



June 25, 2020

VIA EMAIL

U.S. Department of Defense  
OSD/JS FOIA Requester Service Center  
Office of Freedom of Information  
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Washington, DC 20301-1155  
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**Re: Expedited Freedom of Information Act Request**

Dear FOIA Officers:

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

The outbreak of the novel coronavirus, SARS-CoV-2, and the disease it causes, COVID-19, has been declared a public health emergency at both the national and international levels.<sup>1</sup> Since late 2019, the virus has spread across the globe, sickened millions of people, and resulted in over 470,000 deaths.<sup>2</sup> The United States currently has more coronavirus cases than any other country, with over two million cases and 120,000 deaths.<sup>3</sup> Although the White House has downplayed the dangers of the pandemic<sup>4</sup> and some state and local governments have begun to lift social distancing restrictions, it is far from clear that the United States currently has the pandemic under control.<sup>5</sup> In the last week, dozens of states

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<sup>1</sup> *Coronavirus Disease 2019 (COVID-19) Situation Summary*, Ctrs. for Disease Control & Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>.

<sup>2</sup> *Coronavirus Map: Tracking the Global Outbreak*, N.Y. Times (June 23, 2020, 7:52 AM), <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>.

<sup>3</sup> *Id.*

<sup>4</sup> *See, e.g., Betsy Klein, Pence Tries to Declare Coronavirus Over as Trump Pushes Reopening and Campaigning*, CNN (June 17, 2020, 11:07 AM), <https://www.cnn.com/2020/06/16/politics/mike-pence-coronavirus-reopen-campaign/index.html>.

<sup>5</sup> *See, e.g. Derek Hawkins, As Coronavirus Infections Surge Nationwide, 21 States See Increase in Average Daily New Cases*, Wash. Post (June 13, 2020, 10:06 PM), <https://www.washingtonpost.com/nation/2020/06/13/coronavirus-live-updates-us/>; Audrey McNamara, *Fauci Says "We're Still in a First Wave" of Coronavirus Pandemic*, CBS News (June 17, 2020, 2:45 PM), <https://www.cbsnews.com/news/coronavirus-first-wave-fauci/>.



have reported increasing numbers of new cases and hospitalizations,<sup>6</sup> elected officials in some localities are having to implement new precautions,<sup>7</sup> and public health officials continue to warn of a potentially large spike of cases in the fall or winter.<sup>8</sup>

American Oversight seeks records with the potential to shed light on the federal government's continued management of this public health emergency.

### **Requested Records**

American Oversight seeks expedited review of this request for the reasons identified below and requests that your agency produce the following records as soon as practicable, and at least within twenty business days:

1. The "V.I.P. Update" spreadsheet reportedly used by officials and/or private sector volunteers working with the cross-agency Supply Chain Stabilization Task Force, to track "tips from political allies and associates of President Trump."<sup>9</sup>

Public reporting indicates that individuals working with or on the cross-agency Supply Chain Stabilization Task Force ("the Task Force"), to obtain equipment needed to respond to the pandemic were instructed to "prioritize" information tracked in the above-described spreadsheet. American Oversight submits this request to the Department of Defense because Rear Adm. John Polowczyk, vice director of logistics for the Joint Chiefs of Staff, has been the head of the Task Force, including during the time when the "V.I.P. Update" spreadsheet is reported to have been in use.

Please provide all responsive records from March 13, 2020, through the date of the search.

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<sup>6</sup> Chris Canipe & Lisa Shumaker, *New U.S. COVID-19 Cases Surge 25% Last Week; Arizona, Florida and Texas Set Records*, Reuters (June 23, 2020, 4:12 AM), <https://www.reuters.com/article/us-health-coronavirus-usa-trends/new-us-covid-19-cases-surge-25-last-week-arizona-florida-and-texas-set-records-idUSKBN23U1L7>.

<sup>7</sup> Lateshia Beachum, *State and City Leaders in U.S. Respond to Coronavirus Surge with New Rules, Dire Warnings*, Wash. Post (June 22, 2020, 11:41 PM), <https://www.washingtonpost.com/nation/2020/06/22/coronavirus-live-updates-us/>.

<sup>8</sup> See, e.g. *Top Health Experts Paint Bleak Picture of Pandemic*, N.Y. Times, May 13, 2020, <https://www.nytimes.com/2020/05/12/us/coronavirus-live-news-updates.html>; Len Strazewski, *Harvard epidemiologist: Beware COVID-19's second wave this fall*, American Medical Association, May 8, 2020, <https://www.ama-assn.org/delivering-care/public-health/harvard-epidemiologist-beware-covid-19-s-second-wave-fall>.

<sup>9</sup> If further identifying information is needed, please see Nicholas Confessore, *How Kushner's Volunteer Force Led a Fumbling Hunt for Medical Supplies*, N.Y. Times, May 10, 2020, <https://www.nytimes.com/2020/05/05/us/jared-kushner-fema-coronavirus.html?referringSource=articleShare>.

2. Records used to track information provided by associates, allies, or acquaintances of President Trump or Jared Kushner to officials and/or volunteers, who have been involved in the cross-agency Supply Chain Stabilization Task Force.

This request would include but is not limited to the “V.I.P. Update” spreadsheet described above. To be clear, American Oversight requests any and all records used to track “tips” or other information, including solicitations or bids, from officials known to be associated with the President or Mr. Kushner.

At a minimum, a reasonable search would include searching the records of the cross-agency Supply Chain Stabilization Task Force. Additionally, a reasonable search would include making a custodial inquiry of the leaders of the Supply Stabilization Chain Task Force, including officials working in the office of Rear Adm. John Polowczyk. If additional information is needed, American Oversight is available to help craft a reasonable search.

Please provide all responsive records from March 13, 2020, through the date of the search.

### **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.”<sup>10</sup> The public has a significant interest in the federal government’s response to strains on the nation’s supply chain,<sup>11</sup> especially in light of increasing COVID-19 cases and the possibility of a deadly second wave of the pandemic. Records with the potential to shed light on this matter

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<sup>10</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>11</sup> See, e.g., Martha Mendoza & Kimberly Kruesi, *Nurses Push Back on Pressure to Work Without Right Equipment*, Wash. Post (Apr. 16, 2020, 12:22 AM), [https://www.washingtonpost.com/politics/nurses-suspended-for-refusing-covid-19-care-without-n95-mask/2020/04/16/dc0428ce-7f99-11ea-84c2-0792d8591911\\_story.html](https://www.washingtonpost.com/politics/nurses-suspended-for-refusing-covid-19-care-without-n95-mask/2020/04/16/dc0428ce-7f99-11ea-84c2-0792d8591911_story.html); Martin Kaste, *Ventilator Shortages Loom As States Ponder Rules For Rationing*, NPR (Apr. 3, 2020, 5:00 AM), <https://www.npr.org/sections/health-shots/2020/04/03/826082727/ventilator-shortages-loom-as-states-ponder-rules-for-rationing>.

would contribute significantly to public understanding of operations of the federal government, including clarifying the Supply Chain Stabilization Task Force's decision-making around how to manage the nation's supply chain<sup>12</sup> and illuminating the influence politically-well connected individuals may have in those decisions.<sup>13</sup> 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.

This request is primarily and fundamentally for non-commercial purposes.<sup>14</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 its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>15</sup>

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.<sup>16</sup> Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include 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 waivers;<sup>17</sup> 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

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<sup>12</sup> See, e.g. Anita Kumar & Gavin Bade, *States Still Baffled Over How to Get Coronavirus Supplies from Trump*, Politico (Apr. 13, 2020, 7:02 AM), <https://www.politico.com/states/florida/story/2020/04/13/states-still-baffled-over-how-to-get-coronavirus-supplies-from-trump-1275083>.

<sup>13</sup> See, e.g. Confessore, *supra* note 10.

<sup>14</sup> See 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>15</sup> American Oversight currently has approximately 15,500 page likes on Facebook and 104,000 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited June 23, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited June 23, 2020).

<sup>16</sup> News, American Oversight, <https://www.americanoversight.org/blog>.

<sup>17</sup> *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>.

reveal;<sup>18</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>19</sup> posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;<sup>20</sup> and posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.<sup>21</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 your agency's regulations, 32 C.F.R. Part 286.8(e), American Oversight requests that your agency expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that the information requested is urgently needed in order to inform the public concerning actual or alleged government activity, and American Oversight is primarily engaged in disseminating the information it received from public records requests to the public.

Recent reporting demonstrates that there is clearly an urgent need to inform the public regarding the matters that are the subject of American Oversight's FOIA request: how the federal government is responding to the nation's need for supplies and, more specifically, what effect politically-well connected individuals may have had on the Supply Chain Stabilization Task Force's decision-making.

First, American Oversight has requested records with the potential to shed light on the steps the administration has taken to respond to the novel coronavirus outbreak, which has resulted in a major public health emergency. Because the virus has already killed over a

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<sup>18</sup> 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>.

<sup>19</sup> *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, American Oversight, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

<sup>20</sup> *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, American Oversight, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

<sup>21</sup> *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, American Oversight, <https://www.americanoversight.org/sessions-letter>.

hundred thousand people in the United States<sup>22</sup> and is on the rise in over 20 states,<sup>23</sup> there is plainly an urgent need to inform the public about how officials tasked with stabilizing the nation's supply chain have been and are continuing to respond to the virus. Widely-reported confusion amongst governors, legislators, and healthcare leaders about how to obtain needed supplies,<sup>24</sup> has not been clarified and policy and healthcare leaders remain concerned about their ability to obtain needed equipment. The widespread and exceptional media interest on coronavirus demonstrates that the public urgently needs information about the federal government's efforts and policies concerning the subject matter of this request.<sup>25</sup>

Moreover, 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 Supply Chain Stabilization Task Force's work. American Oversight's request seeks information that can shed light on the extent that politically well-connected individuals or companies are attempting to influence the Task Force's decision-making. Public reporting suggests that well-connected "V.I.P"'s may be having a large effect on federal officials' efforts to stabilize the nation's supply chain.<sup>26</sup> At a time when American lives depend upon the work the of Taskforce, the public,

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<sup>22</sup> *Coronavirus Map*, *supra* note 2.

<sup>23</sup> *See, e.g. supra* note 5.

<sup>24</sup> *See, e.g.,* Toluse Olorunnipa, et al., *Governors Plead for Medical Equipment From Federal Stockpile Plagued by Shortages and Confusion*, Wash. Post (Mar. 31, 2020, 3:39 PM), [https://www.washingtonpost.com/politics/governors-plead-for-medical-equipment-from-federal-stockpile-plagued-by-shortages-and-confusion/2020/03/31/18aadda0-728d-11ea-87da-77a8136c1a6d\\_story.html](https://www.washingtonpost.com/politics/governors-plead-for-medical-equipment-from-federal-stockpile-plagued-by-shortages-and-confusion/2020/03/31/18aadda0-728d-11ea-87da-77a8136c1a6d_story.html); Anita Kumar & Gavin Bade, *States Still Baffled Over How to Get Coronavirus Supplies from Trump*, Politico (Apr. 13, 2020, 7:02 AM), <https://www.politico.com/states/florida/story/2020/04/13/states-still-baffled-over-how-to-get-coronavirus-supplies-from-trump-1275083>; Noam N. Levey, *Hospitals Say Feds are Seizing Masks and Other Coronavirus Supplies Without a Word*, L.A. Times (Apr. 7, 2020, 2:97 PM), <https://www.latimes.com/politics/story/2020-04-07/hospitals-washington-seize-coronavirus-supplies>.

<sup>25</sup> Hannah Knowles, et al., *Live updates: Arizona Reports Record-high New Cases, Jump in Hospitalizations as Trump Visits*, Wash. Post (June 23, 2020, 12:42 PM EST), <https://www.washingtonpost.com/nation/2020/06/23/coronavirus-live-updates-us/>; Priscilla Alvarez, et al., *Live Updates: Trump Administration Races to Restock Supplies Before Possible Second Wave of Covid-19*, CNN (June 23, 2020, 10:37 AM), <https://www.cnn.com/world/live-news/coronavirus-pandemic-06-23-20-intl/index.html>.

<sup>26</sup> *See, e.g.* Confessore, *supra* note 10; J. David McSwane & Yeganeh Torbati, *The White House Pushed FEMA To Give its Biggest Coronavirus Contract to a Company That Never Had to Bid*, ProPublica (Apr. 10, 2020, 1:49 PM), [https://www.propublica.org/article/the-white-house-pushed-fema-to-give-its-biggest-coronavirus-contract-to-a-company-that-never-had-to-bid/amp?\\_twitter\\_impression=true](https://www.propublica.org/article/the-white-house-pushed-fema-to-give-its-biggest-coronavirus-contract-to-a-company-that-never-had-to-bid/amp?_twitter_impression=true).

including policy makers and public health leaders, urgently need to know what influences are shaping the Task Force's decisions.

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>27</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>28</sup> American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and 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.<sup>29</sup> As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.<sup>30</sup>

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

### **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:

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<sup>27</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>28</sup> *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

<sup>29</sup> American Oversight currently has approximately 15,500 page likes on Facebook and 104,000 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited June 23, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited June 23, 2020).

<sup>30</sup> See generally *News*, American Oversight, <https://www.americanoversight.org/blog>; see, e.g., *DOJ Civil Division Response Noel Francisco Compliance*, 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>; *Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; *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>; *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, American Oversight, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use>

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- 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.<sup>31</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, by intent or through negligence, failed to meet their obligations.<sup>32</sup>
- 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,<sup>33</sup> 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.

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[his-influence-at-hud-to-help-his-business](#); *Investigating the Trump Administration’s Efforts to Sell Nuclear Technology to Saudi Arabia*, American Oversight, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>; *Sessions’ Letter Shows DOJ Acted On Trump’s Authoritarian Demand to Investigate Clinton*, American Oversight, <https://www.americanoversight.org/sessions-letter>.

<sup>31</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>32</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).

<sup>33</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>.



- 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 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 Megan Field at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.897.2465. 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