Little*, 929 F.2d at 951. That parallel interpretation is consistent with the Supreme Court’s repeated counsel that the decision to borrow statutory text in a new statute is “strong indication that the two statutes should be interpreted *pari passu*.” *Northcross v. Bd. of Educ. of Memphis City Sch.*, 412 U.S. 427 (1973) (*per curiam*); *see also Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich L.P.A.*, 559

U.S. 573, 590 (2010). It is also consistent with the Executive Order's own usage of discrimination on the basis of "religion" as something distinct and more expansive than discrimination on the basis of "religious belief." *See, e.g.*, Exec. Order No. 13279, § 2(c) ("No organization should be discriminated against on the basis of religion *or* religious belief . . ." (emphasis added)); *id.* § 2(d) ("All organizations that receive Federal financial assistance under social services programs should be prohibited from discriminating against beneficiaries or potential beneficiaries of the social services programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice."). Indeed, because the Executive Order uses "on the basis of religion or religious belief" in both the provision prohibiting discrimination against religious organizations and the provision prohibiting discrimination "against beneficiaries or potential beneficiaries," a narrow interpretation of the protection for religious organizations' hiring decisions would lead to a narrow protection for beneficiaries of programs served by such organizations. *See id.* §§ 2(c), (d). It would also lead to inconsistencies in the treatment of religious hiring across government programs, as some program-specific statutes and regulations expressly confirm that "[a] religious organization's exemption provided under section 2000e-1 of this title regarding employment practices shall not be affected by its participation, or receipt of funds from, a designated program." 42 U.S.C. § 290kk-1(e); *see also* 6 C.F.R. § 19.9 (same).

Even absent the Executive Order, however, RFRA would limit the extent to which the government could condition participation in a federal grant or contract program on a religious organization's effective relinquishment of its Section 702 exemption. RFRA applies to all government conduct, not just to legislation or regulation, *see* 42 U.S.C. § 2000bb-1, and the Office of Legal Counsel has determined that application of a religious nondiscrimination law to the hiring decisions of a religious organization can impose a substantial burden on the exercise of religion. *Application of the Religious Freedom Restoration Act to the Award of a Grant*, 31 Op. O.L.C. at 172; *Direct Aid to Faith-Based Organizations*, 25 Op. O.L.C. at 132. Given Congress's "recognition that religious discrimination in employment is permissible in some circumstances," the government will not ordinarily be able to assert a compelling interest in prohibiting that conduct as a general condition of a religious organization's receipt of any particular government grant or contract. *Application of the Religious Freedom Restoration Act to the Award of a Grant*, 31 Op. of O.L.C. at 186. The government will also bear a heavy burden to establish that requiring a particular contractor or grantee effectively to relinquish its Section 702 exemption is the least restrictive means of achieving a compelling governmental interest. *See* 42 U.S.C. § 2000bb-1.

The First Amendment also "supplies a limit on Congress' ability to place conditions on the receipt of funds." *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 133 S. Ct. 2321, 2328 (2013) (internal quotation marks omitted)). Although Congress may specify the activities that it wants to subsidize, it may not "seek to leverage funding" to regulate constitutionally protected conduct "outside the contours of the program itself." *See id.* Thus, if a condition on participation in a government program—including eligibility for receipt of federally backed student loans—would interfere with a religious organization's constitutionally protected rights, *see, e.g.*,

Hosanna-Tabor, 565 U.S. at 188–89, that condition could raise concerns under the “unconstitutional conditions” doctrine, *see All. for Open Soc’y Int’l, Inc.*, 133 S. Ct. at 2328.

Finally, Congress has provided an additional statutory protection for educational institutions controlled by religious organizations who provide education programs or activities receiving federal financial assistance. Such institutions are exempt from Title IX’s prohibition on sex discrimination in those programs and activities where that prohibition “would not be consistent with the religious tenets of such organization[s].” 20 U.S.C. § 1681(a)(3). Although eligible institutions may “claim the exemption” in advance by “submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions . . . [that] conflict with a specific tenet of the religious organization,” 34 C.F.R. § 106.12(b), they are not required to do so to have the benefit of it, *see* 20 U.S.C. § 1681.

3. Government Mandates

Congress has undertaken many similar efforts to accommodate religious adherents in diverse areas of federal law. For example, it has exempted individuals who, “by reason of religious training and belief,” are conscientiously opposed to war from training and service in the armed forces of the United States. 50 U.S.C. § 3806(j). It has exempted “ritual slaughter and the handling or other preparation of livestock for ritual slaughter” from federal regulations governing methods of animal slaughter. 7 U.S.C. § 1906. It has exempted “private secondary school[s] that maintain[] a religious objection to service in the Armed Forces” from being required to provide military recruiters with access to student recruiting information. 20 U.S.C. § 7908. It has exempted federal employees and contractors with religious objections to the death penalty from being required to “be in attendance at or to participate in any prosecution or execution.” 18 U.S.C. § 3597(b). It has allowed individuals with religious objections to certain forms of medical treatment to opt out of such treatment. *See, e.g.*, 33 U.S.C. § 907(k); 42 U.S.C. § 290bb-36(f). It has created tax accommodations for members of religious faiths conscientiously opposed to acceptance of the benefits of any private or public insurance, *see, e.g.*, 26 U.S.C. §§ 1402(g), 3127, and for members of religious orders required to take a vow of poverty, *see, e.g.*, 26 U.S.C. § 3121(r).

Congress has taken special care with respect to programs touching on abortion, sterilization, and other procedures that may raise religious conscience objections. For example, it has prohibited entities receiving certain federal funds for health service programs or research activities from requiring individuals to participate in such program or activity contrary to their religious beliefs. 42 U.S.C. § 300a-7(d), (e). It has prohibited discrimination against health care professionals and entities that refuse to undergo, require, or provide training in the performance of induced abortions; to provide such abortions; or to refer for such abortions, and it will deem accredited any health care professional or entity denied accreditation based on such actions. *Id.* § 238n(a), (b). It has also made clear that receipt of certain federal funds does not require an individual “to perform or assist in the performance of any sterilization procedure or abortion if [doing so] would be contrary to his religious beliefs or moral convictions” nor an entity to “make its facilities available for the performance of” those procedures if such performance “is prohibited by the entity on the basis of religious beliefs or moral convictions,” nor an entity to “provide any personnel for the performance or assistance in the performance of” such procedures if such performance or assistance “would be contrary to the religious beliefs or moral convictions of such

personnel.” *Id.* § 300a-7(b). Finally, no “qualified health plan[s] offered through an Exchange” may discriminate against any health care professional or entity that refuses to “provide, pay for, provide coverage of, or refer for abortions,” § 18023(b)(4); *see also* Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div. H, § 507(d), 129 Stat. 2242, 2649 (Dec. 18, 2015).

Congress has also been particularly solicitous of the religious freedom of American Indians. In 1978, Congress declared it the “policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.” 42 U.S.C. § 1996. Consistent with that policy, it has passed numerous statutes to protect American Indians’ right of access for religious purposes to national park lands, Scenic Area lands, and lands held in trust by the United States. *See, e.g.*, 16 U.S.C. §§ 228i(b), 410aaa-75(a), 460uu-47, 543f, 698v-11(b)(11). It has specifically sought to preserve lands of religious significance and has required notification to American Indians of any possible harm to or destruction of such lands. *Id.* § 470cc. Finally, it has provided statutory exemptions for American Indians’ use of otherwise regulated articles such as bald eagle feathers and peyote as part of traditional religious practice. *Id.* §§ 668a, 4305(d); 42 U.S.C. § 1996a.

* * *

The depth and breadth of constitutional and statutory protections for religious observance and practice in America confirm the enduring importance of religious freedom to the United States. They also provide clear guidance for all those charged with enforcing federal law: The free exercise of religion is not limited to a right to hold personal religious beliefs or even to worship in a sacred place. It encompasses all aspects of religious observance and practice. To the greatest extent practicable and permitted by law, such religious observance and practice should be reasonably accommodated in all government activity, including employment, contracting, and programming. *See Zorach v. Clauson*, 343 U.S. 306, 314 (1952) (“[Government] follows the best of our traditions . . . [when it] respects the religious nature of our people and accommodates the public service to their spiritual needs.”).

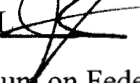


Office of the Attorney General

Washington, D.C. 20530

October 6, 2017

MEMORANDUM FOR ALL COMPONENT HEADS AND UNITED STATES ATTORNEYS

FROM: THE ATTORNEY GENERAL 
SUBJECT: Implementation of Memorandum on Federal Law Protections
for Religious Liberty

The President has instructed me to issue guidance interpreting religious liberty protections in federal law. Exec. Order 13798, § 4 (May 4, 2017). Pursuant to that instruction and consistent with my authority to provide advice and opinions on questions of law to the Executive Branch, I have undertaken a review of the primary sources for federal protection of religious liberty in the United States, along with the case law interpreting such sources. I also convened a series of listening sessions, seeking suggestions regarding the areas of federal protection for religious liberty most in need of clarification or guidance from the Attorney General.

Today, I sent out a memorandum to the heads of all executive departments and agencies summarizing twenty principles of religious liberty and providing an appendix with interpretive guidance of federal-law protections for religious liberty to support those principles. That memorandum and appendix are no less applicable to this Department than to any other agency within the Executive Branch. I therefore direct all attorneys within the Department to adhere to the interpretative guidance set forth in the memorandum and its accompanying appendix.

In particular, I direct the Department of Justice to undertake the following actions:

- All Department components and United States Attorney's Offices shall, effective immediately, incorporate the interpretative guidance in litigation strategy and arguments, operations, grant administration, and all other aspects of the Department's work, keeping in mind the President's declaration that "[i]t shall be the policy of the executive branch to vigorously enforce Federal law's robust protections for religious freedom." Exec. Order 13798, § 1 (May 4, 2017).
- Litigating Divisions and United States Attorney's Offices should also consider, in consultation with the Associate Attorney General, how best to implement the guidance with respect to arguments already made in pending cases where such arguments may be inconsistent with the guidance.
- Department attorneys shall also use the interpretive guidance in formulating opinions and advice for other Executive Branch agencies and shall alert the appropriate officials at such agencies whenever agency policies may conflict with the guidance.
- To aid in the consistent application of the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb *et seq.*, and other federal-law protections for religious liberty, the Office of Legal Policy shall coordinate with the Civil Rights Division to

review every Department rulemaking and every agency action submitted by the Office of Management and Budget for review by this Department for consistency with the interpretive guidance. In particular, the Office of Legal Policy, in consultation with the Civil Rights Division, shall consider whether such rules might impose a substantial burden on the exercise of religion and whether the imposition of that burden would be consistent with the requirements of RFRA. The Department shall not concur in the issuance of any rule that appears to conflict with federal laws governing religious liberty, as set forth in the interpretive guidance.

- In addition, to the extent that existing procedures do not already provide for consultation with the Associate Attorney General, Department components and United States Attorney's Offices shall notify the Associate Attorney General of all issues arising in litigation, operations, grants, or other aspects of the Department's work that appear to raise novel, material questions under RFRA or other religious liberty protections addressed in the interpretive guidance. The Associate Attorney General shall promptly alert the submitting component of any concerns.

Any questions about the interpretive guidance or this memorandum should be addressed to the Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue N.W., Washington, D.C. 20530, phone (202) 514-4601.

Thank you for your time and attention to this important matter.

**ATTORNEY GENERAL SESSIONS ISSUES GUIDANCE ON FEDERAL LAW
PROTECTIONS FOR RELIGIOUS LIBERTY**

WASHINGTON – Attorney General Sessions today issued guidance to all administrative agencies and executive departments regarding religious liberty protections in federal law and made the following statement:

“Our freedom as citizens has always been inextricably linked with our religious freedom as a people. It has protected both the freedom to worship and the freedom not to believe. Every American has a right to believe, worship, and exercise their faith. The protections for this right, enshrined in our Constitution and laws, serve to declare and protect this important part of our heritage.

“As President Trump said, ‘Faith is deeply embedded into the history of our country, the spirit of our founding and the soul of our nation . . . [this administration] will not allow people of faith to be targeted, bullied or silenced anymore.’

“The constitutional protection of religious beliefs and the right to exercise those beliefs have served this country well, have made us one of the most tolerant countries in the world, and have also helped make us the freest and most generous. President Trump promised that this administration would ‘lead by example on religious liberty,’ and he is delivering on that promise.”

The memorandum was issued pursuant to President Trump’s Executive Order No. 13798 (May 4, 2017), which directed the Attorney General to “issue guidance interpreting religious liberty protections in Federal law” in order “to guide all agencies in complying with relevant Federal law.”

The guidance interprets existing protections for religious liberty in Federal law, identifying 20 high-level principles that administrative agencies and executive departments can put to practical use to ensure the religious freedoms of Americans are lawfully protected. Attorney General Sessions also issued a second memorandum to the Department of Justice, directing implementation of the religious liberty guidance within the Department.

Religious Liberty Guidance Backgrounder

- As President Trump said, "Faith is deeply embedded into the history of our country, the spirit of our founding and the soul of our nation * * * [and the administration] will not allow people of faith to be targeted, bullied or silenced anymore." He promised that this administration would "lead by example on religious liberty" and he is delivering on that promise.
- In his Executive Order, the President directed the Attorney General to "issue guidance interpreting religious liberty protections in Federal law" in order "to guide all agencies in complying with relevant Federal law."
- The Attorney General has issued legal guidance to all administrative agencies and executive departments about their obligations to protect religious liberty in the United States. The guidance reminds agencies of their obligations under federal law to protect religious liberty, and summarizes twenty key principles of religious liberty protections that agencies can use in that effort.

Religious Liberty Guidance Generally

- Religious liberty is a foundational principle of enduring importance in this country, enshrined in our Constitution and other sources of federal law. In fact, we identified more than 200 statutes and more than 158 regulations that provide such protection during our review.
- President Trump recognized the importance of this right in his Executive Order Promoting Free Speech and Religious Liberty, and he declared that "[i]t shall be the policy of the executive branch to vigorously enforce Federal law's robust protections for religious freedom."¹
- The Attorney General issued two memoranda. The first memorandum, addressed to all administrative agencies and executive departments, identifies 20 key principles of religious liberty. It explains that agencies should use these principles to protect religious liberty in all aspects of their work, including as employers, rule makers, adjudicators, contract and grant makers, and program administrators. The second memorandum, addressed to Department of Justice components and United States Attorney's offices, directs the implementation of that guidance within the Department.
- This Guidance does not resolve any specific cases; it offers guidance on existing protections for religious liberty in federal law. The Guidance does not authorize anyone to discriminate on the basis of race, ethnicity, national origin, sex, sexual orientation, or gender identity in violation of federal law or change existing federal and state protections.

¹ Exec. Order No. 13798 § 1, 82 Fed. Reg. 21675 (May 4, 2017).

The 20 Key Principles of Religious Liberty

1. The freedom of religion is an important, fundamental right, expressly protected by federal law.
2. The free exercise of religion includes the right to act or not to act in accordance with one's religious beliefs.
3. The freedom of religion extends to persons and organizations.
4. Americans do not give up their freedom of religion by participating in society or the economy, or interacting with government.
5. Government may not restrict or compel actions because of the belief they display.
6. Government may not exclude religious individuals or entities based on their religion.
7. Government may not target religious individuals or entities through discriminatory enforcement of neutral, generally applicable laws.
8. Government may not officially favor or disfavor particular religious groups.
9. Government may not interfere with the autonomy of a religious organization.
10. The Religious Freedom Restoration Act of 1993 ("RFRA") prohibits the federal government from substantially burdening any aspect of religious observance or practice, except in rare cases where the government has a compelling reason and there is not a less restrictive option available.
11. RFRA's protection extends not just to individuals, but also to organizations, associations, and at least some for profit corporations.
12. RFRA does not permit the federal government to second guess the reasonableness of a sincerely held religious belief.
13. A governmental action substantially burdens an exercise of religion under RFRA if it bans an aspect of an adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice.
14. Under RFRA, any government action that would substantially burden religious freedom is held to an exceptionally demanding standard.
15. RFRA applies even where a religious adherent seeks an exemption from a requirement to confer benefits on third parties.

16. Title VII of the Civil Rights Act prohibits covered employers from discriminating against individuals on the basis of their religion.
17. Title VII's prohibits discrimination on the basis of religious observance or practice as well as belief, unless the employer cannot reasonably accommodate such observance or practice without undue hardship.
18. The Clinton Guidelines on Religious Exercise and Religious Expression in the Federal Workplace provide useful examples for private employers of reasonable accommodations for religious observance and practice in the workplace.
19. Religious employers are entitled to employ only persons whose beliefs and conduct are consistent with the employers' religious precepts.
20. Generally, the federal government may not condition federal grants or contracts on the religious organization altering its religious character, beliefs, or activities.

Implementation of the Guidance at the Department of Justice

- The Department of Justice will vigorously enforce federal protections for religious liberty.
- The Attorney General has directed all Department components and United States Attorney's offices to incorporate the new guidance in litigation strategy and arguments, Department operations, grant administration, and all other aspects of the Department's work.
- Department attorneys will also use this interpretive guidance in formulating opinions and advice for all other Executive Branch agencies.
- The Office of Legal Policy, in consultation with the Civil Rights Division, will review every Department rule making action, and every agency action submitted for review by the Department, to ensure consistency with federal protections for religious liberty. The Department will not concur in the issuance of any rule that appears to conflict with federal laws governing religious liberty.

From: Browne, Pamela <pamela.browne@foxnews.com>
Sent: Friday, October 6, 2017 10:48 AM
To: Carr, Peter (OPA)
Subject: FW: question from Fox News/Pamela K. Browne/ CHRISTOPHER STEELE MEETING

Peter,

And here is my inquiry as per my voicemail.

Thank you for your prompt consideration.

Sincerely,
Pamela

Pamela K. Browne

Senior Executive Producer
Director, Long-Form Series and Specials
FOX News

T (b) (6)
M (b) (6)
E pamela.browne@foxnews.com

1211 Avenue of the Americas
16th Floor, New York, NY 10036
USA

From: Browne, Pamela
Sent: Friday, October 06, 2017 10:35 AM
To: 'Stueve, Joshua (USAVAE)' <Joshua.Stueve@usdoj.gov>; 'specialcounselpress@usdoj.gov' <specialcounselpress@usdoj.gov>
Subject: RE: question from Fox News/Pamela K. Browne/ CHRISTOPHER STEELE MEETING

Hi Joshua,

Thank you.

I am adding Peter and will call him as per your suggestion here.

-Pamela

Pamela K. Browne

Senior Executive Producer

Director, Long-Form Series and Specials
FOX News

T (b) (6)
M (b) (6)
E pamela.browne@foxnews.com

1211 Avenue of the Americas
16th Floor, New York, NY 10036
USA

From: Stueve, Joshua (USAVAE) [<mailto:Joshua.Stueve@usdoj.gov>]
Sent: Friday, October 06, 2017 10:25 AM
To: Browne, Pamela <pamela.browne@foxnews.com>
Cc: SpecialCounselPress (JMD) <SpecialCounselPress@usdoj.gov>
Subject: RE: question from Fox News/Pamela K. Browne/ CHRISTOPHER STEELE MEETING

Hi Pamela,

Peter Carr is the primary spokesman for the Special Counsel's Office, and your best POC for this request. You can reach him at: specialcounselpress@usdoj.gov

Joshua Stueve
Director of Communications
U.S. Attorney's Office | Eastern District of Virginia
Office: 703-299-3774
joshua.stueve@usdoj.gov

From: Browne, Pamela [<mailto:pamela.browne@foxnews.com>]
Sent: Friday, October 06, 2017 9:27 AM
To: Stueve, Joshua (USAVAE) <jstueve1@usa.doj.gov>
Subject: question from Fox News/Pamela K. Browne/ CHRISTOPHER STEELE MEETING
Importance: High

Good morning Joshua,

Trust you are well. In addition to this email, I left you a voicemail.

I would like to receive an on the record comment for Fox News regarding published reports that Robert Mueller's Special Counsel team has met with Christopher Steele.

If this true and when and where did the meeting take place? Did Mr. Steele meet voluntarily with Special Counsel? And-has the Special Counsel team met with Glenn Simpson or Fusion GPS? If so, when and where did that meeting take place?

Do you have any statement about the progress of the Special Counsel's investigation?

Thank you for your prompt reply as we are on deadline.

Sincerely,
Pamela

Pamela K. Browne

Senior Executive Producer
Director, Long-Form Series and Specials
FOX News

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M (b) (6)
E pamela.browne@foxnews.com

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USA

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Pettit, Mark T. (OPA)

From: Pettit, Mark T. (OPA)
Sent: Friday, October 6, 2017 8:52 AM
To: mark.t.pettit@usdoj.gov
Bcc: (b) (6); achristensen@sba-list.org; mquigley@SBA-LIST.ORG; Fred.Lucas@heritage.or (b) (6); ari@thefire.org; kscanlon@theblaze.com; brooke.singman@FOXNEWS.COM; mhadro@catholicna.co (b) (6); mbauman@catholicna.com; sberry@breitbart.com
Subject: REVISED CALL IN NUMBER FOR 10:00 AM Call
Importance: High

Please see below for the [new](#) call in number:

Conference Lin (b) (6)
PC (b) (6)

Mark T. Pettit
Confidential Assistant
Office of Public Affairs
U.S. Department of Justice
Office: 202.514.1449
Cell (b) (6)

From: Prior, Ian (OPA)
Sent: Friday, October 6, 2017 8:46 AM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: REVISED CALL IN NUMBER FOR 10:00 AM Call
Importance: High

Thank you!!

Conference Lin (b) (6)
PC (b) (6)

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

Scanlon, Katherine

From: Scanlon, Katherine
Sent: Thursday, October 5, 2017 7:13 PM
To: Pettit, Mark T. (OPA)
Subject: Re: FOR PLANNING PURPOSES ONLY - 10:00 am briefing call

Hi Mark,

I'd like to RSVP

Thanks!

Kate Scanlon
Reporter, TheBlaze

(b) (6)

From: Prior, Ian (OPA) <Ian.Prior@usdoj.gov>
Sent: Thursday, October 5, 2017 6:48:38 PM
To: Prior, Ian (OPA)
Cc: Pettit, Mark T. (OPA)
Subject: FOR PLANNING PURPOSES ONLY - 10:00 am briefing call

For planning purposes only, tomorrow morning at 10:00 am we will provide a background briefing with senior Department of Justice officials to update you on Exec. Order No. 13798, the Presidential Executive Order Promoting Free Speech and Religious Liberty.

Please RSVP to Mark and let him know whether you will be participating. Please find the call in numbers below.

Conference Call Info

(b) (6)

(b) (6)

We will distribute materials to you for review before the call at 9:00 am tomorrow.

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Singman, Brooke <brooke.singman@FOXNEWS.COM>
Sent: Thursday, October 5, 2017 7:01 PM
To: Prior, Ian (OPA)
Cc: Pettit, Mark T. (OPA)
Subject: Re: FOR PLANNING PURPOSES ONLY - 10:00 am briefing call

I'll be on the call.

Thank you!

Sent from my iPhone

On Oct 5, 2017, at 6:52 PM, Prior, Ian (OPA) <ian.prior@usdoj.gov> wrote:

duplicative material

From: Dr. Susan Berry <sberry@breitbart.com>
Sent: Thursday, October 5, 2017 6:55 PM
To: Prior, Ian (OPA)
Cc: Pettit, Mark T. (OPA)
Subject: Re: FOR PLANNING PURPOSES ONLY - 10:00 am briefing call

I plan to attend.

Susan Berry

Dr. Susan Berry
Breitbart News Network
sberry@breitbart.com

On Oct 5, 2017, at 6:48 PM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

duplicative material



O'Malley, Devin (OPA)

From: O'Malley, Devin (OPA)
Sent: Thursday, October 5, 2017 12:44 PM
To: rachel.sutherland@foxnews.com
Cc: Laco, Kelly (OPA)
Subject: RE: DOJ Transgender
Attachments: attachment 2.pdf

Attributable to me:

"The Department of Justice cannot expand the law beyond what Congress has provided. Unfortunately, the last administration abandoned that fundamental principle, which necessitated today's action. This Department remains committed to protecting the civil and constitutional rights of all individuals, and will continue to enforce the numerous laws that Congress has enacted that prohibit discrimination on the basis of sexual orientation."

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Press
Sent: Thursday, October 5, 2017 12:37 PM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Cc: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>
Subject: FW: DOJ Transgender

Thank you - Kristen

From: Sutherland, Rachel [<mailto:Rachel.Sutherland@FOXNEWS.COM>]
Sent: Thursday, October 5, 2017 12:17 PM
To: Press <Press@jmd.usdoj.gov>
Cc: Austin, Jason <Jason.Austin@FOXNEWS.COM>
Subject: DOJ Transgender

Hello. I hope I've reached the right person. Can the DOJ confirm the reversal of the Obama administration's position regarding the 1964 Civil Rights Act and transgender individuals? Thanks and have a great day.

Rachel

Rachel Sutherland
Washington Correspondent
Fox News Radio
(b) (6)

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From: Spinato, Eric <eric.spinato@FOXNEWS.COM>
Sent: Thursday, October 5, 2017 10:30 AM
To: Flores, Sarah Isgur (OPA)
Cc: Henning, Alexa A. EOP/WHO
Subject: AG Sessions with Maria next week, on her FBN program?

If you think he would join her live this Sunday, please let me know.

