



April 5, 2017

**VIA ELECTRONIC MAIL**

Nicole Barksdale-Perry  
Acting Senior Director of FOIA Operations  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW  
STOP-0655  
Washington, DC 20528-0655  
[foia@hq.dhs.gov](mailto:foia@hq.dhs.gov)

**Re: Expedited Freedom of Information Act Request**

Dear Ms. Barksdale-Perry:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations of the Department of Homeland Security (DHS), 6 C.F.R. Part 5, American Oversight makes the following request for records.

Building a “wall” along the entire U.S.–Mexico border was a central promise of President Donald Trump’s 2016 campaign.<sup>1</sup> Today, Secretary of Homeland Security John F. Kelly testified before the U.S. Senate Committee on Homeland Security and Governmental Affairs in a hearing titled,

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<sup>1</sup> Donald J. Trump (@realdonaldtrump), TWITTER (May 20, 2015, 4:22 PM), <https://twitter.com/realDonaldTrump/status/601120861882621955>; Donald J. Trump (@realdonaldtrump), TWITTER (Apr. 1, 2016, 5:49 PM), <https://twitter.com/realDonaldTrump/status/716019755682045952>; see also Amanda Holpuch, *Trump Re-ups Controversial Muslim Ban and Mexico Wall in First Campaign Ad*, THE GUARDIAN, Jan. 4, 2016, <https://www.theguardian.com/us-news/2016/jan/04/donald-trump-great-again-first-campaign-ad-isis-mexico-wall-muslim-ban>; Seema Mehta & Noah Bierman, *Campaign 2016 Updates: Donald Trump Continues Vow to Build Wall and Have Mexico Pay for It*, L.A. TIMES, Aug. 31, 2016, <http://www.latimes.com/nation/politics/trailguide/la-na-trailguide-updates-08312016-htmlstory.html>; Donald J. Trump (@realdonaldtrump), TWITTER (Oct. 8, 2014, 5:26 PM), <https://twitter.com/realDonaldTrump/status/519962130859429888>; Bob Woodward & Robert Costa, *Trump Reveals How He Would Force Mexico to Pay for Border Wall*, WASH. POST, Apr. 5, 2016, [https://www.washingtonpost.com/politics/trump-would-seek-to-block-money-transfers-to-force-mexico-to-fund-border-wall/2016/04/05/c0196314-fa7c-11e5-80e4-c381214de1a3\\_story.html?utm\\_term=.7d6d9e7aac34](https://www.washingtonpost.com/politics/trump-would-seek-to-block-money-transfers-to-force-mexico-to-fund-border-wall/2016/04/05/c0196314-fa7c-11e5-80e4-c381214de1a3_story.html?utm_term=.7d6d9e7aac34).



“Improving Border Security and Public Safety.”<sup>2</sup> Although Mr. Kelly spoke about a range of issues, the subject of Mr. Trump’s wall was addressed at length.<sup>3</sup> At one point, Mr. Kelly stated explicitly, “It’s unlikely that we will build a wall or physical barrier from sea to shining sea.”<sup>4</sup> Mr. Kelly also addressed the needs of the Border Patrol to effectively do their job, the partnership of the Mexican government in securing the border, and the challenges of a wall along a border that includes national parks and tribal land.<sup>5</sup> No answer could be provided on the cost of the wall, and the question of who would pay for the wall did not come up.<sup>6</sup>

Given that building the wall was the hallmark issue of Mr. Trump’s campaign and the cost estimates of its fulfillment range from \$15 billion<sup>7</sup> to \$66.9 billion,<sup>8</sup> Americans have a significant interest in keeping abreast of developments and cost as this project progresses.

### Requested Records

American Oversight requests that DHS produce the following within twenty business days and seeks expedited review of this request for the reasons identified below:

1. Any communications with non-government entities or parties relating to the “requirements analysis” to seek input from DHS field agents.<sup>9</sup>
2. Any briefing materials prepared for Mr. Kelly regarding his February 1, 2017, visit to McAllen, Texas.<sup>10</sup>

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<sup>2</sup> *Improving Border Security and Public Safety*, U.S. SENATE COMM. ON HOMELAND SEC. & GOVERNMENTAL AFF., <https://www.hsgac.senate.gov/hearings/improving-border-security-and-public-safety> (last visited Apr. 5, 2017).

<sup>3</sup> See *Border Security and Public Safety*, C-SPAN, Apr. 5, 2017, <https://www.c-span.org/video/?426451-1/homeland-security-secretary-john-kelly-testifies-border-security>.

<sup>4</sup> See *id.*; see also American Oversight (@weareoversight), TWITTER (Apr. 5, 2017, 10:01 AM), <https://twitter.com/weareoversight/status/849623141618003968>.

<sup>5</sup> See *Border Security and Public Safety*, *supra* note 3.

<sup>6</sup> See *id.*

<sup>7</sup> Kate Drew, *This Is What Trump’s Border Wall Could Cost*, CNBC (Jan. 26, 2017, 10:00 AM), <http://www.cnbc.com/2015/10/09/this-is-what-trumps-border-wall-could-cost-us.html>.

<sup>8</sup> Tal Kopan, *McCaskill to CBP: Will Wall Cost \$70 Billion?*, CNN (Mar. 28, 2017, 4:28 PM), <http://www.cnn.com/2017/03/28/politics/border-wall-total-cost-billions-mccaskill/>.

<sup>9</sup> Mr. Kelly referenced the “requirements analysis” in his prepared and delivered testimony at today’s hearing. See *Written Testimony of DHS Secretary John F. Kelly for a Senate Committee on Homeland Security and Governmental Affairs Hearing Titled “Improving Border Security and Public Safety,”* U.S. DEP’T OF HOMELAND SEC., Apr. 5, 2017, <https://www.dhs.gov/news/2017/04/05/written-testimony-dhs-secretary-kelly-senate-committee-homeland-security-and>; *Border Security and Public Safety*, *supra* note 3.

<sup>10</sup> See *Pool Report for Secretary Kelly’s Visit to Texas*, U.S. DEP’T OF HOMELAND SEC., Feb. 1, 2017, <https://www.dhs.gov/news/2017/02/01/pool-report-secretary-kellys-visit-texas>.

3. Any communications between Mr. Kelly, or anyone acting on his behalf, with President Enrique Peña Nieto, or anyone acting on his behalf, concerning the wall, fence, or other physical or virtual barrier, and who will pay for it.<sup>11</sup>
4. Any materials prepared for Mr. Kelly regarding the Tohono O’odham Nation as it relates to construction of a wall, fence, or other physical or virtual barrier on Tohono land.
5. Any communications from Mr. Kelly relating to the length of any proposed or planned physical barrier along the U.S.-Mexico border. Materials responsive to this request would include, but are not limited to, emails from Mr. Kelly stating that the wall will not be the entire length of the border.
6. Any recommendations to or final decisions of Mr. Kelly regarding the laws that will or will not be waived under Section 102 of the REAL ID Act.<sup>12</sup>

Please provide all responsive records from January 20, 2017, through the date the search is conducted.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If DHS uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.<sup>13</sup> **It is not adequate to rely on policies and procedures that require**

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<sup>11</sup> See *Readout of Secretary Kelly’s Trip to Guatemala and Mexico*, U.S. DEP’T OF HOMELAND SEC., Feb. 24, 2017, <https://www.dhs.gov/news/2017/02/24/readout-secretary-kellys-trip-guatemala-and-mexico>.

<sup>12</sup> See American Oversight (@weareoversight), TWITTER (Apr. 5, 2017, 11:34 AM), <https://twitter.com/weareoversight/status/849646466939461633>.

<sup>13</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.<sup>14</sup>

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered DHS’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.**<sup>15</sup> Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but DHS’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that DHS use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>16</sup> If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”<sup>17</sup> Moreover, the *Vaughn* index “must describe *each* document or

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<sup>14</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

<sup>15</sup> Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

<sup>16</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

<sup>17</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”<sup>18</sup> Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”<sup>19</sup>

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.<sup>20</sup> Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

**You should institute a preservation hold on information responsive to this request.** American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, DHS is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and DHS can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15<sup>th</sup> Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on rolling basis.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way.<sup>21</sup> Moreover, the request is primarily and fundamentally for non-commercial purposes.<sup>22</sup>

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding” of

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<sup>18</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>19</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

<sup>20</sup> *Mead Data Central*, 566 F.2d at 261.

<sup>21</sup> 6 C.F.R. § 5.11(k)(1)(i).

<sup>22</sup> 6 C.F.R. § 5.11(k)(1)(ii).

government.<sup>23</sup> The requested records will help American Oversight and the general public understand the progress and scope of this mammoth government project. Construction of Mr. Trump's wall resides at an intersection of significant areas of federal policy expertise, including border security, immigration, and procurement. Media coverage of internal DHS reports indicates that the wall could cost \$21.6 billion and take less than four years to procure and build a barrier extending over 1,250 miles.<sup>24</sup> A multi-billion-dollar construction project directed by the federal government and financed with U.S. tax dollars epitomizes a government operation and activity. The requested records about this specific government activity would meaningfully inform the public as to the logistics and scope of this project and significantly enhance the public's understanding of the priorities, constraints, and challenges in building a border wall on such an accelerated timeline.

This request is primarily and fundamentally for non-commercial purposes.<sup>25</sup> As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight will also make materials it gathers available on our public website and promote their availability on social media platforms, such as Facebook and Twitter.<sup>26</sup> This particular FOIA request is part of a public project conducted by American Oversight called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.<sup>27</sup>

Accordingly, American Oversight qualifies for a fee waiver.

### **Application for Expedited Processing**

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 6 C.F.R. § 5.5(e), American Oversight requests that DHS expedite the processing of this request.

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<sup>23</sup> 6 C.F.R. § 5.11(k)(1)(i); 6 C.F.R. § 5.11(k)(2)(i)-(iv).

<sup>24</sup> Julia Edwards Ainsley, *Exclusive - Trump Border 'Wall' to Cost \$21.6 Billion, Take 3.5 Years to Build: Internal Report*, REUTERS.COM (Feb. 9, 2017, 10:05 PM), <http://www.reuters.com/article/us-usa-trump-immigration-wall-exclusive-idUSKBN15O2ZN>. This may be a significant underestimate of costs, however. After a briefing with U.S. Customs and Border Protection, Senator Claire McCaskill calculated that the wall could cost more than \$66.9 billion. Kopan, *supra* note 8.

<sup>25</sup> 6 C.F.R. § 5.11(k)(1)(ii); 6 C.F.R. § 5.11(k)(3)(i)-(ii).

<sup>26</sup> American Oversight currently has over 10,400 page likes on Facebook, and over 10,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 4, 2017); American Oversight (@weareoversight), TWITTER (last visited Apr. 4, 2017).

<sup>27</sup> *Audit the Wall*, AMERICAN OVERSIGHT, [www.auditthewall.org](http://www.auditthewall.org).



I certify to be true and correct to the best of my knowledge and belief, that there is widespread and exceptional media interest and there exist possible questions about the government's integrity, which affect public confidence. News stories about the wall are published on a daily basis.<sup>28</sup> Media reports indicate funding for the wall could begin to be appropriated as soon as this month.<sup>29</sup> Despite not having secured funding, DHS has already issued multiple requests for proposals related to the wall.<sup>30</sup> The administration has been described as moving with "extreme haste" on the procurement process.<sup>31</sup> U.S. Customs and Border Protection has said that winning contractors selected to build wall prototypes will be selected by June 1.<sup>32</sup> Mr. Kelly has previously committed to

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<sup>28</sup> See, e.g., Associated Press, *Trump Calls for Cuts on Medical Research and Infrastructure to Pay for the Wall*, FORTUNE, Mar. 28, 2017, <http://fortune.com/2017/03/29/trump-budget-cuts-mexico-wall/>; Alicia A. Caldwell, *Trump's Border-Wall Proposal Faces Many Obstacles*, WASH. POST, Mar. 26, 2017, [https://www.washingtonpost.com/politics/congress/trumps-border-wall-proposal-faces-many-obstacles/2017/03/26/9c11e914-121d-11e7-bb16-269934184168\\_story.html?utm\\_term=.ebf7e99d69ad](https://www.washingtonpost.com/politics/congress/trumps-border-wall-proposal-faces-many-obstacles/2017/03/26/9c11e914-121d-11e7-bb16-269934184168_story.html?utm_term=.ebf7e99d69ad); Fox & Friends, *Bids to Build President Trump's Border Wall Due Today*, FOXNEWS INSIDER (Apr. 4, 2017, 7:59 AM), <http://insider.foxnews.com/2017/04/04/mexico-border-wall-bids-due-today-president-trump-illegal-immigration-policy>; Morning Edition, *Potential U.S.-Mexico Wall Builder Has Family in the U.S. Illegally*, NPR (Mar. 29, 2017, 5:07 AM), <http://www.npr.org/2017/03/29/521884308/potential-u-s-mexico-wall-builder-has-family-in-the-u-s-illegally>; William R. Rhodes, *U.S. Risks Alienating Mexico*, FIN. TIMES, Mar. 31, 2017, <https://www.ft.com/content/11d07970-1626-11e7-80f4-13e067d5072c>; Alex Veiga, *Who Would Gain from Trump's Border Wall?*, DETROIT NEWS, Apr. 1, 2017, <http://www.detroitnews.com/story/news/nation/2017/04/01/border-wall-trump/99907624/>.

<sup>29</sup> Manu Raju et al., *Trump Asking Congress, not Mexico, to Pay for Border Wall*, CNN.COM (Jan. 6, 2017, 2:11 PM), <http://www.cnn.com/2017/01/05/politics/border-wall-house-republicans-donald-trump-taxpayers/>.

<sup>30</sup> FED. BUS. OPPORTUNITIES, Solicitation No. 2017-JC-RT-0001, <https://www.fbo.gov/index?id=f61a85538f383ec3ed9cac3c9e21d6f1> (last visited Apr. 4, 2017); FED. BUS. OPPORTUNITIES, Solicitation No. HSBP1017R0022, [https://www.fbo.gov/index?s=opportunity&mode=form&id=6d883f07a72d10347a0304089f00f1eb&tab=core&\\_cview=1](https://www.fbo.gov/index?s=opportunity&mode=form&id=6d883f07a72d10347a0304089f00f1eb&tab=core&_cview=1) (last visited Apr. 4, 2017); FED. BUS. OPPORTUNITIES, Solicitation No. HSBP1017R0023, [https://www.fbo.gov/index?s=opportunity&mode=form&id=5eb4c7553ad9aeb62ad3ecf7f216ef3c&tab=core&\\_cview=1](https://www.fbo.gov/index?s=opportunity&mode=form&id=5eb4c7553ad9aeb62ad3ecf7f216ef3c&tab=core&_cview=1) (last visited Apr. 4, 2017). See, e.g., Dan Frosch, *Bidding Process for U.S. Border-Wall Construction Begins*, WALL ST. J., Mar. 18, 2017, <https://www.wsj.com/articles/bidding-process-for-u-s-border-wall-construction-begins-1489869241>; Margaret Hartmann, *Trump's 'Big, Beautiful' Border Wall Threatened by Political Reality*, NEW YORK (Mar. 10, 2017, 4:34 AM), <http://nymag.com/daily/intelligencer/2017/03/trumps-border-wall-threatened-by-political-reality.html>.

<sup>31</sup> Kriston Capps, *Almost 200 Firms Have Bid to Build Trump's Border Wall*, GOV'T EXEC., Feb. 28, 2017, <http://www.govexec.com/contracting/2017/02/almost-200-firms-have-bid-build-trumps-border-wall/135754/> ("The extreme haste of the government's procurement process is matched only by the breakneck speed with which the government plans to build the wall.").

<sup>32</sup> Elliot Spagat, *Border Wall Contractors Brace for Hostile Environment*, ASSOCIATED PRESS, Apr. 4, 2017, <https://apnews.com/0ebfb4522e734425b5e1ff60998da158/Border-wall-contractors-brace-for-hostile-environment>.

completing the wall by 2019.<sup>33</sup> Today’s testimony, however, seems to re-envision the scope of the project as something less than what Mr. Trump has previously advocated.<sup>34</sup> A multi-billion-dollar construction project directed and financed by the federal government using tax dollars on an accelerated timeline—but with no clear vision of what the deliverable will be—is a quintessential example of “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.”<sup>35</sup>

Accordingly, American Oversight’s request satisfies the criteria for expedition.

## Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with DHS on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Cerissa Cafasso at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.869.5246. Also, if American Oversight’s request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,



Austin R. Evers  
Executive Director  
American Oversight

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<sup>33</sup> Madeline Conway, *Kelly: I Hope Border Wall Will Be ‘Done Within the Next Two Years,’* POLITICO (Feb. 2, 2017, 12:16 PM), <http://www.politico.com/story/2017/02/john-kelly-border-wall-fox-interview-234543>; Adam K. Raymond, *DHS Head John Kelly Says He Only Needs Two Years to Build That Wall*, NEW YORK (Feb. 2, 2017, 4:55 PM), <http://nymag.com/daily/intelligencer/2017/02/john-kelly-says-he-only-needs-two-years-to-build-that-wall.html>.

<sup>34</sup> *Compare* American Oversight (@weareoversight), TWITTER (Apr. 5, 2017, 10:01 AM), <https://twitter.com/weareoversight/status/849623141618003968> (Mr. Kelly saying, “It’s unlikely that we will build a wall or physical barrier from sea to shining sea.”), *with* Donald J. Trump (@realdonaldtrump), TWITTER (Aug. 25, 2015, 8:39 AM), <https://twitter.com/realDonaldTrump/status/636155822326829056> (“Jeb Bush just talked about my border proposal to build a ‘fence.’ It’s not a fence, Jeb, it’s a WALL, and there’s a BIG difference!”).

<sup>35</sup> 6 C.F.R. § 5.5(e)(1)(iv).