



November 22, 2021

VIA EMAIL

Joseph R. Schaaf
Chief Counsel
Executive Office for Immigration Review
Department of Justice
5107 Leesburg Pike, Suite 2150
Falls Church, VA 22041
EOIR.FOIARequests@usdoj.gov

Re: Freedom of Information Act Request

Dear Chief Counsel Schaaf:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, 28 C.F.R. Part 16, American Oversight makes the following request for records.

In May 2020, the Trump administration hired former political appointee David Wetmore as Chief Appellate Immigration Judge and chairman of the Board of Immigration Appeals.¹ Shortly after, former Immigration and Customs Enforcement prosecutor Tracy Short was selected to serve as Chief Immigration Judge, the head of the Executive Office for Immigration Review's (EOIR) Office of the Chief Immigration Judge.²

American Oversight seeks records with the potential to shed light on the actions of Judge Wetmore and Judge Short while in their respective positions.

Requested Records

American Oversight requests that EOIR produce the following records within twenty business days:

1. All calendars or calendar entries for each of the following officials, including any calendars maintained on their behalf (*e.g.*, by an administrative assistant):

¹ Press Release, *Executive Office for Immigration Review Announces New Board of Immigration Appeals Chairman*, U.S. Department of Justice Executive Office for Immigration Review, May 29, 2020, <https://www.justice.gov/eoir/page/file/1291891/download>.

² Press Release, *EOIR Announces New Chief Immigration Judge*, U.S. Department of Justice Executive Office for Immigration Review, July 2, 2020, <https://www.justice.gov/eoir/page/file/1281596/download>.



- a. Chief Appellate Immigration Judge David H. Wetmore
- b. Chief Immigration Judge Tracy Short

American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars; we request the production of any calendar— paper or electronic, whether on government-issued or personal devices— used to track or coordinate how specified officials allocate their time on agency business.

The search should include any calendars associated with their individual email accounts, as well as any official calendars maintained for them, including by their administrative assistants or schedulers.

Please provide all responsive records from the date each custodian was hired to their respective positions through the date the search is conducted.

2. All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) between (a) Chief Appellate Immigration Judge David Wetmore or Chief Immigration Judge Tracy Short and (b) any entity or individual listed below.

- i. Federation for American Immigration Reform (including, but not limited to, any communications with an address ending in @fairus.org)
- ii. Immigration Reform Law Institute (including, but not limited to, any communications with an address ending in @irli.org)
- iii. Center for Immigration Studies (including, but not limited to, any communications with an address ending in @cis.org)
- iv. NumbersUSA (including, but not limited to, any communications with an address ending @numbersusa.com)
- v. The Remembrance Project (including, but not limited to, any communications with an address ending @theremembranceproject.org)
- vi. Kris Kobach (including, but not limited to, the email address kkobach@gmail.com)
- vii. Former Acting Department of Homeland Security (DHS) Secretary Chad Wolf, John Zadronzy, or anyone from America First Policy Institute, including anyone communicating from an email address ending in @americafirstpolicy.com
- viii. Stephen Miller, Gene Hamilton, or America First Legal (including, but not limited to, anyone communicating from an email address ending in @aflegal.org)
- ix. Former Immigrations and Customs Enforcement (ICE) Director Tom Homan
- x. Former Deputy DHS Secretary Ken Cuccinelli
- xi. Former Acting DHS General Counsel Chad Mizelle
- xii. Former Acting Commissioner of U.S. Customs and Border Protection (CBP) Mark Morgan

Please provide all responsive records from the date each EOIR custodian was hired to their respective positions through the date the search is conducted.

3. All decision memoranda, directives, or policy interpretations or guidance signed, approved, or otherwise adopted by the officials specified below. This request includes any document establishing, modifying, clarifying, or rescinding any EOIR policy, legal or policy interpretation, or practice, whether presented as a memorandum, letter, guidance document, or in any other form.

Please provide all responsive records from the date each EOIR custodian was hired to their respective positions through the date the search is conducted.

Specified Officials:

- i. David Wetmore (Chief Appellate Immigration Judge)
- ii. Tracy Short (Chief Immigration Judge)

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, 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. Moreover, the request is primarily and fundamentally for non-commercial purposes.

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 operations or activities of the government."³ The public has a significant interest in the actions of those holding leadership positions at EOIR impartiality of the EOIR headquarters, including in communications that may have occurred with partisan entities.⁴ Records with the potential to shed light on this issue would contribute significantly to public understanding of operations of the federal government, including whether and to what extent EOIR leadership has communicated with anti-immigration entities since being hired. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

³ 5 U.S.C. § 552(a)(4)(A)(iii).

⁴ Adam Edelman, *Durbin Wants More Info on Trump Appointees 'Burrowed' into Career Justice Dept. Jobs*, NBC News (Apr. 20, 2021, 2:00 PM), <https://www.nbcnews.com/politics/politics-news/durbin-wants-more-info-trump-appointees-burrowed-career-justice-dept-n1264671>; Felipe de la Hoz, *The Shadow Court Cementing Trump's Immigration Policy*, The Nation, June 30, 2020, <https://www.thenation.com/article/society/trump-immigration-bia/>.

This request is primarily and fundamentally for non-commercial purposes.⁵ 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 uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁶

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website.⁷ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the Trump Administration's contacts with Ukraine and analyses of those contacts;⁸ posting records and editorial content about the federal government's response to the Coronavirus pandemic;⁹ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;¹⁰ the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such

⁵ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁶ American Oversight currently has approximately 15,600 page likes on Facebook and 109,100 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited November 17, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited November 17, 2021).

⁷ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁸ *Trump Administration's Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

⁹ See generally *The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; see, e.g., *CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>.

¹⁰ See generally *Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

waivers;¹¹ and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹²

Accordingly, American Oversight qualifies for a fee waiver.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have 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 for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.¹³ It is not adequate to rely on policies and procedures that require officials to move such information to official systems

¹¹ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹² See generally *Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; see, e.g., *New Information on Pompeo's 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.

¹³ 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).

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, by intent or through negligence, failed to meet their obligations.¹⁴

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,¹⁵ and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- 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 a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. 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

¹⁴ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁵ 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>.

Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

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

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Taylor Stoneman at foia@americanoversight.org or (202) 848-1319. 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,

/s/ Taylor Stoneman
Taylor Stoneman
on behalf of
American Oversight