Thank you, Sarah

Eric

Eric Spinato

Senior Story Editor, Fox Business Network

W 212-601-2399

C (b) (6)

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From: McDonough, Constance <Constance.mcdonough@FOXNEWS.COM>
Sent: Wednesday, October 4, 2017 5:25 PM
To: O'Malley, Devin (OPA); Laco, Kelly (OPA)
Subject: Re: Hi Devin and Kelly -- NBC POOL for Sessions remarks and photo-op tomorrow (10/5)

Completely understood and no worries. Thank you for being so quick in your emails regarding the logistics, that was greatly appreciated!

I'm sure we'll be talking again soon!
Connie

From: O'Malley, Devin (OPA) <Devin.O'Malley@usdoj.gov>
Sent: Wednesday, October 4, 2017 5:20:37 PM
To: Laco, Kelly (OPA)
Cc: McDonough, Constance; Forman, Dave (NBCUniversal)
Subject: Re: Hi Devin and Kelly -- NBC POOL for Sessions remarks and photo-op tomorrow (10/5)

And please understand we are very sorry about this. There was a lot of back and forth securing this pool, and I know a lot goes into assigning these.

Sent from my iPhone

On Oct 4, 2017, at 5:18 PM, Laco, Kelly (OPA) <klaco@jmd.usdoj.gov> wrote:

Correct.

Kelly Laco
Office of Public Affairs
Department of Justice
Office: 202-353-0173
Cell (b) (6)

From: McDonough, Constance [<mailto:Constance.mcdonough@FOXNEWS.COM>]
Sent: Wednesday, October 4, 2017 5:16 PM
To: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>; Forman, Dave (NBCUniversal) <Dave.Forman@nbcuni.com>; O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: Re: Hi Devin and Kelly -- NBC POOL for Sessions remarks and photo-op tomorrow (10/5)

Hi Kelly,
Confirming this means both the remarks and photo op have been cancelled?

From: Laco, Kelly (OPA) <Kelly.Laco@usdoj.gov>
Sent: Wednesday, October 4, 2017 5:14:03 PM
To: Forman, Dave (NBCUniversal); McDonough, Constance; O'Malley, Devin (OPA)
Subject: RE: Hi Devin and Kelly -- NBC POOL for Sessions remarks and photo-op tomorrow (10/5)

Hi Dave,

Sorry for the late notice, but we were just informed that the event tomorrow has been cancelled. We apologize for the inconvenience.

Thanks so much!

Kelly Laco

Office of Public Affairs
Department of Justice
Office: 202-353-0173
Cell (b) (6)

From: Forman, Dave (NBCUniversal) [<mailto:Dave.Forman@nbcuni.com>]
Sent: Wednesday, October 4, 2017 4:54 PM
To: 'McDonough, Constance' <Constance.mcdonough@FOXNEWS.COM>; O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>; Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>
Subject: RE: Hi Devin and Kelly -- NBC POOL for Sessions remarks and photo-op tomorrow (10/5)

Hi Devin and Kelly
Here is our NBC pool team:

Camera (b) (6)
Audio (b) (6)
Producer: Charlie Gile

Can you please send me any additional info in terms of presetting.
We will hope that Justice can route the camera line from the Great Hall to the network pool line on the 7th floor.
Thanks much

Dave Forman
NBC News /Washington Bureau
Des (b) (6)
Cell (b) (6)
IPhone: Dave.Forman@NBCuni.com
Twitter: @DCDesker
<image001.jpg><image002.jpg>

From: McDonough, Constance [<mailto:Constance.mcdonough@FOXNEWS.COM>]
Sent: Wednesday, October 04, 2017 4:52 PM
To: O'Malley, Devin (OPA); Laco, Kelly (OPA); Forman, Dave (NBCUniversal)
Subject: [EXTERNAL] Hi Devin and Kelly NBC POOL for Sessions remarks and photo op tomorrow (10/5)

Hi Devin and Kelly,
I am looping you in with Dave Foreman from NBC. They are covering the mandated pool tomorrow for both AG Sessions' 1100 remarks in the Great Hall and the 1150 photo op in the 5th Floor Conference room. I let Dave know there is one fiber line available in the Great Hall so that NBC's camera can plug in and provide a live shot of the AG's remarks to the pool. NBC will then shoot the 1150 photo spray to tape. Please speak directly to Dave regarding any additional details that his team may need.

Thank you very much,
Connie McDonough
Fox News Channel - D.C.

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Prior, Ian (OPA)

From: Prior, Ian (OPA)
Sent: Wednesday, October 4, 2017 11:11 AM
To: Gibson, Jake
Subject: RE: Hey there

No its about forensics

Ian D. Prior

Principal Deputy Director of Public Affairs Department of Justice Office: 202.616.0911 Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please [click here](#).

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

From: Gibson, Jake [mailto:Jake.Gibson@FOXNEWS.COM]
Sent: Wednesday, October 4, 2017 11:03 AM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: Hey there

I see DAG will issue one release today.

Something big?

Is it that release about immigration judges that already came out?

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Gibson, Jake

From: Gibson, Jake
Sent: Tuesday, October 3, 2017 3:11 PM
To: Flores, Sarah Isgur (OPA)
Cc: Prior, Ian (OPA)
Subject: RE: This happening tomorrow?

Oh... Copy that.

From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Tuesday, October 03, 2017 3:10 PM
To: Gibson, Jake
Cc: Prior, Ian (OPA)
Subject: Re: This happening tomorrow?

No. Closed and at state.

On Oct 3, 2017, at 3:06 PM, Gibson, Jake <Jake.Gibson@FOXNEWS.COM> wrote:

Is this an open event here?
What time?

Thanks

From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Tuesday, October 03, 2017 3:04 PM
To: Gibson, Jake
Cc: Prior, Ian (OPA)
Subject: Re: This happening tomorrow?

Yes

On Oct 3, 2017, at 2:34 PM, Gibson, Jake <Jake.Gibson@FOXNEWS.COM> wrote:

NEW EVENT: [Wednesday, Oct. 04](#) U.S.-China Law Enforcement and Cybersecurity Dialogue - U.S.-China Law Enforcement and Cybersecurity Dialogue, with delegations chaired by Attorney General Jeff Sessions and Acting Secretary of Homeland Security Elaine Duke, and State Councilor and Minister of Public Security Guo Shengkun, respectively. Agenda includes increasing cooperation on repatriations, fugitives, counternarcotics, and cybercrime .. Marks the conclusion of the first round of cabinet-level dialogues agreed to by Presidents Donald Trump and Xi Jinping in April, following the earlier U.S.-China Diplomatic and Security Dialogue, Comprehensive Economic Dialogue, and Social and Cultural Dialogue
Location: Washington, DC www.justice.govhttps://twitter.com/TheJusticeDept

Contacts: DHS press DHSPressOffice@HQ.DHS.GOV 1 202 282 8010 DoJ
press press@usdoj.gov 1 202 514 2007

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From: Navas, Nicole (OPA)
Sent: Tuesday, October 3, 2017 3:03 PM
To: Gibson, Jake
Cc: Flores, Sarah Isgur (OPA)
Subject: RE: Are you familiar with this?
Attachments: 1972-11-14 - Applicability to President of Restriction on Employment ofpdf;
1977-02-18 - Possible appointment of Mrs Carter as Chairman of the Commi....pdf;
1977-03-15 - Appointment of President's Son to Position in the White Hou....pdf;
1977-03-23 - Employment of Relatives Who Will Serve Without Compensation....pdf;
1983-02-28 - Appointment of Member of President's Family to Pres Adv Com....pdf;
2009-09-17 - Application of 5 USC 3110 to Two Proposed Appointments.pdf;
2017-01-20 - Application of the Anti-Nepotism Statute to a Presidentialpdf

Hi Jake,
Please see attached. Thank you

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)
202-514-1155 (office)
(b) (6) (cell)
Nicole.Navas@usdoj.gov

From: Flores, Sarah Isgur (OPA)
Sent: Tuesday, October 03, 2017 2:26 PM
To: Gibson, Jake <Jake.Gibson@FOXNEWS.COM>
Cc: Navas, Nicole (OPA) <nnavas@jmd.usdoj.gov>
Subject: RE: Are you familiar with this?

Nicole can send

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Gibson, Jake [<mailto:Jake.Gibson@FOXNEWS.COM>]
Sent: Tuesday, October 3, 2017 2:14 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: Are you familiar with this?

Can you point me to the relevant documents?

Thanks

http://www.politico.com/story/2017/10/03/justice-department-legal-memos-presidents-appoint-relatives-243395?lo_ap_e1

Jake Gibson
Department of Justice and Federal Law Enforcement Producer
Fox News Washington
Cell (b) (6)
Cell (b) (6)
Jake.Gibson@foxnews.com
@JakeBGibson

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November 14, 1972

MEMORANDUM FOR THE HONORABLE JOHN W. DEAN, III
Counsel to the President

Re: Applicability to President of Restriction
on Employment of Relatives.

Under 5 U.S.C. 3110, no federal official (expressly including the President) may appoint or employ any of a broadly defined class of relatives in a "civilian position" in the agency in which the appointing official is serving "or over which he exercises jurisdiction of control." A question has been raised as to whether this 1967 enactment would bar the President from appointing an individual therein defined as a relative to permanent or temporary employment as a member of the White House staff.

The legislative history of 5 U.S.C. 3110, which is discussed in more detail in the memorandum of October 15, 1968, which is enclosed, does not contain a detailed discussion of the applicability of this provision to the Office of the President. It is arguable that the section is an unconstitutional restriction on the President's appointive authority, especially if construed to limit his discretion in appointing members of his Cabinet or other high officials, acting under his constitutional authority to appoint "officers of the United States" with or without Senate confirmation. Article II, section 2. The language of 5 U.S.C. 3110, however, extends to any appointment to a "civilian position" over which the President exercises jurisdiction or control. Whatever its constitutionality may be as applied to an appointment by the President of a relative

to a Cabinet or other high-level position, it seems clearly applicable to subordinate positions on the White House staff, which fall within the category of "inferior officers" subject to Congressional control.

I am enclosing several memoranda which the Office of Legal Counsel has prepared on this subject. If I can be of further assistance, please let me know.

Roger C. Cramton
Assistant Attorney General
Office of Legal Counsel

February 18, 1977

MEMORANDUM FOR DOUGLAS B. HURON
Associate Counsel to the President

Re: Possible appointment of Mrs. Carter as
Chairman of the Commission on Mental Health

You have asked for our opinion on the question whether the President could appoint Mrs. Carter to be Chairman of a Commission on Mental Health proposed to be established in a forthcoming Executive Order. It is our opinion that he may not. The applicable statute is 5 U.S.C. § 3110, subsection (b) which provides:

A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official.

The definition of the term "public official" in subsection (a) (2) expressly includes the President, and a public official's wife is among those listed in the definition of "relative" in subsection (a) (3). The term "agency" is defined in 5 U.S.C. § 3110(a) (1) (A) to include an "Executive agency" which in turn includes any "establishment" in the Executive Branch. See 5 U.S.C. §§ 104, 105. The comprehensive term "establishment" would clearly cover the Commission on Mental Health, which will be comprised of persons who will be regarded as government employees (section 7) and be authorized, through its Chairman, to conduct hearings and procure independent services pursuant to 5 U.S.C. § 3109 (sections 4 and 7(b)). See also 5 CFR 310.101. Therefore, since the President "exercises jurisdiction or control" over the Commission, his appointments to that "agency" are squarely covered by the terms of 5 U.S.C. § 3110.

Moreover, the legislative history of the statute shows that the prohibition in 5 U.S.C. § 3110(b) applies whether or not the appointee will receive compensation. However, we do not believe that 5 U.S.C. § 3110(b) would prohibit the President from appointing Mrs. Carter to an honorary position related to the Commission if she remained sufficiently removed from the Commission's official functions. Attached hereto is a memorandum discussing in more detail the legal basis for our conclusions.

John M. Harmon
Acting Assistant Attorney General
Office of Legal Counsel

Enclosure

John M. Harmon
Acting Assistant Attorney General
Office of Legal Counsel

February 17, 1977

Edwin S. Kneedler
Attorney-Adviser
Office of Legal Counsel

Legality of the President's appointing Mrs. Carter
as Chairman of the Commission on Mental Health

The appointment of Mrs. Carter to be Chairman of the Commission on Mental Health proposed to be established by Executive Order would violate 5 U.S.C. § 3110, subsection (b). 1/

1/ In a memorandum to files dated October 15, 1968, former Deputy Assistant Attorney General Richman of this office suggested that 5 U.S.C. § 3110 may not apply to appointments to titled positions by the President, acting under his constitutional duty to appoint "officers of the United States." Art. II, Sec. 2. He based this suggestion on the belief that because of possible constitutional questions in limiting the President's power of appointment and because Congress was no doubt aware that President Kennedy had appointed relatives to high positions, it was unlikely that the provision was intended to reach such appointments without specific mention of this fact in the legislative history. But in fact, the Kennedy appointments were specifically discussed during the Senate hearings on the legislation, and the Chairman of the Civil Service Commission expressed the opinion, with which no member of the Committee disagreed, that the provision would prohibit appointment of a relative to a Cabinet position. Hearings on Federal Pay Legislation before the Senate Committee on Post Office and Civil Service, 90th Cong., 1st Sess. 360, 366 (1967). On the question of legislative intent, then, the 1968 memorandum appears to be wrong. The possible constitutional argument does not seem substantial in the present case.

The only possible argument that the appointment of Mrs. Carter would be lawful might be that the statute does not apply if the appointee will serve without compensation. 2/ The language of the substantive prohibition in 5 U.S.C. § 3110(b) is written in broad terms which on their face attach no significance to the matter of compensation. However, subsection (c) provides:

An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.

It might be argued that because the statutory remedy for a violation is to deny the appointee pay, the statute must be regarded as being directed only to those situations where the appointee receives compensation.

In addition there are several instances in the sparse legislative history of the provision where individual Members of Congress spoke of the provision in the context of compensated positions. For example, Representative Smith, who introduced the measure on the House floor as an amendment to a Federal pay bill, stated that a primary place one would find violations was in smaller post offices, where postmasters often refused to hire a permanent clerk unless their wives were on the eligibility list and found other ways to "maneuver to hire their relatives." 113 Cong. Rec. 28659 (Oct. 11, 1967). Other Members of Congress used words such as "hire" and "payroll" when speaking of the prohibition, again suggesting the element of compensation. Id.; 113 Cong. Rec. 37316 (Dec. 15, 1967); Hearings, supra, at 369, 371-72. However, I do not believe that the fact that Congress may have been thinking in terms of compensated services can have the effect of limiting the plainly broader reach of the language of the statute itself absent a clear indication of congressional intent to do so. That indication is lacking here.

2/ Section 7 of the proposed Executive Order provides that the Members of the Commission "may" receive compensation for their services. I assume this would permit Mrs. Carter to serve without compensation.

Indeed, there are several factors which affirmatively suggest that the statute should not be construed to apply only to situations in which the employee will receive compensation. First, the Senate Report on the legislation ^{3/} describes the present 5 U.S.C. § 3110 in broad terms which contain no suggestion that only compensated positions are covered, except for a reference to 5 U.S.C. § 3110(e), which denies pay to a person appointed in violation of the section. S. Rep. No. 801, 90th Cong., 1st Sess. 29 (1967). The Civil Service Commission's description of the provision in its submission to the Senate Committee, stated that the "amendment permits no exceptions." Hearings, supra, at 387. ^{4/} See also id. at 359.

Also, one rationale of focusing on compensated positions would apparently be that the statute's purpose is to prevent the public official from realizing any indirect financial benefit in appointing a relative. This purpose makes sense if the employee involved is the public official's spouse, as in the case of the Postmaster's wife mentioned by Representative Smith when he introduced the amendment. But the persons included in the definition of "relative" under the statute include many persons, such as first cousins, nephews, nieces, and others whose compensation would be unlikely to redound to the financial benefit of the appointing official. Thus, the prohibition must have a broader rationale.

^{3/} The House Report does not discuss the provision involved here because it was added as an amendment on the House floor.

^{4/} The exceptions later included in the bill following the testimony of the Chairman of the Civil Service Commission only permit "temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances" and the appointment of veterans who are entitled to a preference in appointments in the civil service, 5 U.S.C. §§ 3110(d) and (e); these obviously would not apply to Mrs. Carter's appointment.

The broader rationale appears to be to prevent the detriment to the government when appointments are based on favoritism -- i.e., familial ties -- rather than merit. For example, Congressman Smith stated:

This is bad for morale where it is practiced. Many of these relatives, including some on congressional payrolls may do a good job, but the overall interest of the Government is against the practice and those good employees can get a job in some office on their merits rather than using relationship as a leverage. 113 Cong. Rec. 28659.

The Civil Service Commission's submission to the Senate Committee described the provision as a prohibition against favoritism, Hearings, supra, at 387, and the discussion in the course of the hearings focused on favoritism as such and the possible detriment or loss of "efficiency" to the Government when a family member is appointed. Id. at 359, 365-68, 372. Obviously the injury to the Government in terms of the reduced quality of the services it receives is the same whether or not it pays compensation to the employee who is appointed because of familial ties rather than merit. 5/ Therefore, I do not believe that the purposes sought to be furthered by the statute require or even suggest that its plain language should be construed so as not to apply to employees who receive no compensation. I have been informally advised by the Office of the General Counsel at the Civil Service Commission that while the issue has apparently not arisen in the past, the Commission would construe 5 U.S.C. § 3110 to apply even where the employee receives no compensation.

5/ Another possible purpose of the section might be to prevent public officials from rewarding their relatives with appointments; but such a reward could be in the form of the prestige of an appointment as well as compensation.

It has also been suggested that the prohibition may not apply here because the Commission will be funded out of appropriations available to the President under the Executive Office Appropriations Act of 1977 for "Unanticipated Needs," which may be expended for personnel "without regard to any provision of law regulating employment and pay of persons in the Government service." 90 Stat. 968. However, I do not believe that the quoted language makes 5 U.S.C. § 3110 inapplicable.

This language was included in the appropriation for the Executive Office under the heading "Emergency Fund for the President" in the Executive Office Appropriation Act of 1968, 81 Stat. 118 (which was in effect when 5 U.S.C. § 3110 was enacted) and in prior appropriations act as well. Then, as now, the separate appropriations available for the White House Office under the same act contained a virtually identical provision for obtaining personnel services without regard to laws governing employment and pay. 81 Stat. 117; 90 Stat. 966. Although there is no mention in the legislative history of 5 U.S.C. § 3110 of the effect of the appropriations act language, the application of the prohibition in the present 5 U.S.C. § 3110 to appointments by the President was fully discussed in the Senate hearings. In fact, in response to an inquiry from Senator Yarborough, Chairman Macy of the Civil Service Commission stated that had it been in effect, the provision would have prevented President Franklin Roosevelt from appointing his son as a civilian White House aide, as the President apparently had done. Hearings, supra, at 366. Chairman Macy even suggested that the prohibition should be inapplicable to the President in order to maintain his discretion in making appointments. Id. Nevertheless, the Senate Committee chose to amend the House bill expressly to include the President among the "public officials" covered by the bill, and the section was enacted in this form. In view of this legislative history, the language in the appropriation for the White House Office, which merely has been carried forward from prior years, should not be construed to override the express prohibition in 5 U.S.C. § 3110. 6/

6/ By memorandum dated November 14, 1972, Assistant Attorney General Roger Crampton of this office advised the White House that 5 U.S.C. § 3110 does apply to appointments to the White House staff, although the appropriations acts were not considered in the memorandum.

The result should be no different with respect to the almost identical language in the appropriation for "Unanticipated Needs," from which the Commission will be funded.

For the reasons stated, 5 U.S.C. § 3110(b) prohibits the President from appointing Mrs. Carter as Chairman or a member of the proposed Commission.

On the other hand, although the matter is not wholly free from doubt, I do not believe that 5 U.S.C. § 3110 would prohibit Mrs. Carter from holding an essentially honorary position, such as Honorary Chairman, related to the Commission's work. Subsection (b) as enacted prohibits appointments to a "civilian position" in an agency over which the public official has jurisdiction or control. The term "civilian position" appears to have been intended to cover all positions occupied by an "officer" or "employee" of the United States under the civil service laws and to exclude positions in the military. See Hearings, supra, at 363-64, 365.

For purposes of Title 5 of the United States Code, an officer or employee is a person who is (1) appointed in the civil service by an officer or employee; (2) engaged in the performance of a Federal function under authority of law; and (3) subject to the supervision of an officer or employee while engaged in the performance of his duties. 5 U.S.C. §§ 2104 and 2105. Presumably the President's designation of Mrs. Carter as an Honorary Chairman of the Commission would constitute an appointment for purposes of the first of the factors mentioned above. However, it would seem that Mrs. Carter's role as Honorary Chairman could be fashioned in such a manner that she would not necessarily be engaging in a Federal function when she lends her prestige, insights, and support to the Commission's work. 7/ To accomplish the

7/ It could also be argued that as an Honorary Chairman Mrs. Carter would not be subject to the supervision of an officer as contemplated in the third factor mentioned above. This argument is of doubtful validity, however, in view of the President's authority to appoint an Honorary Chairman and establish and direct that person's official duties, however insubstantial they may be.

required detachment from the Commission's Federal function, Mrs. Carter should at least have no formal authority or duties relating to the Commission's work and avoid being the moving force behind its operations -- e.g., in selecting staff, convening meetings, conducting hearings, establishing policy, or formulating recommendations. This would not, however, prohibit Mrs. Carter from attending meetings or hearings (although perhaps she should not do so on a regular basis), submitting her ideas to the Commission for consideration, or offering her support and soliciting support from others for the Commission's work. It is my understanding that First Ladies have in the past assumed this type of advocate's role in connection with Government programs in which they were especially interested, and it would seem to make no difference here that Mrs. Carter may have an honorary title that really only serves to highlight her interest.

MAR 15 1977

MEMORANDUM FOR HONORABLE ROBERT J. LIPSHUTZ
Counsel to the President

Attached is a copy of a memorandum prepared by Ed Kneedler of this Office on the question of the appointment of the President's son to a position on the White House staff. Mr. Kneedler has concluded that such appointment is prohibited by 5 U.S.C. § 3110. I concur in that conclusion.

John M. Harmon
Acting Assistant Attorney General
Office of Legal Counsel

Encl:

cc: Ms. Margaret McKenna
Mr. Douglas Huron

March 15, 1977

Edwin S. Kneedler
Office of Legal Counsel

Appointment of President's Son to Position in the White
House Office

John M. Harmon
Acting Assistant Attorney General
Office of Legal Counsel

Margaret McKenna, Deputy Counsel to the President, requested our views on whether the President is prohibited by 5 U.S.C. § 3110 from appointing his son to an unpaid position on the White House staff. It is my conclusion that the statute prohibits the contemplated appointment.

By memorandum dated February 18, 1977, this office advised Doug Huron, Associate Counsel to the President, that this same statute prohibited the President from appointing Mrs. Carter to be Chairperson of the recently established Commission on Mental Health. As Ms. McKenna pointed out to me, a number of the conclusions in our February 18 memorandum are contrary to those expressed by Carl F. Goodman, General Counsel of the Civil Service Commission, in his letter of December 28 to Mr. Michael Berman, Transition Director for the Vice President. I had reviewed Mr. Goodman's letter to Mr. Berman in connection with the proposed appointment of Mrs. Carter. However, at Ms. McKenna's request, I have again considered the points raised by Mr. Goodman to determine whether they should alter the conclusion reached in our February 18 memorandum or permit the appointment of the President's son here. After doing so, I believe that our earlier interpretation was correct.

The Civil Service Commission's letter advances three possible arguments in support of its position that 5 U.S.C. § 3110 can be construed to be inapplicable to appointments to the personal staffs of the President and Vice President. First, the Commission suggests that 5 U.S.C. § 3110 is

inapplicable to the President's and Vice President's staff by virtue of language in the Executive Office Appropriations Act of 1977 permitting the President and Vice President to obtain personal services "without regard to the provisions of law regulating the employment and compensation of persons in the Government services." 90 Stat. 966. We specifically considered and rejected this argument in connection with Mrs. Carter's proposed appointment.

As pointed out at pages 5-6 memorandum on Mrs. Carter's appointment, which you sent to Doug Kuron, Chairman Macy of the Civil Service Commission informed the Senate Committee during hearings on the provision later enacted as 5 U.S.C. § 3110 that had it been in effect, the section would have prevented President Franklin Roosevelt from appointing his son as a civilian White House aide, as President Roosevelt apparently had done. Hearings on Federal Pay Legislation before the Senate Committee on Post Office and Civil Service, 90th Cong., 1st Sess. 366 (1967). No member of the committee present at the hearings disagreed with this conclusion. Chairman Macy even suggested that, as a matter of policy, the prohibition should be made altogether inapplicable to the President in order to preserve broad Presidential discretion in making appointments.

In the face of this suggestion to exempt the President and Chairman Macy's statement that the prohibition would apply to the President's personal staff, the Senate Committee chose to amend the House bill expressly to include the President among the "public officials" covered by the bill (the President was not expressly mentioned in the House version), and the bill was enacted in this form. Because the Senate Hearings contain the only extended discussion of the provision and the only discussion at all of its application to the President, it seems appropriate to attach particular significance to the Civil Service Commission's interpretation of the statute in the course of the hearings. It is reasonable to assume that the Senate Committee and eventually the Congress acted on the basis of Chairman Macy's interpretation of the prohibition as drafted.

The language in the appropriation for the White House Office for fiscal year 1977, permitting the President to obtain personal services "without regard to the provisions of law regulating the employment and compensation of persons in Government service," was also contained in the appropriation for the White House Office for fiscal 1967, the year in which 5 U.S.C. § 3110 was enacted. 81 Stat. 117. It appears to have been carried forward from prior years without comment. There is nothing in the legislative history of 5 U.S.C. § 3110 that sheds any light on the interaction of that section and the language in the White House Office appropriation, quoted above. However, although the question is not wholly free of doubt (in view of the broad language in the appropriation for the White House Office), it is my opinion that the specific prohibition should be construed to be an exception to the general rule that limitations on employment do not apply to the White House Office. As the Supreme Court recently stated, "It is a basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum." Radzanower v. Touche Ross & Co., 426 U.S. 148, 153 (1976). Here this rule has even greater force, because although the language in the current White House appropriation is "later enacted," it has simply been carried forward from acts predating the passage of 5 U.S.C. § 3110.

The second argument advanced by the Civil Service Commission is based on the language in 5 U.S.C. § 3110 that prohibits appointments to a civilian position in an "agency" over which the appointing official has control. In the Commission's view, while some components within the Executive Office of the President may properly be viewed as "Executive agencies," the President's personal staff would not. In the face of the evidence of legislative intent, discussed above, to apply the prohibition to the President's personal staff, I do not believe that the term "Executive

agency" may properly be construed in such a narrow fashion. It is not apparent to me why the White House Office or the entire Executive Office of the President cannot be considered to be the appropriate "Executive agency" under 5 U.S.C. § 3110(a)(1). Cf. 5 U.S.C. § 552(e) (1975 Supp.).

Finally, the Civil Service Commission suggests that there might be serious constitutional questions involved in interpreting the statute to apply to appointments to the President or Vice President's staff. I believe this argument is of dubious validity. The cases the Commission cites in support of the proposition deal with the power of a court to conduct a post hoc examination of the motives behind a specific appointment made by a State official in whom the discretionary power of appointment is vested. Mayor v. Educational Equality League, 415 U.S. 605, 613-14 (1974); Jones v. Wallace, 386 F. Supp. 815 (M.D. Ala. 1974), aff'd 533 F.2d 963 (5th Cir. 1973). Neither case addresses the power of the Legislative Branch of the Federal Government to establish the qualifications necessary to hold a position in the Federal Government, which is the purpose of 5 U.S.C. § 3110. The political and practical difficulties and potential for embarrassment to a coordinate branch inhering in a court's second-guessing of a specific appointment by an elected official are obvious. But these same problems do not exist in Congress' establishing the threshold qualifications of the persons from whom the President may select in making a particular appointment. This is especially true where, as here, the effect of the qualification requirement is to eliminate only a handful of persons from the pool of possible appointees.

It is generally thought that Congress does not impermissibly invade the President's constitutional power of appointment by establishing qualifications for an office or position to which the President makes appointments. E. Corwin, The President, Office and Powers, 1787-1957 (1957), at pp. 74-75. I see no reason why the limitation in 5 U.S.C. § 3110 should stand on a different footing. In fact, in a memorandum dated November 14, 1972, from Assistant Attorney

General Roger C. Gramton to John Dean, Counsel to the President (copy attached), this office took the position that 5 U.S.C. § 3110 prohibited the President from appointing a relative to a temporary or permanent position on the White House staff. The memorandum noted that whatever the constitutional difficulties in applying the statute when the President exercises his authority under Article II, Section 2 of the Constitution to appoint "officers of the United States" -- such as Cabinet or other high-level officials --, the statute seemed clearly to apply to subordinate positions on the White House staff, which fall within the category of inferior officers or employees subject to congressional control.

For the foregoing reasons, it is my conclusion that 5 U.S.C. § 3110 prohibits the President from appointing his son to a White House staff position. As pointed out in our memorandum of February 18 regarding Mrs. Carter, it makes no difference that he would serve without compensation.

MAR 23 1977

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Employment of relatives who will serve
without compensation

Following our meeting with Bob Lipshutz on March 17, you have asked for my views as to whether 5 U.S.C. § 3110, which prohibits a public official from appointing or employing a relative in a civilian position in an agency over which he has jurisdiction or control, applies in situations in which the relative will serve without compensation.

This question was recently presented to the Office of Legal Counsel in connection with the proposed appointment of Mrs. Carter to be Chairperson of the Commission on Mental Health. After re-searching the legislative history of the statute, we concluded that the statute applied to uncompensated positions and advised by memorandum dated February 18 against the contemplated appointment of Mrs. Carter.

Subsequently, a question was raised as to whether the President's son could be given office space and support services in the West Wing of the White House in connection with his part-time work for the Democratic National Committee. We orally advised Mr. Lipshutz's office that funds appropriated for the White House Office should not be used for this purpose.

Finally, the Office of Legal Counsel was asked whether there would be any legal objection to the President's son volunteering his time to work as an assistant to a regular member of the White House staff. Mr. Lipshutz's office specifically requested that the Office of Legal Counsel consider the points raised in a letter from the General Counsel of the Civil Service Commission to the Vice President's transition staff on December 29, 1976, which concluded that 5 U.S.C. § 3110 does not prohibit the President or Vice President from appointing relatives to their personal staffs. After re-examining the matter, we concluded that 5 U.S.C. § 3110 does apply to positions on the President's staff.

In this connection, a memorandum prepared by Ed Kneedler of the staff of the Office of Legal Counsel and sent to Mr. Lipshutz on March 15, 1977, noted that the Chairman of the Civil Service Commission informed the Senate Committee during hearings on the nepotism provision in 1967 that had it been in effect, the provision would have prevented President Roosevelt from appointing his son as a civilian aide in the White House. No member of the committee disputed the Chairman on this point. This comment by the head of the agency charged with administering laws relating to Federal employment generally is particularly persuasive on the application of the statute to the President's son here, especially in view of the fact that Congress specifically rejected the Chairman's suggestions to exempt Presidential appointments from the prohibition now contained in 5 U.S.C. § 3110.

Similarly, we concluded that the argument that there would be constitutional difficulties in applying the statute to positions on the President's staff was not substantial. This was in accord with the position taken by the Office of Legal Counsel in a 1972 memorandum, which assumed that the statute applied to the White House staff and found no constitutional infirmity in its doing so.

At your request, I have now re-examined the specific issue of whether the statute applies to uncompensated positions. It is my conclusion that it does. The reasons for my conclusion are discussed in the attached legal memorandum which I recommend that you forward to Bob Lipshutz with the attached cover letter.

John M. Harmon
Acting Assistant Attorney General
Office of Legal Counsel



U.S. Department of Justice
Office of Legal Counsel

Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530

28 FEB 1983

MEMORANDUM TO DAVID B. WALLER
SENIOR ASSOCIATE COUNSEL TO THE PRESIDENT

Re: Appointment of Member of President's
Family to Presidential Advisory
Committee on Private Sector Initiatives

Attached, as we discussed, is a memorandum dated February 18, 1977, prepared by this Office concerning whether the federal nepotism statute, 5 U.S.C. § 3110, prevented Mrs. Carter from being appointed to the President's Commission on Mental Health, a federal advisory commission established pursuant to Executive Order No. 11973 of February 17, 1977, 42 Fed. Reg. 10677 (February 23, 1977). The memorandum concluded that Mrs. Carter could not serve actively on the Commission, whether or not she received compensation for her services, although she could serve in an "honorary" capacity.

Also attached is a Memorandum for the Attorney General dated March 23, 1977, located subsequent to our telephone conversations, which addresses the question whether President Carter's son could volunteer his services as an assistant to a regular member of the White House staff. This memorandum referred to the February 18 memorandum in concluding that he could not, despite the fact that he would not be compensated. In support of this conclusion, it attached an undated Memorandum for the Attorney General entitled "Employment of relatives who will serve without compensation."

As we discussed, time constraints have not permitted us to reexamine the legal analysis and conclusions reached in these memoranda. We did examine the Executive Order, establishing the President's Commission on Mental Health, however, to determine whether that Commission differed significantly from the proposed Commission on Private Sector Initiatives. Our brief review convinces us that the two are not sufficiently different to provide a basis for distinguishing between them with respect to the applicability of section 3110.

Based on our discussions, we think the proposal to have a member of the President's family serve actively on the Commission on Private Sector Initiatives raises virtually the same problems raised by Mrs. Carter's proposed service on the President's Commission on Mental Health. Without sufficient time to reexamine the legal analysis contained in our earlier memoranda, we must adhere to the conclusion reached there that the President cannot, consistently with section 3110, appoint a relative as an active member of such a Commission, even if the relative serves without compensation.



Robert B. Shanks
Deputy Assistant Attorney General
Office of Legal Counsel

Enclosure



U.S. Department of Justice

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

September 17, 2009

**MEMORANDUM FOR GREGORY B. CRAIG
COUNSEL TO THE PRESIDENT**

Re: Application of 5 U.S.C. § 3110 to Two Proposed Appointments by the President to Advisory Committees

You have asked for our opinion whether section 3110 of title 5, United States Code, which prohibits a public official from appointing or employing a relative “in or to a civilian position in the agency . . . over which [the official] exercises jurisdiction or control,” bars the President from appointing two of his relatives to advisory committees within the Executive Branch. Specifically, you have asked whether the President may appoint his brother-in-law to the President’s Council on Physical Fitness and Sports (“Fitness Council” or “Council”) and his half-sister to the President’s Commission on White House Fellowships (“Fellowships Commission” or “Commission”). We conclude that section 3110 prohibits both proposed appointments.

I

The Fitness Council is an advisory committee established by executive order and charged with advising, and making recommendations to, the Secretary of Health and Human Services and the President regarding measures to enhance participation in physical activity and sports. *See* Exec. Order No. 13265, 67 Fed. Reg. 39,841 (June 6, 2002).¹ The Council lacks any authority to undertake operational activities, and its functions are purely advisory. *See* Memorandum for Richard Hauser, Deputy Counsel to the President, from Robert B. Shanks, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: President’s Council on Physical Fitness and Sports* at 5 (Feb. 17, 1984) (“Fitness Council Memo”). Specifically, the Council provides advice and recommendations through the Secretary to the President regarding the Secretary’s progress in establishing “a national program to enhance physical activity and sports participation.” Exec. Order No. 13265, § 1; *see id.* § 3(a). It also advises the Secretary in her own capacity regarding “ways to enhance opportunities for participation in physical fitness and sports” and the need for “enhancement” of the Council’s “programs and educational and promotional materials.” *Id.* § 3(b), (d). In advising the Secretary, the Council also serves as her “liaison to relevant State, local, and private entities.” *Id.* § 3(c).

The Council is composed of twenty presidentially appointed members, with a Chair or Vice Chair designated by the President and an Executive Director appointed by the Secretary. *Id.* §§ 2(b), 4(d). Members of the Council serve without compensation, but may receive certain

¹ In accordance with subsection 14(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. § 14(a)(2) (2006), the Council was scheduled to terminate on June 6, 2004, but that date has repeatedly been extended by executive order. The Council’s current termination date is September 30, 2009. *See* Exec. Order No. 13446, § 1(m), 72 Fed. Reg. 56,175 (Sept. 28, 2007).

travel expenses. *Id.* § 4(b). The Secretary is responsible for the Council's administrative requirements, "furnish[ing] the Council with necessary staff, supplies, facilities, and other administrative services" and paying its expenses "from funds available to the Secretary." *Id.* § 4(c).

The Fellowships Commission, which was also established by executive order, is a presidential advisory committee charged with "prescrib[ing] such standards and procedures as may be necessary to enable it to recommend annually a group of outstanding young persons from among whom the President may select White House Fellows." Exec. Order No. 11183, § 2(a), 29 Fed. Reg. 13,633 (Oct. 3, 1964), *as amended by* Exec. Order No. 11648, 37 Fed. Reg. 3,623 (Feb. 16, 1972). "[T]he basic function of the Commission is to provide [these] recommendations" to the President. Letter for the Honorable Dudley Mecum, II, Assistant Director for Management Organization and Analysis, Office of Management and Budget, from Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel at 2 (Apr. 23, 1973) ("Fellowships Commission Letter").² Once the Commission's "standards and procedures" have been published, it may accept applications and nominations "for consideration in its recommendations." Exec. Order No. 11183, § 2(a). The Commission is composed of "such outstanding citizens . . . of private endeavor, and the Government service, as the President may from time to time appoint," with "[o]ne of the members appointed from private life . . . designated by the President to serve as Chairman of the Commission." *Id.* § 1(a). Members "serve at the pleasure of the President," and receive no compensation for their service. *Id.* § 1(b). The Office of Personnel Management ("OPM") (the successor to the Civil Service Commission) is responsible for "provid[ing] the Commission with administrative services, staff support, and travel expenses." *Id.* § 4(b).

The Federal Advisory Committee Act ("FACA") applies to the Fitness Council and the Fellowships Commission, both of which "were established . . . by the President . . . in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government," and both of which have members who are not full-time or permanent part-time federal employees or officers. 5 U.S.C. app. § 3(2) (2006); *see also* Fellowships Commission Letter at 2-3; Fitness Council Memo at 2. You have informed us that the President's brother-in-law and half-sister would, like other members of these sorts of advisory committees, be appointed to their positions as "special government employees," who exercise their duties on a part-time, temporary basis. *See* 18 U.S.C. § 202 (2006); *see also* Fitness Council Memo at 8 n.9 ("[i]n light of their limited service, it is likely that most, if not all, of the Council members from private life are 'special government employees'").

² The Fellowships Commission's current termination date is September 30, 2009. *See* Exec. Order No. 13446, § 1(f).

II

The operative portion of section 3110 is subsection (b), which provides that “[a] public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official.” 5 U.S.C. § 3110(b) (2006). The statute provides expressly that the President is a “public official” and that a public official’s brother-in-law and half-sister are his “relative[s]” for purposes of the prohibition. *See id.* § 3110(a)(2), (3). We also have little doubt that the President has “jurisdiction or control” over the Fitness Council and the Fellowships Commission. *See, e.g., Inspector General Legislation*, 1 Op. O.L.C. 16, 17 (1977) (“The President’s power of control extends to the entire executive branch. . .”). Accordingly, the permissibility of each of the President’s contemplated appointments turns on whether it constitutes an appointment “to a civilian position in [an] agency.”

Our inquiry into this question is guided by the substantial precedent from this Office addressing the scope of the section 3110 prohibition as applied to presidential appointments. In a November 14, 1972 memorandum, we advised that section 3110 would bar the President from appointing a relative “to permanent or temporary employment as a member of the White House staff.” Memorandum for the Honorable John W. Dean, III, Counsel to the President, from Roger C. Cramton, Assistant Attorney General, Office of Legal Counsel, *Re: Applicability to President of Restriction on Employment of Relatives* at 1 (“Cramton Memo”). In a February 18, 1977 memorandum, we advised that section 3110 would also bar the President from appointing the First Lady to serve, with or without compensation, as Chairperson of the President’s Commission on Mental Health (“Mental Health Commission”). *See* Memorandum for Douglas B. Huron, Associate Counsel to the President, from John M. Harmon, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Possible Appointment of Mrs. Carter as Chairman of the Commission on Mental Health* (“Mental Health Commission Memo”) (referencing attached Memorandum for John M. Harmon, Acting Assistant Attorney General, Office of Legal Counsel, from Edwin S. Kneedler, Attorney-Adviser, Office of Legal Counsel, *Re: Legality of the President’s appointing Mrs. Carter as Chairman of the Commission on Mental Health* (Feb. 17, 1977) (“2/17/77 Kneedler Memo”). That memorandum further advised that the First Lady could serve in an “honorary position related to the Commission,” as long as she “remained sufficiently removed from the Commission’s official functions.” *Id.* at 1.

Later in 1977, the White House again asked us to advise on the application of section 3110 to a contemplated presidential appointment, this time of the President’s son to serve as an unpaid assistant to a regular member of the White House staff. *See* Memorandum for the Attorney General, from John M. Harmon, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Employment of Relatives Who Will Serve without Compensation* (Mar. 23, 1977) (“3/23/77 Harmon Memo”) (referencing Memorandum for John M. Harmon, Acting Assistant Attorney General, Office of Legal Counsel, from Edwin S. Kneedler, Office of Legal Counsel, *Re: Appointment of President’s Son to Position in the White House Office* (Mar. 15, 1977) (“3/15/77 Kneedler Memo”). We “re-examin[ed]” the issues raised by the proposed appointment in light of arguments advanced by the Civil Service Commission (now OPM) for construing section 3110 not to prohibit the President and Vice President from appointing relatives to their personal staffs. *Id.* at 1. We deemed the Commission’s arguments

unpersuasive, however, reaffirming the reasoning of the Mental Health Commission Memo and concluding that section 3110 barred the proposed appointment. *See* 3/23/77 Harmon Memo at 1 (noting that 3/15/77 Kneedler Memo, which concluded “that [section 3110] does apply to positions on the President’s staff,” and to the proposed appointment in particular, was conveyed to the Counsel to the President); *see also id.* at 2 (stating that Mr. Harmon had “re-examined the specific issue of whether the statute applies to uncompensated positions,” and concluded that it does).

Finally, in a February 28, 1983 memorandum, we advised on whether the President could appoint a relative to the Presidential Advisory Committee on Private Sector Initiatives (“CPSI”). *See* Memorandum for David B. Waller, Senior Associate Counsel to the President, from Robert B. Shanks, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Appointment of Member of President’s Family to Presidential Advisory Committee on Private Sector Initiatives* (“CPSI Memo”). After summarizing the Office’s precedents on the application of section 3110, we cautioned that “time constraints have not permitted us to reexamine the legal analysis and conclusions reached in these memoranda.” *Id.* at 1. We nonetheless observed that the CPSI and the Mental Health Commission “are not sufficiently different to provide a basis for distinguishing between them with respect to the applicability of section 3110,” and stated that in light of our inability to conduct a proper reexamination, “we must adhere to the conclusion . . . that the President cannot, consistently with section 3110, appoint a relative as an active member of such a Commission, even if the relative serves without compensation.” *Id.* at 1-2.

Thus, these precedents demonstrate this Office’s consistent position that a presidential appointment is not exempt from the bar imposed by section 3110 just because it is to an uncompensated position or to a position on an advisory committee. Absent clear evidence that the analysis in these prior memoranda was in error, that there have been material intervening changes in the governing law, or that the appointments presently contemplated are somehow distinguishable from those we have addressed previously, we are disinclined to deviate from our longstanding position.

III

The first issue we address is whether members of the Fitness Council and the Fellowships Commission, who receive no compensation and exercise duties that are strictly advisory in nature, occupy “civilian positions” within the meaning of section 3110. We conclude that they do.

Lack of compensation. As discussed above, the Office has repeatedly advised that section 3110 applies to presidential appointments to uncompensated positions.³ In a 1993

³ *See* 3/23/77 Harmon Memo at 2; Mental Health Commission Memo; *see also* Memorandum for D. Lowell Jensen, Acting Deputy Attorney General, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, *Re: Application of 5 U.S.C. § 3110 to Mrs. Meese’s Service on Attorney General’s Task Force on Family Violence* at 2 (Feb. 14, 1984) (relying on 3/23/77 Harmon Memo in concluding that section 3110 applies to the uncompensated service of the wife of Attorney General Edwin Meese III on the Attorney General’s Task Force on Family Violence) (“Family Violence Task Force Memo”); Memorandum for Michael E. Shaheen, Jr., Counsel, Office of Professional Responsibility, from Robert B. Shanks, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Use of Department of Justice Vehicles by Attorney General’s Spouse* at 9 (Jan. 23, 1984) (concluding

decision, however, the U.S. Court of Appeals for the District of Columbia Circuit observed in *dicta* that “[t]he anti-nepotism statute . . . may well bar appointment only to paid positions in government.” *Ass’n of Am. Physicians and Surgeons, Inc. v. Clinton*, 997 F.2d 898, 905 (D.C. Cir.) (“AAPS”). The only support the court offered for this view was a citation to subsection (c) of the statute, which provides that “[a]n individual appointed, employed, promoted, or advanced in violation of [section 3110] is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.” 5 U.S.C. § 3110(c). The 2/17/77 Kneedler Memo that was attached to and referenced in the Mental Health Commission Memo addressed the import of subsection (c). In concluding that section 3110 applies to uncompensated appointments, the Kneedler Memo acknowledged the argument “that because the statutory remedy for a violation is to deny the appointee pay,” the ban applies only to appointments to compensated positions, 2/17/77 Kneedler Memo at 2. But the Kneedler Memo deemed this argument unpersuasive in light of section 3110’s text and legislative history and the evident congressional purposes underlying its enactment. *See id.* at 2-4; *see also id.* at 4 (observing that Civil Service Commission concurred in the Memo’s view that the prohibition applies to uncompensated positions). We agree with this conclusion.

We turn first to the text of section 3110. As the 2/17/77 Kneedler Memo observed, the “substantive prohibition in [section 3110(b)] is written in broad terms which on their face attach no significance to the matter of compensation.” 2/17/77 Kneedler Memo at 2. In particular, to say that a public official may not “appoint” someone does not suggest that the appointment must be compensated. This is demonstrated by the very executive orders establishing the Fitness Council and the Fellowships Commission, both of which use the term “appoint” to refer to positions that are uncompensated. *See* Exec. Order No. 11183, § 1(b) (“Members appointed to the Commission from private life shall serve without compensation.”); Exec. Order No. 13265, § 2(b) (“The Council shall be composed of up to 20 members appointed by the President.”). It is true that subsection (b) uses “appoint” in conjunction with “employ” and that the appointment must be to a civilian “position”—a term that in context might well mean an “employment,” Webster’s New International Dictionary 1925 (2d ed. 1958). But although it may be fair to say that employments usually come with a salary, that is not necessarily the case. *See* Memorandum for the Honorable Fred F. Fielding, Counsel to the President, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, *Re: Private Sector Survey on Cost Control in the Federal Government* at 4 (Mar. 17, 1982) (“[P]ersons who do not receive a federal salary may nonetheless be deemed to be government employees by virtue of the tasks that they perform or the positions in which they serve.”) (“Cost Control Survey Memo”). Since the members of the Council and the Commission serve in their positions as uncompensated “special government employees,” 18 U.S.C. § 202 (emphasis added), the proposed appointments at issue here again demonstrate the point. Accordingly, we believe that the text of section 3110 strongly supports the conclusion that Congress intended the prohibition to encompass appointments to both paid and unpaid positions.

In addition, as the 2/17/77 Kneedler Memo observed, the legislative history of section 3110 provides no clear indication that Congress intended uncompensated appointments to be exempt from the prohibition. *See* 2/17/77 Kneedler Memo at 2; *cf.* Mental Health Commission

that “[s]ection 3110 would prohibit the Attorney General from appointing his spouse to, or recommending her for, even an uncompensated official position within the Department of Justice”).

Memo (“[T]he legislative history of the statute shows that the prohibition in 5 U.S.C. § 3110(b) applies whether or not the appointee will receive compensation.”). To be sure, there are isolated floor and hearing statements indicating that certain members of Congress were particularly concerned about appointments to paid positions. *See* 113 Cong. Rec. 28,659 (Oct. 11, 1967) (statement of Rep. Smith); 113 Cong. Rec. 37,316 (Dec. 15, 1967) (statement of Rep. Udall); Federal Pay Legislation: Hearings Before the S. Comm. on Post Office and Civil Service, 90th Cong. 360, 366 (1967) (“Section 3110 Hearings”). But there is no evidence that members were concerned exclusively with such appointments, or that they were unconcerned about appointments to unpaid positions. In fact, Congress might well have concluded that eliminating “family patronage” from “Federal job appointments,” 113 Cong. Rec. 37,316—among the stated purposes of section 3110—would necessarily require applying the prohibition to unpaid government positions as such positions are often highly sought after for their substantial non-pecuniary benefits. Moreover, as the 2/17/77 Kneedler Memo also noted, the legislative history demonstrates that section 3110 was motivated in significant part by Congress’s belief that appointments of unqualified relatives were sapping the morale of government workers and hindering government efficiency. *See* 2/17/77 Kneedler Memo at 4 (citing 113 Cong. Rec. 28,659 (statement of Rep. Smith); Section 3110 Hearings at 359, 365-68, 372). Such detrimental effects can result from appointments to unpaid as well as paid positions.

Subsection (c)’s provision that relatives appointed in violation of the statutory prohibition are “not entitled to compensation” does not undermine this reading. Admittedly, were this loss of compensation the only statutorily required penalty for violations of section 3110, it might cast some doubt on whether the prohibition extends to uncompensated positions. In our view, however, the better reading of section 3110, including its legislative history and structure, is that Congress intended for relatives appointed in violation of the prohibition to be removed—a penalty that applies regardless whether the position is compensated. Three considerations support this conclusion. First, section 3110 does not describe loss of compensation as the exclusive statutory penalty for appointments in violation of the prohibition, nor do we believe that loss of compensation is inconsistent with an implied statutory penalty of removal. *See Chauffeur’s Training Sch., Inc. v. Spellings*, 478 F.3d 117, 126-27 (2d Cir. 2007). Second, the legislative record supports the conclusion that Congress intended an implied statutory penalty of removal. *See* 113 Cong. Rec. 37,377 (1967) (“Discovery of such an appointment [in violation of section 3110] will result in the removal of the appointee from office.”) (statement by House Majority Leader Albert of accomplishments of the first session of the 90th Congress). Moreover, as noted above, there is no suggestion in the relevant legislative history that Congress intended appointments of relatives to uncompensated positions to be treated more leniently than such appointments to compensated positions. Third, it makes little sense to construe the available remedies under section 3110 as limited to denial of compensation, since such a reading would mean that an illegal paid appointee is subject to loss of his compensation, but not to loss of his position. We doubt that Congress’s intent in enacting section 3110 was to permit improperly appointed relatives to remain as volunteers in their formerly compensated positions.

To be sure, “it is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it.” *Transamerica Mortgage Advisors v. Lewis*, 444 U.S. 11, 20 (1979). This canon may “yield,” however, “to persuasive evidence of a contrary legislative intent,” *id.*, including the text, the “legislative history[,] and the overall structure” of a statute, *Sec. Investor Prot. Corp. v.*

Barbour, 421 U.S. 412, 419 (1975). Cf. *Transamerica Mortgage Advisors*, 444 U.S. at 18-19 (concluding that statutory language, “[b]y declaring certain contracts void,” “itself fairly implies” a cause of action to bring “suit for rescission or for an injunction against continued operation of the contract, and for restitution,” which suits are “customary legal incidents of voidness”); *Chauffeur’s Training Sch., Inc.*, 478 F.3d at 126-27 (“We are not persuaded that Congress, by describing some remedial actions available to the Department [of Education], intended to preclude the Department from taking other reasonable remedial actions.”). As discussed above, we have identified such “persuasive evidence” here.

Accordingly, we conclude that subsection (c) is best read as affording an additional specific penalty for appointments to compensated positions made in violation of section 3110, but not as limiting the universe of prohibited appointments to only those that are compensated.

Advisory Character. As discussed above, this Office has also advised that section 3110 applies to presidential appointments to positions that are strictly advisory.⁴ We remain of this view, and therefore believe that the purely advisory functions of the Fitness Council and the Fellowships Commission would not remove their members from occupying “civilian positions.”

“Members of advisory committees are usually considered to be employees of the United States,” Memorandum for C. Boyden Gray, Counsel to the President, from William P. Barr, Assistant Attorney General, Office of Legal Counsel at 1-2 (May 15, 1989) (“Barr Memo”). That would be clearly true here, as we are advised that members of the Fitness Council and the Fellowships Commission are appointed as special government employees. Moreover, members of these bodies, like the members of other advisory committees, “hold positions that are expressly created by federal authority, they are charged with federal responsibilities, and they are often entrusted with access to government information not available to the public.” *Application of 18 U.S.C. § 219 to Members of Federal Advisory Committees*, 15 Op. O.L.C. 65, 68 (1991) (“Section 219 Opinion”).⁵ In light of the purposes underlying section 3110—including Congress’s concern that appointments of relatives were impairing government operations—we believe that the prohibition applies to positions that carry these indicia of authority and responsibility.

We note, moreover, that application of section 3110 in the present circumstances hardly constitutes an unprecedented example of congressional regulation of volunteer service in Executive Branch advisory positions. Were they to be appointed, both the President’s brother-in-law and his half-sister would be subject as special government employees to a number of statutory restrictions on their conduct. See Fitness Council Memo at 8 (members of Fitness Council, as federal employees, are subject to conflict-of-interest laws, including 18 U.S.C.

⁴ See Mental Health Commission Memo at 1; see also CPSI Memo at 2; cf. 3/23/77 Harmon Memo at 1 (appointment to White House staff); Cramton Memo at 1-2 (same).

⁵ The Section 219 Opinion, from which this characterization of advisory committees is drawn, concluded that members of such committees “hold offices of profit or trust within the meaning of the Emoluments Clause[, U.S. Const. art. I, § 9, cl. 8].” 15 Op. O.L.C. at 68. The Office subsequently receded from the view that the Emoluments Clause applies to entities of this type, see *The Advisory Committee on International Economic Policy*, 20 Op. O.L.C. 123 (1996); see also *infra*, fn. 6, but the Section 219 Opinion’s characterization of the nature and functions of advisory committees remains sound.

§ 208); *see also* Barr Memo at 2 (“As special government employees, advisory committee members are subject to some—but not all—of the conflict laws.”); Memorandum for Stephen J. Markman, Assistant Attorney General, Office of Legal Policy, from Douglas W. Kmiec, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: H.R. 4203, Advisory Panel on Government Debt Collection Act* at 5 & n. 5 (Apr. 24, 1986) (same); *see, e.g.*, 18 U.S.C. § 208 (2006) (precluding government employees from participating personally and substantially, including through “recommendation [or] the rendering of advice,” in any matter in which they have a financial interest, absent a waiver).⁶

That members of the Fitness Council and the Fellowships Commission are charged with advising the President does not affect our conclusion in this case. In particular, we do not believe that Congress’s barring of the appointment of presidential relatives to such advisory committees impermissibly “restrict[s] the President’s ability to seek advice from whom and in the fashion he chooses,” *AAPS*, 997 F.2d at 909. *See* Cramton Memo at 1-2 (concluding that while section 3110 may present constitutional concerns as applied to presidential appointments of “high-level” officials, it “seems clearly applicable to subordinate positions on the White House staff, which fall within the category of ‘inferior officers’ subject to Congressional control”). The U.S. Court of Appeals for the District of Columbia Circuit has “construe[d]” FACA “strictly” in determining whether it applies to presidential advisory committees to avoid potential separation of powers concerns. *In re: Cheney*, 406 F.3d 723, 728 (D.C. Cir. 2005); *see also Ctr. For Arms Control and Non-Proliferation v. Pray*, 531 F.3d 836, 843-44 (D.C. Cir. 2008); *AAPS*, 997 F.2d at 910-11. The court has expressed the view that subjecting such committees to FACA—which requires, among other things, balanced committee membership, open committee meetings, and the public availability of committee documents, *see* 5 U.S.C. app. §§ 5(b)(2); 10(a), (b) (2006)—risks impermissible interference with the President’s constitutional entitlement “to consult with his advisers confidentially [and,] as a corollary, . . . to organize his advisers and seek advice from them as he wishes.” *AAPS*, 997 F.2d at 909; *see also Cheney*, 407 F.3d at 728 (identifying President’s need, “[i]n making decisions on personnel and policy, and in formulating legislative proposals, . . . to seek confidential information from many sources, both inside the government and outside”); *cf. Pub. Citizen v. United States Dep’t of Justice*, 491 U.S. 440, 466 (1989) (construing FACA not to apply to the judicial recommendation panels of the American Bar Association to avoid “formidable constitutional difficulties”). But whatever the merits of the D.C. Circuit’s analysis in the context of FACA, we do not believe that the application of section 3110 to prevent a President’s relative from serving on a presidential advisory committee threatens to “impermissibly undermine[] the powers of the Executive

⁶ We recognize that members of the Fitness Council and the Fellowships Commission might not be subject to a number of statutory and constitutional standards of conduct that apply only to employees of the federal government who exercise some substantive authority. *See* 20 Op. O.L.C. 123 (1996) (appointees do not hold an “Office[] of Profit or Trust” for purposes of the Emoluments Clause when they “meet only occasionally, serve without compensation, take no oath, and do not have access to classified information,” and when “the Committee” on which they serve “is purely advisory, is not a creature of statute, and discharges no substantive statutory responsibilities”); *Dixon v. United States*, 465 U.S. 482, 496, 499 (1984) (in order to qualify as a “public official” for purposes of the federal bribery statute, 18 U.S.C. § 201, a person must “occup[y] a position of public trust with official federal responsibilities,” and “must possess some degree of official responsibility for carrying out a federal program or policy”). These standards are phrased differently than section 3110, and they are motivated by different purposes. Accordingly, we do not view any limits on their application as shedding significant light on the present inquiry.

Branch” or to “disrupt[] the proper balance between the coordinate branches by preventing the Executive Branch from accomplishing its constitutionally assigned functions.” *Morrison v. Olson*, 487 U.S. 654, 695 (1988) (internal quotation marks, alterations, and citation omitted). The President remains free to consult his relatives in their private, individual capacities at the time and place of, and on the subjects of, his choosing, and, in any event, “the effect of the qualification requirement is to eliminate only a handful of persons from the pool of possible appointees,” 3/15/77 Kneedler Memo at 4.

IV

We next address whether the proposed appointments would be to positions “in [an] agency” as defined in section 3110. We have previously determined that positions on the President’s staff and the White House Office staff and as a member of the Mental Health Commission would be “in [] agenc[ies]” for purposes of section 3110.⁷ We conclude the same with respect to seats on the Fitness Council and the Fellowships Commission.

Section 3110 defines “agency” to mean “Executive agency,” 5 U.S.C. § 3110(a)(1)(A), which in turn is defined for title 5 generally as “an Executive department, a Government corporation, and an independent establishment,” *id.* § 105. Thus, for a seat on the Council or the Commission to be “in [an] agency” for purposes of section 3110, the Council or the Commission must either constitute or be located in one of the kinds of entities that qualify as an “Executive agency” under section 105.⁸ Neither the Fitness Council nor the Fellowships Commission is, or is part of, a Government corporation, *see id.* § 103, so whether membership on the Council or the Commission would be “in [an] agency” turns on whether the Council or the Commission constitutes, or is situated in, an “Executive department” or an “independent establishment.”

Fitness Council. We believe that the Fitness Council has a sufficiently close and substantial relationship with the Department of Health and Human Services (“HHS”) that the Council should be considered within that Department for purposes of determining whether section 3110 applies. Since the Department of HHS is one of the “Executive Department[s]” listed in 5 U.S.C. § 101 (2006), membership on the Council constitutes a position in an “Executive department,” and thus “in [an] agency.” The position therefore falls within the scope of section 3110.

The executive order establishing the Fitness Council does not specify its location, but the order does indicate a close connection between the Council and the Department of HHS. *See* Executive Order No. 13265; *see also infra* pp. 11-12. In order to determine whether the Council is actually a part of HHS for purposes of section 105 (and thus section 3110), we must perform a “fact-specific analysis,” as guided by our prior Office precedent. *Applicability of the Federal*

⁷ *See* CPSI Memo; 3/23/77 Harmon Memo at 2; Mental Health Commission Memo; Cramton Memo; *see also* Family Violence Task Force Memo at 2 (service on Attorney General’s Task Force on Family Violence—located within the Department of Justice—is “in [an] agency” for purposes of section 3110).

⁸ An independent establishment cannot be “part of an independent establishment,” 5 U.S.C. § 104(1), but an entity that is part of an independent establishment is subject to “the provisions of [title 5] applicable to the independent establishment of which [the entity is] a constituent or part.” S. Rep. No. 89-1380, at 22 (1966); H.R. Rep. No. 89-901, at 6 (1965).

Vacancies Reform Act to Vacancies at the International Monetary Fund and the World Bank, 24 Op. O.L.C. 58, 63 (2000) (“IMF Memo”).

Particularly instructive on this point is advice we provided in 1995 on whether the Regional Fishery Management Councils are components of the Commerce Department for purposes of section 15 of the Age Discrimination in Employment Act, 29 U.S.C. § 633a (1994). That statute applies to personnel actions affecting applicants to and employees in Executive agencies as defined in section 105. See Memorandum for Ginger Lew, General Counsel, Department of Commerce, from Dawn Johnsen, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: ADEA and Regional Fishery Management Councils* (Mar. 14, 1995) (“Regional Fishery Management Councils Opinion”). In concluding that the Councils are part of the Commerce Department, we identified the following factors as “substantial and persuasive”:

(1) the Councils’ primary function is to advise the Secretary of Commerce with respect to fishery management plans which are a Commerce responsibility; (2) those plans are subject to ultimate review and approval by the Secretary; (3) a majority of the Councils’ voting members are appointed by the Secretary, and those members are removable “for cause” by the Secretary on the recommendation of the Councils; (4) the Secretary determines what administrative employees (other than the executive directors) may be appointed by the Councils; (5) the Secretary prescribes the uniform standards that govern the organization, practice, and procedures adopted by the Councils in performing their functions; (6) the Councils must report annually to the Secretary; and (7) the compensation of Council members and staff, as well as its other costs and expenses, are paid by Commerce.

Id. at 4 n.1.

Also relevant is our advice on whether the United States Mission to the United Nations is within the Department of State for purposes of a since-superseded version of the Vacancies Act, 5 U.S.C. §§ 3345-3349 (1994), which applied to certain vacancies in “Executive agenc[ies]” as defined in section 105. See Memorandum for Files, from Daniel L. Koffsky, Special Counsel, Office of Legal Counsel, *Re: Permanent Representative to the United Nations* (July 14, 1998) (“1998 UN Memo”); Memorandum for Files, from Daniel L. Koffsky, Special Counsel, Office of Legal Counsel, *Re: Vacancy at United States Mission to the United Nations* (Apr. 8, 1996) (“1996 UN Memo”). In the 1996 UN Memo, we identified three factors as establishing that the Mission was part of the State Department: that instructions for the U.S. Permanent Representative to the United Nations (who heads the Mission) were sent through the Secretary of State, that the State Department controlled the Mission’s appropriations, and that the State Department’s organizational chart had an entry for the Permanent Representative. See 1996 UN Memo at 1-2. In the 1998 UN Memo, we reaffirmed this conclusion and deemed it “reinforce[d]” by “practice,” including that the State Department handled the Freedom of Information Act (“FOIA”), whistleblower, and ethics work for the Mission; that the State Department carried the Permanent Representative on its employment rolls; that there was a “home desk” for the Mission within the State Department; and that the State Department’s administrative officers treated the Permanent Representative as an official of the Department. See 1998 UN Memo at 2.

Finally, we find guidance in our 2000 advice on whether the U.S. Executive Director and the Alternate U.S. Executive Director at the International Monetary Fund and the World Bank (“U.S. representatives”) are part of the Department of the Treasury for purposes of the Federal Vacancies Reform Act, 5 U.S.C. §§ 3341-3349d (Supp. IV 1998). *See* 24 Op. O.L.C. at 61-65, 67-68. In concluding that they were not, we acknowledged that the President had delegated to the Secretary of the Treasury responsibility for conveying the government’s instructions to the U.S. representatives, that the Treasury Department is responsible for some aspects of the representatives’ receipt of certain employment benefits, and that the Department gives ethics advice to the representatives. *See id.* at 62-63. We nonetheless characterized the relationship of the U.S. representatives to the Treasury Department as “quite limited in scope and frequently ambiguous even within that limited area.” *Id.* at 61. Central to this determination was the fact that “[f]or some of the most central elements of personnel administration, the U.S. representatives are unconnected to the Department of the Treasury.” *Id.*⁹ Specifically, we noted that the Department was not responsible for setting or paying the U.S. representatives’ salaries and did not carry them on its employment roles and that the U.S. representatives’ staff were not employees of the Treasury Department. *See id.*

Consistent with this past advice, we believe that the relevant factors support the conclusion that the Fitness Council is part of the Department of HHS. The HHS General Counsel’s Office has advised us that it concurs with this conclusion. *Accord* Memorandum for Files, from Janis Sposato, Office of Legal Counsel, *Re: President’s Council on Physical Fitness and Sports Authority to Accept Gifts* at 1 (Aug. 2, 1982) (“[T]he Council is an advisory Committee attached to the Department of [HHS].”); S. Comm. on Homeland Sec. and Governmental Affairs, 110th Cong., U.S. Gov’t Policy and Supporting Positions 68 (Comm. Print 2008) (“Plum Book”), available at <http://www.gpoaccess.gov/plumbok/2008/> (locating Executive Director of Fitness Council within HHS Office of the Assistant Secretary for Public Health and Science).

Most importantly, the Fitness Council advises and makes recommendations directly to the Secretary of HHS on matters relating to the Secretary’s operational responsibilities—specifically, the Secretary’s development and coordination of a “program to enhance physical activity and sports participation,” Exec. Order No. 13265, § 1; *see id.* § 3(b), (d). *See* Regional Fishery Management Councils Opinion at 4 n.1 (noting that Councils advise the Secretary of Commerce regarding matters for which Secretary is responsible). Even the Council’s advice and recommendations for the President must be made “through the Secretary,” Exec. Order No. 13265, § 3(a).¹⁰ *Cf.* 1996 UN Memo at 1-2 (noting that instructions for U.S. Permanent Representative to the United Nations are sent through the Secretary of State). It is also significant that the Secretary appoints the Council’s Executive Director; must agree to the objectives of any subcommittees established by the Council; is responsible for furnishing the Council with necessary administrative services, including staff; and pays the Council’s expenses

⁹ We also noted that the responsibility for instructing the U.S. representatives had not originally been delegated to the Secretary of the Treasury, and that no action by the President or Congress in subsequently transferring this authority to the Secretary demonstrated an intent to “transfer the legal, administrative location of the U.S. representatives.” 24 Op. O.L.C. at 63.

¹⁰ Prior to 2002, the Council had advised and provided recommendations to the President directly. *See* Exec. Order No. 12345, § 3(a), 47 Fed. Reg. 5,189 (Feb. 2, 1982).

out of her own funds. *See* Exec. Order No. 13265, § 4(c), (d), & (e). Finally, we note that the Secretary is responsible for performing all of the President's functions under FACA with respect to the Council (except reporting to Congress), *see id.* § 5(a), including "evaluating and taking action, where appropriate, with respect to all public recommendations" the Council makes to the President, 5 U.S.C. app. § 6(a).

Although the President, not the Secretary of HHS, appoints the members of the Fitness Council, that does not outweigh the other relevant considerations we have identified. *See* 1998 UN Memo (deeming the U.S. Mission to the United Nations part of the State Department despite the fact that the President, not the Secretary of State, appoints the Permanent Representative, *see* U.S. Const. art. II, § 2, cl. 2); *see also* 1996 UN Memo (same). Taken together, these factors—particularly the fact that the Secretary either receives herself or conveys to the President all of the Fitness Council's advice—suffice to make the Council a part of the Department of HHS for purposes of section 105, and thus to render appointments to it subject to section 3110.¹¹

Fellowships Commission. The Fellowships Commission is not one of the Executive Departments listed in section 101 and has no connection with any of those Departments. Accordingly, whether membership on the Commission constitutes a position "in [an] agency" turns on a distinct question—namely, whether the Commission is, or is part of, an "independent establishment" for purposes of section 105.

An "independent establishment" is defined as "an establishment in the executive branch (other than the United States Postal Service or the Postal Regulatory Commission) which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment." 5 U.S.C. § 104(1) (2006). The executive order establishing the Commission does not specify its location, *see* Exec. Order No. 11183, and so we must look beyond the text of the order. We discern four realistic possibilities: either the Commission is in OPM, which "provid[es] the Commission with administrative services, staff support, and travel expenses," *id.* § 4(b); it is within the White House Office; it is elsewhere in the Executive Office of the President ("EOP"); or it is a freestanding Executive Branch entity.

If the Commission were in OPM, then Commission memberships would be subject to section 3110, since OPM is an independent establishment, *see* 5 U.S.C. § 1101 (2006). Looking to the same factors that were relevant in assessing whether an entity is part of an Executive department, however, we are of the view that the Commission is not part of OPM. The OPM General Counsel's Office has advised us orally that it agrees with this conclusion.

OPM provides the Commission with administrative support, but that relationship is not itself dispositive of the Commission's status. We are mindful that, since title 5 "largely deals with personnel matters," we have advised that if an Executive Branch entity has no connection with an Executive department for certain "essential aspects of personnel administration," then

¹¹ This conclusion is consistent with those executive orders creating advisory committees similar to the Fitness Council in which the location of the committee is specified. *See* Exec. Order No. 13256, 67 Fed. Reg. 6,823 (Feb. 12, 2002) (locating President's Board of Advisors on Historically Black Colleges and Universities within the Department of Education); Exec. Order No. 13270, 67 Fed. Reg. 45,288 (Jul. 3, 2002) (locating the President's Board of Advisors on Tribal Colleges and Universities within the Department of Education).

“the compelling implication” is that the entity does not reside within that Executive department. 24 Op. O.L.C. at 62. But the converse of this proposition—that if an Executive department or independent establishment is responsible for an entity’s “essential aspects of personnel administration,” then the entity is necessarily part of that Executive department or independent establishment—is not necessarily true. Indeed, we are loath to treat the identity of the agency providing administrative services as dispositive of the location of the entity receiving the services when, as in this instance, the receiving entity is a FACA advisory committee. FACA permits the “establishing authority” to provide for a committee to receive “support services” from an entity other than the one that established the committee or receives advice from it. *See* 5 U.S.C. app. § 12(b) (2006); *see, e.g.*, Exec. Order No. 13498, § 2(a), (d)(5), 74 Fed. Reg. 6,533 (Feb. 5, 2009) (establishing President’s Advisory Council on Faith-Based and Neighborhood Partnerships within the Executive Office of the President (“EOP”), but specifying that the Department of HHS shall provide administrative support to and fund the Council).¹² It would give too much weight to the establishing authority’s discretionary choice of a particular entity to provide support services—possibly for budgetary or other practical reasons—to treat that choice as determinative of the location of the committee receiving the support.¹³

We therefore must consider the other indicia of the Commission’s form and function, all of which—by suggesting the Commission’s close connection to the President—militate against placing it within OPM. In particular, the Commission’s “basic function . . . is to provide recommendations” regarding prospective White House Fellows to the President, for his “ultimate decisions,” Fellowships Commission Letter at 2; *see* Exec. Order No. 11183, § 2—a process that does not involve OPM in any way. Moreover, the President—not OPM—selects the members of the Commission and its Chairman. The evolution over time of the Commission’s structure also supports treating it as separate from OPM. The original version of the executive order

¹² The discretion of the establishing authority under section 12(b) of FACA to choose which entity will supply support services to a committee applies equally with respect to presidential advisory committees. To be sure, section 12(b) provides that “[i]n the case of Presidential advisory committees, [support] services may be provided by the General Services Administration.” But any argument that this language implicitly “requires that administrative support [for a presidential advisory committee] come from either the appropriation for the Executive Office of the President or from the GSA, and not some other agency,” finds no support in Executive Branch practice or the legislative history of FACA, Memorandum for Files, from Thomas O. Sargentich, Office of Legal Counsel, *Re: Contemplated Executive Order to establish Presidential Advisory Committee on the Arts and Humanities* at 2 (May 28, 1981).

¹³ We advised in the IMF Memo that the offices of the U.S. representatives are “component part[s] of the IMF [and World Bank]” because those organizations fully fund the offices—including setting and paying the compensation of the representatives and their staffs and the offices’ operating expenses—and staff the offices with IMF and World Bank employees. 24 Op. O.L.C. at 66. We thus appeared to take the position that the offices of the U.S. representatives were components of the IMF and the World Bank at least in large part because those organizations were responsible for funding and staffing the offices. In rejecting the proposition that a federal government entity’s responsibility for providing administrative support and staff to a FACA advisory committee suffices to establish the committee’s location within that entity, we do not call the validity of this previous advice into question. We addressed in the IMF memo only whether an entity was within an international organization or the federal government. The standards for resolving this question may not necessarily be the same as those we have applied here in determining whether the Fitness Council and Fellowships Commission—entities that are unquestionably within the Executive Branch—are free-standing or components of an Executive department or independent establishment. Moreover, the offices of the U.S. representatives are not FACA advisory committees, and we have already explained why we are particularly reluctant to treat the identity of the entity providing administrative support to such a committee as dispositive of where the committee resides.

establishing the Commission, issued in 1964, provided that the “Civil Service Commission shall . . . assist in the conduct of the [Fellowships] Commission’s work.” Exec. Order No. 11183, § 4(b). The 1972 order amending that original order eliminated this requirement, *see* Exec. Order No. 11648, § 4, although it retained the requirement that the Civil Service Commission provide administrative services to the Fellowships Commission. Thus, in issuing the 1972 executive order, the President appears to have intended to limit the involvement in the Commission’s activities of the entity charged with providing it with administrative support. Considering all of the relevant factors, we conclude that the Commission is not part of OPM.

We also do not believe that the Commission is part of the White House Office. The executive order establishing the Commission does not place it within the White House Office, *cf.* Exec. Order No. 13283, § 1, 68 Fed. Reg. 3,371 (Jan. 21, 2003) (establishing Office of Global Communications within the White House Office); Exec. Order No. 13254, § 4, 67 Fed. Reg. 4,869 (Jan. 29, 2002) (establishing USA Freedom Corps Office as “a component of the White House Office”); Exec. Order No. 12537, § 1, 50 Fed. Reg. 45,083 (Oct. 28, 1985) (establishing President’s Foreign Intelligence Advisory Board within the White House Office), and no member of the President’s personal staff serves on the Commission, *cf.* Exec. Order No. 13503, § 5(b), 74 Fed. Reg. 8,139 (Feb. 19, 2009) (designating Deputy Assistant to the President and Director of Urban Affairs as head of the White House Office of Urban Affairs); Exec. Order No. 13199, § 4(b), 66 Fed. Reg. 8,499 (Jan. 29, 2001) (designating the Assistant to the President for Faith-Based and Community Initiatives as head of the White House Office of Faith-Based and Community Initiatives). In addition, the Plum Book lists the Commission among the “independent agencies and government corporations,” not as part of the White House Office (or the Executive Office of the President). Plum Book at 180; *cf.* 1996 UN Memo at 2 (looking to State Department organizational chart in determining location of U.S. Permanent Representative to the United Nations). We note, moreover, that OPM, not the White House Office, provides “the Commission with administrative services, staff support, and travel expenses,” Exec. Order No. 11183, § 4(b), and indeed the Commission has informed us that it receives no funding through the White House Office. *See* 24 Op. O.L.C. at 62-63 (noting that if Treasury Department does not employ or pay the salaries of the U.S. representatives, the “compelling implication is that [they] are not located in the Department”). Finally, based on our discussions with your Office, we are not aware of any other factors that would suffice to warrant treating the Commission as part of the White House Office under our precedents.

It is true that the White House website identifies the “White House Fellows” as within the White House Office, *see* <http://www.whitehouse.gov/administration/eop/>, but this may be a reference to the administrative location of the fellowship program itself, not to the location of the Commission. *See* Congressional Quarterly, Inc., Federal Staff Directory 12, 43-44 (56th ed. 2008) (separate entries for “White House Fellowships,” which is situated within the Office of the President, and the “President’s Commission on White House Fellowships,” which is situated outside the Office of the President as an agency of the EOP). In any event, as we have noted, the other available evidence points away from the Commission’s location within the White House Office.

Having determined that the Commission is part of neither OPM nor the White House Office, the remaining alternatives are either that it resides elsewhere in the EOP or that it constitutes a free-standing entity within the Executive Branch. There is some support for

locating the Commission, which is charged solely with advising the President, in the EOP, since we have in the past advised that entities of this type reside in the EOP. See Memorandum for Files, from Paul P. Colborn, Special Counsel, *Re: Records of the Information Coordination Center* at 2 (Nov. 14, 2000) (“As with other presidential boards and commissions, the [President’s Council on Year 2000 Conversions] resided in the Executive Office of the President.”). However, in light of our conclusion below that the Commission amounts to an “establishment,” see *infra* pp. 15-18, we need not resolve this question definitively. Regardless whether the Commission is part of the EOP or free-standing, the Commission’s status as an establishment means that membership on the Commission constitutes a position in an independent establishment for purposes of section 105—and thus “in [an] agency” for purposes of section 3110.

Three separate possible lines of analysis lead to this same conclusion. If the Commission is a free-standing establishment, then it would qualify as an independent establishment, and its members would hold positions in an independent establishment. If the Commission is in the EOP, then there are two further possibilities, depending on whether EOP itself is an independent establishment, but both lead to the conclusion that so long as the Commission amounts to an establishment, its members occupy positions in an independent establishment and thus in an agency under section 3110. If the EOP itself is an independent establishment, as we have suggested at times in the past,¹⁴ then Commission memberships would constitute positions in that independent establishment. If the EOP is not an independent establishment—the view that we have espoused more recently¹⁵—then, so long as the Commission constitutes an “establishment,” its members would hold positions in an independent establishment, since the Commission would be independent in the sense of not being part of any department or independent establishment.

We turn, then, to the ultimate question of whether the Commission constitutes an “establishment,” as that term is used in sections 104 and 105. Although the question is not entirely free of doubt, we conclude that it does.

This Office has consistently read the statutory term “establishment” as having “broad” application. 24 Op. O.L.C. at 65. We have sometimes suggested that the term is a catch-all for “essentially any . . . organization in the Executive Branch” that is not an Executive department or a Government corporation. *Applicability of the Hatch Act to the Chairman of the Native Hawaiians Study Commission*, 6 Op. O.L.C. 292, 293 (1982). Thus, we have characterized it as intended to sweep in “all agencies and instrumentalities in the Executive Branch.” Memorandum for Charles H. Atherton, Secretary, Commission of Fine Arts, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, *Re: Applicability of Exec. Order 11988 Concerning Floodplain Management to the Commission of Fine Arts* at 4 (June 7, 1984) (“1984 Fine Arts Memo”). That approach is consistent with the most basic definition of “establishment”: “[t]hat which is established.” Webster’s New International Dictionary at 874.

¹⁴ See Memorandum for Bernard Nussbaum, Counsel to the President, from Daniel L. Koffsky, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Use of GSA Authority to Accept Gift of Equipment* at 5 (Aug. 3, 1993) (“the ordinary meaning of . . . ‘independent establishment in the executive branch’” as used in 40 U.S.C. § 472(a) “would seem to” encompass the EOP and some of its “principal components”); 3/15/77 Kneeder Memo at 4.

¹⁵ See Memorandum for Files, from Daniel Koffsky, Special Counsel, *Re: OSTP* (Apr. 23, 1998); Memorandum to Files, from Daniel Koffsky, Special Counsel at 2-3 (Jan. 9, 1998).

More recently, we have indicated that section 104(1)'s use of the term "establishment" is not quite all-encompassing, but rather should include only entities with "[their] own structure and unity." 24 Op. O.L.C. at 65; *cf. id.* at 60 ("The use of the phrase 'of an Executive agency' imposes a meaningful limitation on the scope of the [Federal Vacancies Reform Act]."); Memorandum for Bernard Nussbaum, Counsel to the President, from Daniel L. Koffsky, Acting Assistant Attorney General, *Re: Use of GSA Authority to Accept Gift of Equipment* at 5 (Aug. 3, 1993) (not clear "whether more ad hoc and less formal entities under the EOP would meet this definition"). This approach is consistent with that of the U.S. Court of Appeals for the District of Columbia Circuit in addressing the meaning of "establishment" as used in FOIA's somewhat different definition of "agency." *See Meyer v. Bush*, 981 F.2d 1288, 1296 (D.C. Cir. 1993) ("FOIA, by declaring that only 'establishments in the executive branch' are covered, 5 U.S.C. § 552(e), requires a definite structure for agency status."); *Armstrong v. EOP*, 90 F.3d 553, 558 (D.C. Cir. 1996) ("a definite structure may be a prerequisite to qualify as an 'establishment within the executive branch'"); *see also* Memorandum for J. Michael Farren, Deputy Counsel to the President, from Steven A. Engel, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Whether the Office of Administration Within the Executive Office of the President Is an "Agency" for Purposes of the Freedom of Information Act* at 2-3 (Aug. 21, 2007).

The legislative history of section 104, which was added to the U.S. Code as part of the codification of title 5, *see* Pub. L. No. 89-554, 80 Stat. 378, 379 (1966), does not shed much light on the question. But the amendment history of section 3110 suggests that Congress intended section 3110 to bar appointments to a broad range of Executive Branch entities. Introduced in the House as a floor amendment to extensive legislation for the revision of postal rates and salaries, *see* Postal Revenue and Federal Salary Act of 1967, Pub. L. No. 90-206, § 221, 81 Stat. 613, 640, section 3110 as adopted by the House prohibited the appointment of relatives to positions in the appointing official's "Department," meaning "each department, agency, establishment, or *other organization unit in or under the . . . executive branch.*" 113 Cong. Rec. 28,658 (1967) (emphasis added). When the bill was reported out of Senate committee, that definition had been replaced with the current language referencing the official's "agency," defined to incorporate the title 5 definition of "Executive agency." The rationale for the change is unclear—the legislative history suggests it was intended to allay concerns that the original definition of "Department" included military as well as civilian entities, *see* Section 3110 Hearings at 363; *see also* 5 U.S.C. § 104 (excluding "military department" from definition of "independent establishment")—but there is no indication that the purpose of the shift from "Department" to "Executive agency" was to limit the application of the prohibition to a smaller subset of civilian Executive Branch entities.

In accord with our broad reading of "establishment," we have repeatedly advised that particular advisory committees constitute establishments for purposes of sections 104 and 105 of title 5.¹⁶ For example, in concluding that section 3110 would bar President Carter's appointment of the First Lady as Chairperson of the Mental Health Commission, which was a federal advisory committee, *see* Exec. Order No. 11973, 42 Fed. Reg. 10,677 (Feb. 17, 1977), we observed that

¹⁶ We have observed generally that "[a]n entity in the Executive Branch may be both an advisory committee within the meaning of FACA and an executive agency within the meaning of 5 U.S.C. § 105." 1984 Fine Arts Memo at 5 n.4.

“[t]he comprehensive term ‘establishment’ would clearly cover the [Commission].” Mental Health Commission Memo; *see also* CPSI Memo (stating that the reasons for deeming the Mental Health Commission an establishment would apply equally to the CPSI). We also have concluded that another FACA advisory committee, the Commission of Fine Arts (“Fine Arts Commission”), is an establishment for purposes of section 104,¹⁷ and we have suggested that the Advisory Board for Cuba Broadcasting “probably qualifies” as one as well, Memorandum for Files, from Daniel Koffsky, Special Counsel at 2-3 (Jan. 9, 1998). *See also* 6 Op. O.L.C. at 293-95 (concluding that the Hatch Act, 5 U.S.C. § 7324 (1976), which applies to “[a]n employee in an Executive agency” as defined in section 105, applies to Native Hawaiians Study Commission).

In addressing the status of the Fine Arts Commission, we saw “no question” that the Commission—regardless of whether it was engaged in its “advisory function” or making “substantive, binding decision[s]”—“is performing functions constitutionally committed to the Executive Branch and, as such, is an executive agency within the meaning of [section] 105.” 1984 Fine Arts Memo at 5; *cf.* Memorandum for Charles H. Atherton, Secretary, Commission of Fine Arts, from Leon Ulman, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Application of Executive Order 11988, entitled “Floodplain Management,” to the Commission of Fine Arts* at 2-3 (Nov. 14, 1980) (“1980 Fine Arts Memo”) (describing Commission’s functions as purely advisory and concluding that Commission is an establishment because it is congressionally created, composed of presidential appointees, and entirely financed by the federal government).

Assuming an entity must have some degree of ongoing structure and unity to qualify as an independent establishment within the meaning of section 105, we believe the Fellowships Commission meets the test. The Fellowships Commission has a structure—a formal membership comprising special government employees—and is unified—in its ability to deliberate and make decisions as a body. *See* Mental Health Commission Memo (identifying fact that President’s Commission on Mental Health is “comprised of persons who will be regarded as government employees” as among reasons that it is “clearly” an establishment) (citing Exec. Order No. 11973, §§ 4, 7). To be sure, the Commission has a fairly skeletal organization; functions as a body only on a small number of occasions per year; and possesses relatively limited powers, even as compared to some of the other advisory committees that we have deemed independent establishments. *Cf.* 1984 Fine Arts Memo at 5 (observing that Fine Arts Commission is established by statute and exercises “both advisory and substantive responsibilities”); Mental Health Commission Memo (observing that President’s Commission on Mental Health is “authorized, through its Chairman, to conduct hearings and procure independent services pursuant to 5 U.S.C. § 3109”) (citing Exec. Order No. 11973, § 7); Exec. Order No. 11973, § 7 (providing for compensation of members of Commission on Mental Health). Moreover, the Commission is a creature of executive order, and thus subject to abolition at the President’s discretion, unlike a number of the statutorily created advisory bodies that we have deemed establishments. *See, e.g.,* 40 U.S.C. § 9101 (2006) (establishing the Fine

¹⁷ *See* 1984 Fine Arts Memo at 5 & n.4; *see also* Memorandum for Charles H. Atherton, Secretary, Commission of Fine Arts, from Leon Ulman, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Application of Executive Order 11988, entitled “Floodplain Management,” to the Commission of Fine Arts* at 2-3 (Nov. 14, 1980) (same); Letter for Charles H. Atherton, Secretary, Commission of Fine Arts, from Ralph W. Tarr, Acting Assistant Attorney General, Office of Legal Counsel at 2 (May 20, 1985) (same).

Arts Commission); 22 U.S.C. § 1465c (2006) (establishing the Advisory Board for Cuba Broadcasting); Pub. L. No. 96-565, title III, §§ 301-307, 94 Stat. 3321, 3324-3327 (1980) (establishing the Native Hawaiians Study Commission). Nonetheless, in the context of the present inquiry, we do not think that these differences suffice to distinguish the Fellowships Commission from these other advisory committees, such that the Commission should not be considered an “establishment.” In reaching this conclusion, we give particular weight to the fact that the Commission was established during the Johnson Administration, and thus is now in its fifth decade of continuous operation. Accordingly, it cannot be disputed that, in a most basic sense, the Commission constitutes an established entity with its own structure, practices, and history. *Cf. Armstrong*, 90 F.3d at 560 (contrasting entity possessing sufficient structure to qualify as FOIA agency with “an amorphous assembly from which ad hoc task groups are convened periodically by the President”); *Meyer*, 981 F.2d at 1296 (“The President does not create an ‘establishment’ subject to FOIA every time he convenes a group of senior staff or departmental heads to work on a problem.”).

We are aware of two judicial decisions that either hold or suggest that particular free-standing Executive Branch entities that are not Executive departments or Government corporations are not independent establishments. *See Haddon v. Walters*, 43 F.3d 1488 (D.C. Cir. 1995); *AAPS*, 997 F.2d at 905. Neither of these opinions affects our conclusion here.

In *Haddon*, the D.C. Circuit held that section 2000e-16 of title 42, which prohibits certain discrimination in connection with “personnel actions affecting employees or applicants . . . in executive agencies as defined in [5 U.S.C. § 105],” did not apply to a personnel action affecting an employee of the Executive Residence. *Id.* at 1489. The court relied on two statutory rationales. First, the court construed 3 U.S.C. § 112 (2006)—which authorizes details from “any department, agency, or independent establishment of the executive branch” to a number of entities in the EOP, including the Executive Residence—as “suggest[ing] that Congress does not regard” the Residence to be an independent establishment. *Haddon*, 43 F.3d at 1490. Second, the court deemed it significant that section 2000e-16 incorporated *title 5*’s definition of Executive agency, since title 3 of the United States Code contains a provision that authorizes the President to appoint and fix the pay of the employees of the Executive Residence “without regard to any other provision of law regulating the employment or compensation of persons in the Government service,” 3 U.S.C. § 105(b) (2006). *See Haddon*, 43 F.3d at 1490.

Even assuming that the *Haddon* court’s reasoning is sound, neither of these rationales has any bearing on whether the Fellowships Commission qualifies as an “establishment.” The only entities that are grouped with the Executive Residence as possible recipients of details from independent establishments under 3 U.S.C. § 112—and thus, in the court’s view, distinct from those independent establishments—are the White House Office, the Office of the Vice President, the Domestic Policy Staff, and the Office of Administration. These are the same entities with respect to which title 3 grants the President special authority to appoint and fix the pay of employees without regard to other provisions of law regulating the employment or compensation of government workers, *see* 3 U.S.C. §§ 105, 106, 107 (2006)—the same special authority that the *Haddon* court deemed significant in concluding that the Executive Residence was not an independent establishment. Even if the *Haddon* court is correct that Congress wished to thus signify that the named entities are not independent establishments for purposes of section 105 of title 5, Congress expressed no such intent to similarly demarcate presidential advisory

committees not in the White House Office, such as the Fellowships Commission, which are mentioned in neither 3 U.S.C. § 112 nor in any special grant of appointment authority under title 3. Congress may well have concluded that the President's need to be free of title 5's strictures in appointing and paying the employees of the named entities did not extend to such advisory committees to the same extent.

The *AAPS* court's views are more on point, but we find the court's brief discussion unpersuasive. The court expressed "doubt that Congress intended" section 3110 to apply to appointments to "the White House or the Executive Office of the President," although the court did not need to, and did not purport to, resolve that question definitively. 997 F.2d at 905; *see also id.* (speculating that the President might be "barred from appointing his brother as Attorney General, but perhaps not as a White House special assistant"). The only support the *AAPS* court advanced for its tentative view were citations to *Franklin v. Massachusetts*, 505 U.S. 788 (1992); *Meyer*, 981 F.2d 1288; and *Armstrong v. Bush*, 924 F.2d 282, 289 (D.C. Cir. 1991). These decisions do not support changing our conclusion that the Commission is an "establishment" for purposes of section 105. *Cf. AAPS*, 997 F.2d at 921 (Buckley, J., concurring) ("Viewed purely as a matter of congressional intent, the [majority's] argument that the Anti-Nepotism Act applies only to the Departments and not to the White House . . . is a weak one.").

In *Meyer*, the court held that the President's Task Force on Regulatory Relief—an entity within the EOP—was not an "agency" subject to FOIA, 5 U.S.C. § 552(1), because it was not a body with "substantial independent authority" to direct Executive Branch officials. 981 F.2d at 1297; *see also Citizens for Responsibility and Ethics in Washington v. Office of Administration*, 566 F.3d 219, 224 (D.C. Cir. 2009); *cf. Soucie v. David*, 448 F.2d 1067, 1075 (D.C. Cir. 1971) (stating that if EOP entity's "sole function were to advise and assist the President, that might be taken as an indication that the [entity] is part of the President's staff and not a separate agency" for purposes of the Administrative Procedure Act, 5 U.S.C. § 551(1) (Supp. V 1970), which at the time defined an agency as any "authority of the Government of the United States"). That holding is not of direct relevance here. It may be the case that the Fellowships Commission, which is charged solely with advising the President, would not qualify as an "agency" for FOIA purposes. *But see* Letter for the Honorable Abner J. Mikva, Counsel to the President, from Richard L. Shiffrin, Deputy Assistant Attorney General, Office of Legal Counsel at 1 (Mar. 10, 1995) (noting that "[t]he Commission considers itself an agency subject to the Privacy Act," which incorporates the FOIA definition of "agency," *see* 5 U.S.C. § 552a(a)(1) (2006)). But we need not resolve that question for present purposes, since the Commission's status under FOIA is not dispositive of whether it is an Executive agency within the meaning of section 105. FOIA's legislative history is "unambiguous" that "'the President's immediate personal staff or units in the Executive Office whose sole function is to advise and assist the President' are not included within the term 'agency.'" *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 156 (1980) (quoting H.R. Conf. Rep. No. 1380, 93d Cong., 2d Sess. 15 (1974)); *see also Meyer*, 981 F.2d at 1291-92. At least when it comes to such entities within the EOP—and analogous entities outside the EOP that are "responsible directly to the President and assist[] him by performing whatever duties he may prescribe," *Sweetland v. Walters*, 60 F.3d 852, 854 (D.C. Cir. 1995)—the definition of an "agency" for FOIA purposes is plainly more restrictive than the section 105 definition of Executive agency. *See Armstrong*, 90 F.3d at 558 ("not every [Executive Branch] establishment is an agency under the FOIA"). As suggested previously, *see supra* p. 16, there is no legislative history for sections 104, 105, or 3110 that is comparable to

FOIA's legislative history, and thus there is no support for construing their ambit to be similarly limited.

In *Franklin*, which the AAPS court also cited, the Supreme Court “[o]ut of respect for the separation of powers and the unique constitutional position of the President” declined to subject the President to the Administrative Procedure Act (“APA”) absent “an express statement by Congress,” 505 U.S. at 800-01. *See also Armstrong*, 924 F.2d at 289 (relying on clear statement rule in concluding that APA does not apply to the President). We have previously invoked this clear statement rule where “application [of a statute to the President] would involve a possible conflict with the President’s constitutional prerogatives,” *Application of 28 U.S.C. § 458 to Presidential Appointments of Federal Judges*, 19 Op. O.L.C. 350, 351 (1995); but the rule does not affect our construction of section 104, section 105, or section 3110 as applied to the Fellowships Commission. Congress defined “public official” in section 3110 expressly to include the President. 5 U.S.C. § 3110(a)(2). And although the definitions of “agency” in section 3110, “Executive agency” in section 105, and “independent establishment” in section 104 do not expressly include entities charged solely with advising the President, for the reasons discussed previously we do not think that the application of the prohibition to bar presidential appointments to such entities raises significant constitutional concerns. *See supra* pp. 8-9; *see also* 19 Op. O.L.C. at 357 n.11 (“The clear statement principle . . . does not apply with respect to a statute that raises no separation of powers questions were it to be applied to the President.”).

Accordingly, we conclude that the Fellowships Commission is an independent establishment and therefore is subject to the bar imposed by section 3110.¹⁸

Please let us know if we may be of further assistance.



David J. Barron
Acting Assistant Attorney General

¹⁸ We have previously advised that section 3110 would not bar the President from appointing a relative to an “honorary” position relating to an Executive Branch entity, so long as the appointee remains “sufficiently removed” from the entity’s “official functions.” Mental Health Commission Memo at 1; *see also* 2/17/77 Kneeder Memo at 7 (honorary appointee could attend entity’s meetings or hearings, submit ideas for the entity’s consideration, and offer and solicit support for the entity’s work). We have not independently examined this question, and express no view on the status of “honorary” appointments under section 3110. Even if they are permissible in cases where an appointment otherwise would be prohibited, the involvement of a nonemployee with the work of an advisory committee would potentially raise independent legal questions, requiring careful consideration, relating to the application of other laws, including FACA, FOIA, and the conflict of interest laws.

Application of the Anti-Nepotism Statute to a Presidential Appointment in the White House Office

Section 105(a) of title 3, U.S. Code, which authorizes the President to appoint employees in the White House Office “without regard to any other provision of law regulating the employment or compensation of persons in the Government service,” exempts positions in the White House Office from the prohibition on nepotism in 5 U.S.C. § 3110.

January 20, 2017

MEMORANDUM OPINION FOR THE COUNSEL TO THE PRESIDENT

You have asked whether section 3110 of title 5, U.S. Code, which forbids a public official from appointing a relative “to a civilian position in the agency . . . over which [the official] exercises jurisdiction or control,” bars the President from appointing his son-in-law to a position in the White House Office, where the President’s immediate personal staff of advisors serve. We conclude that section 3110 does not bar this appointment because the President’s special hiring authority in 3 U.S.C. § 105(a) exempts positions in the White House Office from section 3110.

A decision of the D.C. Circuit, *Haddon v. Walters*, 43 F.3d 1488 (D.C. Cir. 1995) (per curiam), lays out a different, but overlapping, route to the same result. According to the reasoning of *Haddon*, section 3110 does not reach an appointment in the White House Office because section 3110 covers only appointments in an “agency,” which the statute defines to include “Executive agenc[ies],” and the White House Office is not an “Executive agency” within the definition generally applicable to title 5. Although our analysis does not track every element of the D.C. Circuit’s reasoning about the meaning of “Executive agency,” we believe that *Haddon* arrived at the correct outcome and that our conclusion here that, because of the President’s special hiring authority for the White House Office, section 3110 does not forbid the proposed appointment squares with both the holding and a central part of the analysis in that case.

I.

Section 105(a) of title 3 authorizes the President “to appoint and fix the pay of employees in the White House Office without regard to any other provision of law regulating the employment or compensation of persons in the Government service,” as long as the employees’ pay is within listed

salary caps. 3 U.S.C. § 105(a)(1). These employees are to “perform such official duties as the President may prescribe.” *Id.* § 105(b)(1). We understand that most White House Office employees are appointed under section 105 or a similar hiring authority, such as 3 U.S.C. § 107 (the authorization for domestic policy staff). *See Authority to Employ White House Office Personnel Exempt from the Annual and Sick Leave Act Under 5 U.S.C. § 6301(2)(x) and (xi) During an Appropriations Lapse*, 36 Op. O.L.C. ___, at *5 (Apr. 8, 2011), <https://www.justice.gov/olc/opinions>; *Authority to Employ the Services of White House Office Employees During an Appropriations Lapse*, 19 Op. O.L.C. 235, 236 (1995). Such employees are the President’s “immediate personal staff” and work in close proximity to him. *Meyer v. Bush*, 981 F.2d 1288, 1293 & n.3 (D.C. Cir. 1993). The appointment at issue here, we understand, would be under 3 U.S.C. § 105(a).

Section 3110 of title 5, also known as the anti-nepotism statute, states that “[a] public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official.” 5 U.S.C. § 3110(b). The statute expressly identifies the President as one of the “public official[s]” subject to the prohibition, and a son-in-law is a covered “relative.” *Id.* § 3110(a)(2), (a)(3). Moreover, under Article II of the Constitution, the President exercises “jurisdiction or control” over the White House Office as well as over the rest of the Executive Branch. *See Myers v. United States*, 272 U.S. 52, 163–64 (1926); *Inspector General Legislation*, 1 Op. O.L.C. 16, 17 (1977). Less certain is whether the White House Office is an “agency” — a term that section 3110 defines to include an “Executive agency,” thereby calling up the definition of “Executive agency” generally applicable to title 5, *see* 5 U.S.C. § 3110(a)(1)(A); *id.* § 105. But whether or not the White House Office meets this definition (a subject to which we will return in Part II, *infra*), we believe that the President’s special hiring authority in 3 U.S.C. § 105(a) permits him to make appointments to the White House Office that the anti-nepotism statute might otherwise forbid.

Section 3110 prohibits the appointment of certain persons to positions of employment in the federal government. It is therefore a “provision of law regulating the employment . . . of persons in the Government service.”¹

¹ Subsection (c) of section 3110, which states that an individual appointed, employed, promoted, or advanced in violation of the statute’s prohibition is “not entitled to pay,” 5 U.S.C.

Under section 105(a), the President can exercise his authority to appoint and fix the pay of employees in the White House Office “without regard to” such a law. 3 U.S.C. § 105(a)(1). This authority is “[s]ubject” only to the provisions of subsection (a)(2), which limit the number of White House employees the President may appoint at certain pay levels. *See id.* § 105(a)(2). Thus, according to the most natural and straightforward reading of section 105(a), the President may appoint relatives as employees in the White House Office “without regard to” the anti-nepotism statute.

This reading of the two statutes gives section 105(a) a meaning no more sweeping than its words dictate. The ordinary effect of “without regard” language is to negate the application of a specified class of provisions. In *American Hospital Association v. Bowen*, 834 F.2d 1037 (D.C. Cir. 1987), for example, the D.C. Circuit declared that the “plain meaning” of a “without regard” exemption, which there enabled the Secretary of Health and Human Services (“HHS”) to carry out his contracting authority “without regard to any provision of law relating to the making, performance, amendment or modification of contracts of the United States,” was “to exempt HHS from . . . the vast corpus of laws establishing rules regarding the procurement of contracts from the government,” although not from the requirements of the Administrative Procedure Act. *Id.* at 1054; *see also Friends of Animals v. Jewell*, 824 F.3d 1033, 1045 (D.C. Cir. 2016) (holding that a statutory direction to issue a rule “without regard to any other provision of statute or regulation that applies to issuance of such rule” effectively changed the Endangered Species Act); *Alliance for the Wild Rockies v. Salazar*, 672 F.3d 1170, 1174–75 (9th Cir. 2012) (reaching the same conclusion about a direction to issue a rule “without regard to any other provision of statute or regulation”); *cf. Crowley Caribbean Transport, Inc. v. United States*, 865 F.2d 1281, 1282–83 (D.C. Cir. 1989) (noting, in interpreting an authorization to the President to take certain action “notwithstanding any other provision of this chapter or any other Act,” that a “clearer statement is difficult to imagine,” and declining to “edit” the language to add an implied exemption).

Applying the “without regard” language, our Office has interpreted section 105(a) as a grant of “broad discretion” to the President “in hiring the employees of [the White House Office]”; the provision, we have said, “re-

§ 3110(c), may also make section 3110 a “provision of law regulating the . . . compensation of persons in the Government service” rendered inapplicable by section 105(a).

flect[s] Congress’s judgment that the President should have complete discretion in hiring staff with whom he interacts on a continuing basis.” *Applicability of the Presidential Records Act to the White House Usher’s Office*, 31 Op. O.L.C. 194, 197 (2007); *see also* Memorandum for Bernard Nussbaum, Counsel to the President, from Daniel L. Koffsky, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Presidential Authority under 3 U.S.C. § 105(a) to Grant Retroactive Pay Increases to Staff Members of the White House Office* at 2–3 (July 30, 1993) (section 105(a)’s “sweeping language” gives the President “complete discretion” in adjusting pay of White House Office employees “in any manner he chooses”). That congressional intent is manifest in the House and Senate committee reports accompanying the 1978 legislation by which Congress enacted section 105(a). *See* Pub. L. No. 95-570, 92 Stat. 2445 (1978). Both reports state that the language “expresses the committee’s intent to permit the President *total discretion in the employment*, removal, and compensation (within the limits established by this bill) *of all employees in the White House Office*.” H.R. Rep. No. 95-979, at 6 (1978) (emphasis added); S. Rep. No. 95-868, at 7 (1978) (same). Aside from the reference to the compensation limits in subsection (a)(2), that statement is qualified only by the committees’ explanation that section 105(a) “would not excuse any employee so appointed from full compliance with all laws, executive orders, and regulations governing such employee’s conduct while serving under the appointment.” H.R. Rep. No. 95-979, at 6; S. Rep. No. 95-868, at 7 (same).

One piece of section 105(a)’s legislative history does point the other way. During the House subcommittee hearing, the General Counsel to the President’s Reorganization Project at the Office of Management and Budget (“OMB”) testified that the language exempting the White House Office (along with other entities in the Executive Office of the President) from the usual rules on hiring and compensation “would not exempt [these entities] from the restrictions under the nepotism statute because of the specific provisions of that act which apply to the President.” *Authorization for the White House Staff: Hearings Before the Subcomm. on Employee Ethics and Utilization of the H. Comm. on Post Office and Civil Service*, 95th Cong. 20 (1978) (“*Authorization for the White House Staff*”) (testimony of F.T. Davis, Jr.). Even if we were prepared to reach a different understanding of section 105(a)’s text based on a single witness statement, *but see S&E Contractors, Inc. v. United States*, 406 U.S. 1, 13 n.9 (1972) (“In construing laws we have been extremely wary of testimony before committee hearings . . .”), this

particular statement does not offer a persuasive basis on which to do so. Although no member of the subcommittee disputed the OMB official's interpretation, it is far from clear whether the members (and later, the authors of the House and Senate reports) ultimately endorsed his view about the language. The OMB official offered his interpretation after the subcommittee chair asked about the language's effect on a number of federal laws and authorities, including "the Hatch Act, nepotism law, criminal conflict of interest laws, [and] Executive Order 11222 regulating employee conduct"; the chair explained that she was asking in order to draft the committee report. *Authorization for the White House Staff* at 20 (question of Rep. Schroeder). But while another of the witness's assertions ultimately made it into the committee reports his statement that the language would not affect any laws "dealing with conduct by public officials once they are appointed," *id.* (testimony of Mr. Davis), *see also* H.R. Rep. No. 95-979, at 6; S. Rep. No. 95-868, at 7 his comment about the anti-nepotism statute did not. *Cf. Gustafson v. Alloyd Co.*, 513 U.S. 561, 580 (1995) ("If legislative history is to be considered, it is preferable to consult the documents prepared by Congress when deliberating."). Moreover, the rationale the OMB official offered for his interpretation that "specific provisions" of section 3110 "apply to the President" is not particularly convincing. Because the President exercises "jurisdiction or control" over the entire Executive Branch, section 3110, by its express terms, would seemingly apply to the President's filling of numerous positions in federal agencies, even if the "without regard to any other provision of law" language carved out a handful of entities in the Executive Office of the President, such as the White House Office. *Cf. Ass'n of Am. Physicians & Surgeons, Inc. v. Clinton*, 997 F.2d 898, 905 (D.C. Cir. 1993) ("AAPS") (suggesting a reading of section 3110 under which "a President would be barred from appointing his brother as Attorney General, but perhaps not as a White House special assistant").

In our view, therefore, section 105(a) exempts presidential appointments to the White House Office from the scope of the anti-nepotism statute.

II.

Haddon v. Walters, 43 F.3d 1488 (D.C. Cir. 1995) (per curiam), also bears on the question here and might appear to resolve it, albeit through a different route. Relying on arguments that would apply equally to the White House Office, *Haddon* held that the Executive Residence at the White House is not an "Executive agency" within the title 5 definition. *Id.* at 1490. Be-

cause the prohibition in section 3110 applies, as relevant here, only to appointments in “Executive agenc[ies],” *Haddon* seems to compel the conclusion that the bar against nepotism would not extend to appointments in the White House Office. Reinforcing this conclusion, though resting on other grounds, an earlier opinion of the D.C. Circuit had expressed “doubt that Congress intended to include the White House” as an “agency” under section 3110. *AAPS*, 997 F.2d at 905; *but see id.* at 920–21 (Buckley, J., concurring in the judgment) (disputing that interpretation of “agency”).

The matter, however, is somewhat more complicated. Not every part of the reasoning in *Haddon* is entirely persuasive, and the court’s rationale extends more broadly than necessary, in our view, to address the question now at hand. Nonetheless, we believe that *Haddon* lends support to our conclusion that the President may appoint relatives to positions in the White House Office.

Haddon held that the Executive Residence, which like the White House Office has a staff appointed under title 3, *see* 3 U.S.C. § 105(b), is not an “Executive agency” within the title 5 definition. *Haddon* was considering 42 U.S.C. § 2000e-16, which extends the antidiscrimination provisions of Title VII of the Civil Rights Act of 1964 to employees or applicants for employment “in executive agencies as defined in [5 U.S.C. § 105].” 42 U.S.C. § 2000e-16(a). Under that definition (the same one that governs section 3110), an “Executive agency” means “an Executive department, a Government corporation, and an independent establishment.” 5 U.S.C. § 105. Because the Executive Residence, like the White House Office, is plainly not an “Executive department” or a “Government corporation,” *see id.* §§ 101, 103, the issue in *Haddon* came down to whether the Executive Residence is an “independent establishment,” *see id.* § 104.

The D.C. Circuit had two reasons for concluding that the Executive Residence is not an independent establishment and therefore not an Executive agency under 5 U.S.C. § 105. First, the court observed that another statute, 3 U.S.C. § 112, authorizes “[t]he head of any department, agency, or independent establishment of the executive branch of the Government [to] detail, from time to time, employees of such department, agency, or establishment to the White House Office, the Executive Residence at the White House, the Office of the Vice President, the Domestic Policy Staff, and the Office of Administration.” In the court’s view, this phrasing suggested that the listed entities in the Executive Office of the President are not themselves “department[s], agenc[ies], or independent establishment[s].” *Haddon*, 43 F.3d at

1490 (“That Congress distinguished the Executive Residence from the independent establishments, whatever they may be, suggests that Congress does not regard the Executive Residence to be an independent establishment, as it uses that term.”). Second, the court said that title 5 of the U.S. Code “relates to government organization and employees and prescribes pay and working conditions for agency employees,” while title 3 of the Code “addresses similar concerns with respect to the President’s advisors and the staff of the Executive Residence.” *Id.* The incorporation of the title 5 definition in section 2000e-16, the court explained, suggests that Congress intended the statute to cover only “title 5” positions – not positions provided for in 3 U.S.C. § 105 and other title 3 authorities. *Id.*²

The D.C. Circuit’s first reason may be the less convincing of the two. The wording of the detail statute, 3 U.S.C. § 112, “distinguish[es]” between the sending and receiving entities only insofar as the sending entities are identified generically, while the small group of entities that may receive details, including the Executive Residence and the White House Office, are specifically named. This wording might well be an apt way to authorize a detail without implying anything about the status of the receiving entities. Indeed, Congress elsewhere used similar constructions to provide for transfers between executive departments. Section 2256 of title 7, U.S. Code, declares that the “head of any department” may “transfer to the Department [of Agriculture]” funds to perform certain inspections, analyses, or tests. Similarly, under 22 U.S.C. § 2675, the Secretary of State may “transfer to any department” certain “funds appropriated to the Department of State.” The generic references to “departments” on one side of these transactions could not be read to imply that the entities on the other side, the Departments of Agriculture and State, are not “departments.”

The court’s second argument seems stronger, although the court stated it more broadly than the facts of *Haddon* required. The court apparently viewed the provisions in title 3 as creating a complete substitute for title 5: “while Title 5 relates to government organization and employees and prescribes pay and working conditions for agency employees, Title 3 addresses similar concerns with respect to the President’s advisors and the staff of the

² Shortly after *Haddon*, Congress passed the Presidential and Executive Office Accountability Act, Pub. L. No. 104-331, 110 Stat. 4053 (1996), which expressly applies Title VII and other federal civil rights and workplace laws to entities in the Executive Office of the President, including the White House Office and the Executive Residence. *See id.* § 2(a) (relevant provisions codified at 3 U.S.C. §§ 401, 402, 411).

Executive Residence.” *Haddon*, 43 F.3d at 1490 (citation omitted). The court then quoted, in a parenthetical, the “without regard” provision for hiring in the Executive Residence that exactly parallels the one for the White House Office. *Id.* (quoting 3 U.S.C. § 105(b)(1)). Inasmuch as the plaintiff in *Haddon* claimed that he had been unlawfully passed over for promotion that he had not been appointed to a higher position with higher pay his claim had to do with exactly the subjects identified in 3 U.S.C. § 105(b)(1), “employment or compensation of persons in the Government service.” Section 105(b)(1) could therefore be understood to displace the restrictions in Title VII, even if title 3 did not completely displace all of title 5. Thus, the court’s broader statements about the relationship of title 3 and title 5, though not dicta, went further than necessary to decide the case and further than we need to go here.

In any event, our conclusion above that the President’s special hiring authority in 3 U.S.C. § 105(a) allows him to appoint relatives to the White House Office without regard to section 3110’s bar against nepotism is consistent with the holding in *Haddon* and with the court’s reliance on the parallel language in 3 U.S.C. § 105(b)(1). In accordance with *Haddon*, we believe that the White House Office is not an “Executive agency” insofar as the laws on employment and compensation are concerned. Both the “without regard” language of section 105(a) and the general treatment of the White House Office under title 3 instead of title 5 undergird this conclusion.³ Having conformed our analysis, to this extent, with the only authoritative judicial guidance bearing on this question, we have no need to delve into the issue whether the White House Office should be considered outside of title 5 for all purposes whenever the application of that title is confined to “Executive agenc[ies].”⁴

³ We do not address the application of section 3110 to any other component of the government.

⁴ We have observed before that the D.C. Circuit’s reasoning in *Haddon* would seemingly extend to other entities listed in section 112 with special hiring authorities under title 3, including the White House Office. See Memorandum for Gregory B. Craig, Counsel to the President, from David J. Barron, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Application of 5 U.S.C. § 3110 to Two Proposed Appointments by the President to Advisory Committees* at 18 (Sept. 17, 2009); *Application of 18 U.S.C. § 603 to Contributions to the President’s Re-Election Committee*, 27 Op. O.L.C. 118, 118 (2003) (“Section 603 Opinion”). In one circumstance, however, because of features “unique” to the statutory scheme at issue—the Hatch Act Reform Amendments of 1993 (“HARA”)—we have found that the White House Office should be treated as an “Executive agency” under title 5 notwith-

III.

Our Office, on several occasions, has addressed the application of section 3110 to presidential appointments, including appointments to the White House Office and other entities within the Executive Office of the President. Although our conclusion today departs from some of that prior work, we think that this departure is fully justified. Our initial opinions on the subject drew unwarranted inferences about Congress’s intent from a single witness statement in a congressional hearing. Moreover, the surrounding legal context has been transformed by the subsequent enactment of section 105(a), which expressly and specifically addresses employment within the White House Office, and also by the D.C. Circuit’s decision in *Haddon*.

standing *Haddon*. See Section 603 Opinion, 27 Op. O.L.C. at 119 (White House Office employees may make contributions to a President’s authorized re-election campaign by virtue of an exception available to employees in an “Executive agency”).

Section 603 of title 18 prohibits “an officer or employee of the United States or any department or agency thereof” from “mak[ing] any contribution . . . to any other such officer, employee or person . . . if the person receiving such contribution is the employer or employing authority of the person making the contribution.” 18 U.S.C. § 603(a). But section 603(c) exempts from liability “employee[s] (as defined in section 7322(1) of title 5)” —meaning, employees subject to HARA. Section 7322(1), in turn, defines “employee” as “any individual, other than the President and the Vice President, employed or holding office in . . . an Executive agency.” 5 U.S.C. § 7322(1)(A). Several considerations led us in our Section 603 Opinion to confirm a prior opinion treating the White House Office as an “Executive agency” for purposes of section 7322(1), see *Whether 18 U.S.C. § 603 Bars Civilian Executive Branch Employees and Officers from Making Contributions to a President’s Authorized Re-Election Campaign Committee*, 19 Op. O.L.C. 103 (1995). First, there would be “no purpose” for section 7322(1)’s express exclusion of the President and the Vice President if they were not understood to be “holding office in . . . an Executive agency.” Section 603 Opinion, 27 Op. O.L.C. at 119. Second, the exception to HARA’s substantive prohibition on partisan political activity in 5 U.S.C. § 7324(b)(2)(B)(i) applies to “employee[s] paid from an appropriation for the Executive Office of the President,” further reflecting HARA’s assumption that such employees are otherwise covered. Section 603 Opinion, 27 Op. O.L.C. at 119. Third, reading section 7322(1) to exclude employees of the White House Office “might be thought to produce highly anomalous results,” as it would follow that White House employees “would be entirely free from the restrictions of [HARA]” and “would be able to engage in all sorts of partisan political activity,” including by “us[ing] [their] official authority or influence for the purpose of interfering with or affecting the result of an election,” see 5 U.S.C. § 7323(a)(1). Section 603 Opinion, 27 Op. O.L.C. at 119. Thus, we determined that there are “powerful reasons to conclude that the term ‘Executive agency’ in section 7322(1) does not have the same meaning that section 105 of title 5 generally assigns it (and that cases like *Haddon* recognize) for the purpose of title 5.” *Id.*

A.

Section 3110 was enacted in 1967. In a 1972 memorandum, our Office concluded that the statute would bar the President from appointing a relative “to permanent or temporary employment as a member of the White House staff.” Memorandum for John W. Dean, III, Counsel to the President, from Roger C. Cramton, Assistant Attorney General, Office of Legal Counsel, *Re: Applicability to President of Restriction on Employment of Relatives* at 1 (Nov. 14, 1972) (“Cramton Memo”). The Cramton Memo is brief but unequivocal: section 3110, we said, “seems clearly applicable to . . . positions on the White House staff.” *Id.* at 2.

In 1977, we advised that section 3110 would preclude the President from appointing the First Lady to serve as chair of the President’s Commission on Mental Health (“Mental Health Commission”), whether with or without compensation. *See* Memorandum for Douglas B. Huron, Associate Counsel to the President, from John M. Harmon, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Possible Appointment of Mrs. Carter as Chairman of the Commission on Mental Health* (Feb. 18, 1977) (“Mental Health Commission Memo I”) (referencing attached Memorandum for John M. Harmon, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Legality of the President’s Appointing Mrs. Carter as Chairman of the Commission on Mental Health* (Feb. 17, 1977) (“Mental Health Commission Memo II”). We determined that the Mental Health Commission, which would be established by executive order and assigned specific authorities, would “clearly” qualify as an independent establishment within the “comprehensive” meaning of that term. Mental Health Commission Memo I. Our analysis noted, however, that the funding for the Commission would come from an annual appropriation for the Executive Office of the President covering “Unanticipated Needs,” and we accordingly considered the effect of language in that appropriation that, presaging section 105(a), authorized the President to hire personnel “without regard to any provision of law regulating employment and pay of persons in the Government service.” Mental Health Commission Memo II, at 5–6. We ultimately concluded that the appropriation language did not override section 3110. Although we did not say that the Mental Health Commission would be located in the White House Office specifically, our analysis suggested that our conclusion about the appointment would have been the same, whether or not the position was located there. *See id.*

Shortly afterward, the White House asked us to answer that very question: whether section 3110 applied to the contemplated appointment of the President's son to serve as an unpaid assistant to a member of the White House staff. *See* Memorandum for the Attorney General from John M. Harmon, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Employment of Relatives Who Will Serve Without Compensation* (Mar. 23, 1977) ("White House Aide Memo I") (referencing attached Memorandum for John M. Harmon, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Appointment of President's Son to Position in the White House Office* (Mar. 15, 1977) ("White House Aide Memo II")). The Civil Service Commission, the predecessor of the Office of Personnel Management, had advanced several arguments why section 3110 did not forbid the President's appointment of relatives to his personal staff. *See* White House Aide Memo I, at 1. Reaffirming the points made in the Mental Health Commission Memos, however, our Office concluded that the statute also covered the proposed appointment. Once again, we rejected an argument that the language in the annual appropriation for the White House Office (i.e., the "without regard" language) exempted those appointments from section 3110. White House Aide Memo II, at 1-3.

In 1983, we were asked whether the President could appoint a relative to a Presidential Advisory Committee on Private Sector Initiatives ("CPSI"). *See* Memorandum for David B. Waller, Senior Associate Counsel to the President, from Robert B. Shanks, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Appointment of Member of President's Family to Presidential Advisory Committee on Private Sector Initiatives* (Feb. 28, 1983). We answered that the President's proposed appointment of a relative to the CPSI raised "virtually the same problems raised by Mrs. Carter's proposed service on the President's Commission on Mental Health." *Id.* at 2. Because we lacked "sufficient time to reexamine the legal analysis contained in our earlier memoranda," we stated that we had no choice but to "adhere to the conclusion" that "the President cannot, consistently with section 3110, appoint a relative as an active member of such a Commission." *Id.*

Most recently, we advised whether the President could appoint his brother-in-law and his half-sister to two advisory committees. Once again, we found that section 3110 precluded the appointments. *See* Memorandum for Gregory B. Craig, Counsel to the President, from David J. Barron, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Application of 5 U.S.C. § 3110 to Two Proposed Appointments by the President to Advisory*

Committees (Sept. 17, 2009) (“Barron Opinion”). In the course of that analysis, we considered whether one of the committees, the President’s Commission on White House Fellowships (“Fellowships Commission”), was located within the Executive Office of the President or was instead a free-standing establishment within the Executive Branch. *Id.* at 14–15.⁵ Concluding that, either way, the Fellowships Commission was, or was within, an “independent establishment” falling within the title 5 definition of Executive agency, we did not decide the question. *Id.* But we explicitly rejected the possibility that the Fellowships Commission constituted a part of the White House Office. *Id.* at 14. As a result, the Barron Opinion had no occasion to reapply or reconsider our precedents finding that section 3110 barred the President from appointing relatives to White House Office positions. *See id.* at 18–19 (distinguishing *Haddon*).

B.

Although none of our previous opinions analyzed the interaction between 3 U.S.C. § 105(a) and the anti-nepotism statute, our 1977 memoranda did consider the effect of language in annual appropriations for the Executive Office of the President that was nearly identical to section 105(a). Prompted by the inconsistency between our earlier memoranda and the implications of *Haddon*, we now revisit the reasoning in those memoranda in order to assess the issue presented under section 105(a).

While acknowledging that the appropriation language was “broad” and the issue “not wholly free of doubt,” our memorandum regarding the White House appointment reasoned that section 3110 should be understood as a “specific prohibition” constituting an “exception to the general rule that limitations on employment do not apply to the White House Office.” White House Aide Memo II, at 3. We therefore invoked the “basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum.” *Id.* (quoting *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976)). But the canon about general and specific statutes

⁵ We concluded that the other advisory committee at issue, the President’s Council on Physical Fitness and Sports, constituted part of the Department of Health and Human Services. Barron Opinion at 9. Nothing in our present opinion should be understood to question our prior conclusions about filling positions not covered by the special hiring authorities in title 3.

seems of limited help here, because neither of the two relevant statutes can readily be characterized as more or less specific than the other. To be sure, section 3110 could be said to concern the “specific” subject of nepotism. But section 105(a) could reasonably be described as a statute “dealing with [the] narrow, precise, and specific” subject of hiring for the White House Office that ought to overcome the generally applicable anti-nepotism rule of section 3110.

The 1977 memoranda also put significant weight on the legislative history of section 3110, discerning a clear congressional intent that the Executive Office of the President, including the White House Office, be among the entities subject to the anti-nepotism prohibition. *See* Mental Health Commission Memo I; Mental Health Commission Memo II, at 5; White House Aide Memo I, at 2; White House Aide Memo II, at 2–3. We think that this history is not so compelling, however, as to direct the outcome on the question here.

Section 3110 was enacted as part of the Postal Revenue and Federal Salary Act of 1967. *See* Pub. L. No. 90-206, § 221, 81 Stat. 613, 640. When Congress considered and passed the legislation, the annual appropriations for the Executive Office of the President then in effect included the permissive language about the President’s authority to hire personnel in the White House Office. *See* Pub. L. No. 90-47, tit. III, 81 Stat. 113, 117 (1967). As our 1977 memoranda observed, there was no mention of those appropriations or that language during Congress’s consideration of the anti-nepotism provision. But one witness, the Chairman of the Civil Service Commission, testified before the Senate committee that, in his view, the language then under consideration would have prevented President Franklin Delano Roosevelt from appointing his son “at the White House as a civilian aide” (as President Roosevelt had done). *Federal Pay Legislation: Hearings Before the S. Comm. on Post Office and Civil Service*, 90th Cong. 366 (1967) (“*Federal Pay Legislation Hearings*”) (testimony of Chairman Macy). Following the hearing, the Senate amended the provision in the bill and explicitly named the President as a “public official” to whom the bar applied. “Because the Senate Hearings contain the only extended discussion of the provision and the only discussion at all of its application to the President,” we explained in our memorandum concerning the White House appointment, “it seems appropriate to attach particular significance to the Civil Service Commission’s interpretation of the statute in the course of the hearings. It is reasonable to assume that the Senate Committee and eventual-

ly the Congress acted on the basis of Chairman Macy's interpretation of the prohibition as drafted." White House Aide Memo II, at 2.

Having reexamined the legislative materials, we no longer would make that assumption. The Senate committee and Chairman Macy were reviewing a version of the bill that prohibited nepotistic appointments to "department[s]," defined more broadly to include "each department, agency, establishment, *or other organization unit* in or under the . . . executive . . . branch of the Government . . . including a Government-owned or controlled corporation." H.R. 7977, 90th Cong. § 222 (as referred to S. Comm. on Post Office and Civil Service, Oct. 16, 1967) (emphasis added). It is unclear why the Senate amended the provision to apply instead to "Executive agenc[ies]" and thus to call up the title 5 definition of that term. *See* H.R. 7977, 90th Cong. § 221 (as reported out of S. Comm. on Post Office and Civil Service, Nov. 21, 1967). The Senate report does not explain the change. *See* S. Rep. No. 90-801, at 28 (1967). Nevertheless, that the Civil Service Commission Chairman was considering different statutory language when offering his view about the scope of the prohibition dilutes the strength of his testimony which, as a witness statement, should typically be afforded less weight to begin with. *See S&E Contractors*, 406 U.S. at 13 n.9; *Gustafson*, 513 U.S. at 580.

Because the appropriation language was apparently never mentioned during the House's or Senate's consideration of the bill, the debates and other materials include no clear statement that the anti-nepotism provision was intended to prevail over the broad hiring authority previously granted in that year's appropriation for the Executive Office of the President.⁶ Moreover,

⁶ Individual senators did stress the amended provision's breadth in floor statements. *See* 113 Cong. Rec. 36103 (1967) (statement of Sen. Randolph) (indicating that the Senate amended the provision "to plug any loopholes which might exist," because "[i]t was critical that the nepotism provisions be applied across the board"); *id.* (stating that "[w]e could not stop at a certain point in formulating a policy on nepotism" and "had to apply the policy across the board"); *id.* at 36103-04 (suggesting that "the White House believes, as does now the Congress, that a nonnepotism policy should apply equally to any branch of Government"); *id.* at 37316 (statement of Sen. Udall) (explaining that the provision applies "across-the-board, from the highest office to the lowest paid job, with equal force and effect" and that "[n]o official in any of the three branches of the Government . . . may appoint or promote a relative to any position under his or her control or jurisdiction," and calling it "the strongest possible guarantee against any abuse of Federal appointive authority and any preference in Federal positions that is adverse to the public interest"). These statements, whatever their worth in demonstrating congressional intent more generally, suggest that at least those

aside from that single question about the service of President Roosevelt's son as a White House aide—which was part of a series of questions posed by the senators to Chairman Macy about the language's application to the President generally, *see Federal Pay Legislation Hearings* at 360–69—neither the Senate nor the House appears to have focused on the White House Office. We therefore are hesitant to infer that the 90th Congress envisioned that section 3110 would overcome the President's hiring authorities under the annual appropriation. We are even more reluctant to draw that inference with respect to the permanent special hiring authority for the White House Office that Congress enacted ten years later.

IV.

Finally, we believe that this result—that the President may appoint relatives to his immediate staff of advisors in the White House Office—makes sense when considered in light of other applicable legal principles. Congress has not blocked, and most likely could not block, the President from seeking advice from family members in their personal capacities. *Cf. In re Cheney*, 406 F.3d 723, 728 (D.C. Cir. 2005) (en banc) (referring to the President's need, “[i]n making decisions on personnel and policy, and in formulating legislative proposals, . . . to seek confidential information from many sources, both inside the government and outside”); *Pub. Citizen v. Dep’t of Justice*, 491 U.S. 440, 466 (1989) (construing the Federal Advisory Committee Act (“FACA”) not to apply to the judicial recommendation panels of the American Bar Association in order to avoid “formidable constitutional difficulties”). Consequently, even if the anti-nepotism statute prevented the President from employing relatives in the White House as advisors, he would remain free to consult those relatives as private citizens. *See Barron Opinion* at 8–9 (finding the application of section 3110 to presidential advisory committees constitutional in part because “[t]he President remains free to consult his relatives in their private, individual capacities at the time and place of, and on the subjects of, his choosing”). And our Office has found that such an informal, “essentially personal” advisory relationship,

senators meant for section 3110 to have broad effect across the three branches of government. But because those statements do not speak to section 3110's relationship to the President's hiring authority under the annual appropriations for the Executive Office of the President—and, of course, could not speak to the relationship between section 3110 and the later-enacted section 105(a)—they do not illuminate the matter at hand.

even if the private person offers advice to the President on a “wide variety of issues,” does not make that person an employee of the federal government subject to the conflict of interest laws in title 18. *Status of an Informal Presidential Advisor as a “Special Government Employee”*, 1 Op. O.L.C. 20, 20–21 (1977) (“*Informal Presidential Advisor*”); see also *id.* at 22 (“Mrs. Carter would not be regarded as a special Government employee solely on the ground that she may discuss governmental matters with the President on a daily basis.”).⁷

But the conflict of interest laws do apply to employees of the White House Office. See 18 U.S.C. §§ 203, 205, 207, 208, 209 (all applicable to, *inter alia*, officers and employees in the “executive branch”); *id.* § 202(e)(1) (defining “executive branch” for purposes of those statutes to include “each executive agency as defined in title 5, and any other entity or administrative unit in the executive branch”); *id.* § 207(c)(2)(A)(iii), (d)(1)(C) (applying more stringent post-employment restrictions to employees appointed to the White House Office pursuant to 3 U.S.C. § 105(a)(2)); see also, e.g., *Applicability of Post-Employment Restrictions in 18 U.S.C. § 207 to a Former Government Official Representing a Former President or Vice President in Connection with the Presidential Records Act*, 25 Op. O.L.C. 120 (2001) (considering section 207’s application to former employees of the White House Office).

A President wanting a relative’s advice on governmental matters therefore has a choice: to seek that advice on an unofficial, ad hoc basis without conferring the status and imposing the responsibilities that accompany formal White House positions; or to appoint his relative to the White House under title 3 and subject him to substantial restrictions against conflicts of interest. *Cf. AAPS*, 997 F.2d at 911 n.10 (declining, after holding that the First Lady qualifies as a “full-time officer or employee” of the government under FACA, to decide her status under the conflict of interest statutes). In choosing his personal staff, the President enjoys an unusual degree of free-

⁷ Our opinion explained, however, that while the informal presidential advisor’s general practice (as we understood it) of discussing policy issues directly with the President did not itself render him a government employee, his more extensive “work” on a particular “current social issue”—in connection with which the advisor “called and chaired a number of meetings that were attended by employees of various agencies” and “assumed considerable responsibility for coordinating the Administration’s activities in that particular area”—did cross a line and made him a government employee for purposes of that work. *Informal Presidential Advisor*, 1 Op. O.L.C. at 23.

dom, which Congress found suitable to the demands of his office. Any appointment to that staff, however, carries with it a set of legal restrictions, by which Congress has regulated and fenced in the conduct of federal officials.

* * * * *

In our view, section 105(a) of title 3 exempts appointments to the White House Office from the bar in section 3110 of title 5. Section 3110 therefore would not prohibit the contemplated appointment.

DANIEL L. KOFFSKY
Deputy Assistant Attorney General
Office of Legal Counsel

Robbins, Christina

From: Robbins, Christina
Sent: Monday, October 2, 2017 2:00 PM
To: Flores, Sarah Isgur (OPA); Prior, Ian (OPA)
Subject: RE: Req for AG Sessions on Vegas Shooting

Copy. Thanks if anything changes know please let me know.

Christina Svolopoulos Robbins

Fox News Channel

Dir: (b) (6)

Cel: (b) (6)

Email: Christina.Robbins@FoxNews.com

From: Flores, Sarah Isgur (OPA) [mailto:Sarah.Isgur.Flores@usdoj.gov]
Sent: Monday, October 02, 2017 1:58 PM
To: Robbins, Christina <Christina.Robbins@FOXNEWS.COM>; Prior, Ian (OPA) <Ian.Prior@usdoj.gov>
Subject: RE: Req for AG Sessions on Vegas Shooting

We'll pass for now

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

From: Robbins, Christina [mailto:Christina.Robbins@FOXNEWS.COM]
Sent: Monday, October 2, 2017 9:31 AM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: Req for AG Sessions on Vegas Shooting

Hi Sarah and Ian

If the Attorney General is able we would like to have him on Fox News Channel.

I'm working on the 12p and 1p hours (Harris Faulkner's show) we can do that today/or this week.

OR if he is available for another time today I can make that happen as well.

If the AG has time and is willing to comment on the shooting please let me know.

Thank you.

Christina Svolopoulos Robbins

Fox News Channel

Dir: (b) (6)

Cel: (b) (6)

Email: Christina.Robbins@FoxNews.com

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From: Gibson, Jake <Jake.Gibson@FOXNEWS.COM>
Sent: Monday, October 2, 2017 8:58 AM
To: Flores, Sarah Isgur (OPA)
Subject: Re: AG update

Thanks!

On Oct 2, 2017, at 8:50 AM, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

Background: The Attorney General just got off the phone with Sherriff Lombardo, whom he'd met with on our previous trip to Las Vegas a couple months ago, offering the Sherriff his full support. The AG is currently being briefed by the FBI here at Main Justice. Will update you as we know more.

Off the record—I do not know about briefing POTUS yet. AG had previous plans to be at the WH at 11am. So will update you on that as well.

Sarah Isgur Flores
Director of Public Affairs
202.305.5808

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From: Spinato, Eric <eric.spinato@FOXNEWS.COM>
Sent: Monday, October 2, 2017 8:58 AM
To: Flores, Sarah Isgur (OPA)
Cc: Henning, Alexa A. EOP/WHO; Spinato, Eric
Subject: AG Sessions w/ Maria

Good morning, Sarah
I know you are swamped, but please let me know
If AG Sessions can join Maria Bartiromo any day this week please, to discuss the deadly murders in Vegas.

We are on air, 6a-9a, on FBN.

Thank you,
Eric

Eric Spinato
Senior Story Editor, Fox Business Network
W 212-601-2399
C (b) (6)

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From: Flores, Sarah Isgur (OPA)
Sent: Friday, September 29, 2017 5:02 PM
To: Gibson, Jake
Cc: Prior, Ian (OPA)
Subject: Re: Monday?

I don't think so....

> On Sep 29, 2017, at 4:34 PM, Gibson, Jake <Jake.Gibson@FOXNEWS.COM> wrote:

>

>

> Anything going on besides Khatallah trial?

>

>

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>

From: Flores, Sarah Isgur (OPA)
Sent: Friday, September 29, 2017 5:01 PM
To: Herridge, Catherine
Cc: Prior, Ian (OPA); Gibson, Jake
Subject: Re: Fox Query

No prob! Appreciate it.

On Sep 29, 2017, at 4:33 PM, Herridge, Catherine <Catherine.Herridge@FOXNEWS.COM> wrote:

Thx for the quick response.

We sent to them SCO as well but did not want your office to be blind sided by reference.

Sent from my iPhone

On Sep 29, 2017, at 4:28 PM, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

These appear to be questions for SCO.

On Sep 29, 2017, at 4:11 PM, Herridge, Catherine
<Catherine.Herridge@FOXNEWS.COM> wrote:

Good afternoon

We understand the special counsel as well as congressional investigators are looking at the March 2016 Trump campaign national security meeting in Washington DC, this photo was posted to instagram.

<https://www.instagram.com/p/BDo-7SimhUn/?hl=en>

We understand investigators are interested in who attended, what was discussed, as well as the reaction from then Candidate Trump to a proposed meeting with Russian officials?

We also understand discussion of the proposed meeting was quickly shutdown by then Senator Sessions.
Does the meeting remain of interest to the SC?

Please let us know if you can offer guidance or comment.
Thx for the consideration.
Catherine

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From: Singman, Brooke <brooke.singman@FOXNEWS.COM>
Sent: Friday, September 29, 2017 1:31 PM
To: Hornbuckle, Wyn (OPA); Prior, Ian (OPA); Navas, Nicole (OPA)
Subject: RE: Menendez trial

Thank you! Let's talk next week.

From: Hornbuckle, Wyn (OPA) [mailto:Wyn.Hornbuckle@usdoj.gov]
Sent: Friday, September 29, 2017 1:30 PM
To: Singman, Brooke <brooke.singman@FOXNEWS.COM>; Prior, Ian (OPA) <Ian.Prior@usdoj.gov>; Navas, Nicole (OPA) <Nicole.Navas@usdoj.gov>
Subject: RE: Menendez trial

Just declined to comment . The other is for your guidance

From: Singman, Brooke [mailto:brooke.singman@FOXNEWS.COM]
Sent: Friday, September 29, 2017 1:27 PM
To: Hornbuckle, Wyn (OPA) <whornbuckle@jmd.usdoj.gov>; Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Navas, Nicole (OPA) <nnavas@jmd.usdoj.gov>
Subject: RE: Menendez trial

I have declined to comment right now.

From: Singman, Brooke
Sent: Friday, September 29, 2017 1:04 PM
To: 'Hornbuckle, Wyn (OPA)' <Wyn.Hornbuckle@usdoj.gov>; Prior, Ian (OPA) <Ian.Prior@usdoj.gov>; Navas, Nicole (OPA) <Nicole.Navas@usdoj.gov>
Subject: RE: Menendez trial

Wyn,

Thank you very much. Much appreciated.

Fair to say: The Justice Department told Fox News they have yet to file witness lists or discuss who would testify in advance. ?

Or is that for my guidance only?

From: Hornbuckle, Wyn (OPA) [mailto:Wyn.Hornbuckle@usdoj.gov]
Sent: Friday, September 29, 2017 1:01 PM
To: Singman, Brooke <brooke.singman@FOXNEWS.COM>; Prior, Ian (OPA) <Ian.Prior@usdoj.gov>; Navas, Nicole (OPA) <Nicole.Navas@usdoj.gov>
Subject: RE: Menendez trial

Hi Brooke,

We'll decline to comment.

For your background knowledge, we haven't filed witness lists or talked about who would testify in advance.

That said, if I get a heads up that there is a high profile witness scheduled the following day, I will try and reach out, or feel free to check back with me next week.

From: Singman, Brooke [<mailto:brooke.singman@FOXNEWS.COM>]

Sent: Friday, September 29, 2017 10:46 AM

To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Navas, Nicole (OPA) <nnavas@jmd.usdoj.gov>; Hornbuckle, Wyn (OPA) <whornbuckle@jmd.usdoj.gov>

Subject: RE: Menendez trial

Thank you, Ian.

Hi Nicole and Wyn..

Let me know.

Deadline hoping for 12p EST

Brooke

From: Prior, Ian (OPA) [<mailto:ian.Prior@usdoj.gov>]

Sent: Friday, September 29, 2017 10:45 AM

To: Singman, Brooke <brooke.singman@FOXNEWS.COM>; Navas, Nicole (OPA) <Nicole.Navas@usdoj.gov>; Hornbuckle, Wyn (OPA) <Wyn.Hornbuckle@usdoj.gov>

Subject: RE: Menendez trial

Nicole or Wyn

Ian D. Prior

Principal Deputy Director of Public Affairs

Department of Justice

Office: 202.616.0911

Cell (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Singman, Brooke [<mailto:brooke.singman@FOXNEWS.COM>]

Sent: Friday, September 29, 2017 10:44 AM

To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>

Subject: Menendez trial

Ian,

Not sure if you can help direct me to the right person for this request.

Looking for a comment as to whether former Senate Minority Leader Harry Reid will be called to testify as part of the Menendez trial...

I assume they will decline comment, whomever it may be, but would like to get something.

Can you direct?

Thanks,

Brooke Singman
Politics Reporter, Fox News Channel

(b) (6)

(b) (6)

Brooke.singman@foxnews.com

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From: Gibson, Jake <Jake.Gibson@FOXNEWS.COM>
Sent: Thursday, September 28, 2017 2:08 PM
To: Flores, Sarah Isgur (OPA)
Subject: Re: CNN Manu Raju tweet: Grassley/Rosenstein meet for about an hour

Was that today?

On Sep 28, 2017, at 2:05 PM, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

More like 45 minutes

On Sep 28, 2017, at 1:53 PM, Gibson, Jake <Jake.Gibson@FOXNEWS.COM> wrote:

"After DOJ has declined to let Senate Judiciary intvw two FBI officials about Comey, GRASSLEY and ROSENSTEIN privately meet for about an hour."

On Sep 28, 2017, at 1:51 PM, Gibson, Jake <Jake.Gibson@FOXNEWS.COM> wrote:

Accurate?

Subject: CNN Manu Raju
tweet: Grassley/Rosenstein meet for about an hour

officials

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Gibson, Jake

From: Gibson, Jake
Sent: Thursday, September 28, 2017 2:07 PM
To: Flores, Sarah Isgur (OPA)
Cc: Prior, Ian (OPA)
Subject: Re: CNN Manu Raju tweet: Grassley/Rosenstein meet for about an hour

Copy that

Sent from my iPhone

On Sep 28, 2017, at 2:05 PM, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

duplicative material

Gibson, Jake

From: Gibson, Jake
Sent: Thursday, September 28, 2017 12:56 PM
To: O'Malley, Devin (OPA)
Subject: RE: Background on Story Discussed

Here is our story.
Denver buo is pitching to get it on TV as well...

<http://www.foxnews.com/politics/2017/09/28/doj-files-suit-against-company-for-allegedly-not-hiring-americans.html>

FYI-
The company declined to comment because they said they hadn't been made aware of the complaint yet.

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Thursday, September 28, 2017 12:23 PM
To: Gibson, Jake
Subject: RE: Background on Story Discussed

Cool

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Gibson, Jake [mailto:Jake.Gibson@FOXNEWS.COM]
Sent: Thursday, September 28, 2017 12:19 PM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: RE: Background on Story Discussed

We're filing something at 12:30

Giving the company a few mins to respond.

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Thursday, September 28, 2017 11:50 AM
To: Gibson, Jake
Subject: RE: Background on Story Discussed

One settlement: <https://www.justice.gov/opa/pr/justice-department-settles-us-worker-discrimination-claims-against-new-mexico-farm>

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Gibson, Jake [<mailto:Jake.Gibson@FOXNEWS.COM>]
Sent: Thursday, September 28, 2017 11:47 AM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: RE: Background on Story Discussed

This is the first actual complaint.
How many settlements have there been?

From: O'Malley, Devin (OPA) [<mailto:Devin.O'Malley@usdoj.gov>]
Sent: Thursday, September 28, 2017 11:38 AM
To: Gibson, Jake
Subject: RE: Background on Story Discussed

Off the record, I think the big tie in here is that the Attorney General is executing the President's agenda on this, even though this type of action is not directly mandated in the EO, but rather the Justice Department is working within the spirit of the EO.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Gibson, Jake [<mailto:Jake.Gibson@FOXNEWS.COM>]
Sent: Thursday, September 28, 2017 11:29 AM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: RE: Background on Story Discussed

So this initiative was actually launched back in March?
Is this the first time it's being announced... or...?

From: O'Malley, Devin (OPA) [<mailto:Devin.O'Malley@usdoj.gov>]
Sent: Thursday, September 28, 2017 11:12 AM
To: Gibson, Jake
Subject: RE: Background on Story Discussed

I'm still holding

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Gibson, Jake [<mailto:Jake.Gibson@FOXNEWS.COM>]

Sent: Thursday, September 28, 2017 11:05 AM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: RE: Background on Story Discussed

Sorry...

They seem to be lagging.

Maybe once you send it out AP will pick up and my people will scramble!

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Thursday, September 28, 2017 11:02 AM
To: Gibson, Jake
Subject: RE: Background on Story Discussed

I'll wait until after it's posted for a while.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Gibson, Jake [mailto:Jake.Gibson@FOXNEWS.COM]
Sent: Thursday, September 28, 2017 11:00 AM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: RE: Background on Story Discussed

You're good to go.

I have sent it all over Fox.

Editors are looking at it now.

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Thursday, September 28, 2017 10:48 AM
To: Gibson, Jake
Subject: RE: Background on Story Discussed

Just sent new copy. They are filing at 11:00 am. I can hold release until you say you are good, but sooner the better.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Gibson, Jake [mailto:Jake.Gibson@FOXNEWS.COM]
Sent: Thursday, September 28, 2017 10:45 AM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: RE: Background on Story Discussed

I can but they won't get the story up for a bit.

Need time to write.
Are you pressed to release soon?

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
S nt: Thursday, September 28, 2017 10:39 AM
To: Gibson, Jake
Subj ct: Re: Background on Story Discussed

Need to send you a new copy of the release. Can you not forward broadly quite yet?

Sent from my iPhone

On Sep 28, 2017, at 10:35 AM, Gibson, Jake <Jake.Gibson@FOXNEWS.COM> wrote:

On second thought...
Can you give me an hour to write this?

Sorry... I got stuck writing the Reality Winner FBI interview story all morning.

On Sep 28, 2017, at 10:17 AM, O'Malley, Devin (OPA) <Devin.O'Malley@usdoj.gov> wrote:

Here is the press release that will be shipped out. I'll let you know when embargo is lifted on all this, and please don't hesitate to reach out with any questions.

Devin

**JUSTICE DEPARTMENT FILES LAWSUIT AGAINST CROP
PRODUCTION SERVICES ALLEGING DISCRIMINATION AGAINST U.S.
WORKERS**

The Justice Department announced today that it filed a lawsuit against Crop Production Services, Inc. (Crop Production), headquartered in Loveland, Colorado, for allegedly discriminating against U.S. workers in violation of the Immigration and Nationality Act (INA).

The complaint alleges that in 2016 Crop Production discriminated against at least three United States citizens by refusing to employ them as seasonal technicians in El Campo, Texas, because Crop Production preferred to hire temporary foreign workers under the H-2A visa program. According to the department's complaint, Crop Production imposed more burdensome requirements on U.S. citizens than it did on H-2A visa workers to discourage U.S. citizens from working at the facility. For instance, the complaint alleges that whereas U.S. citizens had to complete a background check and a drug test before being permitted to start work, H-2A workers were allowed to begin working without completing them and, in some cases, never completed them. The complaint also alleges that Crop Production refused to consider a limited-English proficient U.S. citizen for employment but hired H-2A workers who could not speak English. Ultimately, all of Crop Production's 15 available seasonal technician jobs in 2016 went to H-2A workers instead of U.S. workers.

Under the INA, it is unlawful for employers to intentionally discriminate against U.S. workers because of their citizenship status or to otherwise favor the employment of temporary foreign workers over available, qualified U.S. workers. In addition, the H-2A visa program requires employers to recruit and hire available, qualified U.S. workers before hiring temporary foreign workers.

“In the spirit of President Trump’s Executive Order on Buy American and Hire American, the Department of Justice will not tolerate employers who discriminate against U.S. workers because of a desire to hire temporary foreign visa holders,” said Attorney General Jeff Sessions. “The Justice Department will enforce the Immigration and Nationality Act in order to protect U.S. workers as they are the very backbone of our communities and our economy. Where there is a job available, American workers should have a chance at it before we bring in workers from abroad.”

The United States’ complaint seeks back pay on behalf of the workers, civil penalties, and other remedial relief to correct and prevent discrimination. The workers have also filed their own private suit, and are represented by Texas RioGrande Legal Aid. Both suits were filed in the Office of the Chief Administrative Hearing Officer, a specialized administrative court that Congress created to resolve such claims.

The Division’s Immigrant and Employee Rights Section (IER), formerly known as the Office of Special Counsel for Immigration-Related Unfair Employment Practices, is responsible for enforcing the anti-discrimination provision of the INA. The statute prohibits, among other things, citizenship status and national origin discrimination in hiring, firing, or recruitment or referral for a fee; unfair documentary practices; retaliation; and intimidation.

This case is part of the Division’s Protecting U.S. Workers Initiative, an initiative aimed at targeting, investigating, and bringing enforcement actions against companies that discriminate against U.S. workers in favor of foreign visa workers.

For more information about protections against employment discrimination under immigration laws, call IER’s worker hotline at 1-800-255-7688 (1-800-237-2515, TTY for hearing impaired); call IER’s employer hotline at 1-800-255-8155 (1-800-237-2515, TTY for hearing impaired); sign up for a free [webinar](#); email IER@usdoj.gov; or visit IER’s [English](#) and [Spanish](#) websites.

Applicants or employees who believe they were subjected to: different documentary requirements based on their citizenship, immigration status, or national origin; or discrimination based on their citizenship, immigration status or national origin in hiring, firing, or recruitment or referral, should contact IER’s worker hotline for assistance.

###

Devin M. O’Malley

Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: O'Malley, Devin (OPA)
Sent: Wednesday, September 27, 2017 11:57 PM
To: 'Gibson, Jake' <Jake.Gibson@FOXNEWS.COM>
Subject: Background on Story Discussed

Hey Jake

https://www.justice.gov/crt/immigrant_and_employee_rights_section

Per my previous email, all of this information is embargoed until a TBD time (i.e., until we file the complaint). You will have ample time to run the story before we send the release to our larger list. Attribution is laid out below, and some documentation is still forthcoming.

On background (as a Civil Rights Division official):

- The Justice Department's Civil Rights Division under Attorney General Jeff Sessions has launched the Protecting U.S. Workers Initiative. This enforcement initiative is focused on targeting, investigating, and, where necessary, bringing suits against employers that intentionally discriminate against U.S. workers in favor of foreign visa workers.
- As part of the initiative, the Division is (1) increasing resources dedicated to investigating and, where a violation is found, taking enforcement actions against companies that discriminate against U.S. workers; (2) working with other federal agencies to improve information sharing and collaboration on such investigations; and (3) identifying new and better ways to detect potentially discriminatory conduct against U.S. workers.
- Since the Initiative's creation on March 1, 2017, the Division has:
 - Opened 29 investigations of potential discrimination against U.S. workers based on a hiring preference for foreign visa workers;
 - Distributed over \$100,000 to U.S. workers as part of a settlement entered into in March 2016 with a company that was allegedly discriminating in favor of foreign visa workers over U.S. workers; and
 - Reached one settlement with a company discriminating against U.S. workers in favor of foreign visa workers.

The attached is a complaint that will be filed tomorrow AM. It is unsigned and provided to you for your deep background purposes only (i.e., not for attribution or reproduction, but you can use as fact). If you need to reference, you can do so as "a complaint/document obtained by FOX News." Again, not for reproduction until I can get you a signed copy.

I owe you the press release with AG quote so you can draw up the rest of your story, and will get to you before 11:00 am EDT tomorrow.

Thanks

Devin

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA,)	
)	8 U.S.C. § 1324b PROCEEDING
Complainant,)	
)	
v.)	
)	OCAHO CASE NO.
CROP PRODUCTION SERVICES, INC.,)	
)	
Respondent)	
)	
)	

COMPLAINT

Complainant, the United States of America, alleges as follows:

1. Pursuant to 8 U.S.C. § 1324b, the Immigrant and Employee Rights Section (“IER”) brings this action on behalf of the United States to enforce the provisions of the Immigration and Nationality Act (“INA”) relating to immigration-related unfair employment practices prohibited under 8 U.S.C. § 1324b(a)(1)(B).
2. This suit arises out of Defendant Crop Production Services Inc.’s (hereinafter “Respondent”) denial of employment to Ramiro Torres, Ramiro Salinas, Javier Salinas (collectively “the Injured Parties”), and other similarly situated individuals yet to be identified, based on their citizenship status in violation of the anti-discrimination provision of the INA, 8 U.S.C. § 1324b(a)(1)(B).
3. Specifically, Respondent refused to allow Javier and Ramiro Salinas to start working in Seasonal Technician jobs at Respondent’s rice breeding facility in El Campo, Texas, during the 2016 work season, and refused to interview Ramiro Torres for a Seasonal Technician job

Gibson, Jake

From: Gibson, Jake
Sent: Thursday, September 28, 2017 11:51 AM
To: O'Malley, Devin (OPA)
Subject: RE: Background on Story Discussed

Okay.
Thanks.

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Thursday, September 28, 2017 11:50 AM
To: Gibson, Jake
Subject: RE: Background on Story Discussed

duplicative material

Gibson, Jake

From: Gibson, Jake
Sent: Thursday, September 28, 2017 11:39 AM
To: O'Malley, Devin (OPA)
Subject: RE: Background on Story Discussed

Understood.

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Thursday, September 28, 2017 11:38 AM
To: Gibson, Jake
Subject: RE: Background on Story Discussed

duplicative material

O'Malley, Devin (OPA)

From: O'Malley, Devin (OPA)
Sent: Thursday, September 28, 2017 11:39 AM
To: Gibson, Jake
Subject: RE: Background on Story Discussed

Yes, correct.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Gibson, Jake [mailto:Jake.Gibson@FOXNEWS.COM]
Sent: Thursday, September 28, 2017 11:37 AM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: RE: Background on Story Discussed

But this is the first announcement of the initiative actually being launched back then?

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Thursday, September 28, 2017 11:36 AM
To: Gibson, Jake
Subject: RE: Background on Story Discussed

Launched in March; this is the first complaint filed. There have been other settlements agreed to stemming from their work.

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Gibson, Jake [mailto:Jake.Gibson@FOXNEWS.COM]
Sent: Thursday, September 28, 2017 11:29 AM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: RE: Background on Story Discussed

duplicative material

Gibson, Jake

From: Gibson, Jake
Sent: Thursday, September 28, 2017 10:49 AM
To: O'Malley, Devin (OPA)
Subject: RE: Background on Story Discussed

Sending this stuff now..
Then will write asap.

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Thursday, September 28, 2017 10:48 AM
To: Gibson, Jake
Subject: RE: Background on Story Discussed

duplicative material

Gibson, Jake

From: Gibson, Jake
Sent: Thursday, September 28, 2017 10:48 AM
To: O'Malley, Devin (OPA)
Subject: RE: Background on Story Discussed

[Can I use this complaint now?](#)

From: O'Malley, Devin (OPA) [mailto:Devin.O'Malley@usdoj.gov]
Sent: Thursday, September 28, 2017 10:43 AM
To: Gibson, Jake
Subject: RE: Background on Story Discussed

Corrected version below. Please use.

-
**JUSTICE DEPARTMENT FILES LAWSUIT AGAINST CROP PRODUCTION SERVICES
ALLEGING DISCRIMINATION AGAINST U.S. WORKERS**

The Justice Department announced today that it filed a lawsuit against Crop Production Services, Inc. (Crop Production), headquartered in Loveland, Colorado, for allegedly discriminating against U.S. workers in violation of the Immigration and Nationality Act (INA).

The complaint alleges that in 2016 Crop Production discriminated against at least three United States citizens by refusing to employ them as seasonal technicians in El Campo, Texas, because Crop Production preferred to hire temporary foreign workers under the H-2A visa program. According to the department's complaint, Crop Production imposed more burdensome requirements on U.S. citizens than it did on H-2A visa workers to discourage U.S. citizens from working at the facility. For instance, the complaint alleges that whereas U.S. citizens had to complete a background check and a drug test before being permitted to start work, H-2A workers were allowed to begin working without completing them and, in some cases, never completed them. The complaint also alleges that Crop Production refused to consider a limited-English proficient U.S. citizen for employment but hired H-2A workers who could not speak English. Ultimately, all of Crop Production's 15 available seasonal technician jobs in 2016 went to H-2A workers instead of U.S. workers.

Under the INA, it is unlawful for employers to intentionally discriminate against U.S. workers because of their citizenship status or to otherwise favor the employment of temporary foreign workers over available, qualified U.S. workers. In addition, the H-2A visa program requires employers to recruit and hire available, qualified U.S. workers before hiring temporary foreign workers.

"In the spirit of President Trump's Executive Order on Buy American and Hire American, the Department of Justice will not tolerate employers who discriminate against U.S. workers because of a desire to hire temporary foreign visa holders," said Attorney General Jeff Sessions. "The Justice Department will enforce the Immigration and Nationality Act in order to protect U.S. workers as they are the very backbone of our communities and our economy. Where there is a job available, U.S. workers should have a chance at it before we bring in workers from abroad."

The United States' complaint seeks back pay on behalf of the workers, civil penalties, and other remedial relief to correct and prevent discrimination. The workers have also filed their own private suit, and are represented by Texas RioGrande Legal Aid. Both suits were filed in the Office of the Chief Administrative Hearing Officer, a specialized administrative court that Congress created to resolve such claims.

The Division's Immigrant and Employee Rights Section (IER), formerly known as the Office of Special Counsel for Immigration-Related Unfair Employment Practices, is responsible for enforcing the anti-discrimination provision of the INA. The statute prohibits, among other things, citizenship status and national origin discrimination in hiring, firing, or recruitment or referral for a fee; unfair documentary practices; retaliation; and intimidation.

This case is part of the Division's Protecting U.S. Workers Initiative, an initiative aimed at targeting, investigating, and bringing enforcement actions against companies that discriminate against U.S. workers in favor of foreign visa workers.

For more information about protections against employment discrimination under immigration laws, call IER's worker hotline at 1-800-255-7688 (1-800-237-2515, TTY for hearing impaired); call IER's employer hotline at 1-800-255-8155 (1-800-237-2515, TTY for hearing impaired); sign up for a free [webinar](#); email IER@usdoj.gov; or visit IER's [English](#) and [Spanish](#) websites.

Applicants or employees who believe they were subjected to: different documentary requirements based on their citizenship, immigration status, or national origin; or discrimination based on their citizenship, immigration status or national origin in hiring, firing, or recruitment or referral, should contact IER's worker hotline for assistance.

###

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

From: Gibson, Jake [<mailto:Jake.Gibson@FOXNEWS.COM>]
Sent: Thursday, September 28, 2017 10:34 AM
To: O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>
Subject: Re: Background on Story Discussed

duplicative material

O'Malley, Devin (OPA)

From: O'Malley, Devin (OPA)
Sent: Thursday, September 28, 2017 10:39 AM
To: Gibson, Jake
Subject: Re: Background on Story Discussed

Need to send you a new copy of the release. Can you not forward broadly quite yet?

Sent from my iPhone

On Sep 28, 2017, at 10:35 AM, Gibson, Jake <Jake.Gibson@FOXNEWS.COM> wrote:

duplicative material

O'Malley, Devin (OPA)

From: O'Malley, Devin (OPA)
Sent: Thursday, September 28, 2017 10:36 AM
To: Gibson, Jake
Subject: Re: Background on Story Discussed

Yes

Sent from my iPhone

On Sep 28, 2017, at 10:35 AM, Gibson, Jake <Jake.Gibson@FOXNEWS.COM> wrote:

duplicative material

Prior, Ian (OPA)

From: Prior, Ian (OPA)
Sent: Thursday, September 28, 2017 11:04 AM
To: Lynne.jordalmartin@foxnews.com
Subject: FW: Op-Ed Submission
Attachments: FOX NEWS OP-ED.docx

Hi Lynne, want to make sure you saw this

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Prior, Ian (OPA)
Sent: Wednesday, September 27, 2017 5:47 PM
To: 'Lynne.jordalmartin@foxnews.com' <Lynne.jordalmartin@foxnews.com>
Subject: Op-Ed Submission

Hi again Lynne,

We would like to submit the attached op-ed to run on Fox News signed by Sarah Isgur Flores, Director of Public Affairs for the Department of Justice. It is in response to a really unfortunate op-ed that Politico magazine ran.

Please let me know if you are interested.

Thanks!!

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

While Attorney General Sessions Works to Fight Crime, Opponents Have Their Heads Stuck in the Sand

Last week, former George Soros Justice Fellow Mark Obbie published an opinion piece in Politico Magazine entitled, “Why Jeff Sessions’ Recycled Crime-Fighting Strategy Is Doomed to Fail.” This piece disregarded the history of criminal law enforcement over the last 30 years and discounted the trends caused by well-meaning reforms that have put communities at risk.

In the mid-1980s, our country was in the midst of a violent crime wave. Over the preceding twenty-five years, violent crime rates tripled.¹ Among the most violent and prolific offenders at the time were drug dealers protecting lucrative turfs in many inner cities. Congress responded to the public outcry by enacting federal laws establishing mandatory minimum penalties for serious drug traffickers, armed career criminals, and serial violent criminals. The theory was straightforward: if we lock up the criminals who are committing the violent crimes, they will be unable to further terrorize communities, other would-be-criminals will be deterred, and violent crime will go down. It is the fundamental concept of criminal justice.

Working together, federal, state, and local law enforcement officers across the country began using these statutory tools to build federal cases against the most violent offenders. Many states, supported by federal grant funding for prisons and additional law enforcement resources, followed suit. These approaches were fully supported by strong, bipartisan majorities in Congress and an unbroken line of presidents for over 20 years, starting with Reagan and continuing through George W. Bush. As those who followed the last presidential campaign will remember, former President Clinton, while stumping for his wife, pointed out that those tough-on-crime policies (which he promoted during his two terms as president) had saved thousands of lives. Likewise, eight Attorneys General who served during those years supported the notion that locking up violent criminals (including drug traffickers and gang members) was good policy.²

Unsurprisingly, as we began incarcerating dangerous criminals, the violent crime rate began to drop precipitously. By 2014, violent crime was cut in half,³ our communities were safer, and drug dealing gangs no longer controlled our inner cities.

President Obama was the first president to reject this strategy and his Attorney General Eric Holder adopted wide-ranging policies that reversed direction. Many of these policies were put in place under an initiative euphemistically called “Smart on Crime,” but which quickly became known in the field as “Soft on Crime.” One such policy prohibited federal prosecutors from charging drug traffickers with the crimes they had committed even when they had been caught red handed with hundreds of thousands of dollars worth of cocaine, heroin, or other deadly narcotics. Similarly, federal prosecutors were directed not to seek statutory enhanced penalties

¹ In 1961 the violent crime rate was 160.1 per 100,000 people and by 1985 it was 558.1. FBI UCR data published at <https://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm>

² <https://news.vice.com/article/bill-clinton-yells-at-black-lives-matter-protesters-defends-violent-crime-bill>

³ Violent crime peaked in 1991 at 758.2 and was cut to 375.7 in 2014. FBI UCR Data published at <https://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm>

for recidivist drug traffickers except in certain, limited cases. Still other policies discouraged federal prosecution of some groups of drug traffickers at all.⁴ By the end of 2016, federal prosecutions dropped by an astonishing 25 percent over five years.⁵

The Obama-Holder Administration also supported retroactive applications of sentencing guideline reductions for previously convicted drug dealers. Convicted drug traffickers became eligible for these sentence reductions and early release from prison regardless of the type of drug they had trafficked, their criminal history, their history of violence, or their ties to violent gangs or international drug cartels. As a result, tens of thousands of federally convicted drug traffickers received reduced sentences and were released back into our communities. (Some went on to commit multiple murders,⁶⁷⁸ shoot police officers,⁹ and engage in other violent crimes and high drug trafficking.¹⁰¹¹)

Under another policy, President Obama exercised his broad pardon powers to grant clemency to hundreds of more drug traffickers, some of whom were convicted kingpins, and many of whom had also been convicted of federal firearm offenses and had multiple drug trafficking convictions. One drug trafficker who received clemency was the leader of an organization that had trafficked over 10 tons of cocaine and heroin.

Finally, but importantly, the Obama-Holder Administration promoted a rhetoric that demoralized our brave men and women of law enforcement. And now, we see rising levels of violence against law enforcement. Last year, 66 law enforcement officers made the ultimate sacrifice in the line of duty – a 61 percent increase compared to 2015.¹² And FBI data shows that about one third of those deaths were the result of premeditated or unprovoked attacks.¹³

After the Obama administration directed federal prosecutors to back away from pursuing statutory penalties based on the quantities of drugs and for recidivist drug traffickers, the number of offenders prosecuted in federal court dropped by twenty-five percent. In addition, it led to the release of tens of thousands of drug traffickers from federal prison early and

⁴ Memorandum of Deputy Attorney General Jim Cole, *Guidance Regarding Marijuana Enforcement* August 29, 2013 available at <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

⁵ Pew Research Center, *Federal criminal prosecutions fall to lowest level in nearly two decades* <http://www.pewresearch.org/fact-tank/2017/03/28/federal-criminal-prosecutions-fall-to-lowest-level-in-nearly-two-decades/>

⁶ <http://www.cnn.com/2017/04/18/us/fresno-california-shootings/>

⁷ <https://www.youtube.com/watch?v=N4BcAqbn38k>

⁸ <http://www.timesfreepress.com/news/local/story/2014/jan/17/roderick-bates-emmett-jones-sentenced-life-prison/129357/>

⁹ http://mms.tveyes.com/PlaybackPortal.aspx?SavedEditID=d5c2c573_7ab7_4f2f_9181_4ccfc8e71bc7

¹⁰ <https://www.justice.gov/usao-nv/pr/man-who-was-caught-almost-100-pounds-meth-and-marijuana-vehicle-sentenced-over-30-years>

¹¹ <https://www.justice.gov/usao-wdpa/pr/two-sentenced-prison-cocaine-trafficking-conspiracy>

¹² <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2016-preliminary-statistics-for-law-enforcement-officers-killed-in-the-line-of-duty>

¹³ <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2016-preliminary-statistics-for-law-enforcement-officers-killed-in-the-line-of-duty>

demoralized law enforcement. To the surprise of very few, violent crime came back with a vengeance.

In 2014, the years-long decline in violent crime ground to a halt. In 2015, we experienced the greatest single-year increase in our homicide rate since 1958, (up by 11.4 percent nationwide), and the greatest increase in the country's overall violent crime rate since 1991 (increasing by 3.3 percent nationwide). In 2016, that surge intensified, with the violent crime rate increasing by an additional 3.4 percent, for a total increase of nearly 7 percent in two years. Likewise, the homicide rate increased by an additional 7.9 percent, for a total increase of more than 20 percent since 2014.

Attorney General Sessions wants to reverse that trend. He is travelling across the country talking to the United States Attorney community and law enforcement to gather information that will allow us to target the problem. Meanwhile, the Department of Justice is already making strides in this area, turning back the tide of violent crime by restoring and improving the tried-and-true policies of effective law enforcement and dedication to the rule of law.

In March, Attorney General Sessions directed federal prosecutors to target the most significant violent offenders, using every available tool to take violent offenders off the streets. In May, Attorney General Sessions directed federal prosecutors to charge the most serious, readily provable offense in criminal cases, reversing Attorney General Holder's 2013 policy change and restoring the standard that has served as the cornerstone for federal charging decisions under nearly every attorney general since it was first implemented during the Carter Administration.

In July, Attorney General Sessions announced the largest health care fraud takedown operation in American history, including charges against more than 400 individuals, more than 100 of whom were charged in connection with fraudulent prescription or distribution of opioids and other dangerous narcotics. Also in July, Attorney General Sessions issued new policy guidance on the Department's civil asset forfeiture program, improving the effectiveness of lawful tools that take the profits out of crime, better protect innocent people, and turn the profits of criminal activity into funds for lifesaving equipment like bulletproof vests and opioid overdose reversal kits. In August, Attorney General Sessions announced the formation of the Opioid Fraud and Abuse Detection Unit, which is utilizing data to help prosecutors better combat the devastating opioid abuse epidemic.

These initiatives are only the beginning. The Department's Task Force on Crime Reduction and Public Safety has spent months studying and developing a multitude of options to stem the tide of violent crime and dangerous drug trafficking before more communities are terrorized.

Mr. Obbie and George Soros may disagree with that strategy, but they are on the wrong side of rising violent crime rates that their preferred policies helped create.

Gibson, Jake

From: Gibson, Jake
Sent: Wednesday, September 27, 2017 11:05 PM
To: O'Malley, Devin (OPA)
Subject: Re: Could you call me when you get a moment?

Send it!
I won't break embargo.

On Sep 27, 2017, at 10:07 PM, O'Malley, Devin (OPA) <Devin.O'Malley@usdoj.gov> wrote:

What time do you wake up haha? We can also sort out now...

Off the record, the Civil Rights Division created a Protecting US Workers Initiative in March that is about to file their first complaint tomorrow against an ag company that discriminated against American workers.

I'd like to send you some background, the complaint and the press release embargoed until the case is filed tomorrow.

Thoughts?

Sent from my iPhone

On Sep 27, 2017, at 10:01 PM, Gibson, Jake <Jake.Gibson@FOXNEWS.COM> wrote:

Yep
What time?

Sent from my iPhone

On Sep 27, 2017, at 9:40 PM, O'Malley, Devin (OPA) <Devin.O'Malley@usdoj.gov> wrote:

Can we talk first thing in AM?

Sent from my iPhone

On Sep 27, 2017, at 7:19 PM, Gibson, Jake
<Jake.Gibson@FOXNEWS.COM> wrote:

Will do.

(b) (6)

Anything urgent?

On Sep 27, 2017, at 6:13 PM, O'Malley, Devin (OPA)
<Devin.O'Malley@usdoj.gov> wrote:

Devin M. O'Malley
Department of Justice
Office of Public Affairs
Office: (202) 353 8763
Cel (b) (6)

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O'Malley, Devin (OPA)

From: O'Malley, Devin (OPA)
Sent: Wednesday, September 27, 2017 7:23 PM
To: Gibson, Jake
Subject: Re: Could you call me when you get a moment?

Just want to pitch you on something

Sent from my iPhone

On Sep 27, 2017, at 7:19 PM, Gibson, Jake <Jake.Gibson@FOXNEWS.COM> wrote:

duplicative material

Singman, Brooke

From: Singman, Brooke
Sent: Wednesday, September 27, 2017 5:59 PM
To: Prior, Ian (OPA)
Cc: Flores, Sarah Isgur (OPA)
Subject: Re: Fox News request -- former Border Patrol agents w/ pending pardon requests -- info

Fantastic.
Thank you!

Sent from my iPhone

On Sep 27, 2017, at 5:48 PM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

You can say that the Department of Justice confirmed that both pardon requests are on file with the Office of the Pardon Attorney. But we would decline further comment.

Thanks

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Singman, Brooke [<mailto:brooke.singman@FOXNEWS.COM>]
Sent: Wednesday, September 27, 2017 5:19 PM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Cc: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: Re: Fox News request -- former Border Patrol agents w/ pending pardon requests -- info

Thank you! Pushed to tomorrow AM.. so if you can get by 9a tomorrow would be great!

Sent from my iPhone

On Sep 27, 2017, at 4:31 PM, Prior, Ian (OPA) <Ian.Prior@usdoj.gov> wrote:

Looks like I missed your deadline but looking into it

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911

Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Singman, Brooke [<mailto:brooke.singman@FOXNEWS.COM>]

Sent: Wednesday, September 27, 2017 2:16 PM

To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>

Subject: Fox News request -- former Border Patrol agents w/ pending pardon requests -- info

Hi Ian and Sarah,

Do you have anyone that can get me information on these cases?

Former Border Patrol Agents Ignacio Ramos and Jose Compean? I believe they have two pardon requests pending at Justice right now.

Deadline will be 4p EST.

Thanks!

Brooke

HUNTER REQUESTS PRESIDENTIAL PARDONS FOR FORMER BORDER PATROL AGENTS

Washington, DC -- Congressman Duncan Hunter (CA-50) sent a letter to President Trump requesting a presidential pardon for former Border Patrol Agents Ignacio Ramos and Jose Compean who were sentenced to federal prison in 2006 for assault against the drug smuggler they were apprehending in the performance of their jobs. While President Bush commuted their 10-year sentence in 2009, these agents remain convicted felons adversely affecting their employment opportunities and quality of life.

“These agents were in process of apprehending an illegal alien smuggling over 700 pounds of drugs into our country,” said Congressman Hunter. “In the course of a struggle, and in what appeared to be the suspect brandishing a weapon, these agents fired their guns and hit him in the backside as he escaped back into Mexico. Rather than reward these agents for their \$1 million seizure, a U.S.

Attorney offered the drug smuggler immunity in exchange for testimony to prosecute and convict them. President Bush's actions got Ramos and Compean out of prison and I'm calling on President Trump to take the next step and give these agents their lives back."

Congressman Hunter's letter comes after President Trump exercised his authority earlier this year to pardon former Arizona Sherriff Joe Arpaio. Both Ramos and Compean were veterans of the U.S. Border Patrol with unblemished service records and Agent Ramos had previously been nominated for Border Patrol Agent of the Year. Conversely, the drug smuggler, Mr. Aldrete-Davila, was captured again after this incident and pleaded guilty to multiple drug charges, including possession of a controlled substance with the intent to distribute.

Congressman Hunter's letter to President Trump is attached.

#

www.hunter.house.gov

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Prior, Ian (OPA)

From: Prior, Ian (OPA)
Sent: Wednesday, September 27, 2017 10:57 AM
To: Christina. Robbins@FOXNEWS. COM
Subject: Check this out

This is apparently happening today in Utah.

<http://www.sltrib.com/opinion/letters/2017/09/26/letter-why-we-intend-to-shut-down-ben-shapiro/>

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

Prior, Ian (OPA)

From: Prior, Ian (OPA)
Sent: Wednesday, September 27, 2017 9:36 AM
To: Robbins, Christina
Subject: RE: All set for Rachel to join us live at 1120a

Yes!

Any other topics she should be aware of?

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

From: Robbins, Christina [mailto:Christina.Robbins@FOXNEWS.COM]
Sent: Wednesday, September 27, 2017 9:33 AM
To: Prior, Ian (OPA) <IPrior@jmd.usdoj.gov>
Subject: All set for Rachel to join us live at 1120a

Hi!
Is Rachel still good to join us at 11:20a? Did she need a car to/from the DC Bureau?
The host will be Heather Childers. WE'll ask about the AG's speech yesterday.
Thanks!

Christina Svolopoulos Robbins
Fox News Channel
Happening Now, 11 & 1p M-F
Direc (b) (6)
Cel (b) (6)
Email: Christina.Robbins@FoxNews.com

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From: DeSanctis, Christine <Christine.DeSanctis@FOXNEWS.COM>
Sent: Wednesday, September 27, 2017 8:00 AM
To: Prior, Ian (OPA)
Subject: RE: Fox News Radio Request/Todd Starnes

Thanks Ian!

From: Prior, Ian (OPA) [mailto:Ian.Prior@usdoj.gov]
Sent: Wednesday, September 27, 2017 7:59 AM
To: DeSanctis, Christine <Christine.DeSanctis@FOXNEWS.COM>
Subject: Re: Fox News Radio Request/Todd Starnes

Hey Christine,

Not going to be able to do today. Let's talk again in a few weeks

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Cell (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

On Sep 27, 2017, at 7:58 AM, DeSanctis, Christine <Christine.DeSanctis@FOXNEWS.COM> wrote:

Good Morning Ian,

Hope you are well!

Just wanted to check in and see if we can do a phoner with AG Sessions?

This could be anytime between Noon-3pmET OR a pre-tape?

We appreciate any consideration.

Thanks!!
Christine

Christine DeSanctis Bragg
The Todd Starnes Show
Fox News Talk
(b) (6)
(Studio (b) (6))
Cell (b) (6)

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Osmanski, Julie

From: Osmanski, Julie
Sent: Wednesday, September 27, 2017 7:32 AM
To: Prior, Ian (OPA); May, Kelly
Cc: Laco, Kelly (OPA); Lewittes, Lee (Kushnir); Woodhull, Lauren; Secli, Garrett
Subject: RE: AG interview this morning

Good morning

Here are the topics:

- 1) ROY MOORE DEFEATS LUTHER STRANGE IN ALABAMA SENATE RUNOFF
- 2) JUDGE LAYS INTO JUSTICE DEPARTMENT LAWYER OVER 'HEARTLESS' DACA DECISION

BROOKLYN FEDERAL JUDGE NICHOLAS GARAUFIS: "It would be useful to take some of the pressure off the various parties, especially the very accomplished young people the president speaks of with such admiration... The thing about deadlines is they can be extended"

- 3) SESSIONS CRITICIZED FOR DEFENDING FREE SPEECH ON COLLEGE CAMPUSES -- BUT TELLING NFL PLAYERS TO STOP KNEELING FOR THE NATIONAL ANTHEM

Best,
Julie

Julie Osmanski
Associate Producer

FOX & friends
Fox News Channel

1211 Avenue of the Americas, 2nd Floor
New York, New York 10036
E: Julie.Osmanski@FoxNews.com
O (b) (6)

From: Prior, Ian (OPA) [mailto:Ian.Prior@usdoj.gov]
Sent: Wednesday, September 27, 2017 7:29 AM
To: May, Kelly
Cc: Laco, Kelly (OPA); Lewittes, Lee (Kushnir); Osmanski, Julie; Woodhull, Lauren; Secli, Garrett
Subject: Re: AG interview this morning

Really need to know this asap as Ag is waiting on it.

Ian D. Prior

Principal Deputy Director of Public Affairs
Office: 202.616.0911
Cel (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).

On Sep 27, 2017, at 7:26 AM, May, Kelly <Kelly.May@FOXNEWS.COM> wrote:

Looping in our overnight team. Hit time is at 8:00am exactly.

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

From: Laco, Kelly (OPA) [<mailto:Kelly.Laco@usdoj.gov>]

Sent: Wednesday, September 27, 2017 7:24 AM

To: May, Kelly <Kelly.May@FOXNEWS.COM>

Cc: Prior, Ian (OPA) <Ian.Prior@usdoj.gov>

Subject: AG interview this morning

Hi Kelly--

We just have a few quick questions regarding the AG on fox and friends this morn. Would it be possible for your producer to send Ian Prior (cc'ed) the topics for discussion ahead of time?

In addition, do you know the exact hit time of our segment? We understand it is around 8am, but an exact time would be great for us to plan around.

Thanks!

Kelly

Sent from my iPhone

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Prior, Ian (OPA)

From: Prior, Ian (OPA)
Sent: Wednesday, September 27, 2017 7:02 AM
To: Taylor.Fleming@FOXNEWS.COM
Subject: Checking in on topics

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: 202.616.0911
Ce (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click [here](#).