From: Ciobanu, Ileana (OLP)
Subject: Info: The current drafts of the SORNs and NPRM, as discussed
To: Zubrensky, Michael A (OLP)
Cc: Davies, Susan M. (OLP); Matthews, Matrina (OLP); Loughlin, Ann (OLP); Hinchman, Robert (OLP); Jones, Kevin R (OLP)
Sent: June 8, 2021 3:44 PM (UTC-04:00)
Attached: FW_ Notice of a Modified System of Records & Notice of Proposed Rule Making_ OLP-002 & OLP-003 .eml, FW_ As Discussed Today_ Notice of a Modified System of Records & Notice of Proposed Rule Making_ OLP-002 & OLP-003 .eml

Billing Code: 0A18001

DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. XXX-2020]

Privacy Act of 1974; Implementation

AGENCY: Office of Legal Policy, United States Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: Elsewhere in the Federal Register, the Office of Legal Policy (OLP), a component within the United States Department of Justice (DOJ or Department), published a notice of a modified system of records for the OLP system of records, Judicial Nominations Files, JUSTICE/OLP-002. In this notice of proposed rulemaking, OLP proposes to modify the exemptions from certain provisions of the Privacy Act claimed for this system of records, as well as other administrative modifications. For the reasons provided below, the Department proposes to amend its Privacy Act regulations. Public comments are invited.

DATES: Comments must be received by [**INSERT DATE 30 AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: You may send comments by any of the following methods:

- E-mail: *privacy.compliance@usdoj.gov*. To ensure proper handling, please reference the CPCLO Order No. in the subject line of the message.
- Fax: 202-307-0693.
- Mail: United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, Two Constitution Square (2Con), 145 N Street, NE Suite

8W.300, Washington DC 20530. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes. To ensure proper handling, please reference the CPCLO Order No. in your correspondence.

- Federal eRulemaking Portal: *http://www.regulations.gov*. When submitting comments electronically, you must include the CPCLO Order No. in the subject box. Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Daylight Savings Time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at that time. Commenters in time zones other than Eastern Time may want to consider this to ensure that their electronic comments are received.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Department's public docket. Such information includes personally identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. If you want to submit personally identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONALLY IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all personally identifying information that you do not

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want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personally identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, may be posted online and placed in the Department's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the "FOR FURTHER INFORMATION CONTACT" paragraph, below.

FOR FURTHER INFORMATION CONTACT: Matrina Matthews, Executive Officer, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Room 4234, Washington, DC 20530-0001; telephone: (202) 616-0040; email: *matrina.matthews@usdoj.gov*.

SUPPLEMENTARY INFORMATION:

The Assistant Attorney General, OLP, is responsible for assisting the Attorney General in, *inter alia*, advising and assisting in the selection and appointment of Federal judges. OLP is comprised of attorneys and other DOJ personnel responsible for assisting

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the Assistant Attorney General in executing the responsibilities of the office. DOJ established the recently renamed system of records, "Judicial Nominations Files," JUSTICE/OLP-002, to maintain records primarily needed to assist the Assistant Attorney General, OLP, and the personnel within OLP, in assessing candidates for potential nomination to be a Federal judge and securing a judicial nominee's confirmation and appointment.

Elsewhere in the Federal Register, OLP updated the system of records notice for JUSTICE/OLP-002 to account for a number of organizational, procedural, and technological changes that have modernized the information and information system used to collect, maintain, and disseminate these records. The Department determined that these updates to the system of records notice were necessary to accurately describe the Department's organizational, procedural, and technological changes.

As part of the existing process for reviewing an individual's potential nomination to a Federal judgeship or other related Executive Branch position, and securing confirmation, individuals agree to a number of evaluations, including but not limited to, a full background investigation. As disclosed in JUSTICE/OLP-002, OLP will maintain records relating to these investigations in its system of records. Given the law enforcement and national security information maintained in these records, as well as the examination materials used to assess a potential nominee, the Department has determined that it is appropriate to claim additional exemptions from certain Privacy Act provisions for these records.

Specifically, certain classified information may be maintained in JUSTICE/OLP-002, including but not limited to, records related to a potential nominee that maintained a

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previous or current position with access to classified information and/or assigned to a national security sensitive position. Given the law enforcement information that may be discovered as part of the nomination investigation and/or evaluations, certain investigatory materials for law enforcement purposes may be maintained in this system of records. Investigatory material may also be used in determining suitability, eligibility, or qualification decisions, and such information may require exemption to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Department under an express promise that the identity of the source would be held in confidence. The Department also utilizes various examination materials to determine individual qualifications for appointment, which if disclosed, could compromise the objectivity or fairness of the Department's examination and vetting process.

Finally, as an administrative matter, the Department proposes to modify 28 CFR 16.73 as a result of the rescindment of JUSTICE/OLP-001, "Freedom of Information and Privacy Appeals Index," and JUSTICE/OLP-004, "Declassification Review System." *See* 66 FR 29994 (June 6, 2001). Specifically, the administrative edits proposed in this rule would: (1) remove the current paragraphs (g), and (h); and (2) revise 28 CFR 16.73(a), (b), (c), and (d), to account for OLP's two remaining systems of records that claim Privacy Act exemptions—JUSTICE/OLP-002 and the "General Files System of the Office of Legal Policy," JUSTICE/OLP-003.

Executive Orders 12866 and 13563–Regulatory Review

In accordance with 5 U.S.C. 552a(j) and 552a(k), this proposed action is subject to formal rulemaking procedures by giving interested persons an opportunity to

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participate in the rulemaking process "through submission of written data, views, or arguments," pursuant to 5 U.S.C. 553. The Department has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Information and Regulatory Affairs within the Office of Management and Budget pursuant to Executive Order 12866.

Regulatory Flexibility Act

This proposed rule will only impact Privacy Act-protected records, which are personal and generally do not apply to an individual's entrepreneurial capacity, subject to limited exceptions. Accordingly, the Chief Privacy and Civil Liberties Officer, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E– Congressional Review Act)

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 801 *et seq.*, requires the Department to comply with small entity requests for information and advice about compliance with statutes and regulations within the Department's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in the "FOR FURTHER INFORMATION CONTACT" paragraph, above. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *https://www.sba.gov/advocacy.* This proposed rule is not a major rule as defined by 5 U.S.C. 804 of the Congressional Review Act.

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Executive Order 13132–Federalism

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988–Civil Justice Reform

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13175–Consultation and Coordination With Indian Tribal Governments

This proposed rule will have no implications for Indian Tribal governments. More specifically, it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Therefore, the consultation requirements of Executive Order 13175 do not apply.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000, as adjusted for inflation, or more in any one year, and it will not significantly or uniquely affect small

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governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires the Department to consider the impact of paperwork and other information collection burdens imposed on the public. There are no current or new information collection requirements associated with this proposed rule.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940-2008, the Department of Justice proposes to amend 28 CFR part 16 as follows:

Part 16-PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

Subpart E – Exemption of Records Systems Under the Privacy Act

2. Amend § 16.73 by removing paragraphs (e) through (h), and revising paragraphs (a) through (d) to read as follows:

§ 16.73 Exemption of Office of Legal Policy Systems

(a) The Judicial Nominations Files (JUSTICE/OLP-002) system of records is exempt from subsections (c)(3); (d); (e)(1), (e)(4)(G), (H), and (I); and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), and (k)(6). These exemptions apply

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only to the extent that information in this system of records is subject to an exemption, pursuant to 5 U.S.C. 552a(k). Where compliance would not appear to interfere with or adversely affect OLP's processes, OLP may waive the applicable exemption.

