

Congress of the United States
Washington, DC 20515

September 7, 2018

Michael E. Horowitz
Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, NW, Suite 4706
Washington, D.C. 20528-0305

John V. Kelly
Department of Homeland Security
Office of the Inspector General
245 Murray Lane SW
Washington, D.C. 20530-0001

Dear Inspector General Horowitz and Deputy Inspector General Kelly:

We write to express our grave concerns about the scope of recent Department of Justice (DOJ) and Immigration and Customs Enforcement (ICE) subpoenas issued for voting records and sensitive private information in the Eastern District of North Carolina.

These subpoenas request an estimated 15 million documents concerning North Carolina voters, including voter registration applications, absentee ballot requests, and “admission or denial of non-citizen return” forms.¹ More than two million of these documents are ballots that could be traced back to the individuals who cast them.²

These subpoenas are overly broad, request private voter information, and appear to target voters of color. Accordingly, we respectfully request that you undertake an investigation to examine the circumstances by which these subpoenas were issued, the scope of the subpoenas, and the seemingly political motivations behind them.

President Trump has continually repeated false claims regarding widespread voter fraud in the 2016 election, and subsequently created a so-called Advisory Commission on Election Integrity that sought to obtain millions of pieces of private voter information. The Commission was disbanded in January after endless controversy and litigation, but President Trump then charged the Department of Homeland Security (DHS) to continue to investigate the myth of widespread voter fraud.³ This new North Carolina document request by ICE appears to pick up where the Commission left off and seeks to use allegations of widespread voter fraud to justify voter suppression and intimidation practices.

It is no surprise that the subpoenas target North Carolina’s voter rolls, as the state has a history of voter suppression. In 2016, a federal appeals court struck down North Carolina’s voter identification law, finding that the law “target[ed] African-Americans with almost surgical precision” in order to lower turnout among African-Americans.⁴ Despite this decisive ruling, Republicans in North Carolina are continuing to push a constitutional amendment that would require photo identification at the polls.⁵

¹ Travis Fain, *Federal Subpoenas Demand ‘Tsunami’ of NC Voter Records*, WRAL.com (Sept. 6, 2018) <https://www.wral.com/federal-subpoenas-demand-tsunami-of-nc-voter-records/17821061/>

² *Id.*

³ Michael Tackett and Michael Wines, *Trump Disbands Commission on Voter Fraud*, The New York Times (Jan. 3, 2018) <https://www.nytimes.com/2018/01/03/us/politics/trump-voter-fraud-commission.html>

⁴ Michael Wines and Alan Blinder, *Federal Appeals Court Strikes Down North Carolina Voter ID Requirement*, The New York Times (Jul. 29, 2016) <https://www.nytimes.com/2016/07/30/us/federal-appeals-court-strikes-down-north-carolina-voter-id-provision.html>

⁵ Dave Hendrickson, *Here’s a Look at North Carolina’s Proposed Constitutional Amendments*, WRAL.com (Aug. 29, 2018) <https://www.wral.com/here-s-a-look-at-north-carolina-s-proposed-constitutional-amendments/17715772/>

At a time when DOJ should be investigating voter suppression, it appears that the Department is instead supporting it. In the subpoenas issued here, there is again an obvious targeting of minority voters. The 44 counties that received subpoenas account for approximately 46% of the state's registered black voters, 39% of the state's registered Hispanic voters, and 36% of the state's registered white voters.⁶ This appears to be an effort designed to disproportionately target minority voters and depress voter turnout. At a minimum, this apparent disproportionate targeting of minority voters may raise potential equal protection and due process concerns.

The subpoenas may have additional legal implications. Under the National Voter Registration Act, each state must "ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public."⁷ Presumably, the massive data set requested by DOJ would reveal the agency where a voter was registered. Moreover, the request for absentee ballots, which are potentially traceable to the specific voter who cast the ballot, is a violation of every voter's right to cast a secret ballot.

Though DOJ has delayed the production deadline until after the November election, the subpoenas still raise many questions about their legality and true motivations. We write to request that you begin an investigation that considers the following questions:

- What motivated the request for these documents?
- How was this particular set of records chosen for the subpoena?
- Was there any consideration of whether the request was overly broad?
- Do the subpoenas violate constitutional guarantees of equal protection and due process or any other constitutional provision?
- Do the subpoenas violate the National Voter Registration Act of 1993?
- Do the subpoenas violate North Carolina law?
- Why was the deadline initially set for September 25, 2018, less than two months before an election?
- Why was the deadline moved to after the November election?
- Does this action have any precedent? Is DHS planning to make similar requests in other states?
- Is DHS following President Trump's directive to investigate widespread voter fraud?
- Are these subpoenas related to the DHS' work following the President's directive to investigate widespread voter fraud?
- Is ICE planning to use voter data to initiate deportation proceedings?
- Did DOJ and DHS follow all relevant laws and guidance, including the U.S. Attorneys' Manual, in issuing the subpoenas, and was there a less intrusive method that the agencies rejected?
- Was there a reasonable evidential basis for the scope of the subpoenas?
- If the agencies obtain the requested records, do they have appropriate plans to limit the use of these records to the stated purpose of the grand jury subpoenas and ensure their secure storage?

Given what we know about the scope of the subpoenas, and the counties that were targeted, we are concerned that this could be part of the Trump Administration's dangerous and anti-democratic strategy of voter suppression and intimidation to limit equal access to the ballot box.

We hope that you will promptly launch an investigation to determine the legal implications of and rationale for these subpoenas.

⁶ North Carolina State Board of Elections & Ethics Enforcement. (2018). *Voter Registration Statistics*. [Data file]. Retrieved from <https://vt.ncsbe.gov/RegStat/Results/?date=08%2F25%2F2018>.

⁷ 52 U.S.C. § 20507(a)(6)

Thank you for your consideration.

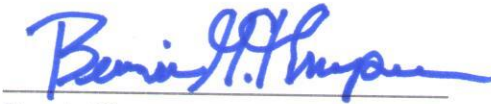
Sincerely,



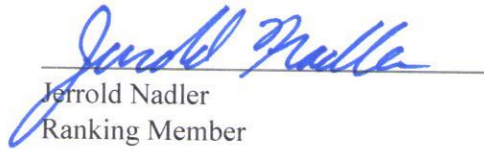
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Ranking Member
Committee on House Administration



Elijah Cummings
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Bennie Thompson
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