



August 25, 2017

**VIA ELECTRONIC MAIL**

Kathy Ray  
U.S. Department of Transportation  
1200 New Jersey Avenue SE  
W94-122  
Washington, DC 20590  
[ost.foia@dot.gov](mailto:ost.foia@dot.gov)

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

Dear Ms. Ray:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations of the Department of Transportation (DOT), 49 C.F.R. Part 7, American Oversight makes the following request for records.

On August 11, hundreds of people marched on the University of Virginia shouting slogans—such as “Jews will not replace us” and “blood and soil”—long-associated with racist and nationalist organizations like the Ku Klux Klan and Vanguard America.<sup>1</sup> The following afternoon a man who had been photographed that day brandishing white-nationalist symbols is alleged to have driven his car into a crowd of protesters demonstrating against the white nationalists, killing one woman, Heather Heyer, and injuring several others.<sup>2</sup> President Trump’s public statements responding to the incidents have raised questions about the president’s views of the white nationalists who marched in his name and said they were marching “to fulfill the promises of Donald Trump.”<sup>3</sup>

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<sup>1</sup> Hawes Spencer & Sheryl Gay Stolberg, *White Nationalists March on University of Virginia*, N.Y. TIMES, Aug. 11, 2017, <https://www.nytimes.com/2017/08/11/us/white-nationalists-rally-charlottesville-virginia.html>; Washington Post Staff, *Deconstructing the Symbols and Slogans Spotted in Charlottesville*, WASH. POST, Aug. 18, 2017, [https://www.washingtonpost.com/graphics/2017/local/charlottesville-videos/?utm\\_term=.e0eac844c8fc](https://www.washingtonpost.com/graphics/2017/local/charlottesville-videos/?utm_term=.e0eac844c8fc).

<sup>2</sup> Sheryl Gay Stolberg & Brian M. Rosenthal, *Man Charged After White Nationalist Rally in Charlottesville Ends in Deadly Violence*, N.Y. TIMES, Aug. 12, 2017, <https://www.nytimes.com/2017/08/12/us/charlottesville-protest-white-nationalist.html>.

<sup>3</sup> Rosie Gray, *Trump Defends White-Nationalist Protesters: ‘Some Very Fine People on Both Sides,’* THE ATLANTIC, Aug. 15, 2017, <https://www.theatlantic.com/politics/archive/2017/08/trump-defends-white-nationalist-protesters-some-very-fine-people-on-both-sides/537012/>; David Duke, *Charlottesville Rally Part of Effort to ‘Take Country Back,’* NBC NEWS, Aug. 12, 2017, <http://www.nbcnews.com/video/david-duke-says-he-was-at-charlottesville-rally-to-fulfill-promise-of-trump-1023420483642>.



Several agency heads were present at Mr. Trump's public comments,<sup>4</sup> and there have been media reports that the White House was coordinating talking points.<sup>5</sup> American Oversight seeks records related to how the administration is responding to the events in Charlottesville.

### Requested Records

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

1. All records reflecting talking points prepared by, in conjunction with, or in consultation with anyone from the Office of the White House for DOT to respond to media inquiries about the events in Charlottesville.
2. All emails belonging to (a) any non-career member of the Senior Executive Service (SES) in the Office of the Secretary, or career employee detailed to a position eligible to be filled by a non-career member of the SES, (b) any Schedule C employee in the Office of the Secretary, (c) any employee appointed by the President, with or without Senate confirmation (PAS and PA), or (d) any administratively appointed employee containing any of the following words or phrases:

- |   |                    |
|---|--------------------|
| a) 1488                                   | l) Breitbart       |
| b) 1488ers                                | m) C'ville         |
| c) 4chan                                  | n) Charlottesville |
| d) AFL-CIO                                | o) Confederacy     |
| e) Alliance for American<br>Manufacturing | p) Confederate     |
| f) Alt-left                               | q) Cville          |
| g) Alt-right                              | r) Duke            |
| h) Altleft                                | s) Heather         |
| i) Altright                               | t) Heil            |
| j) Antifa                                 | u) Heyer           |
| k) BLM                                    | v) Hitler          |
|   | w) Intel           |

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<sup>4</sup> Ben Jacobs & Oliver Laughland, *Charlottesville: Trump Reverts to Blaming Both Sides Including 'Violent Alt-Left,'* THE GUARDIAN (Aug. 16, 2017, 3:17 AM), <https://www.theguardian.com/us-news/2017/aug/15/donald-trump-press-conference-far-right-defends-charlottesville>; David Lauter, *Usually Quick to Comment, Trump Suddenly at a Loss for Words in Response to Charlottesville Violence,* L.A. TIMES (Aug. 12, 2017, 6:35 PM), <http://www.latimes.com/politics/la-na-pol-trump-silence-20170812-story.html>.

<sup>5</sup> Jim Acosta & Daniella Diaz, *Read the White House's Talking Points on Trump's News Conference,* CNNPOLITICS (Aug. 16, 2017, 10:36 AM), <http://www.cnn.com/2017/08/16/politics/charlottesville-white-house-surrogates-talking-points/index.html>.

- x) Jim Crow
- y) KKK
- z) Klan
- aa) Lee
- bb) Merck
- cc) Nazi
- dd) Neo-nazi
- ee) Neonazi
- ff) Pepe
- gg) Pizzagate
- hh) Pride
- ii) Rebel

- jj) Remove Kebab
- kk) Shlomo Shekelburg
- ll) Spencer
- mm) Statue
- nn) Under Armor
- oo) UVA
- pp) Virginia
- qq) Wahoowa
- rr) Walmart
- ss) White nationalist
- tt) White supremacist

3. All records reflecting off-the-record communications between DOT's public affairs office and any member of the media regarding the events in Charlottesville, the president's response, the administration's response, the secretary's response, or DOT's response.
4. All records reflecting communications between anyone in the Office of the Secretary and a non-.gov email address regarding the events in Charlottesville, the president's response, the administration's response, the secretary's response, or DOT's response.

Please provide all responsive records from August 11, 2017, to 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 DOT 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>6</sup> **It is not adequate to rely on policies and procedures that require 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>7</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 DOT’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>8</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 DOT’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that DOT 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.**

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<sup>6</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).

<sup>7</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>8</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>.

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>9</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>10</sup> Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”<sup>11</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>12</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>13</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, DOT 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 DOT 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 a rolling basis.

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<sup>9</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

<sup>10</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>11</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis in original).

<sup>12</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>13</sup> *Mead Data Central*, 566 F.2d at 261.

## Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 49 C.F.R. §§ 7.42(i), 7.43(c), 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>14</sup> Moreover, the request is primarily and fundamentally for non-commercial purposes.<sup>15</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 government operations and activities.<sup>16</sup> The events in Charlottesville beginning the evening of August 11, 2017, have dominated the national conversation since they occurred.<sup>17</sup> Of equal discussion has been the president’s response.<sup>18</sup> Several agency heads have been asked to speak publicly about what happened in Charlottesville;<sup>19</sup> the Department of Justice has opened an

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<sup>14</sup> 49 C.F.R. § 7.43(c).

<sup>15</sup> *Id.*

<sup>16</sup> 49 C.F.R. § 7.43(c)(1)-(4).

<sup>17</sup> See Gray, *supra* note 3; NBC NEWS, *supra* note 3; Spencer & Stolberg, *supra* note 1; Stolberg & Rosenthal, *supra* note 2.

<sup>18</sup> See Jacobs & Laughland, *supra* note 4; Lauter, *supra* note 4

<sup>19</sup> See Emma Brown, *DeVos on Charlottesville: The Views of Neo-Nazis and White Nationalists Are ‘Cowardly, Hateful and Just Plain Wrong,’* WASH. POST, Aug. 17, 2017, [https://www.washingtonpost.com/news/education/wp/2017/08/17/devos-on-charlottesville-the-views-of-neo-nazis-and-white-nationalists-are-cowardly-hateful-and-just-plain-wrong/?utm\\_term=.3a4a880bbc06](https://www.washingtonpost.com/news/education/wp/2017/08/17/devos-on-charlottesville-the-views-of-neo-nazis-and-white-nationalists-are-cowardly-hateful-and-just-plain-wrong/?utm_term=.3a4a880bbc06); CNN Wire, *Cabinet’s Silence on Trump’s Comments Disturbing to Agency Employees*, CBS 6 NEWS (Aug. 17, 2017, 9:57 PM), <http://wtvr.com/2017/08/17/cabinets-silence-on-trumps-comments-disturbing-to-agency-employees/>; Max Greenwood, *Haley: ‘We All Have a Responsibility to Stand Up and Condemn’ Hate*, THE HILL (Aug. 19, 2017, 1:20 PM), <http://thehill.com/homenews/administration/347212-haley-we-all-have-a-responsibility-to-stand-up-and-condemn-hate>; Maggie Haberman, *Steven Mnuchin Defends Trump’s Reaction to Charlottesville Violence*, N.Y. TIMES, Aug. 20, 2017, <https://www.nytimes.com/2017/08/20/us/politics/steven-mnuchin-trump-reaction-to-charlottesville-violence.html>; Dan Lamothe, *Veterans Affairs Secretary Says He’s ‘Outraged’ by What He’s Seen from Nazis and White Supremacists*, WASH. POST, Aug. 16, 2017, [https://www.washingtonpost.com/news/checkpoint/wp/2017/08/16/veterans-affairs-secretary-says-hes-outraged-by-what-hes-seen-from-nazis-and-white-supremacists/?utm\\_term=.3d10f0ea26b4](https://www.washingtonpost.com/news/checkpoint/wp/2017/08/16/veterans-affairs-secretary-says-hes-outraged-by-what-hes-seen-from-nazis-and-white-supremacists/?utm_term=.3d10f0ea26b4); Carol Morello, *Tillerson: Hate Is Not an American Value*, WASH. POST, Aug. 18, 2017, [https://www.washingtonpost.com/world/national-security/tillerson-hate-is-not-an-american-value/2017/08/18/ce8f42a2-842c-11e7-ab27-1a21a8e006ab\\_story.html?utm\\_term=.ba67d8c40b84](https://www.washingtonpost.com/world/national-security/tillerson-hate-is-not-an-american-value/2017/08/18/ce8f42a2-842c-11e7-ab27-1a21a8e006ab_story.html?utm_term=.ba67d8c40b84); Megan O’Matz, *Ben Carson Downplays Trump Controversy on Charlottesville*, SUN SENTINEL (Aug. 16, 2017, 2:45 PM), <http://www.sun-sentinel.com/news/nationworld/fl-reg-ben-carson>

investigation;<sup>20</sup> presidential advisory boards are disbanding;<sup>21</sup> and the White House is coordinating talking points to answer media inquiries about the events.<sup>22</sup> The records responsive to this request will inform the public how the executive branch is conducting these government operations, discussing Charlottesville, and preparing agency heads to discuss this news of significant public interest.

This request is primarily and fundamentally for non-commercial purposes.<sup>23</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 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 our public website and promote their availability on social media platforms, such as Facebook and Twitter.<sup>24</sup> American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney, American Oversight promptly posted the records to its website<sup>25</sup> and published an analysis of what the records reflected about DOJ's process for ethics

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[charlottesville-20170816-story.html](#); Caroline Strange, *Senators Send Letter to Dept. of Homeland Security With Questions About Domestic Terrorism*, MY CHAMPLAIN VALLEY (Aug. 18, 2017, 5:47 PM), <http://www.mychamplainvalley.com/news/senators-send-letter-to-dept-of-homeland-security-with-questions-about-domestic-terrorism/793590016>; Betsy Woodruff, *Sessions: DOJ's 'Top People' to Investigate Charlottesville*, THE DAILY BEAST (Aug. 14, 2017, 9:08 AM), <http://www.thedailybeast.com/sessions-doj-s-top-people-to-investigate-charlottesville>; Melanie Zanona, *Chao Comes Under Fire After Trump's Charlottesville Response*, THE HILL (Aug. 18, 2017, 4:12 PM), <http://thehill.com/policy/transportation/347150-chao-comes-under-fire-after-trumps-charlottesville-response>.

<sup>20</sup> Charlie Savage, *A Hate Crime? How the Charlottesville Car Attack May Become a Federal Case*, N.Y. TIMES, Aug. 13, 2017, <https://www.nytimes.com/2017/08/13/us/politics/charlottesville-sessions-justice-department.html>.

<sup>21</sup> Dan Diamond, *Trump Dumps CEOs Before More Could Abandon Him*, POLITICO (Aug. 16, 2017, 5:07 PM), <http://www.politico.com/story/2017/08/16/inge-thulin-3m-quits-trump-manufacturing-council-241705>.

<sup>22</sup> See Acosta & Diaz, *supra* note 5.

<sup>23</sup> 49 C.F.R. § 7.43(c)(5).

<sup>24</sup> American Oversight currently has approximately 11,200 page likes on Facebook, and 33,700 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited August 21, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited August 21, 2017).

<sup>25</sup> *Vetting the Nominees: Solicitor General Nominee Noel Francisco*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/our-actions/vetting-nominees-solicitor-general-nominee-noel-francisco>.

waivers.<sup>26</sup> Additionally, American Oversight has a project 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) and 49 C.F.R. § 7.31(c)(1)(ii), American Oversight requests that the DOT expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief, that there is an urgent need to inform the public about the federal government activity that is the subject of this request. The information American Oversight seeks concerns “a matter of a current exigency to the American public.”<sup>28</sup> The events in Charlottesville and the government’s response have been the subject of significant debate about the role of the federal government in stemming the rise of a white-nationalist movement that openly identifies Mr. Trump as its leader.<sup>29</sup> The records responsive to

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<sup>26</sup> *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/news/francisco-travel-ban-learned-doj-documents>.

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

<sup>28</sup> *Al-Fayed v. Cent. Intelligence Agency*, 254 F.3d 300, 310 (D.C. Cir. 2001) (quoting H.R. Rep. No. 104-795, at 26 (1996), *reprinted in* 1996 U.S.C.C.A.N. 3448, 3469).

<sup>29</sup> See Acosta & Diaz, *supra* note 5; Brown, *supra* note 19; CNN Wire, *supra* note 19; Zachary Cohen, *CBS Poll: Most Americans Disapprove of Trump's Charlottesville Response*, CNNPOLITICS (Aug. 17, 2017, 12:10 PM), <http://www.cnn.com/2017/08/17/politics/trump-poll-cbs-charlottesville-north-korea/index.html>; Summer Concepcion, *Gallup: Trump Approval Hits All-Time Low Amid Carnage in Charlottesville*, TPM (Aug. 14, 2017, 2:05 PM), <http://talkingpointsmemo.com/livewire/gallup-trump-rating-all-time-low-charlottesville>; Josh Delk, *Poll: Majority Says Trump's Charlottesville Response 'Not Strong Enough'*, THE HILL (Aug. 16, 2017, 5:43 PM), <http://thehill.com/homenews/administration/346875-poll-majority-thinks-trumps-charlottesville-statements-not-strong>; Diamond, *supra* note 21; Jessica Estepa, *Poll: Majority Believe President Trump's Response to Charlottesville Wasn't Strong Enough*, USA TODAY (Aug. 16, 2017, 5:48 PM), <https://www.usatoday.com/story/news/politics/onpolitics/2017/08/16/poll-majority-believe-president-trump-response-charlottesville-was-not-strong-enough/574097001/>; Gray, *supra* note 3; Greenwood, *supra* note 19; Haberman, *supra* note 19; Jacobs & Laugland, *supra* note 4; Lamothe, *supra* note 19; Lauter, *supra* note 4; Dara Lind, *Trump Says He's Committed to Fighting White Supremacy. His Policies Say Otherwise.*, VOX (Aug. 14, 2017, 2:40 PM), <https://www.vox.com/policy-and-politics/2017/8/14/16144598/trump-white-terrorism>; Domenico Montanaro, *Poll: Majority Believes Trump's Response to Charlottesville Hasn't Been Strong Enough*, NPR (Aug. 16, 2017, 4:00 PM), <http://www.npr.org/2017/08/16/543957964/poll-majority-believe-trump-s-response-to-charlottesville-hasn-t-been-strong-eno>; Morello, *supra* note 19; NBC NEWS, *supra* note 3; O'Matz, *supra* note 19; Savage, *supra* note 20; Spencer & Stolberg, *supra*



this request are necessary for the public to be able to participate as informed citizens in the debate regarding how the Trump administration responds to acts of racial hatred and what the federal government can do to prevent future acts of domestic terror. A denial of expedition would diminish the value of this information. The president continues to refer to Charlottesville and attempt to reframe his response and the media's coverage of his response.<sup>30</sup> Mr. Trump's comments have drawn rebuke not only domestically<sup>31</sup> but also from the United Nations as well as leaders in Britain and Germany.<sup>32</sup> These records are necessary to clarify the record of the administration's actions in the days immediately following the events in Charlottesville.

I further certify that American Oversight is primarily engaged in disseminating information to the public. 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. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,<sup>33</sup> American Oversight "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience."<sup>34</sup> American Oversight uses the information gathered, and its analysis of it, to

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note 1; Stolberg & Rosenthal, *supra* note 2; Strange, *supra* note 19; Paul Waldman, *It's White Nationalism Week in the Trump Administration*, THE WEEK, Aug. 3, 2017, <http://theweek.com/articles/715980/white-nationalism-week-trump-administration>; Washington Post Staff, *supra* note 1; *Trump's Leadership, Temperament Questioned in New Poll Results*, WASH. POST (Aug. 17, 2017, 10:38 AM), [https://www.washingtonpost.com/video/politics/trumps-leadership-temperament-questioned-in-new-poll-results/2017/04/17/16be49c6-2387-11e7-928e-3624539060e8\\_video.html?utm\\_term=.520316107ecb](https://www.washingtonpost.com/video/politics/trumps-leadership-temperament-questioned-in-new-poll-results/2017/04/17/16be49c6-2387-11e7-928e-3624539060e8_video.html?utm_term=.520316107ecb); Woodruff, *supra* note 19; Zanova, *supra* note 19.

<sup>30</sup> Jeff Mason & Keith Coffman, *Trump Unshackled: President Defends Charlottesville Response at Raucous Rally*, REUTERS (Aug. 22, 2017, 6:17 AM), <https://www.reuters.com/article/us-usa-trump-idUSKCN1B211U?il=0>.

<sup>31</sup> See Russell Berman, *Republicans Rebuke Trump All Over Again*, THE ATLANTIC, Aug. 15, 2017, <https://www.theatlantic.com/politics/archive/2017/08/republicans-rebuke-trump-all-over-again-white-supremacy-charlottesville/537033/>; Elizabeth Elizalde, *Rabbis Ditch Call with Trump over Charlottesville Remarks*, DAILY NEWS (Aug. 23, 2017, 10:04 PM), <http://www.nydailynews.com/news/politics/rabbis-ditch-call-trump-charlottesville-remarks-article-1.3437314>; David Gelles et al., *Rift Widens Between Trump and Business Leaders*, N.Y. TIMES, Aug. 15, 2017, <https://www.nytimes.com/2017/08/15/business/trump-councils-ceos.html>; K.K. Rebecca Lai et al., *The People in Trump's Orbit Who Rebuked Him After Charlottesville*, N.Y. TIMES, Aug. 22, 2017, <https://www.nytimes.com/interactive/2017/08/22/us/politics/trump-rebuked-charlottesville.html>.

<sup>32</sup> Sewell Chan & Nick Cumming-Bruce, *U.N. Panel Condemns Trump's Response to Charlottesville Violence*, N.Y. TIMES, Aug. 23, 2017, <https://www.nytimes.com/2017/08/23/world/un-trump-racism-charlottesville.html>.

<sup>33</sup> See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

<sup>34</sup> *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

educate the public through reports, press releases, and other media. American Oversight also makes materials it gathers available on its public website and promote their availability on social media platforms, such as Facebook and Twitter.<sup>35</sup> American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney, American Oversight promptly posted the records to its website<sup>36</sup> and published an analysis of what the records reflected about DOJ's process for ethics waivers.<sup>37</sup> Additionally, American Oversight has a project 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>38</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 DOT 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>35</sup> American Oversight currently has approximately 11,200 page likes on Facebook, and 33,700 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited August 21, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited August 21, 2017).

<sup>36</sup> *Vetting the Nominees: Solicitor General Nominee Noel Francisco*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/our-actions/vetting-nominees-solicitor-general-nominee-noel-francisco>.

<sup>37</sup> *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/news/francisco-travel-ban-learned-doj-documents>.

<sup>38</sup> *Audit the Wall*, AMERICAN OVERSIGHT, [www.auditthewall.org](http://www.auditthewall.org).