

September 26, 2018,

Attorney General Jeff Sessions
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Deputy and Acting Director Ron Vitiello
Immigration and Customs Enforcement
500 12th St., SW
Washington, D.C. 20536

Dear Attorney General Sessions and Director Vitiello,

On behalf of the undersigned organizations, we write to strongly request that your agencies immediately cease efforts to subpoena millions of North Carolina voter records in what we believe is an unjustified and likely unlawful fishing expedition. We are deeply concerned that these excessive discovery demands are intended to amplify the incredibly few examples of voting irregularities that actually exist within the voting process and to falsely manufacture a perception that massive voting fraud has occurred in this State. We believe that any such “evidence” is intended to be used as a basis for justifying future voter suppression efforts.

In North Carolina recently, representatives of your agencies, only weeks before a major election, issued at least 46 subpoenas seeking millions of state voters’ records. We strongly urge you to immediately withdraw the federal subpoenas which were issued on August 31, 2018, by Assistant U.S. Attorney Sebastian Kielmanovich for the Eastern District of North Carolina and directed to the North Carolina State Board of Elections and Ethics Enforcement, the County Boards of Elections in all 44 counties in the North Carolina’s Eastern District, and the North Carolina Division of Motor Vehicles on behalf of Immigration and Customs Enforcement (hereinafter, “ICE Subpoenas”). The extremely broad and unprecedented subpoenas extend far beyond the scope of any legitimate law enforcement objective and threaten voters’ constitutional right to cast a ballot free from fear and intimidation as well as their expectation that their personally identifiable information (hereinafter, “PII”) and their voting preferences will remain private in accordance with the law. Further, given the massive redactions necessary to avoid complete disregard for voters’ rights and the law, responding to these ICE Subpoenas would interfere with the duties of North Carolina’s election officials at any point in any election cycle. The requested ICE Subpoenas will seriously hinder North Carolina election officials’ ability to provide free and fair elections and follow through with the state’s mandate to enhance election security against foreign interference. The apparent concession by the U.S. Attorney’s Office, which extended the deadline for responses to the subpoenas until January, does not resolve the underlying issue with the legality or propriety of the subpoenas. Indeed, neither an informally negotiated revision of these subpoenas nor formal legal action by the State of North Carolina in fighting the subpoenas would be adequate to address the lasting damage your actions would pose to a free and fair election in this state.

The ICE Subpoenas became public knowledge on September 4 after an email was sent to all members of the local boards and redacted subpoena language was posted on Twitter. The

subpoenas, which were directed to 44 of North Carolina's eastern counties, seek "all poll books, e-poll books, voting records, and/or voter authorization documents, executed official ballots that were submitted to, filed by, received by, and/or maintained by" the local board of elections "from August 30, 2013 to August 30, 2018." The subpoenas directed to the State Board of Elections and NC DMV demand documents including all voter registration, early voting, provisional voting, and absentee ballot request forms over an even longer period—from January 1, 2010 through August 30, 2018. These blanket demands for information on individual voters would have required state election officials to compile more than 15 million voting records, within 60 days before a statewide election. Delaying the compliance deadline for these subpoenas until after the November 2018 election does not ease the burden on North Carolina election officials to redact all of the PII that they would be required to redact under state law, nor does it ensure that the redaction of this data that would not connect the individual voters to their official executed ballots, a problem that would exist with every early voting ballot, absentee ballot, or provisional ballot cast in the state.

The Subpoenas Target People of Color, Immigrants and Low Income Communities

The Eastern District of North Carolina, the jurisdiction of the federal judiciary system at issue here, is comprised of 44 counties. While the region includes only 39% of North Carolina's voters, nearly 70% of North Carolina's Native American voters and 46% of its Black voters live in this district. Additionally, of these 44 counties, the majority experience a poverty rate between 15 and 30%, making it the most concentrated region of low-income communities in the state. The region's communities of color have experienced a long history of voter intimidation and disenfranchisement, including the ninety-year period during which official voting discrimination and physical violence prevented any person of color from being elected as a part of North Carolina's congressional delegation. Given the State's recent voting rights history and the lived experiences of voters of color, these voters will surely find the fact that the ICE Subpoenas target their region, while offering no explanation for doing so, to be both ominous and intimidating.

The subpoena directed toward the North Carolina DMV is even more concerning in this regard. It specifically seeks information on individuals who filled out forms at the DMV in a language other than English. Nothing about the language that an individual speaks or uses to fill out forms creates any reason to believe that a crime has been committed, voting related or otherwise, and any suggestion to the contrary is discriminatory and intimidating.

The Subpoenas Seek Voter Information that Must Remain Protected

The ill-considered ICE Subpoenas seek millions of cast ballots, along with absentee and provisional voter documents that would allow ICE to penetrate the sacrosanct veil of ballot secrecy and reveal many voters' individual choices in past elections. In a September 6, 2018 letter to the General Counsel of the North Carolina State Board of Elections and Ethics Enforcement, Assistant U.S. Attorney Keilmanovich tellingly admitted that the obtaining the records of votes cast was "not relevant to our inquiry." He nonetheless continued to demand that the documents be produced, with redactions. In other words, the purported compromise position following the initial outrageous demand was for state officials to devote time and resources to making millions of redactions in service to an ICE demand for information that it never had the authority to make and, apparently, never wanted in the first place. It is the duty of your office

and you, as chief law enforcement officer of the Federal Government, to ensure that subordinate agents are not acting beyond the scope of their authority or in a manner that would interfere with the administration of elections and have an intimidating effect on voters.

To be clear, ballot secrecy—the right of citizens to cast a secret ballot, without fear of retaliation—came about because of a “persistent battle against two evils: voter intimidation and election fraud.” *Burson v. Freeman*, 504 U.S. 191, 206 (1992). The ICE Subpoenas would not only revive the threat of government-sanctioned voter intimidation, but they would ironically destroy what has been an essential protection *against* election fraud. For these reasons, subpoenaing the voting records of millions of North Carolinians is unreasonable and oppressive, and the demand for cast ballots must be withdrawn in its entirety.

The Subpoenas Have Already Interfered with Upcoming Elections

As stated above, the amount and types of data demanded by the ICE Subpoenas is unprecedented and massive. The Subpoenas demand detailed information about voting records that include millions of cast ballots that would provide sufficient information to allow ICE to identify not only the choices made on each ballot, but the identity of the specific individual who cast it. This fact alone should chill any member of a democratic society.

North Carolina election officials have already explained, in public meeting, that these incredibly sweeping subpoenas have required an overwhelming amount of their time during a period when their heightened attention is normally required to ensure that the upcoming election is conducted smoothly and securely. Indeed, because of recent state legislative decisions relating to the content and form of the November ballots that have delayed their development and production, elections officials are already working on a significantly truncated calendar as they seek to manage the fast approaching statewide election. These subpoenas are not only unnecessary and unjustified, but they also have already harmed preparations for the upcoming election and voters’ confidence in it. As a result of these Subpoenas, thousands of North Carolinians have expressed their concern about having their private voting records and PII turned over to the federal government without reason. They have not only called upon the State Board of Elections to reject these requests, but are also demanding that U.S. Attorney Robert Higdon withdraw the originally issued subpoenas.

In the name of public confidence in the legitimacy of your agencies and the U.S. Constitution’s commitment to protect against voter intimidation and election interference, we strongly request that you quickly and fully repudiate the actions of the U.S. Attorney for the Eastern District of North Carolina, taken on behalf of ICE, and that these unprecedented subpoenas be withdrawn immediately.

The U.S. Attorney Should Not Use Grand Jury Proceedings as Fishing Expeditions

The aforementioned background and peculiar timing of this action strongly suggest that it is a cynical ploy to seek support for the same specious voter fraud narrative that was used to justify the creation of the defunct Pence-Kobach Commission. To many observers, there seems to be more than a passing similarity between the discredited agenda of the disbanded Commission and

the unprecedented and broad interest of the U.S. Attorney for the Eastern District of North Carolina into the content of state voting records

The review of the requested millions of documents in search of perhaps a handful of individual technical violations of voting laws would also undoubtedly entail a massive commitment of federal resources that might otherwise be used to investigate and prosecute crimes that actually pose a threat to the people of North Carolina. Neither your office nor the U.S. Attorney's Office has made any showing in the public record to justify the scope of these subpoenas, which seek information on millions of voters, nor does it justify the need for an indiscriminate investigation of every vote cast during the designated time period. In the North Carolina State Board of Elections' Post-2016 Election Audit Report, the board rejected the proposition that participation by ineligible voters was rampant in North Carolina; instead it concluded that in the very few instances where voting irregularities occur, "***[m]ost incidents are isolated and uncoordinated, and detecting technical violations does not always prove purposefully unlawful conduct.***" Your agencies have a duty and a responsibility to properly use the power of the federal grand jury system, and to not abuse that power in the process.

We the undersigned request that the U.S. Attorney's Office and ICE immediately instruct their agents to withdraw these subpoenas.

If you have any questions, please feel free to contact Allison Riggs at allisonriggs@southerncoalition.org or 919-323-3909.

Sincerely,

The Southern Coalition for Social Justice
Democracy North Carolina
North Carolina State Conference of the NAACP
North Carolina Justice Center
Common Cause North Carolina
NAACP Legal Defense and Education Fund
LatinoJustice PRLDEF
NALEO Education Fund
Demos
American Civil Liberties Union (ACLU)

Cc: Robert J. Higdon, Jr., U.S. Attorney for the E.D.N.C