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3), the requirement that an accounting be made available to the named subject of a record, because release of disclosure accountings could alert the subject of an investigation and/or evaluation to the extent of an investigation and/or evaluation. Such a disclosure could also reveal investigative interests by not only OLP, but also other recipient agencies or components. Since release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation and/or evaluation, release could result in the destruction of documentary evidence, improper influencing of witnesses, endangerment of the physical safety of confidential sources, witnesses, and law enforcement personnel, the fabrication of testimony, and other activities that could impede or compromise the investigation and/or evaluation. In addition, providing the individual an accounting for each disclosure could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(2) From subsection (d), the access and amendment provisions, because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning the subject of an investigation and/or evaluation. Access could reveal the identity of the source of the information and constitute a breach of the promised confidentiality on the part of the Department. Such breaches ultimately would

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restrict the free flow of information vital to the determination of a candidate's qualifications and suitability, among other determinations. The Department also relies on certain examination materials to assess and evaluate an individual's qualifications for an applicable position. Access and/or amendment to such material could reveal information about the examination and vetting process and could compromise its objectivity and/or fairness. Access and/or amendment to such material could also inappropriately advantage future candidates with knowledge of the examination materials. Finally, providing the individual access or amendment rights could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(3) From subsection (e)(1), because in the collection of information for investigative and evaluative purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of the subject of an investigation and/or evaluation. Information which may seem irrelevant, when combined with other seemingly irrelevant information, can on occasion provide a composite picture of a candidate which assists in determining whether that candidate should be nominated for appointment. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In interviewing individuals or obtaining other forms of information during OLP processes, information may be supplied to OLP which relates to matters incidental to the primary purpose of OLP's processes, but also relates to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

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(4) From subsections (e)(4)(G) and (H), and subsection (f), because this system is exempt from the access and amendment provisions of subsection (d).

(c) The General Files System of the Office of Legal Policy (JUSTICE/OLP-003) system of records is exempt from subsections 552a(c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), and (e)(5); and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552(j), (k). Where compliance would not appear to interfere with or adversely affect OLP's processes, the applicable exemption may be waived by OLP.

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to these records might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain

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investigation. Amendment of records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e) (1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced, the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information since it may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigation process if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsections (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations and duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4) (G) and (H) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(8) From subsection (g) because this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

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_____	_____
Date	Peter A. Winn Acting Chief Privacy and Civil Liberties Officer United States Department of Justice

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DEPARTMENT OF JUSTICE
NARRATIVE STATEMENT
MODIFIED SYSTEM OF RECORDS

System Name: General Files System of the Office of Legal Policy, JUSTICE/OLP-003.

Purpose of the System of Records: The purpose of this system is to assist the Assistant Attorney General, Office of Legal Policy (OLP), in carrying out OLP's responsibilities. OLP is principally responsible for planning, developing, and coordinating the implementation of major policy initiatives of high priority to the Department and to the Administration. In addition, the Assistant Attorney General, OLP, consistent with 28 CFR § 0.23: examines and studies legislation and other policy proposals and coordinates Departmental efforts to secure enactment of those of special interest to the Department and the Administration; advises and assists the Attorney General and the Deputy Attorney General regarding the selection and appointment of Federal judges; represents the Department on the Administrative Conference of the United States and, as appropriate, on regulatory reform matters; advises appropriate Departmental officials, from time to time, on investigation, litigation, negotiation, penal, or correctional policies to ensure the compatibility of those policies with overall Departmental goals; and performs such other duties and functions as may be specially assigned by the Attorney General and the Deputy Attorney General.

Modifications to the system of records are as follows: the system location paragraph has been updated to account for the location of both hard copies and the Department's data centers; the authorities paragraph has been clarified to include statutes outlining the role and responsibilities of the Assistant Attorney General and OLP, as delegated by the Attorney General; the routine uses have been updated to include additional routine uses that appear in almost every DOJ system of records notice, which allow for disclosures that are functionally equivalent to the purpose for which the DOJ information is collected, or are necessary and proper uses of the DOJ information (for example, disclosures to NARA, disclosures to identify and mitigate actual or suspected breaches, and disclosures to the public or news media, when appropriate); the records-storage paragraph has been updated to include the electronic storage of records; the paragraph detailing the policies and practices for the retrieval of records in the system has been updated to account for the electronic storage of records; the records-retention paragraph has been updated to include the appropriate records control schedules; the access, amendment, and notification procedures have been clarified to detail the process for requesting access to, amendment of, or notification of, records within this system of records not otherwise exempt from such requests; and a history paragraph has been added. The Department has not amended the Privacy Act exemptions already claimed for this system of records, so that paragraph remains unchanged. The Department will publish this system of records in its entirety for the benefit of the public.

The scope of the system of records, as proposed, is commensurate with the purpose(s) of the system. JUSTICE/OLP-003 was last published in full, 50 FR 37299 (Sept. 12, 1985), and OLP and the Department as a whole have undertaken a number of organizational, procedural, and technological changes that have modernized the information and information system that are used to collect, use, maintain, and disseminate these records. The primary purpose of these modifications is to reflect these changes.

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Authority for Maintenance of System: The authorities for the maintenance of this system of records include 28 U.S.C. ch. 31; 5 U.S.C. 301; and 28 CFR Part 0, Subpart D-2.

Probable or Potential Effects on the Privacy of Individuals: The proposed modification to this system of records are likely to have minimal probable and/or potential effects on the privacy of individuals. OLP proposes to modify this system of records notice as part of the Department's overall effort to update leadership system of records notices in light of organizational, procedural, and technological changes at the Department. All information obtained will be appropriately safeguarded and will only be used for authorized purposes. Specifically, information in this system is maintained in accordance with applicable laws, rules, and policies on protecting individual privacy. The servers storing electronic data and the backup tapes stored onsite are located in locked rooms with access limited to authorized agency personnel. Backup tapes stored offsite are maintained in accordance with a government contract that requires adherence to applicable laws, rules, and policies on protecting individual privacy. Internet connections are protected by multiple firewalls. Security personnel conduct periodic vulnerability scans using DOJ-approved software to ensure security compliance, and security logs are enabled for all computers to assist in troubleshooting and forensics analysis during incident investigations. Users of individual computers can only gain access to the data with a valid user identification and password.

Compatibility of New Routine Uses: OLP has applied routine uses to this system. Having these routine uses permits the OLP necessary flexibility to disclose information in ways that are compatible with the purposes for which the information was collected. Specifically, the routine uses have been updated to include additional, or modified existing, routine uses that appear in almost every DOJ system of records notice. These "model" routine uses allow for disclosures that are functionally equivalent to the purpose for which the DOJ information is collected, or are necessary and proper uses of the DOJ information (for example, disclosures to NARA, disclosure to identify and mitigate actual or suspected breaches, and disclosures to the public or news media, when appropriate).

OMB-Approved Information Collection Requests: Information in this system is not a collection of information within the meaning of 5 CFR § 1320.3(c).

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DEPARTMENT OF JUSTICE
NARRATIVE STATEMENT
MODIFIED SYSTEM OF RECORDS

System Name: Judicial Nominations Files, JUSTICE/OLP-002.

Purpose of the System of Records: The purpose of this system is to assist the Assistant Attorney General, OLP, in carrying out OLP's responsibilities including, but not limited to: advising and assisting the Attorney General in the selection and appointment of Federal judges; assessing candidates for potential nomination to a Federal judgeship; securing a judicial nominee's confirmation and appointment to a Federal judgeship; and providing advice and assistance in the selection and appointment of candidates to positions on the U.S. Sentencing Commission or an Executive Branch position.

Modifications to this system of records are as follows: the system of records is being renamed the "Judicial Nominations Files"; the system location paragraph has been updated to account for the location of both hard copies and the Department's data centers; the authorities paragraph has been clarified to include statutes outlining the role and responsibilities of the Assistant Attorney General and OLP, as delegated by the Attorney General; the categories-of-individuals paragraph has been updated to include individuals who were candidates for, nominated for, or nominated and confirmed for, Federal judgeships, excluding those appointed to the United States Court of Appeals for the Armed Forces, the United States Court of Appeals for Veterans Claims, the United States Tax Court, and the United States Court of Military Commission Review; the categories-of-individuals paragraph has also been updated to include individuals who were candidates for, nominated for, and/or confirmed to a position on the U.S. Sentencing Commission or related Executive Branch positions; the categories-of-records paragraph has been clarified to better articulate information that could be maintained in an individual's file; the routine uses have been updated, as detailed below; the records-storage paragraph has been updated to include the electronic storage of records; the paragraph on policies and practices for the retrieval of records in the system has been updated to account for the electronic storage of records; the records-retention paragraph has been updated to include the appropriate records control schedules; the access, amendment, and notification procedures have been clarified to detail the process for requesting access to, amendment of, or notification of, records within this system of records not otherwise exempt from such requests; the exemptions paragraph has been modified to claim certain Privacy Act exemptions for this system, consistent with the Notice of Proposed Rulemaking, published elsewhere in the Federal Register, that will modify the exemptions claimed for this system of records; and a history paragraph has been added. The Department will publish this system of records in its entirety for the benefit of the public.

The scope of the system of records, as proposed, is commensurate with the purpose(s) of the system. JUSTICE/OLP-002 was last published in full, 50 FR 30309 (July 25, 1985), and OLP and the Department as a whole have undertaken a number of organizational, procedural, and technological changes that have modernized the information and information system that are used to collect, use, maintain, and disseminate these records. The primary purpose of these modifications is to reflect these changes.

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Authority for Maintenance of System: The authorities for the maintenance of this system of records include the United States Constitution, Art. II, Sec. 2, Clause 2; 28 U.S.C. ch. 31; 28 U.S.C. 44; 5 U.S.C. 301; and 28 CFR Part 0, Subpart D-2.

Probable or Potential Effects on the Privacy of Individuals: The proposed modification to this system of records are likely to have minimal probable and/or potential effects on the privacy of individuals participating in the judicial nominations process. OLP proposes to modify this system of records notice as part of the Department's overall effort to update leadership system of records notices in light of organizational, procedural, and technological changes at the Department. All information obtained will be appropriately safeguarded and will only be used for authorized purposes. Specifically, information in this system is maintained in accordance with applicable laws, rules, and policies on protecting individual privacy. The servers storing electronic data and the backup tapes stored onsite are located in locked rooms with access limited to authorized agency personnel. Backup tapes stored offsite are maintained in accordance with a government contract that requires adherence to applicable laws, rules, and policies on protecting individual privacy. Internet connections are protected by multiple firewalls. Security personnel conduct periodic vulnerability scans using DOJ-approved software to ensure security compliance, and security logs are enabled for all computers to assist in troubleshooting and forensics analysis during incident investigations. Users of individual computers can only gain access to the data with a valid user identification and password.

Compatibility of New Routine Uses: OLP has updated its routine uses: (1) to add or update routine uses that appear in almost every DOJ system of records notice that allow for disclosures that are functionally equivalent to the purpose for which the DOJ information is collected, or are necessary and proper uses of the DOJ information (for example, disclosures to NARA, and disclosures to identify and mitigate actual or suspected breaches); and (2) to revise the White House disclosure routine use to clearly indicate the purposes for which records would be disclosed to the White House and its staff as part of the judicial nominations process. Having these routine uses permits the OLP necessary flexibility to disclose information in ways that are compatible with the purposes for which the information was collected.

OMB-Approved Information Collection Requests: Information in this system is not a collection of information within the meaning of 5 CFR § 1320.3(c).

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DEPARTMENT OF JUSTICE

[CPCLO Order No. XXX-2020]

Privacy Act of 1974; Systems of Records

AGENCY: Office of Legal Policy, United States Department of Justice.

ACTION: Notice of a Modified System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended, and Office of Management and Budget (OMB) Circular No. A-108, notice is hereby given that the Office of Legal Policy (OLP), a component within the United States Department of Justice (DOJ or Department), proposes to modify its system of records notice titled "General Files System of the Office of Legal Policy," JUSTICE/OLP-003. OLP proposes to modify this system of records notice as part of the Department's overall effort to update leadership system of records notices in light of organizational, procedural, and technological changes at the Department.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the modifications to this system of records will be effective upon publication, subject to a 30-day period in which to comment on the modified routine uses, described below. Please submit any comments by **[INSERT DATE 30 AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments by mail to the United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, Two Constitution Square (2Con), 145 N Street, NE, Suite 8W.300, Washington, DC 20530; by facsimile at 202-307-0693; or by email at

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privacy.compliance@usdoj.gov. To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Matrina Matthews, Executive Officer, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Room 4234, Washington, DC 20530-0001; telephone: (202) 616-0040.

SUPPLEMENTARY INFORMATION:

OLP is principally responsible for planning, developing, and coordinating the implementation of major policy initiatives of high priority to the Department and to the Administration. In addition, the Assistant Attorney General, OLP, consistent with 28 CFR § 0.23, is responsible for: examining and studying legislation and other policy proposals and coordinating Departmental efforts to secure enactment of those of special interest to the Department and the Administration; advising and assisting the Attorney General and the Deputy Attorney General regarding the selection and appointment of Federal judges; representing the Department on the Administrative Conference of the United States and, as appropriate, on regulatory reform matters; advising appropriate Departmental officials, from time to time, on investigation, litigation, negotiation, penal, or correctional policies to ensure the compatibility of those policies with overall Departmental goals; and performing such other duties and functions as may be specially assigned by the Attorney General and the Deputy Attorney General.

The Department established the system of records, "General Files System of the Office of Legal Policy," JUSTICE/OLP-003, to assist the Assistant Attorney General, OLP, and the personnel within OLP in carrying out the responsibilities of the Office. Since JUSTICE/OLP-003 was last published in full, 50 FR 37299 (Sept. 12, 1985), OLP

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and the Department as a whole have undertaken a number of organizational, procedural, and technological changes that have modernized the information and information system that are used to collect, use, maintain, and disseminate these records.

Specifically, JUSTICE/OLP-003 is being updated as follows: the system location paragraph has been updated to account for the location of both hard copies and the Department's data centers; the authorities paragraph has been clarified to include statutes outlining the role and responsibilities of the Assistant Attorney General and OLP, as delegated by the Attorney General; the routine uses have been updated to include additional routine uses that appear in almost every DOJ system of records notice, which allow for disclosures that are functionally equivalent to the purpose for which the DOJ information is collected, or are necessary and proper uses of the DOJ information (for example, disclosures to NARA, disclosure to identify and mitigate actual or suspected breaches, and disclosures to the public or news media, when appropriate); the records-storage paragraph has been updated to include the electronic storage of records; the paragraph detailing the policies and practices for the retrieval of records in the system has been updated to account for the electronic storage of records; the records-retention paragraph has been updated to include the appropriate records control schedules; the access, amendment, and notification procedures have been clarified to detail the process for requesting access to, amendment of, or notification of, records within this system of records not otherwise exempt from such requests; and a history paragraph has been added. The Department has not amended the Privacy Act exemptions already claimed for this system of records, so that paragraph remains unchanged. The Department has published this system of records in its entirety for the benefit of the public.

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In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this new system of records.

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Date

_____
Peter A. Winn
Acting Chief Privacy and Civil Liberties Officer
United States Department of Justice

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JUSTICE/OLP-003

SYSTEM NAME AND NUMBER:

General Files System of the Office of Legal Policy, JUSTICE/OLP-003.

SECURITY CLASSIFICATION:

Classified and Controlled Unclassified Information.

SYSTEM LOCATION:

Hard-copy records will be maintained at OLP, Robert F. Kennedy Department of Justice Building, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

Electronic records will be maintained at one or more of the Department's data centers, including, but not limited to, the Justice Data Center, Rockville, MD 20854, and/or at one or more of the Department's Core Enterprise Facilities (CEF), including, but not limited to, the Department's CEF East, Clarksburg, WV 26306, or CEF West, Pocatello, ID 83201. Records within this system of records may be transferred to a Department-authorized cloud service provider, in which records would be limited to locations within the continental United States. Access to these electronic records includes all locations at which OLP operates or at which OLP operations are supported, including the Robert F. Kennedy Department of Justice Building. Some or all system information may also be duplicated at other locations where the Department has granted direct access to support OLP operations, system backup, emergency preparedness, and/or continuity of operations.

To determine the location of particular OLP records, contact the system manager, whose contact information is listed in the ''SYSTEM MANAGER(S)'' paragraph, below.

SYSTEM MANAGER(S):

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Assistant Attorney General, Office of Legal Policy, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001; phone: 202-514-4601; general inquiries to the Department can be submitted online at: *https://www.justice.gov/contact-us*.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained pursuant to 28 U.S.C. ch. 31; 5 U.S.C. 301; and 28 CFR Part 0, Subpart D-2.

PURPOSE(S) OF THE SYSTEM:

This system is maintained for the purpose of assisting the Assistant Attorney General, OLP, in carrying out OLP's responsibilities. OLP is principally responsible for planning, developing, and coordinating the implementation of major policy initiatives of high priority to the Department and to the Administration. In addition, the Assistant Attorney General, OLP, consistent with 28 CFR § 0.23: examines and studies legislation and other policy proposals and coordinates Departmental efforts to secure enactment of those of special interest to the Department and the Administration; advises and assists the Attorney General and the Deputy Attorney General regarding the selection and appointment of Federal judges; represents the Department on the Administrative Conference of the United States and, as appropriate, on regulatory reform matters; advises appropriate Departmental officials, from time to time, on investigation, litigation, negotiation, penal, or correctional policies to ensure the compatibility of those policies with overall Departmental goals; and performs such other duties and functions as may be specially assigned by the Attorney General and the Deputy Attorney General.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

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The system may encompass individuals who are involved with official Federal investigations, policy decisions, and administrative matters of significance. Such individuals include, but are not limited to, subjects of litigation, targets of investigations, Members and staff members of Congress, government officials, and individuals of national prominence or notoriety. The system also encompasses individuals who were candidates for Federal judgeships but who were never nominated, individuals who were nominated for Federal judgeships but who were never confirmed, and individuals who were nominated and confirmed for Federal judgeships, excluding those appointed to the United States Court of Appeals for the Armed Forces, the United States Court of Appeals for Veterans Claims, the United States Tax Court, and the United States Court of Military Commission Review. The Assistant Attorney General, OLP, maintains records indexed to the name of the individual.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include case files, litigation materials, exhibits, internal memoranda and reports, or other records on a given subject or individual. Records vary in number and kind according to the breadth of the responsibilities assigned to the Assistant Attorney General, OLP. Records include those of such significance that the Assistant Attorney General, OLP, has policy or administrative interest, and may include those which pertain to investigative or law enforcement cases for which the Assistant Attorney General, OLP, is asked to provide an analysis and establish future policy direction. A computerized index containing the subject title and/or individual's name is also maintained.

RECORD SOURCE CATEGORIES:

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Sources of information contained in this system not otherwise exempt include individuals; organizations; State, local, and foreign government agencies as appropriate; the executive and legislative branches of the Federal Government; relevant third parties, and other Department and OLP systems of records, including but not limited to, JUSTICE/OLP-002, Judicial Nominations Files.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

(A) Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law – criminal, civil, or regulatory in nature – the relevant records may be referred to the appropriate Federal, State, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

(B) To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

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(C) To any person or entity that OLP has reason to believe possesses information regarding a matter within the jurisdiction of OLP, to the extent deemed to be necessary by OLP in order to elicit such information or cooperation from the recipient for use in the performance of an authorized activity.

(D) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(E) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or informal discovery proceedings.

(F) To the news media and the public, including disclosures pursuant to 28 CFR § 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(G) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, interagency agreements, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(H) To a former employee of the Department for the purpose of: responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or

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other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(I) To Federal, State, local, territorial, tribal, foreign, or international licensing agencies or associations that require information concerning the suitability or eligibility of an individual for a license or permit.

(J) To a Member of Congress, or staff acting upon the Member's behalf, when the Member or staff requests the information for investigative or policy decision-making purposes, or on behalf of, or at the request of, the individual who is the subject of the record.

(K) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(L) To appropriate agencies, entities, and persons when: (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that, as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(M) To another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach; or (2)

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preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(N) To any agency, organization, or individual for the purpose of performing authorized audit or oversight operations of OLP and meeting related reporting requirements.

(O) To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

(P) To any criminal, civil, or regulatory law enforcement authority (whether Federal, State, local, territorial, tribal, foreign, or international) where the information is relevant to the recipient entity's law enforcement responsibilities.

(Q) To a governmental entity lawfully engaged in collecting law enforcement, law enforcement intelligence, or national security intelligence information for such purposes.

(R) To any person, organization, or governmental entity in order to notify them of a serious terrorist threat for the purpose of guarding against or responding to such threat.

(S) To any person or entity if deemed by OLP to be necessary in order to elicit information or cooperation from the recipient for use by OLP in the performance of an authorized law enforcement activity.

(T) To officials and employees of the White House, and during Presidential transitions, the President-elect and Vice President-elect and their designees, or any Federal agency which requires information relevant to an agency concerning the hiring, appointment, or retention of an employee, the issuance of a security clearance, the

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conducting of a security or suitability investigation, the classifying of a job, or the issuance of a grant or benefit.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system may be stored in electronic form, stored in paper folders, and/or stored on magnetic disks, hard disks, removable storage devices, or other electronic media. Electronic records are stored in databases and/or on hard disks, removable storage devices, or other electronic media. Records are stored securely in accordance with applicable executive orders, statutes, and agency implementing recommendations.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved manually by personal identifier (*e.g.*, name of the individual, registration number, employee identification number, etc.); subject title; or in some cases, by other identifying search terms.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with guidelines approved by the National Archives and Records Administration (DAA-006-2013-0005 (pending), DAA-0060-2012-0009, and DAA-006-2016-0006 (pending)).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information in this system is maintained in accordance with applicable laws, rules, and policies on protecting individual privacy. The servers storing electronic data and the backup tapes stored onsite are located in locked rooms with access limited to authorized agency personnel. Backup tapes stored offsite are maintained in accordance

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with a government contract that requires adherence to applicable laws, rules, and policies on protecting individual privacy. Internet connections are protected by multiple firewalls. Security personnel conduct periodic vulnerability scans using DOJ-approved software to ensure security compliance, and security logs are enabled for all computers to assist in troubleshooting and forensics analysis during incident investigations. Users of individual computers can only gain access to the data with a valid user identification and password.

RECORD ACCESS PROCEDURES:

All requests for access to records must be in writing and should be addressed to the Chief, Initial Request Staff, Office of Information Policy, 1425 New York Avenue, NW, Suite 11050, Washington, DC 20530-0001. Requests may also be made online at *https://www.justice.gov/oip/submit-and-track-request-or-appeal*. The envelope, letter, and/or subject line should be clearly marked "Privacy Act Access Request." The request must describe the records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort in accordance with 28 CFR 16.41(d). The request must include a general description of the records sought and must include the requester's full name, current address, and, when necessary to identify records, date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury. Some information may be exempt from the access provisions as described in the "EXEMPTIONS PROMULGATED FOR THE SYSTEM" paragraph, below. An individual who is the subject of a record in this system of records may request access to those records that are not exempt from access. A determination of whether a record may be accessed will be made at the time a request is received.

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Although no specific form is required to submit a request, you may obtain forms for this purpose from the FOIA/Privacy Act Mail Referral Unit, United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530, or on the Department of Justice Web site at *https://www.justice.gov/oip/make-foia-request-doj*.

More information regarding the Department's procedures for accessing records in accordance with the Privacy Act can be found at 28 CFR Part 16 Subpart D, "Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974."

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records maintained in this system of records must direct their requests to the address indicated in the "RECORD ACCESS PROCEDURES" paragraph, above. All requests to contest or amend records must be in writing, and the envelope, letter, and/or subject line should be clearly marked "Privacy Act Amendment Request." All requests must state clearly and concisely what record is being contested, the reason(s) for contesting it, and the proposed amendment to the record. Some information may be exempt from the amendment provisions as described in the "EXEMPTIONS PROMULGATED FOR THE SYSTEM" paragraph, below. An individual who is the subject of a record in this system of records may request to contest or amend those records that are not exempt. A determination of whether a record is exempt from the amendment provisions will be made after a request is received.

More information regarding the Department's procedures for amending or contesting records in accordance with the Privacy Act can be found at 28 CFR §16.46, "Requests for Amendment or Correction of Records."

NOTIFICATION PROCEDURES:

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Individuals may request to be notified if a record in this system of records pertains to them by utilizing the same procedures identified in the "RECORD ACCESS PROCEDURES" paragraph, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2), and (3), (e)(4)(G) and (H), and (e)(5); and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

HISTORY:

50 FR 37299 (Sept. 12, 1985): Last published in full;

66 FR 8425 (Jan. 31, 2001); Added one routine use;

72 FR 3410 (Jan. 25, 2007): Added one routine use; and

82 FR 24147 (May 25, 2017): Rescinded 72 FR 3410, and added two routine uses.

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Billing Code: 0A18001

DEPARTMENT OF JUSTICE

[CPCLO Order No. XXX-2020]

Privacy Act of 1974; Systems of Records

AGENCY: Office of Legal Policy, United States Department of Justice.

ACTION: Notice of a Modified System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended, and Office of Management and Budget (OMB) Circular No. A-108, notice is hereby given that the Office of Legal Policy (OLP), a component within the United States Department of Justice (DOJ or Department), proposes to modify its System of Records Notice currently titled "United States Judges Records System," JUSTICE/OLP-002. OLP proposes to modify this system of records notice as part of the Department's overall effort to update DOJ leadership system of records notices in light of organizational, procedural, and technological changes at the Department.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the modifications to this system of records will be effective upon publication, subject to a 30-day period in which to comment on the modified routine uses, described below. Please submit any comments by **[INSERT DATE 30 AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments by mail to the United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, Two Constitution Square (2Con), 145 N Street, NE, Suite 8W.300, Washington, DC 20530; by facsimile at 202-307-0693; or by email at

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privacy.compliance@usdoj.gov. To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Matrina Matthews, Executive Officer, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Room 4234, Washington, DC 20530-0001; telephone: (202) 616-0040.

SUPPLEMENTARY INFORMATION:

The Assistant Attorney General, OLP, is responsible for assisting the Attorney General in, *inter alia*, advising and assisting in the selection and appointment of Federal judges. OLP is comprised of attorneys and other DOJ personnel responsible for assisting the Assistant Attorney General, OLP, in executing the responsibilities of the office. The Department established the system of records, "United States Judges Records System," JUSTICE/OLP-002, to maintain records needed to assist the Assistant Attorney General, OLP, and the personnel within OLP, in assessing candidates for potential nomination to be a Federal judge and securing a judicial nominee's confirmation and appointment. Since JUSTICE/OLP-002 was last published in full, 50 FR 30309 (July 25, 1985), OLP, and the Department as a whole, have undertaken a number of organizational, procedural, and technological changes that have modernized the information and information system that are used to collect, use, maintain, and disseminate these records. The Department has determined that updates to this system of records notice are necessary to describe the Department's organizational, procedural, and technological changes.

Specifically, JUSTICE/OLP-002 is being updated as follows: the system of records is being renamed the "Judicial Nominations Files"; the system location paragraph has been updated to account for the location of both hard copies and the Department's

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data centers; the authorities paragraph has been clarified to include statutes outlining the role and responsibilities of the Attorney General, as delegated to the Assistant Attorney General and OLP; the categories-of-individuals paragraph has been updated to include individuals who were candidates for, nominated for, or nominated and confirmed for, Federal judgeships, excluding those appointed to the United States Court of Appeals for the Armed Forces, the United States Court of Appeals for Veterans Claims, the United States Tax Court, and the United States Court of Military Commission Review; the categories-of-individuals paragraph has also been updated to include individuals who were candidates for, nominated for, and/or confirmed to a position on the U.S. Sentencing Commission or related Executive Branch positions; the categories-of-records paragraph has been clarified to better articulate information that could be maintained in an individual's file; the routine uses have been updated: (1) to add or update routine uses that appear in almost every DOJ system of records notice that allow for disclosures that are functionally equivalent to the purpose for which the DOJ information is collected, or are necessary and proper uses of the DOJ information (for example, disclosures to NARA, and disclosures to identify and mitigate actual or suspected breaches); and (2) to revise the White House disclosure routine use to clearly indicate the purposes for which records would be disclosed to the White House and its staff; the records-storage paragraph has been updated to include the electronic storage of records; the paragraph on policies and practices for the retrieval of records in the system has been updated to account for the electronic storage of records; the records-retention paragraph has been updated to include the appropriate records control schedules; the access, amendment, and notification procedures have been clarified to detail the process for requesting access to,

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amendment of, or notification of, records within this system of records not otherwise exempt from such requests; the exemptions paragraph has been modified to claim certain Privacy Act exemptions for this system, consistent with the Notice of Proposed Rulemaking published elsewhere in the Federal Register, that will modify the exemptions claimed for this system of records; and a history paragraph has been added. The Department has republished the system of records notice in its entirety for the convenience of the public.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this new system of records.

_____
Date

_____
Peter A. Winn
Acting Chief Privacy and Civil Liberties Officer
United States Department of Justice

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JUSTICE/OLP-002

SYSTEM NAME AND NUMBER:

Judicial Nominations Files, JUSTICE/OLP-002.

SECURITY CLASSIFICATION:

Classified and Controlled Unclassified Information.

SYSTEM LOCATION:

Hard-copy records will be maintained at OLP, Robert F. Kennedy Department of Justice Building, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

Electronic records will be maintained at one or more of the Department's data centers, including, but not limited to, the Justice Data Center, Rockville, MD 20854, and/or at one or more of the Department's Core Enterprise Facilities (CEF), including, but not limited to, the Department's CEF East, Clarksburg, WV 26306, or CEF West, Pocatello, ID 83201. Records within this system of records may be transferred to a Department-authorized cloud service provider, in which records would be limited to locations within the continental United States. Access to these electronic records includes all locations at which OLP operates or at which OLP operations are supported, including the Robert F. Kennedy Department of Justice Building. Some or all system information may also be duplicated at other locations where the Department has granted direct access to support OLP operations, system backup, emergency preparedness, and/or continuity of operations.

To determine the location of particular OLP records, contact the system manager, whose contact information is listed in the ''SYSTEM MANAGER(S)'' paragraph, below.

SYSTEM MANAGER(S):

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Assistant Attorney General, Office of Legal Policy, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001; phone: 202-514-4601; general inquiries to the Department can be submitted online at: *https://www.justice.gov/contact-us*.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained pursuant to the United States Constitution, Art. II, Sec. 2, Clause 2; 28 U.S.C. ch. 31; 28 U.S.C. 44; 5 U.S.C. 301; and 28 CFR Part 0, Subpart D-2.

PURPOSE(S) OF THE SYSTEM:

This system is maintained for the purpose of assisting the Assistant Attorney General, OLP, in carrying out OLP's responsibilities including, but not limited to: advising and assisting the Attorney General in the selection and appointment of Federal judges; assessing candidates for potential nomination to a Federal judgeship; securing a judicial nominee's confirmation and appointment to a Federal judgeship; and providing advice and assistance in the selection and appointment of candidates to positions on the U.S. Sentencing Commission or an Executive Branch position.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system may encompass records on: individuals who were candidates for Federal judgeships but who were never nominated; individuals who were nominated for Federal judgeships but who were never confirmed; individuals who were nominated and confirmed for Federal judgeships, excluding those appointed to the United States Court of Appeals for the Armed Forces, the United States Court of Appeals for Veterans Claims, and the United States Court of Military Commission Review; and individuals

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who were considered for, nominated for, and/or confirmed to a position on the U.S. Sentencing Commission or an Executive Branch position.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records consists of records pertaining to: (1) files of individuals who were candidates for Federal judgeships but who were never nominated, which may include: scheduling documents, Congressional actions and requests (for example, Senate Questionnaires), FBI background files and related paperwork, Financial Disclosure Reports, nomination forms and the Attorney General cover letters that accompany them, resumes, documents reflecting notes or assessments of candidates, and any other related documents necessary and relevant to assessing the potential nomination of a candidate for a Federal judgeship; (2) files of individuals who were nominated for Federal judgeships but who were never confirmed, which may include: those documents mentioned in (1), above, as well as American Bar Association (ABA) rating letters; (3) files of individuals who were nominated and confirmed for Federal judgeships, which may include: those documents mentioned in (1) and (2), above, as well as appointment records, oaths of office, Senate confirmation documentation, commission documentation, tax checks and credit reports waivers, medical reports, and nomination files of confirmed individuals that are maintained by employees working on the judicial nominations and confirmations; and (4) files on individuals who were candidates for, nominated for, or confirmed to the United States Sentencing Commission or an Executive Branch position, which may include those documents mentioned in (1) and (3), above, and any other related documents necessary and relevant to assessing the potential nomination and/or

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confirmation of a nominee for the United States Sentencing Commission or an Executive Branch position.

RECORD SOURCE CATEGORIES:

Non-exempt sources of information contained in this system include the general public, organizations, associations, the subjects of the records themselves, government agencies, as appropriate, and other relevant parties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

(A) To officials and employees of the White House concerning the selection, vetting, appointment, confirmation, or other activities related to a judicial candidate, judicial nominee, a confirmed Federal judge, or a candidate for or nominee to the United States Sentencing Commission or an Executive Branch position.

(B) Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law – criminal, civil, or regulatory in nature – the relevant records may be referred to the appropriate Federal, State, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

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(C) To any person or entity that OLP has reason to believe possesses information regarding a matter within the jurisdiction of OLP, to the extent deemed to be necessary by OLP in order to elicit such information or cooperation from the recipient for use in the performance of an authorized activity.

(D) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(E) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or informal discovery proceedings.

(F) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, interagency agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(G) To a former employee of the Department for the purposes of: responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

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(H) To a Member of Congress, or staff acting on the Member's behalf, when the Member or staff requests the information for investigative or confirmation-related purposes.

(I) To the National Archives and Records Administration for the purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(J) To appropriate agencies, entities, and persons when: (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that, as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(K) To another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach, or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(L) To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

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(M) To any criminal, civil, or regulatory law enforcement authority (whether Federal, State, local, territorial, tribal, foreign, or international) where the information is relevant to the recipient entity's law enforcement responsibilities.

(N) To a governmental entity lawfully engaged in collecting law enforcement, law enforcement intelligence, or national security intelligence information, for such purposes.

(O) To any person, organization, or governmental entity in order to notify them of a serious terrorist threat for the purpose of guarding against or responding to such threat.

(P) To any person or entity if deemed by OLP to be necessary in order to elicit information or cooperation from the recipient for use by OLP in the performance of an authorized law enforcement activity.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system may be stored in electronic form, stored in paper folders, and/or stored on magnetic disks, hard disks, removable storage devices, or other electronic media. Electronic records are stored in databases and/or on hard disks, removable storage devices, or other electronic media. Records are stored securely in accordance with applicable executive orders, statutes, and agency implementing recommendations.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

For individuals who were candidates for Federal judgeships but who were never nominated, information is retrieved by use of the name of the nominee and by the year in which a decision was made not to nominate the candidate. For individuals who were nominated for Federal judgeships but who were never confirmed, information is retrieved by use of the name of the nominee and by the year in which a decision was made not to

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re-nominate the candidate. For individuals who were nominated and confirmed for Federal judgeships, information is retrieved by use of the name of the nominee and by the year in which they were confirmed. For individuals who were candidates for, nominated for, or confirmed to the United States Sentencing Commission or an Executive Branch position, information is retrieved by use of the name of the individual and by the year in which a decision was made on the individual's candidacy, nomination, or confirmation. Records for each of these categories are filed alphabetically by year.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with guidelines approved by the National Archives and Records Administration (DAA-0060-2012-0009). Records are destroyed for candidates who are not nominated three years after the decision is made not to nominate the candidate. Records are destroyed for candidates who are nominated but not confirmed five years after the decision is made by the President not to re-nominate the candidate. Records for files of candidates who are nominated and confirmed are transferred to the National Archives sixty years after the date of confirmation.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information in this system is maintained in accordance with applicable laws, rules, and policies on protecting individual privacy. The servers storing electronic data and the backup tapes stored onsite are located in locked rooms with access limited to authorized agency personnel. Backup tapes stored offsite are maintained in accordance with a government contract that requires adherence to applicable laws, rules, and policies on protecting individual privacy. Internet connections are protected by multiple

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firewalls. Security personnel conduct periodic vulnerability scans using DOJ-approved software to ensure security compliance, and security logs are enabled for all computers to assist in troubleshooting and forensics analysis during incident investigations. Users of individual computers can only gain access to the data with a valid user identification and password.

RECORD ACCESS PROCEDURES:

All requests for access to records must be in writing and should be addressed to the Chief, Initial Request Staff, Office of Information Policy, 1425 New York Avenue, NW, Suite 11050, Washington, DC 20530-0001. Requests may also be made online at *https://www.justice.gov/oip/submit-and-track-request-or-appeal*. The envelope, letter, and/or subject line should be clearly marked "Privacy Act Access Request." The request must describe the records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort in accordance with 28 CFR § 16.41(d). The request must include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury. Some information may be exempt from the access provisions as described in the "EXEMPTIONS PROMULGATED FOR THE SYSTEM" paragraph, below. An individual who is the subject of a record in this system of records may request access to those records that are not exempt from access. A determination of whether a record may be accessed will be made at the time a request is received.

Although no specific form is required, you may obtain forms for this purpose from the FOIA/Privacy Act Mail Referral Unit, United States Department of Justice, 950

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Pennsylvania Avenue NW, Washington, DC 20530, or on the Department of Justice Web site at *https://www.justice.gov/oip/make-foia-request-doj*.

More information regarding the Department's procedures for accessing records in accordance with the Privacy Act can be found at 28 CFR Part 16 Subpart D, "Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974."

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records maintained in this system of records must direct their requests to the address indicated in the "RECORD ACCESS PROCEDURES" paragraph, above. All requests to contest or amend records must be in writing, and the envelope, letter, and/or subject line should be clearly marked "Privacy Act Amendment Request." All requests must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record. Some information may be exempt from the amendment provisions as described in the "EXEMPTIONS PROMULGATED FOR THE SYSTEM" paragraph, below. An individual who is the subject of a record in this system of records may contest or amend those records that are not exempt. A determination of whether a record is exempt from the amendment provisions will be made after a request is received.

More information regarding the Department's procedures for amending or contesting records in accordance with the Privacy Act can be found at 28 CFR §16.46, "Requests for Amendment or Correction of Records."

NOTIFICATION PROCEDURES:

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Individuals may request to be notified if a record in this system of records pertains to them by utilizing the same procedures identified in the "RECORD ACCESS PROCEDURES" paragraph, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3); (d); (e)(1), (e)(4)(G), (H), and (I); and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), and (k)(6). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

HISTORY:

50 FR 30309 (Sept. 12, 1985): Last published in full;

66 FR 8425 (Jan. 31, 2001); Added one routine use;

72 FR 3410 (Jan. 25, 2007): Added one routine use; and

82 FR 24147 (May 25, 2017): Rescinded 72 FR 3410, and added two routine uses.

Document ID: 0.7.853.53450-000006 22cv2850-21-01790-003277

From: Zdeb, Sara (Judiciary-Dem)
Subject: Re: Documents for Donoghue (Part Ib)
To: Antell, Kira M. (OLA)
Cc: Gaeta, Joseph (OLA); Charlet, Joseph (Judiciary-Dem)
Sent: June 19, 2021 9:36 AM (UTC-04:00)

Thanks, Kira - confirming receipt of all three PDFs.

> On Jun 19, 2021, at 7:21 AM, Antell, Kira M. (OLA) (b) (6) wrote:
>
> Part Ib
>
> From: Antell, Kira M. (OLA)
> Sent: Saturday, June 19, 2021 7:13 AM
> To: 'Zdeb, Sara (Judiciary-Dem)' (b) (6) ; Gaeta, Joseph (OLA) (b) (6)
> Cc: 'Charlet, Joseph (Judiciary-Dem)' (b) (6)
> Subject: RE: Documents for Donoghue (Part Ia)
>
> Hi Sara and Joe,
>
> I got a bounceback from my email last night. Re-sending part I in parts a and b.
>
> Thanks,
> Kira
>
> From: Antell, Kira M. (OLA)
> Sent: Friday, June 18, 2021 10:53 PM
> To: Zdeb, Sara (Judiciary-Dem) (b) (6) Gaeta, Joseph (OLA) (b) (6)
> Cc: Charlet, Joseph (Judiciary-Dem) (b) (6)
> Subject: RE: Documents for Donoghue (1/2)
>
> Hi Sara and Joe C.,
>
> Attached is part 1 of the Donoghue set of documents. Please note, you requested that I include Bates 000044. I think this was in error as 000044 is a document that you've reviewed in camera but is still being considered for release to the Committee for use in interviews. I have not included it here but if I misunderstood, please let me know.
>
> I checked this twice but if I included or omitted anything incorrectly, please let me know.
>
> Thanks,
> Kira
>
> From: Zdeb, Sara (Judiciary-Dem) (b) (6)
> Sent: Friday, June 18, 2021 7:02 PM
> To: Antell, Kira M. (OLA) (b) (6) ; Gaeta, Joseph (OLA) (b) (6)
> Cc: Charlet, Joseph (Judiciary-Dem) (b) (6)
> Subject: RE: Documents for Donoghue

>
> Hi Kira:
>
> Adding Joe Charlet and circling back with a list of Bates numbers/ranges we'd like extracted and combined into a fresh PDF (or combination of PDFs depending on the size). These are predominantly Mr. Donoghue's own documents, but they also include a select handful of documents on which he wasn't copied but that involve events that we'd like to discuss with him (to the extent he has personal knowledge of such events). Happy to discuss if you have questions, but otherwise, we'd be grateful if you could send us a PDF/PDFs with these documents sometime tomorrow so we can send it along to Mr. Donoghue's counsel subject to the conditions we previously discussed.
>
>
> * 00001-044
> * 000065-070
> * 000174-193
> * 000231-243
> * 000260
> * 000271-276
> * 000278-285
> * 000290-293
> * 000300
> * 000302
> * 000306
> * 000319-320
> * 000324-329
> * 000335
> * 000336-388
> * 000391-424
> * 000425-596
> * 000598-667
> * 000673-679
>
> Many thanks, and have a great weekend –
>
> Sara
>
> From: Antell, Kira M. (OLA) (b) (6)
> Sent: Friday, June 18, 2021 1:10 PM
> To: Zdeb, Sara (Judiciary-Dem)
(b) (6); Gaeta, Joseph
(OLA) (b) (6)
> Subject: RE: Documents for Donoghue
>
> Hi Sara,
>
> Circling back. I will likely be offline for a bit this afternoon and I want to make sure I'm as responsive as possible. What turnaround are we hoping to achieve once you send the Bates numbers? Will you need to PDF today or is tomorrow okay?
>
> Thanks,
> Kira
>
> From: Zdeb, Sara (Judiciary-Dem)
(b) (6)
> Sent: Friday, June 18, 2021 11:46 AM
> To: Antell, Kira M. (OLA) (b) (6); Gaeta,

Joseph (OLA) (b) (6)
> Subject: RE: Documents for Donoghue
>
> That works – thanks! I'll circle back with Bates numbers in a bit.
>
> From: Antell, Kira M. (OLA) (b) (6)
> Sent: Friday, June 18, 2021 11:21 AM
> To: Gaeta, Joseph (OLA) (b) (6) ; Zdeb, Sara (Judiciary-Dem) (b) (6)
> Subject: RE: Documents for Donoghue
>
> Sara,
>
> I'd be happy to help. If you send me the bates numbers, I can send you a fresh combined PDF of just those pages. Does that work? As always, we greatly appreciate your continued sensitivity to the confidentiality of these documents.
>
> Thanks,
> Kira
>
> From: Gaeta, Joseph (OLA) (b) (6)
> Sent: Friday, June 18, 2021 11:15 AM
> To: Zdeb, Sara (Judiciary-Dem)
(b) (6)
> Cc: Antell, Kira M. (OLA) (b) (6)
> Subject: Re: Documents for Donoghue
>
> I don't know what is possible. Kira?
> Sent from my iPhone
>
> On Jun 18, 2021, at 10:58 AM, Zdeb, Sara (Judiciary-Dem)
(b) (6) wrote:
>
> Thanks, Joe – I appreciate it. This is acceptable to us.
>
> One further question: the PDFs DOJ produced to SJC are partially password-protected, such that we're unable to extract pages from the PDFs. Would it be possible to get unprotected versions of the four PDF productions DOJ previously sent so that we can extract specific pages to send to Mr. Donoghue? Otherwise, we'll need to either (1) send him all 600+ pages while specifying which Bates numbers we intend to use, or (2) head into the office to scan hard copy print-outs of select pages, and/or take individualized screen shots of each page. We'd prefer to avoid #2 because the quality won't be as good, but we're happy to do #1 if that's preferable to you versus sending us un-password protected versions of the PDFs.
>
> From: Gaeta, Joseph (OLA) (b) (6)
> Sent: Friday, June 18, 2021 10:06 AM
> To: Zdeb, Sara (Judiciary-Dem)
(b) (6)
> Cc: Antell, Kira M. (OLA) (b) (6)
> Subject: Documents for Donoghue
>
> Sara:
>
> I am writing to follow up on your request to share documents previously provided to SJC by the Department with Richard Donoghue, to assist in his preparation for a transcribed interview. The Department authorizes you to share documents that you may use in the interview under the following

conditions: (1) that Mr. Donoghue not further share any of the documents that he receives from you; (2) that he agree to destroy all copies after his interview; and (3) that you provide the Department a copy of the set of document you provide Mr. Donoghue. Please let me know if this is acceptable. Thank you.
>
> Joe Gaeta
> Deputy Assistant Attorney General
> Office of Legislative Affairs (OLA)
> U.S. Department of Justice
>
> <SJC_Donoghue Set_06182021_Part Ib.pdf>

From: Flynn-Brown, Josh (Judiciary-Rep)
Subject: RE: DOJ 2nd response to Durbin letters of 1/23 and 2/12 (3 of 3)
To: Zdeb, Sara (Judiciary-Dem); Gaeta, Joseph (OLA)
Cc: Antell, Kira M. (OLA)
Sent: March 31, 2021 8:28 PM (UTC-04:00)

Confirming receipt thx

From: Zdeb, Sara (Judiciary-Dem)
Sent: Wednesday, March 31, 2021 7:52 PM
To: Gaeta, Joseph (OLA) (b) (6) ; Flynn-Brown, Josh (Judiciary-Rep) (b) (6)
Cc: Antell, Kira M. (OLA) (b) (6)
Subject: RE: DOJ 2nd response to Durbin letters of 1/23 and 2/12 (3 of 3)

Thanks, Joe – all three emails came through.

From: Gaeta, Joseph (OLA) (b) (6)
Sent: Wednesday, March 31, 2021 7:47 PM
To: Zdeb, Sara (Judiciary-Dem) (b) (6) ; Flynn-Brown, Josh (Judiciary-Rep) (b) (6)
Cc: Antell, Kira M. (OLA) (b) (6)
Subject: DOJ 2nd response to Durbin letters of 1/23 and 2/12 (3 of 3)

Joe Gaeta
Deputy Assistant Attorney General
Office of Legislative Affairs (OLA)
U.S. Department of Justice

From: Gaeta, Joseph (OLA)
Subject: DOJ 2nd response to Durbin letters of 1/23 and 2/12 (1 of 3)
To: Zdeb, Sara (Judiciary-Dem); Flynn-Brown, Josh (Judiciary-Rep)
Cc: Antell, Kira M. (OLA)
Sent: March 31, 2021 7:44 PM (UTC-04:00)
Attached: 2021-3-31 DOJ public reporting events in advance of the Electoral College Certification on January 6 2021 - Durbin #4474357.pdf

This is the first of three emails I'm sending you in further response to Chairman Durbin's letters dated January 23 and February 12, 2021. This email contains a cover letter only. The next two will each have a PDF file. I'm sending the three documents separately to reduce the chance of a bounce back. If this fails, I can upload these to our file sharing system, but I won't be able to do that until tomorrow. Please confirm receipt of all three. Thank you.

Joe Gaeta
Deputy Assistant Attorney General
Office of Legislative Affairs (OLA)
U.S. Department of Justice

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General *Washington, D.C. 20530*

March 31, 2021

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington DC, 20510

Dear Mr. Chairman:

This is a continued response to your letters to Acting Attorney General Wilkinson, dated January 23 and February 12, 2021, requesting certain documents related to public reporting regarding events at the Department of Justice (Department) in advance of the Electoral College Certification on January 6, 2021.

The Department's framework for responding to the Committee's requests on this matter is set forth in our letter, dated March 9, 2021, which also indicated that we were making documents available to the Committee for in camera review. Today's production of documents to the Committee includes certain materials that the Department made available to the Committee on March 9, 2021, for in camera review. At this time, we are providing to the Committee the documents Bates numbered SJC-Pre-CertificationEvents-03092021-00001 through SJC-Pre-CertificationEvents-03092021-000043 and SJC-Pre-CertificationEvents-03092021-00064 through SJC-Pre-CertificationEvents-03092021-000193, comprising 173 of the 201 pages included in the Department's initial March 9, 2021 production.

This production includes an additional 134 pages of documents, Bates numbered SJC-PreCertificationEvents-03312021-000202 to SJC-PreCertificationEvents-03312021-000335. Please note, we have provided some documents that are potentially responsive even if the Department has not been able to conclusively determine from the face of the document that each is responsive. This production contains limited redactions.

Although we are providing these materials to the Committee electronically at the express request of your staff, we reiterate that in making these materials available the Department does not waive any applicable privilege that might otherwise apply to some or all of these documents.

Document ID: 0.7.853.49716-000001 22cv2850-21-01790-003284

The Department continues to review potentially responsive documents and we will supplement this response if additional material becomes available. If you have questions regarding these productions, please feel free to contact Joseph Gaeta, Deputy Assistant Attorney General at 202-531-6146 if we may provide additional assistance regarding this or any other matter.

Sincerely,

Helaine Greenfeld
Acting Assistant Attorney General

cc: The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary