

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DEMOCRACY FORWARD FOUNDATION
1333 H St. NW
Washington, DC 20005,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Ave. NW
Washington, DC 20530,

Defendant.

Case No. 18-cv-376

COMPLAINT

1. Plaintiff Democracy Forward Foundation brings this action against Defendant the United States Department of Justice (the “DOJ”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (the “FOIA”). Defendant has failed to sufficiently respond to Plaintiff’s request for communications and records related to, among other things: DOJ’s decision to rescind an August 18, 2016 memorandum authored by then Deputy Attorney General Sally Yates—the “Yates Memo”¹—that directed the Bureau of Prisons to reduce the role of private prisons in the federal prison system; contracts for private prison services that were established, renewed, or terminated following rescission of the Yates Memo; and any DOJ assessments of the federal correctional system’s future needs for private prison services.

2. The records Plaintiff has requested are of significant public importance. In rescinding the Yates Memo, through a February 21, 2017 memorandum from Attorney General

¹ Deputy Att’y Gen. Sally Yates, U.S. Dep’t of Justice, *Reducing Our Use of Private Prisons* (Aug. 18, 2016), <https://www.justice.gov/archives/opa/file/886311/download>.

Jefferson B. Sessions III sent to the Acting Director of the Federal Bureau of Prisons (the “BOP” or the “Bureau”)—the “Sessions Memo”—Defendant claimed that restrictions on using private prisons “impaired the Bureau’s ability to meet the future needs of the federal correctional system” and “direct[ed] the Bureau to return to its previous approach.”² The Sessions Memo provided no substantive explanation or support for the claim that private prisons were required for the federal correctional system to operate, nor did it address safety and security concerns with regard to private prison facilities that the Yates Memo identified.

3. Nonetheless, BOP is proceeding apace. A January 24, 2018 memorandum for BOP Chief Executive Officers from Frank Lara, the Assistant Director of the Bureau’s Correctional Programs Division, requires the identification of inmates for potential transfer to private prison facilities.³

4. Defendant’s abrupt pivot toward private prisons is occurring as the private prison industry is providing substantial support for President Donald J. Trump’s political and personal endeavors. The industry helped finance President Trump’s campaign and inaugural festivities, and it continues to patronize his business enterprises.

5. Plaintiff submitted a FOIA request to the DOJ in order to examine, and educate the public about, significant questions concerning the motivations behind the Session Memo’s issuance. The DOJ (including its various subcomponents) has failed to sufficiently respond to

² Att’y Gen. Jefferson B. Sessions III, U.S. Dep’t of Justice, *Rescission of Memorandum on Use of Private Prisons* (Feb. 21, 2017), https://www.bop.gov/resources/news/pdfs/20170224_doj_memo.pdf.

³ Frank Lara, U.S. Dep’t of Justice, Fed. Bureau of Prisons, *Increasing Population Levels in Private Contract Facilities* (Jan. 24, 2018) (the “Lara Memo”), https://admin.govexec.com/media/gbc/docs/pdfs_edit/012518privateprisons.pdf.

Plaintiff's request. Plaintiff therefore respectfully requests that the Court compel Defendant to comply with the FOIA.

JURISDICTION AND VENUE

6. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

7. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).

PARTIES

8. Plaintiff Democracy Forward Foundation is a not-for-profit organization incorporated under the laws of the District of Columbia and based in Washington, D.C. Plaintiff works to promote transparency and accountability in government, in part by educating the public on government actions and policies.

9. Defendant the DOJ is a federal agency within the meaning of the FOIA, *see* 5 U.S.C. § 552(f)(1), that is headquartered in Washington, D.C. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

The Yates Memo

10. On August 18, 2016, then-Deputy Attorney General Sally Yates issued a memorandum for the acting director of BOP. *See* Yates Memo. The Yates Memo carefully described the almost 800 percent increase in the federal prison population between 1980 and 2013, and the way in which this massive increase paved the way for BOP to begin using privately operated prisons to house federal inmates. *Id.* at 1. After reaching its historical apex in 2013, however, the federal inmate population began to decline substantially, thereby reducing the need to use private prisons to house federal inmates. *Id.*

11. Moreover, as the Yates Memo noted, even when private prisons *were* deemed necessary to house an expanding inmate population, they failed to adequately protect inmate health and safety and did not significantly reduce costs:

Private prisons served an important role during a difficult period, but time has shown that they compare poorly to our own Bureau facilities. They simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in a recent report by the Department's Office of Inspector General, they do not maintain the same level of safety and security. The rehabilitative services that the Bureau provides, such as educational programs and job training, have proved difficult to replicate and outsource—and these services are essential to reducing recidivism and improving public safety.

Id.

12. In light of these facts, the Yates Memo announced an intention “to enlist [BOP’s] help in beginning the process of reducing—and ultimately ending—our use of privately operated prisons.” *Id.* at 2. To accomplish this goal, the Yates Memo directed that “as each contract reaches the end of its term, the Bureau should either decline to renew that contract or substantially reduce its scope.” *Id.*

13. After the Yates Memo directed BOP to reduce its reliance on private prisons, private prison corporations experienced declining stock prices.⁴

The Sessions Memo

14. On February 21, 2017, Attorney General Sessions, in a memorandum containing only a single paragraph, announced that the Yates Memo was rescinded, and directed BOP “to return to its previous approach.” Sessions Memo at 1.

⁴ Evelyn Cheng, *Prison Stocks Plunge After Report Justice Department Will End Use of Private Prisons*, CNBC (Aug. 18, 2016), <https://www.cnbc.com/2016/08/18/prison-stocks-plunge-after-report-justice-department-will-end-use-of-private-prisons.html>.

15. The Sessions Memo asserted that the Yates Memo had “changed long-standing policy and practice, and impaired the Bureau’s ability to meet the future needs of the federal correctional system.” *Id.*

President Trump’s Support From and For Private Prison Corporations

16. Private prison corporations have financially supported President Trump’s political and private interests in a number of ways.

17. A subsidiary of the GEO Group, one of the largest private prison corporations, contributed more than \$200,000 to a political action committee that supported President Trump’s candidacy.⁵

18. The GEO Group donated another \$250,000 to help finance President Trump’s inaugural festivities.⁶

19. In May 2017, a few months after the Yates Memo was rescinded, the GEO Group announced that it had been awarded two contracts by BOP that are “expected to generate total combined revenues of approximately \$664 million over their full ten-year terms.”⁷

⁵ Amy Brittain & Drew Harwell, *Private-prison Giant, Resurgent in Trump Era, Gathers at President’s Resort*, Wash. Post (Oct. 25, 2017), https://www.washingtonpost.com/politics/with-business-booming-under-trump-private-prison-giant-gathers-at-presidents-resort/2017/10/25/b281d32c-adee-11e7-a908-a3470754bbb9_story.html?tid=ss_tw&utm_term=.903c97f21c42; *see also* Campaign Legal Center, Letter: Trump Super PAC Received Illegal Donations from Private Prison Company (Dec. 20, 2016), <http://www.campaignlegalcenter.org/document/letter-trump-super-pac-received-illegal-donations-private-prison-company> (describing in a letter to the Federal Election Commission a \$225,000 contribution made by GEO Corrections Holdings, Inc., to Rebuilding America Now, a Super PAC that supported President Trump’s candidacy).

⁶ *See, e.g.*, Brittain & Harwell, *supra* note 5; Fredreka Schouten, *Private Prisons Back Trump and Could See Big Payoffs with New Policies*, USA Today (Feb. 23, 2017), <https://www.usatoday.com/story/news/politics/2017/02/23/private-prisons-back-trump-and-could-see-big-payoffs-new-policies/98300394/>.

20. More recently, the GEO Group moved its annual conference to the Trump National Doral Golf Club.⁸ The GEO Group's decision has been described as "an apparent ongoing effort to align more closely with President Trump."⁹

The Need for the Requested Records

21. DOJ's decision to rescind the Yates Memo has sparked significant public interest.¹⁰ But neither the Sessions Memo nor any other publicly available government documents adequately explain DOJ's basis for asserting that the Yates Memo "impaired the Bureau's ability to meet the future needs of the federal correctional system," which was the sole justification offered for rescinding the Yates Memo. Sessions Memo at 1.

22. Moreover, in light of the of the financial support provided by private prison corporations to President Trump, as well as the GEO Group's recent decision to patronize one of President Trump's resort properties, there is additional interest in better understanding whether Defendant's decision to rescind the Yates Memo was influenced or encouraged by private prison corporations.

⁷ Press Release, GEO Grp., Inc., *The GEO Group Awarded 10-Year Contracts by the Federal Bureau of Prisons for 3,532 Existing Beds in Big Spring, Texas* (May 26, 2017), <http://investors.geogroup.com/file/Index?KeyFile=2000767504>.

⁸ See Brittain & Harwell, *supra* note 5; see also Avery Anapol, *Private Prison Company Moves Annual Conference to Trump Golf Course*, The Hill (Oct. 26, 2017), <http://thehill.com/homenews/administration/357282-private-prison-company-moves-annual-conference-to-trump-golf-course>.

⁹ Anapol, *supra* note 8.

¹⁰ See, e.g., Matt Zapposky, *Justice Department Will Again Use Private Prisons*, Wash. Post (Feb. 23, 2017), https://www.washingtonpost.com/world/national-security/justice-department-will-again-use-private-prisons/2017/02/23/da395d02-fa0e-11e6-be05-1a3817ac21a5_story.html?utm_term=.99ee9f44a609; Eric Lichtblau, *Justice Department Keeps For-Profit Prisons, Scrapping an Obama Plan*, N.Y. Times (Feb. 23, 2017), <https://www.nytimes.com/2017/02/23/us/politics/justice-department-private-prisons.html>.

23. The timely need for this information is particularly apparent in light of the White House's recent focus on prison reform.¹¹ Since at least March 2017, President Trump's son-in-law and adviser, Jared Kushner, has been leading White House efforts to develop a policy proposal for reforms to the criminal justice system, including prison reform.¹² As part of this ongoing effort, the White House hosted a roundtable "listening session" on prison reform on January 11, 2018.¹³ The use of, and future plans for, private prisons were not discussed at the January 11 event.

24. Finally, recently, BOP initiated a process to transfer additional federal inmates to private prison facilities. *See* Lara Memo.

25. No national discussion of prison reform can be complete without an understanding of DOJ's expectations for future incarceration needs, and the role that private prison corporations will play moving forward.

Plaintiff's FOIA Request

26. In order to understand and explain to the public the reasoning behind DOJ's decision to rescind the Yates Memo, the extent to which private prison corporations were involved in discussions about the rescission of the Yates Memo, and the ways in which the

¹¹ Gregory Korte, *Trump Tackles Prison Reform: 'We Can Help Break This Vicious Cycle'*, USA Today (Jan. 11, 2018), <https://www.usatoday.com/story/news/politics/2018/01/11/trump-prison-reform-roundtable-jared-kushner-initiative/1023747001/>; Dan Merica, et al., *Trump Hosts Prison Reform Listening Session*, CNN Politics (Jan. 11, 2018), <http://www.cnn.com/2018/01/11/politics/donald-trump-jared-kushner-prison-reform/index.html>.

¹² *See, e.g.*, Beth Reinhard, *Kushner to Gather Bipartisan Group to Come Up with Ideas for Federal Prisons*, Wash. Post (Sept. 13, 2017), https://www.washingtonpost.com/investigations/kushner-to-gather-bipartisan-group-to-come-up-with-ideas-for-federal-prisons/2017/09/13/a65ca446-97e6-11e7-b569-3360011663b4_story.html.

¹³ White House, *Remarks by President Trump in a Meeting on Prison Reform* (Jan. 11, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-meeting-prison-reform/>.

existing relationship between private prison corporations and the Trump Administration might affect federal prison policy and the ongoing White House discussions of prison reform, Plaintiff submitted the following requests for records to DOJ on May 19, 2017:

1. Any and all records that refer or relate to the termination or renewal (including changes to scope) of existing contracts related to the building, construction, operation, and/or maintenance of private prisons, detention centers, and/or facilities.
2. Any and all records that refer or relate to the consideration of new contracts related to the building, construction, operation, and/or maintenance of private prisons, detention centers, and/or facilities.
3. Any and all records that refer or relate to the decision by Attorney General Jeff Sessions to rescind an August 18, 2016 Department of Justice Memorandum (herein “2016 Yates Memo”) regarding the reduced use of private prisons in the federal prison system.
4. Any and all records assessing, or relating to the assessment of, the “future needs of the federal correctional system” as specified in the Attorney General’s memorandum of February 21, 2017.
5. Any and all records assessing whether the 2016 Yates Memo “impaired the Bureau’s ability to meet the future needs of the federal correctional system” as specified in the Attorney General’s memorandum of February 21, 2017 and [a]ny and all records relating to any such assessment.
6. Any and all records considered by the Attorney General, the Office of the Attorney General, or any other component of the Department of Justice, in determining that the 2016 Yates Memo “impaired the Bureau’s ability to meet the future needs of the federal correctional system” as specified in the Attorney General’s memorandum of February 21, 2017.
7. Any and all records that: (i) Contain any the following words: “CoreCivic,” “Core Civic,” “Corrections Corporation of America,” “CCA,” “The Geo Group,” “Geo Group,” “GEO Corrections Holdings Inc.,” “Natchez,” “David Donahue,” “George Zoley,” “Pablo Paez,” or “David Venturella”; and (ii) were sent or received by any of the following Department of Justice employees: Attorney General Jefferson Sessions, Deputy Attorney General Rod Rosenstein, Alan Hanson, Gary Barnett, Jonathan Berry, Noel Francisco, Curtis Gannon, Lauren Goldschmidt, John Gore, Mary Blanche Hankey, Trevor McFadden, Counsel Chad Mizelle, Michael Murray, Ryan Newman, Rachael Parker, Chad Readler, David Rybicki, Matthew Sheehan, Scott Stewart, Brett Talley, Rachael Tucker, Tom Wheeler, or Jeff Wood.

8. Any and all records that: (i) Refer or relate to Department of Justice use of private prisons; and (ii) were sent or received by any of the following Department of Justice employees: Attorney General Jefferson Sessions, Deputy Attorney General Rod Rosenstein, Alan Hanson, Gary Barnett, Jonathan Berry, Noel Francisco, Curtis Gannon, Lauren Goldschmidt, John Gore, Mary Blanche Hankey, Trevor McFadden, Counsel Chad Mizelle, Michael Murray, Ryan Newman, Rachael Parker, Chad Readler, David Rybicki, Matthew Sheehan, Scott Stewart, Brett Talley, Rachael Tucker, Tom Wheeler, or Jeff Wood.

Ex. A at 1-3 (footnotes omitted).

27. The record requests were limited to records created in the period from January 20, 2017 to the date DOJ conducted a search for responsive records. *Id.* at 3.

28. Plaintiff specifically requested that, for requests nos. 1, 2, and 3, DOJ search for responsive records within the Office of the Attorney General, the Office of the Deputy Attorney General, the Office of Legal Policy, the Office of Legislative Affairs, the Office of Public Affairs, the Justice Management Division, and the Bureau of Prisons.¹⁴

29. Plaintiff sought a waiver of search and duplicating fees under 5 U.S.C. § 552(a)(4)(A)(iii), which requires a fee waiver if the disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”

Plaintiff’s Correspondence with DOJ FOIA Offices

30. Plaintiff’s request was sent initially to the DOJ Mail Referral Unit, which, in a letter dated May 22, 2017, acknowledged receipt and notified Plaintiff that the request had been forwarded to the Office of Information Policy (“OIP”) and BOP.

¹⁴ Subsequently, Plaintiff agreed to withdraw request no. 8 with respect to BOP only. *See infra* ¶ 37.

31. On June 20, 2017, OIP informed Plaintiff that it had received the request, that it had not yet made a determination as to waiving search fees, and that it was assigning Plaintiff's request to a complex track, for which OIP asserted additional time was needed.

32. OIP, in turn, referred Plaintiff's request to the Office of Legal Counsel ("OLC"), which acknowledged, in a letter dated July 20, 2017, that it had received Plaintiff's request on June 20, 2017. In that same correspondence, OLC stated that it was assigning Plaintiff's request to a complex processing track, that more time was needed to review the request, and that no decision had yet been made on Plaintiff's request for a fee waiver.

33. The request was also sent to the Office of Justice Policy ("OJP"), which, in an email dated June 29, 2017, acknowledged receipt of the request and asserted that additional time was required due to unusual circumstances.

34. By letter dated July 27, 2017, OJP asserted that it had completed a search within OJP and "no responsive records were located subject to the Freedom of Information Act." Plaintiff did not administratively appeal OJP's decision.

35. BOP acknowledged receipt of Plaintiff's FOIA request by letter dated June 22, 2017, noted that the request had been referred to BOP's Central Office for processing, and claimed that additional time for processing would be required due to unusual circumstances.

36. Following BOP's June acknowledgement, Plaintiff and BOP corresponded intermittently by telephone and email.

37. To expedite processing of the request, in an email dated August 23, 2017, Plaintiff agreed that, with respect to BOP only, request no. 8 would be withdrawn. In that same email, Plaintiff offered recommendations for how request no. 7 could be narrowed and simplified to aid BOP in its search for responsive records.

38. On or around October 17, 2017, Plaintiff and BOP reached an agreement as to how BOP would conduct a search for records responsive to request no. 7.

39. On October 30, 2017, BOP indicated by email that the request for records had been sent to “the appropriate components for a records search,” and that BOP “anticipate[d] receiving a response by the week of November 20,” which would allow BOP to provide an estimate on the total processing time for Plaintiff’s request. BOP further agreed that it would produce documents as they became available for production, *i.e.*, on a rolling basis.

40. Plaintiff inquired as to the status of the request on December 12, 2017, and again sought an estimate from BOP as to when a search for responsive records could be completed.

41. On January 5, 2018, BOP delivered by email its first and, to date, only production of records. The production contained 17 pages of records, 4 pages of which contained redactions.

42. As BOP conceded in the cover letter that accompanied the production, these records were responsive only to requests nos. 1 and 2. It does not appear from BOP’s correspondence that searches have been initiated for the other agreed-upon portions of Plaintiff’s request for records.

43. BOP has not supplemented this initial production, nor has it provided an estimate of when its search for responsive records held by BOP custodians will be complete.

44. As of the date of this Complaint, Defendant DOJ, and numerous DOJ components, have failed to notify Plaintiff whether DOJ will comply with Plaintiff’s FOIA request, *see* 5 U.S.C. § 552(a)(6)(A)(i), or produce all requested records or demonstrate that they are lawfully exempt from production, *see id.* § 552(a)(6)(C). Nor have numerous components of DOJ notified Plaintiff of the scope of any responsive records DOJ intends to produce or withhold

and the reasons for any withholdings, or informed Plaintiff that it may appeal any adequately specific, adverse determination.

45. Because DOJ has “fail[ed] to comply with the applicable time limit provisions” of the FOIA, even with the benefit of any extensions of time that DOJ might have claimed, Plaintiff is “deemed to have exhausted [its] administrative remedies.” *See id.* § 552(a)(6)(C)(i).

CLAIM FOR RELIEF

Count One (Violation of the FOIA, 5 U.S.C. § 552)

46. Plaintiff repeats and incorporates by reference each of the foregoing allegations as if fully set forth herein.

47. By failing to respond to Plaintiff’s request within the statutorily prescribed time limit, Defendant has violated its duties under the FOIA, including but not limited to its duties to conduct a reasonable search for responsive records, and to produce all responsive, reasonably segregable, non-exempt information.

48. Plaintiff is being irreparably harmed by Defendant’s violation of the FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the FOIA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

1. order Defendant to conduct searches for any and all records responsive to Plaintiff’s FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff’s FOIA request;
2. order Defendant to produce, by a date certain, any and all nonexempt records responsive to Plaintiff’s FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption;

3. enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request;
4. order Defendant to grant Plaintiff's request for a fee waiver;
5. grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
6. grant Plaintiff such other relief as the Court deems just and proper.

Dated: February 20, 2018

Respectfully submitted,

/s/ Skye L. Perryman
Skye L. Perryman (D.C. Bar No. 984573)
Adam Grogg (N.Y. Bar)*
Democracy Forward Foundation
1333 H St. NW
Washington, DC 20005
(202) 448-9090
sperryman@democracyforward.org
agrogg@democracyforward.org

*Admitted in New York; practicing under the supervision of members of the D.C. Bar while D.C. Bar application is pending.

Counsel for Plaintiff

Exhibit A



**DEMOCRACY
FORWARD
FOUNDATION**

P.O. Box 34553
Washington, DC 20043
202-448-9090
foia@democracyforward.org

May 19, 2017

VIA ONLINE SUBMISSION

FOIA/PA Mail Referral Unit
Justice Management Division
Department of Justice
Room 115
LOC Building
Washington, D.C. 20530-0001
202-616-3847
Mrfoia.requests@usdoj.gov

Re: Freedom of Information Act Records Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., and Department of Justice FOIA regulations at 28 C.F.R. Part 16, Democracy Forward Foundation requests that the Department of Justice produce the following within twenty (20) business days:

- (1) Any and all records that refer or relate to the termination or renewal (including changes to scope) of existing contracts related to the building, construction, operation, and/or maintenance of private prisons, detention centers, and/or facilities.¹
- (2) Any and all records that refer or relate to the consideration of new contracts related to the building, construction, operation, and/or maintenance of private prisons, detention centers, and/or facilities.²
- (3) Any and all records that refer or relate to the decision by Attorney General Jeff Sessions

¹ Laura Jarrett, [DOJ walks back guidance discouraging use of private prisons](http://www.cnn.com/2017/02/23/politics/doj-walks-back-guidance-discouraging-use-of-private-prisons/), CNN (Feb. 23, 2017), <http://www.cnn.com/2017/02/23/politics/doj-walks-back-guidance-discouraging-use-of-private-prisons/>.

² Laura Jarrett, [DOJ walks back guidance discouraging use of private prisons](http://www.cnn.com/2017/02/23/politics/doj-walks-back-guidance-discouraging-use-of-private-prisons/), CNN (Feb. 23, 2017), <http://www.cnn.com/2017/02/23/politics/doj-walks-back-guidance-discouraging-use-of-private-prisons/>.

May 19, 2017
Page 2

to rescind³ an August 18, 2016 Department of Justice Memorandum (herein "2016 Yates Memo")⁴ regarding the reduced use of private prisons in the federal prison system.

- (4) Any and all records assessing, or relating to the assessment of, the "future needs of the federal correctional system" as specified in the Attorney General's memorandum of February 21, 2017.⁵
- (5) Any and all records assessing whether the 2016 Yates Memo "impaired the Bureau's ability to meet the future needs of the federal correctional system" as specified in the Attorney General's memorandum of February 21, 2017 and any and all records relating to any such assessment.
- (6) Any and all records considered by the Attorney General, the Office of the Attorney General, or any other component of the Department of Justice, in determining that the 2016 Yates Memo "impaired the Bureau's ability to meet the future needs of the federal correctional system" as specified in the Attorney General's memorandum of February 21, 2017.⁶
- (7) Any and all records that: (i) Contain any the following words: "CoreCivic," "Core Civic," "Corrections Corporation of America," "CCA," "The Geo Group," "Geo Group," "GEO Corrections Holdings Inc.," "Natchez," "David Donahue," "George Zoley," "Pablo Paez," or "David Venturella"; and (ii) were sent or received by any of the following Department of Justice employees: Attorney General Jefferson Sessions, Deputy Attorney General Rod Rosenstein, Alan Hanson, Gary Barnett, Jonathan Berry, Noel Francisco, Curtis Gannon, Lauren Goldschmidt, John Gore, Mary Blanche Hankey, Trevor McFadden, Counsel Chad Mizelle, Michael Murray, Ryan Newman, Rachael Parker, Chad Readler, David Rybicki, Matthew Sheehan, Scott Stewart, Brett Talley, Rachael Tucker, Tom Wheeler, or Jeff Wood.
- (8) Any and all records that: (i) Refer or relate to Department of Justice use of private prisons; and (ii) were sent or received by any of the following Department of Justice employees: Attorney General Jefferson Sessions, Deputy Attorney General Rod Rosenstein, Alan Hanson, Gary Barnett, Jonathan Berry, Noel Francisco, Curtis Gannon,

³ Memorandum from Jefferson B. Sessions, Attorney General, Rescission of Memorandum on Use of Private Prisons (Feb. 21, 2017), https://www.bop.gov/resources/news/pdfs/20170224_doj_memo.pdf.

⁴ Memorandum from Sally Yates, Deputy Attorney General, Reducing our Use of Private Prison (Aug. 18, 2016), <https://www.justice.gov/archives/opa/file/886311/download>.

⁵ Supra note 3.

⁶ Id.

May 19, 2017

Page 3

Lauren Goldschmidt, John Gore, Mary Blanche Hankey, Trevor McFadden, Counsel Chad Mizelle, Michael Murray, Ryan Newman, Rachael Parker, Chad Readler, David Rybicki, Matthew Sheehan, Scott Stewart, Brett Talley, Rachael Tucker, Tom Wheeler, or Jeff Wood.

The time period for this request is January 20, 2017 to the date the search is conducted. For requests (1), (2), and (3), please search for records from the Office of the Attorney General, the Office of the Deputy Attorney General, the Office of Legal Policy, the Office of Legislative Affairs, the Office of Public Affairs, the Justice Management Division, and the Bureau of Prisons.

Please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. §552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. *See* 5 U.S.C. § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and nondisclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

To the extent that the records are readily reproducible in an electronic format, we would prefer to receive the records in that format. However, if certain records are not available in that format, we are willing to accept the best available copy of each such record.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. §

May 19, 2017
Page 4

552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

Democracy Forward Foundation is a nonprofit organization organized under Internal Revenue Code § 501(c)(3) and dedicated to educating the public about the operation of the federal government. The records we obtain from this request will be used to support those public education efforts, and we intend to disseminate publicly an analysis of those records. As a nonprofit organization, we do not have a commercial interest in the records. We therefore request a waiver of fees for searching and duplicating records in response to this request under the exception at 5 U.S.C. § 552(a)(4)(A)(iii), which requires waiver of fees if the disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” If our request for a waiver is denied, we are willing to pay all reasonable fees incurred for searching and duplicating records in responding to this request, up to \$250. If the costs of responding to this request should exceed that amount, please contact us before incurring costs exceeding that amount.

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles to releasing fully the requested records within the 20 day period, please contact Karianne Jones as soon as possible at foia@democracyforward.org or 202-448-9090.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

Anne Harkavy
Democracy Forward Foundation

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 5 U.S.C. § 552 (Freedom of Information Act). Defendant is unlawfully withholding public records.

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: Feb. 20, 2018	SIGNATURE OF ATTORNEY OF RECORD: /s/ Skye L. Perryman
---------------------	---

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Democracy Forward Foundation

Plaintiff

v.

U.S. Department of Justice

Defendant

)
)
)
)
)
)
)

Civil Action No. **18-cv-376**

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Skye L. Perryman
Democracy Forward Foundation
1333 H St. NW
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 18-cv-376

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Democracy Forward Foundation

Plaintiff

v.

U.S. Department of Justice

Defendant

)
)
)
)
)
)
)

Civil Action No. **18-cv-376**

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* U.S. Department of Justice
c/o U.S. Attorney General
950 Pennsylvania Ave. NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Skye L. Perryman
Democracy Forward Foundation
1333 H St. NW
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 18-cv-376

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Democracy Forward Foundation

Plaintiff

v.

U.S. Department of Justice

Defendant

)
)
)
)
)
)
)

Civil Action No. **18-cv-376**

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* U.S. Department of Justice
c/o U.S. Attorney for the District of Columbia
555 4th St. NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Skye L. Perryman
Democracy Forward Foundation
1333 H St. NW
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 18-cv-376

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: