

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

America First Legal Foundation and Richard
Grenell,

Plaintiffs,

v.

Alejandro Mayorkas, United States
Department of Homeland Security, and
Homeland Intelligence Experts Group,

Defendants.

Civil Action No. 1:23-cv-3322

**PLAINTIFFS'
APPLICATION FOR
PRELIMINARY
INJUNCTION**

The above Plaintiffs, by and through counsel and pursuant to Fed. R. Civ. P. 65 and LCvR 65.1(c), respectfully move this Court for a preliminary injunction enjoining Defendants Mayorkas, the Department of Homeland Security, and the Homeland Intelligence Experts Group and all of its working groups, from holding any meetings, sessions, or hearings, or conducting any official business whatsoever on behalf of the Group, whether remotely or in person, and from submitting, accepting, publishing, employing, or relying upon any report or recommendations produced by the Group for any official purpose whatsoever, directly or indirectly, including indicating in any way that any report or recommendation of the Group reflects the views of a lawfully constituted advisory committee, until their violations of the Federal Advisory Committee Act are remedied.

The Plaintiffs have attached a supporting memorandum, several declarations, and a proposed order.

The Plaintiffs request an expedited oral hearing pursuant to LCvR 65.1(d), given that the violations outlined in this motion are ongoing and that absent an injunction, the Plaintiffs will be (1) precluded from obtaining information from the

Group in a timely fashion, (2) forced to continue diverting resources to respond to the Group, and (3) prevented from being represented by the Group, all of which result in irreparable harm.

Respectfully submitted,

/s/ Gene P. Hamilton

Gene P. Hamilton
Reed D. Rubinstein
Andrew Block
D.C. Bar No. 1619548
AMERICA FIRST LEGAL FOUNDATION
611 Pennsylvania Avenue SE #231
Washington, DC 20003
(202) 964-3721
gene.hamilton@aflegal.org

/s/ Christopher E. Mills

Christopher E. Mills
D.C. Bar No. 1021558
SPERO LAW LLC
557 East Bay Street #22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

NOVEMBER 22, 2023

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2023, the foregoing and all attachments were served via USPS First-Class Mail to:

Alejandro Mayorkas
2707 Martin Luther King Jr. Ave. SE
Washington, DC 20528

United States Department of Homeland Security
2707 Martin Luther King Jr. Ave. SE
Washington, DC 20528

Homeland Intelligence Experts Group
2707 Martin Luther King Jr. Ave. SE,
Washington, DC 20528

U.S. Attorney
555 Fourth Street NW
Washington, D.C. 20530

U.S. Attorney General
950 Pennsylvania Avenue NW
Washington, DC 20530

/s/Christopher Mills
Christopher E. Mills
D.C. Bar No. 1021558
SPERO LAW LLC
557 East Bay St. #22251
Charleston, SC 29413
Telephone: (843) 606-0640
cmills@spero.law

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

America First Legal Foundation and
Richard Grenell,

Plaintiffs,

v.

Alejandro Mayorkas, United States
Department of Homeland Security, and
Homeland Intelligence Experts Group,

Defendants.

Civil Action No. 1:23-cv-3322

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF
APPLICATION FOR PRELIMINARY INJUNCTION**

Gene P. Hamilton
D.C. Bar No. 1619548
Reed D. Rubinstein
Andrew Block
AMERICA FIRST LEGAL FOUNDATION
611 Pennsylvania Avenue SE #231
Washington, DC 20003
(202) 964-3721
gene.hamilton@aflegal.org

Christopher E. Mills
D.C. Bar No. 1021558
SPERO LAW LLC
557 East Bay Street #22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

TABLE OF CONTENTS

- Introduction 1
- Statement of the Case 3
- Legal Standard 9
- Argument 9
- I. Plaintiffs are likely to succeed on the merits of their claims. 10
 - A. The Group is an advisory committee subject to FACA. 11
 - 1. The Group has an organized structure. 15
 - 2. The Group has a stable membership..... 16
 - 3. The Group has a specific purpose..... 16
 - 4. The Group provides advice or recommendations..... 17
 - B. The Group’s creation, composition, and operations violate FACA..... 19
 - 1. The Defendants have violated FACA’s establishment procedures. 19
 - 2. The Group is not fairly balanced. 21
 - 3. The Group has no provision to protect against improper influence..... 23
 - 4. The Group does not have a Designated Federal Officer..... 24
 - 5. The Group has failed to disclose required information. 25
 - C. The Plaintiffs are likely to succeed on their APA, declaratory relief, and mandamus claims..... 26
- II. The remaining factors weigh in favor of a preliminary injunction..... 29
- Conclusion 32

INTRODUCTION

The Federal Advisory Committee Act (“FACA”) was enacted in 1972 out “of a desire to assess the need for the numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government.” *Am. First Legal Found. v. Cardona*, 630 F. Supp. 3d 170, 178 (D.D.C. 2022) (quoting *Pub. Citizen v. U.S. Dep’t of Justice*, 491 U.S. 440, 445–46 (1989)). “Its purpose [i]s to ensure that new advisory committees be established only when essential,” “that their number be minimized,” “that their creation, operation, and duration be subject to uniform standards and procedures,” and “that Congress and the public remain apprised of their existence, activities, and cost.” *Id.* (quoting *Pub. Citizen*, 491 U.S. at 446).

To those ends, FACA requires that advisory committees be announced in the Federal Register, provide a charter and notice of open meetings, and have a balanced membership free of improper influence. 5 U.S.C. app. 2 §§ 4–11. These “terms promote transparency, accountability, and open public participation in executive branch decisions and prevent informal advisory committees from exerting improper one-sided influence.” *VoteVets Action Fund v. Dep’t of Veterans Affairs*, 992 F.3d 1097, 1101 (D.C. Cir. 2021).

Despite these long-established requirements, the Department of Homeland Security and Secretary Mayorkas disregarded them all in purporting to establish a new advisory committee, the Homeland Intelligence Experts Group. The Plaintiffs are likely to succeed in showing that the Defendants unlawfully established the

Group, failed to ensure that the Group is fairly balanced, failed to adopt a provision to ensure that the Group will not be inappropriately influenced, failed to file a charter, failed to assign a Designated Federal Officer, and failed to disclose the information required by FACA. These violations establish a further violation of the Administrative Procedure Act, which requires that agencies take final actions in accordance with law. *See generally NAACP Legal Def. & Educ. Fund., Inc. v. Barr*, 496 F. Supp. 3d 116, 145 (D.D.C. 2020) (requiring an advisory committee to file a charter and otherwise follow FACA’s procedural requirements, issuing an injunction that required the Attorney General to ensure that the committee had a fairly balanced membership, and “halt[ing]” all committee proceedings “until the requirements of FACA are satisfied”).

The Defendants’ violations work irreparable harm on the Plaintiffs, an organization that conducts oversight of homeland security issues and a former Acting Director of National Intelligence, neither of whose America First approaches to foreign policy is represented on the imbalanced Group. The Defendants’ failure to properly balance the Group’s membership deprives the Plaintiffs of an opportunity to serve on the Group or even a voice that represents their views. The Group’s failure to publicize its creation and activities, including its meetings, deprives the Plaintiffs of information that must be public and further forces them to divert resources from their existing mission and goals for monitoring of the Group—expenditures of time and effort that would be unnecessary if the Group followed the law.

FACA states the public's interest in a transparent government that reflects the views of relevant constituencies: "FACA was enacted to cure specific ills, above all the wasteful expenditure of public funds for worthless committee meetings and biased proposals." *Cummock v. Gore*, 180 F.3d 282, 284 (D.C. Cir. 1999) (cleaned up). The Defendants' failure to follow FACA necessarily violates the public interest, and immediate relief is necessary to prevent ongoing deprivations of information and representative decision making.

Thus, the application for a preliminary injunction should be granted. The Court should enjoin Defendants Mayorkas, the Department, and the Group and all its working groups, from holding any meetings, sessions, or hearings, or conducting any official business on behalf of the Group until their violations of FACA are remedied. The Court should also enjoin the Defendants from submitting, accepting, publishing, employing, or relying upon any report or recommendations produced by the Group for any official purpose, directly or indirectly, including indicating in any way that any report or recommendation of the Group reflects the views of a lawfully constituted advisory committee, until their violations of FACA are remedied.

STATEMENT OF THE CASE

On September 19, 2023, the Department of Homeland Security launched the Homeland Intelligence Experts Group. Declaration of Christopher Mills, Ex. 1. According to the press release announcing the Experts Group, the Department established the Group "to provide advice" "on intelligence and national security efforts to the Office of Intelligence and Analysis and the Office of Counterterrorism

Coordinator.” *Id.* The Department said that “[t]he Experts Group will meet four times annually and leverage the expertise of each member to provide input on I&A’s [Office of Intelligence and Analysis] most complex problems and challenges, including terrorism, fentanyl, transborder issues, and emerging technology.” *Id.* A Department official said, “The Experts Group will be an invaluable asset as we navigate through this evolving threat and operating environment and continue to strengthen our efforts to protect the Homeland.” *Id.* Another said, “The experience, expertise, and perspective offered by Experts Group members will undoubtedly put the Department in a strong position to confront this threat landscape, and we are grateful for the willingness of the Experts Group members to serve in this important capacity.” *Id.*

In an interview that same day, one of these Department officials confirmed that “we had a meeting” of the Experts Group and said that “they are giving us advice about a lot of the thorny issues we’re dealing with.” He continued: “these are people who have tremendous experience and insights. . . . they’re looking at the issues at the same table,” so “you get these completely . . . different views of things and we then walk out really enlightened about issues that we’re dealing with. That, to me, is the best way for people to get advice.” Brookings Institution, *DHS Under Secretary for Intelligence and Analysis Kenneth Wainstein: Current threat environment*, YouTube, https://youtu.be/RGtxAwVHz_c#t=90m (Sept. 19, 2023) (beginning at 1:30.00) (hereinafter “Wainstein Video”).

The official press release announcing the Experts Group’s creation lists the following seventeen Group members:

- John Bellinger, Partner, Arnold & Porter (Former Legal Advisor, Department of State and National Security Council)
- John Brennan, Distinguished Fellow, Fordham University School of Law and University of Texas at Austin (Former Director, Central Intelligence Agency)
- James Clapper, CNN National Security Analyst (Former Director of National Intelligence)
- Rajesh De, Partner, Mayer Brown (Former Principal Deputy Assistant Attorney General for Legal Policy and NSA General Counsel)
- Thomas Galati, Senior Vice President, East Coast Security Operations, NBC Universal (Former New York Police Department, Chief, Intelligence and Counterterrorism)
- Tashina Gauhar, Senior Director, Compliance, Strategy and Policy, The Boeing Company (Former Associate Deputy Attorney General and Deputy Assistant Attorney General, National Security Division, Department of Justice)
- Asha M. George, Executive Director, Bipartisan Commission on Biodefense (Former Subcommittee Staff Director, House Committee on Homeland Security)
- Karen Greenberg, Director, Center on National Security, Fordham University School of Law
- Emily Harding, Senior Fellow and Deputy Director of the International Security Program, Center for Strategic and International Studies (Former Deputy Staff Director, Senate Select Committee on Intelligence)
- Paul Kolbe, Senior Fellow and former Director of the Intelligence Project, Harvard Kennedy School Belfer Center (Former Operations Officer, Central Intelligence Agency)
- David Kris, Co-Founder, Culper Partners LLC (Former Assistant Attorney General, National Security Division, Department of Justice)
- Michael Leiter, Partner, Skadden, Arps, Slate, Meagher & Flom (Former Director, National Counterterrorism Center)
- Elisa Massimino, Executive Director, Human Rights Institute, Georgetown Law
- Gregory Nojeim, Senior Counsel and Director, Security and Surveillance Project, Center for Democracy & Technology
- Francis Taylor, Principal, Cambridge Global Advisors (Former Under Secretary for Intelligence and Analysis, DHS)
- Caryn Wagner, Former Under Secretary for Intelligence and Analysis, DHS
- Benjamin Wittes, Senior Fellow in Governance Studies, The Brookings Institution, and Co-Founder and Editor in Chief, Lawfare

Mills Decl. Ex. 1.

The Group members do not represent diverse views. They are largely politically aligned with the current Administration and strongly oppose an America First approach to national security. *See* Declaration of Richard Grenell ¶ 28; Declaration of John A. Zadrozny ¶ 8. None served in relevant Trump Administration positions. *See* Grenell Decl. ¶ 31. Several “signed a letter calling the Hunter Biden laptop story ‘Russian disinformation’ and leveraging their intelligence expertise to sway public opinion ahead of the 2020 presidential election despite the fact that the FBI had verified the authenticity of the laptop and its contents in 2019.” *Id.* ¶ 30.

Moreover, members of the Experts Group have overwhelmingly donated to Democratic political candidates. *See* Declaration of Andrew Block ¶ 6, Ex. 1. Of the 17 people named to the Group, 13 have an apparent history of political contributions since January 1, 2012. *Id.* ¶ 6. In that time, these 13 individuals have made a collective 950 contributions to candidates for political office that are reportable to the Federal Election Commission. *Id.* Of those, 937, or nearly 99%, were made to Democrat candidates for office, while only 12 were made to Republican candidates for office. *Id.* Of the 13 people who apparently contributed to political campaigns, 9 contributed only to Democrats, while only 1 person contributed solely to a Republican—a single donation of \$250. *Id.* While three people contributed to members of both parties, two of those donated heavily in favor of Democrat candidates—with contribution totals being 36 to 3 and 17 to 1, respectively. *Id.* Collectively, the apparent political contributions of people named to the Group total

\$173,876.47 since January 1, 2012. *Id.* Of that, \$161,026.47 went to Democrat candidates. *Id.*

In short, all the individuals named to the Experts Group, regardless of partisan affiliation, have long and vested interests in supporting the Biden Administration and an internationalist view that is hostile to America First notions of U.S. sovereignty. The Group has “a severe lack of ideological diversity.” Grenell Decl. ¶ 31.

Details about the Group and its meetings are unavailable in the Federal Register or elsewhere. The single press release is the only official source that provides information on the Group. Notice of the establishment of the Group has not been published in the Federal Register. President Biden issued no Executive Order creating the Group, and no statute specifically authorized the establishment of the Group. The only pieces of information the Department has disclosed to the public are the Group’s members, the Group’s goals, and that the Group “meets.”

Because of the Defendants’ disregard of FACA’s requirements in forming and convening the Group, the Plaintiffs were forced to bring suit. Plaintiff America First Legal Foundation is a nonprofit corporation that promotes government transparency and accountability by gathering official government information, analyzing it, and disseminating it to the public through reports, press releases, media platforms including social media, and by posting government records on its website for use by the public, scholars, and others. Zadrozny Decl. ¶ 2. Among other things, America First Legal conducts oversight of the Department of Homeland Security to educate the public about the Department. *Id.* ¶ 3. Because of the Defendants’ violations,

including their failure to publicize the Group’s activities, America First Legal Foundation is deprived of “information and access to meetings to which” FACA entitles it. *Am. First Legal*, 630 F. Supp. 3d at 180; *see Zadrozny Decl.* ¶¶ 5–6. Moreover, America First Legal Foundation must expend additional resources to investigate and monitor the Group and its activities, so that it can fulfill its mission of holding the government accountable and educating the public about the government’s homeland security policies. *Id.* ¶¶ 7, 9. It has thereby been forced to divert resources from its other priorities. *Id.* ¶ 7. And because of the Group’s lack of ideological balance, no member of the Group represents America First Legal Foundation’s viewpoint on foreign policy issues. *Id.* ¶ 8.

Plaintiff Richard Grenell is the former ambassador to Germany and the former Acting Director of National Intelligence. Grenell Decl. ¶ 2. Mr. Grenell brings an America First approach to his intelligence work—an approach that is skeptical of the institutional interests being furthered by the Biden Administration and the current members of the Group. *Id.* ¶¶ 28–35. Mr. Grenell is qualified to serve on the Experts Group, having previously held the position of Director for National Intelligence, as did Mr. Clapper (a Group member), and a post at the Department of State, similar to Mr. Taylor and Mr. Bellinger (both Group members). Had he had an opportunity to apply to the Group or been invited to serve, he would have. *Id.* ¶ 34. Were he on the Group, he would have “suggested approaches for DHS that would allow it to leverage its intelligence resources to make policy decisions that support an America First agenda.” *Id.* ¶ 35; *see id.* ¶¶ 5–27. Grenell’s America First viewpoint is not currently

represented on the Group, and he cannot access materials and meetings of the Group that should be public under FACA. *See id.* ¶¶ 31, 32, 36.

LEGAL STANDARD

A preliminary injunction is appropriate if the plaintiff establishes “[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Beacon Assocs., Inc. v. Apprio, Inc.*, 308 F. Supp. 3d 277, 283 (D.D.C. 2018) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). “The last two factors ‘merge when the Government is the opposing party.’” *Navajo Nation v. Azar*, 292 F. Supp. 3d 508, 512 (D.D.C. 2018) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Despite some suggestion that the law has changed, *id.*, the preliminary injunction factors have been balanced “on a sliding scale.” *Beacon*, 308 F. Supp. 3d at 284.

ARGUMENT

All factors support a preliminary injunction. First, the Plaintiffs have an overwhelming likelihood of success on the merits. The Group falls within FACA’s scope, yet it was not announced in the Federal Register, does not have a fairly balanced membership, does not have a charter or a designed federal officer, and has disregarded FACA’s other requirements. Because the Department and Defendant Mayorkas’s failure to follow FACA in establishing and constituting the Group amounts to final agency action, the Plaintiffs have a cause of action against them under the Administrative Procedure Act, as well as a well-established mandamus

cause against the Group itself. Courts in this district have not hesitated to grant relief in similar cases, including preliminary relief, because permitting a committee that has flouted FACA to continue operations works irreparable harm.

Second, the remaining factors weigh in favor of a preliminary injunction. Without relief, the Plaintiffs will continue to be deprived of information and a representative voice on the Group, as well as being forced to divert their resources to monitor and respond to this Group that is actively seeking to avoid public oversight. And the public will be harmed too, for the point of FACA is to promote open and representative government; the Group's operations so far have been the opposite. The public interest lies in executive compliance with the law. The Court should grant the application for a preliminary injunction.

I. Plaintiffs are likely to succeed on the merits of their claims.

FACA imposes many procedural and substantive requirements on federal committees, all of which seek to ensure “that Congress and the public remain apprised of the[] existence, activities, and cost” of any federal advisory committees. *Ctr. for Arms Control & Non-Proliferation v. Lago*, No. 05-682, 2006 WL 3328257, at *2 (D.D.C. Nov. 15, 2006), *aff'd sub nom.*, *Ctr. for Arms Control & Non-Proliferation v. Pray*, 531 F.3d 836 (D.C. Cir. 2008). Under FACA, an advisory committee and the agency under which it operates must obey numerous nondiscretionary procedural requirements, including those governing establishment, 5 U.S.C. app. 2 § 9, notice, *id.* § 10, membership, *id.* § 5, and disclosure, *id.* § 10.

The government has violated all these requirements in establishing and operating the Group. The procedural prerequisites to the Group's formation were

ignored, the membership of the Group is far from balanced, and the Group has disclosed none of the required material to the public. The Defendants' violations give rise to both APA and mandamus claims. Thus, the Plaintiffs are likely to succeed on the merits.

A. The Group is an advisory committee subject to FACA.

Under FACA, an advisory committee is “any committee, board, commission, council, conference, panel, task force, or other similar group” “which is . . . established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for . . . one or more agencies or officers of the Federal Government.” 5 U.S.C. app. 2 § 3(2). As this text reflects, “[t]he Act broadly defines an advisory committee.” *Ctr. for Auto Safety v. Cox*, 580 F.2d 689, 692 (D.C. Cir. 1978). FACA’s “reach is extensive,” and Congress intended it to prevent “the wasteful expenditure of public funds for worthless committee meetings and biased proposals.” *Pub. Citizen*, 491 U.S. at 453. The Court “must construe FACA in light of its purpose to regulate the growth and operation of advisory committees.” *Ass’n of Am. Physicians & Surgeons, Inc. v. Clinton*, 997 F.2d 898, 915 (D.C. Cir. 1993) (“AAPS”).

To show that an entity is “established” for the purposes of FACA, all a plaintiff needs to show is that the entity was “actually formed by the agency” and that the government selected the members. *VoteVets*, 992 F.3d at 1105 (quoting *Byrd v. EPA*, 174 F.3d 239, 245 (D.C. Cir. 1999)). According to its own press release, the Department “establish[ed]” the Group and chose the members. Mills Decl. Ex. 1. So the only statutory question is whether the Department established it “in the interest

of obtaining advice or recommendations.” According to the Defendants’ own statements, it did:

- “Experts Group to provide advice and perspectives on intelligence and national security efforts.” Mills Decl. Ex. 1.
- “The Experts Group will be an invaluable asset as we navigate through this evolving threat and operating environment and continue to strengthen our efforts to protect the Homeland.” *Id.*
- “The Experts Group will meet four times annually and leverage the expertise of each member to provide input on I&A’s most complex problems and challenges, including terrorism, fentanyl, transborder issues, and emerging technology.” *Id.*
- “[T]hey are giving us advice about a lot of the thorny issues we’re dealing with.” Having people with “different views” “at the same table,” “to me, is the best way for people to get advice.” Wainstein Video, *supra*, at 1:31.15.

“These words fit the definition of ‘advisory committee’ like a glove.” *Elec. Privacy Info. Ctr. v. Nat’l Sec. Comm’n on Artificial Intelligence*, 466 F. Supp. 3d 100, 112 (D.D.C. 2020). “From a purely commonsense standpoint, is the [Group] an ‘advisory’ commission? Of course it is.” *Id.* It “provide[s] advice and perspectives on intelligence and national security efforts” “to support DHS’ vital work.” Mills. Decl. Ex. 1.

The D.C. Circuit has explained that “a group is a FACA advisory committee when it is asked to render advice or recommendations, *as a group*, and not as a collection of individuals.” *AAPS*, 997 F.2d at 913. “Thus, an important factor in determining the presence of an advisory committee becomes the formality and structure of the group.” *Id.* at 914. When groups are established “with a good deal of formality,” that signals that the committee *will* render advice “as a group”; otherwise, the group need not exist. *Id.* at 914. Of course, requiring *strict* formality would contradict FACA, whose purpose is to “prevent *informal* advisory committees from exerting improper or one-sided influence.” *VoteVets*, 992 F.3d at 1101 (emphasis added).

To assess whether an agency established an entity to obtain advice from the group *as a group*, courts assess whether the group “has, in large measure, an organized structure, a fixed membership, and a specific purpose.” *AAPS*, 997 F.2d at 914. When these factors are prevalent, “[t]he group’s activities are expected to, and appear to, benefit from the interaction among the members both internally and externally.” *Id.* at 913. “[A] range of variations exist in terms of the purpose, structure, and personnel of the group,” and “it is best characterized as a continuum.” *Id.* at 914. “At one end one can visualize a formal group of a limited number of private citizens who are brought together to give publicized advice as a group,” which “would seem covered by [FACA] regardless of other fortuities.” *Id.* “At the other end of the continuum is an unstructured arrangement in which the government seeks advice from what is only a collection of individuals who do not significantly interact with

each other,” which “does not trigger FACA.” *Id.* at 915. Thus, the core question is whether this Group is more like “a formal group of a limited number of private citizens who are brought together to give publicized advice as a group” or an “*ad hoc* collection[] of private individuals” “who do not significantly interact with each other.” *Id.* at 915; *see VoteVets*, 992 F.3d at 1101.¹

Plaintiffs are likely to succeed in showing that this Group was organized with sufficient formality to confirm what the Department and Group members said in public: that the Group would “meet” to “leverage the expertise of each member to provide input.” Mills Decl. Ex. 1. In other words, it is at the far end of *AAPS*’s continuum, where FACA applies “regardless of other fortuities,” for it is “a formal group of a limited number of private citizens who are brought together to give publicized advice as a group.” 997 F.2d at 914. That is what the Department said, and the Group’s organization, structure, and purpose confirm it. These formalities confirm that the Group was created with “the group structure of an advisory

¹ In *AAPS*, the D.C. Circuit explained that “the government has a good deal of control over whether a group constitutes a FACA advisory committee” because “form is a factor.” 997 F.2d 914. But once the government has established a committee and its form, the Court need not credit its post-hoc attempts to avoid adhering to FACA’s requirements. That would be inconsistent with FACA’s “purpose to regulate the growth and operation of advisory committees.” *Id.* at 915. Hence the many decisions that reject the government’s similar efforts to avoid FACA. *See, e.g., Cal. Forestry Ass’n v. U.S. Forest Serv.*, 102 F.3d 609, 610 (D.C. Cir. 1996); *Am. First Legal*, 630 F. Supp. 3d at 182 (“Congress cannot have intended to make FACA so easy to evade.”); *NAACP Legal Def. & Educ. Fund, Inc. v. Wilkinson*, No. 20-1132, 2021 WL 723993, at *13 (D.D.C. Feb. 24, 2021); *Barr*, 496 F. Supp. 3d at 137; *AI*, 466 F. Supp. 3d at 122; *Heartwood, Inc. v. U.S. Forest Serv.*, 431 F. Supp. 2d 28, 36 (D.D.C. 2006); *Nw. Forest Res. Council v. Espy*, 846 F. Supp. 1009, 1010 (D.D.C. 1994) (“This case arises upon yet another attempt by the Executive Branch to escape the toils of FACA.”).

committee” and thus “render[s] advice” “as a group.” *VoteVets*, 992 F.3d at 1101, 1103. The Group was formally selected and organized by the Department, it has regular meetings with a stable group, and it will address Department-provided topics. In short, it was formed to give advice.

1. The Group has an organized structure.

The Group has an organized structure composed of Department-selected representatives. *See* Mills Decl. Ex. 1. It is “coordinated and hosted by [Department] officials.” *Pub. Emps. for Env'tl. Resp. v. Nat'l Park Serv.*, No. CV 19-3629 (RC), 2022 WL 1657013, at *15 (D.D.C. May 24, 2022). The Department convenes its meetings and apparently provided its resources. *See* Mills Decl. Ex. 1. Those meetings will occur with regularity, four times annually. *See id.*

This organization suffices to satisfy the “organized structure” requirement, which “is not a high bar to clear.” *Am. First Legal*, 630 F. Supp. 3d at 181. “For instance, in *VoteVets*, the Circuit held that the plaintiffs in that case adequately alleged that a group formed to ‘straighten out the VA’ was a FACA advisory committee even though it was comprised of only three individuals, all three of whom apparently were not present at every meeting, and who would ‘fill in the others’ on missed meetings rather than resorting to some kind of formal minute-taking.” *Am. First Legal*, 630 F. Supp. 3d at 181–82 (quoting 992 F.3d at 1104–05); *see also Pub. Emps.*, 2022 WL 1657013, at *15 (sufficient organization where “[m]eetings were held quarterly”); *Heartwood*, 431 F. Supp. 2d at 35 (sufficient organization even though the group only “met twice”).

This Group is not some “*ad hoc* collection[] of private individuals.” *VoteVets*, 992 F.3d at 1101. It is organized and convened by the Department for regular meetings with set membership. *Cf. Nader v. Baroody*, 396 F. Supp. 1231, 1232 (D.D.C. 1975) (insufficient organization where “[a] different group” held “meetings every two weeks between different high officials of the executive branch and major business organizations or private sector groups”).

2. The Group has a stable membership.

“[A] fixed membership” is another indication of whether, “in large measure,” a committee is sufficiently structured. *AAPS*, 997 F.2d at 914. “A group has a ‘fixed membership’ for FACA purposes if it has a designated list of members rather than a rotating cast of characters who come and go from meeting to meeting.” *Am. First Legal*, 630 F. Supp. 3d at 182. Even a “semi-stable membership” is sufficient. *Pub. Emps.*, 2022 WL 1657013, at *16; *id.* (rejecting any requirement for “a rigidly fixed membership”); *Am. First Legal*, 630 F. Supp. 3d at 182 (same). According to all the Department had made public, the Group’s membership is set for its four annual meetings. *See* Mills Decl. Ex. 1. The Defendants have given no indication that the membership will significantly change, rotate, or expand. This factor too supports FACA’s applicability.

3. The Group has a specific purpose.

The Experts Group also has “a specific purpose’ of advising the Department.” *VoteVets*, 992 F.3d at 1105. “The ‘specific purpose’ requirement, like the ‘organized structure’ requirement, is not a high bar to clear.” *Am. First Legal*, 630 F. Supp. 3d at 183. “There is no requirement that plaintiffs identify a discrete regulation or

administrative determination on which the putative committee intends to offer advice.” *Id.* “For example, in *VoteVets*, the Circuit concluded that ‘advising the Department of Veteran Affairs on “the essential decisions” relating to veterans’ affairs’ was a sufficiently specific purpose for the group to qualify as a FACA advisory committee.” *Id.* (quoting 992 F.3d at 1105).

Here, the official press release identifies not just the Group’s overarching purpose—“to provide advice”—but also specific areas of advice that will be solicited from the Group: “input on I&A’s most complex problems and challenges, including terrorism, fentanyl, transborder issues, and emerging technology.” Mills Decl. 1. The Group reports “to DHS’s I&A and the Office of the Counterterrorism Coordinator.” *Id.* Thus, the Group “has a sufficiently specific purpose to qualify as a FACA advisory committee.” *Am. First Legal*, 630 F. Supp. 3d at 184.

4. The Group provides advice or recommendations.

Given these formalities, the Group exists to provide “advice or recommendations” as a group. 5 U.S.C. app. 2 § 3(2). As noted, the Department organized and convened the Group “to provide input on I&A’s most complex problems and challenges, including terrorism, fentanyl, transborder issues, and emerging technology.” Mills Decl. Ex. 1. The official press release’s subheading starts: “Experts Group to provide advice.” *Id.* The Department says that the “Group will be an invaluable asset.” *Id.* And one of the organizing officials said the Department structured the Group “like other panels around the government”—with people of “different views” “at the same table”—because that “is the best way for people to get advice.” Wainstein Video, *supra*, at 1:32.30.

These “express statement[s] that [the Group’s] purpose is to provide recommendations” in a group setting are entitled to great weight. *Sofamor Danek Grp., Inc. v. Gaus*, 61 F.3d 929, 937 (D.C. Cir. 1995). “[T]he circumstances of [the Group’s] genesis support an inference that [it] was in fact established ‘in the interest’ of advising an agency and therefore is subject to FACA.” *Cal. Forestry*, 102 F.3d at 611.

Anticipating objections by the government, FACA is not limited “to those committees that would offer consensus recommendations.” *AAPS*, 997 F.2d at 913. Thus, it does not matter if advice is given through “sub-groups or individually, and not as one large group.” *Heartwood*, 431 F. Supp. 2d at 35. Nor does it matter if members of the advisory committee “support decision makers with data, and not policy advice or recommendations.” *Id.* at 34 (collecting cases). Nor does it matter “whether the federal government actually uses the” advice, “as long as the advice was directed to the federal government.” *Sofamor Danek Grp., Inc. v. Clinton*, 870 F. Supp. 379, 384 (D.D.C. 1994), *aff’d*, 61 F.3d 929. Instead, the central question is whether the Group was convened with some formality and structure “to inform the [agency’s] policymaking.” *Heartwood*, 431 F. Supp. 2d at 35; *Nw. Forest*, 846 F. Supp. at 1012 (asking if the committee was “a consultative assembly of knowledgeable persons”).

As shown above, the Group was formally announced by the Department, convened by the Department, organized by the Department with a set membership for regular meetings throughout the year, and will give advice on Department-provided topics. All this shows that the “[t]he group’s activities are expected to”

“benefit from the interaction among the members both internally and externally,” and therefore that the Department established the Group in the interest of obtaining advice from the *group*. *AAPS*, 997 F.2d at 913. As the Department’s own officials emphasize here, the enterprise of *joint* meetings means that the Group is more “than the sum of the parts.” *Id.* at 914. By convening the Group, the government “recognizes [its] usefulness for political (and patronage) purposes” *as a group*. *Id.* at 914. “The function of a group giving such advice” is “to aid the decision makers in choosing the direction of government behavior.” *Jud. Watch, Inc. v. Clinton*, 76 F.3d 1232, 1234 (D.C. Cir. 1996). It “is the best way for people to get advice.” Wainstein Video, *supra*, at 1:31.15. The Group is “a consultative assembly of knowledgeable persons.” *Nw. Forest*, 846 F. Supp. at 1012. It is a FACA advisory committee.

B. The Group’s creation, composition, and operations violate FACA.

Because the Group is subject to FACA, it must comply with the statute’s nondiscretionary requirements that govern its establishment, membership, and disclosure. Yet the government has complied with none of these requirements, and it will continue to violate the statute absent immediate relief from this Court.

1. The Defendants have violated FACA’s establishment procedures.

First, the Defendants violated FACA’s procedural requirements that must be followed to create a lawful advisory committee. FACA orders that “[n]o advisory committee shall be established unless such establishment is (1) specifically authorized by statute or by the President; or (2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator,

with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.” 5 U.S.C. app. 2 § 9(a). If the government uses the second route, “[t]he relevant implementing regulations require findings that the committee be ‘essential to the conduct of agency business’ and that ‘the information to be obtained is not already available through another advisory committee or source within the Federal Government.’” *Nat. Res. Def. Council v. Dep’t of Interior*, 410 F. Supp. 3d 582, 595–96 (S.D.N.Y. 2019) (quoting 41 C.F.R. § 102-3.30(a)).

Further, “[n]o advisory committee shall meet or take any action until an advisory committee charter has been filed with . . . the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency.” 5 U.S.C. app. 2 § 9(c). An advisory committee must also file a charter with the Library of Congress and the Secretariat. 41 C.F.R. § 102-3.70(a)(3)–(4). FACA enumerates 10 specific requirements that a charter must contain. 5 U.S.C. app. 2 § 9(c)(A)–(J).

The government here flouted all these requirements. Neither a statute nor the President specifically authorized the establishment of the Group. Yet contrary to the statute, Defendant Mayorkas did not purport to consult with the Administrator, no formal record indicates that the Group is operating in the public interest in connection with the Department’s duties, and notice of the Group was not published in the Federal Register. The Department’s press release provides the only official, publicly available information on the Group and its creation. *See Mills Decl. Ex. 1.*

Moreover, the Group failed to fulfill its nondiscretionary duty to file a charter with the Department, the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Homeland Security, the Library of Congress, and the Secretariat. According to the Department officials, the Group is meeting (and thus generating documents and information that must be public), Wainstein Video, *supra*, at 1:33.00, but any meetings violate FACA. Injunctive relief is necessary.

2. The Group is not fairly balanced.

Next, FACA “require[s] the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee.” 5 U.S.C. app. 2 § 5(b)(2). This requirement “was designed to ensure that persons or groups directly affected by the work of a particular advisory committee would have some representation on the committee.” *Nat’l Anti-Hunger Coal. v. Exec. Comm. of President’s Private Sector Survey on Cost Control*, 711 F.2d 1071, 1074 n. 2 (D.C. Cir. 1983). That is because “[a]dvisory committees are not just mechanisms for transmitting policy advice on a particular subject matter to the government”; they “also possess a kind of political legitimacy as representative bodies.” *AAPS*, 997 F.2d at 914.

To fulfill this goal, “before establishing a new committee, an agency head must consult with the Committee Management Secretariat at the GSA.” *Barr*, 496 F. Supp. 3d at 134 (citing 41 C.F.R. § 102-3.60). “[T]he agency head must submit a ‘description of the agency’s plan to attain fairly balanced membership’ that ensures ‘the agency will consider a cross-section of those directly affected, interested, and qualified, as

appropriate to the nature and functions of the advisory committee.” *Id.* (quoting 41 C.F.R. § 102-3.60(b)(3)).

At the outset, the government violated FACA by failing to consult with the Committee Management Secretariat at the GSA. The Defendants provided no description of its plan to attain a fairly balanced membership.

Moreover, the current make-up of the Group is far from balanced in terms of points of view represented. To have a fair balance of viewpoints and competent deliberation on homeland security and intelligence issues, there must be fairly equal representation from all sides of the political and ideological spectrum. “FACA is designed to prevent commissions from, *inter alia*, convening a group of like-minded individuals, excluding duly appointed members with appointing viewpoints, and rubber-stamping the political agenda of the appointing authority.” *Dunlap v. Presidential Advisory Comm’n on Election Integrity*, 464 F. Supp. 3d 247, 252 (D.D.C. 2020).

Yet here, the Department appointed only like-minded members supportive of the current Administration and more generally the intelligence state. The members have overwhelmingly supported Democratic political candidates. *Supra* pp. 6–7. None served as part of the Trump Administration. Grenell Decl. ¶ 31. And all the members, regardless of partisan affiliation, have long and vested interests in supporting the Biden Administration and an internationalist view that is hostile to America First notions of U.S. sovereignty. “None of the people announced as members of the ‘Experts Group’ will advocate for new or novel uses of intelligence reporting or

the use of intelligence to secure the homeland using America First policies.” Grenell Decl. ¶ 28; *see* Zadrozny Decl. ¶ 8 (“No member of the current Group shares America First Legal’s viewpoint on homeland security and intelligence policy issues, and the vast majority of members have been openly hostile to America First policy positions.”).

The Group has no ideological diversity or balance. The Department picked members that are agreeable, not balanced. This violates FACA.

3. The Group has no provision to protect against improper influence.

Under FACA, an advisory committee’s founding documents must “contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee’s independent judgment.” 5 U.S.C. app. 2 § 5(b)(3). This provision was “designed to counter ‘the belief that these advisory committees do not adequately and fairly represent the public interest or that they may be biased toward one point of view or interest.’” *Barr*, 496 F. Supp. 3d at 135 (cleaned up) (quoting *Pub. Citizen v. Nat’l Advisory Comm. on Microbiological Criteria for Foods*, 886 F.2d 419, 423 (D.C. Cir. 1989) (Friedman, J., concurring in the judgment)).

Once again, the Defendants faltered out of the gate by flouting FACA’s procedural requirements, failing to include any provision to ensure that the Group will not be inappropriately influenced by the appointing authority. *See Wilkinson*, 2021 WL 723993, at *7 (granting summary judgment, issuing a declaratory

judgment, and ordering defendants to amend the disclaimer to the committee's report to reflect their failure to comply with section 5(b)(3) because a provision ensuring that the committee would not inappropriately be influenced by the appointing authority was absent). More, given the Defendants' failure to comply with FACA and the Group's obvious political leanings, it appears likely that the Group *is* subject to improper influence. But the Defendants' procedural fault is alone sufficient to show another FACA violation.

4. The Group does not have a Designated Federal Officer.

FACA also requires that Defendant Mayorkas, as head of the agency to which the Group reports, "designate a Federal officer . . . to be the [Designated Federal Officer ("DFO")]" for the Group. 41 C.F.R. § 102-3.120. Absent a DFO, the Group cannot meet. 5 U.S.C. app. 2 § 10(e); *id.* § 10(f) ("Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a [DFO], and in the case of advisory committees . . ., with an agenda approved by such officer or employee."). The DFO requirement "ensures that regulators and the public can obtain information about committees' operations." *Barr*, 496 F. Supp. 3d at 128.

Defendant Mayorkas has apparently failed to assign a DFO for the Group. No DFO evidently exists to call a meeting or approve an agenda, yet the Group is meeting. The Defendants' apparent failure to appoint a DFO violates FACA, and the Plaintiffs are entitled to relief. *See Barr*, 496 F. Supp. 3d at 128 ("[Plaintiff] is . . . entitled to injunctive relief requiring defendant . . . to appoint a designated federal officer.").

5. The Group has failed to disclose required information.

FACA requires advisory committees to comply with several transparency and public access requirements. *First*, “[e]ach advisory committee meeting shall be open to the public.” 5 U.S.C. app. 2 § 10(a)(1). *Second*, “timely notice of each such meeting shall be published in the Federal Register, and the Administrator shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.” *Id.* § 10(a)(2). To satisfy this requirement, committees must publish notice in the Federal Register at least 15 days before the meeting, and include (1) the name of the advisory committee; (2) the time, date, and place of the meeting; (3) a summary of the agenda and topics to be discussed; (4) a statement of whether any parts of the meeting will be closed, along with an explanation for that closure; and (5) contact information for a designated officer for those who wish to learn more information. 41 C.F.R. § 102-3.150(a). *Third*, “the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying . . . until the advisory committee ceases to exist.” 5 U.S.C. app. 2 § 10(b).

Though Department officials say that the Group is meeting, no such meeting was announced or open to the public, nor did any Defendant apparently provide timely notice of the meetings in the Federal Register or anywhere else. Further, to the Plaintiffs’ knowledge, the Defendants have failed to make the records, reports, and other necessary documents pertaining to any meetings publicly available. Thus, the Defendants have violated FACA and continue to do so.

C. The Plaintiffs are likely to succeed on their APA, declaratory relief, and mandamus claims.

The only remaining question is whether the Defendants' FACA violations can be remedied in this case. They can. First, the Administrative Procedure Act "is an appropriate vehicle" for the claims here against the Department and Defendant Mayorkas in his official capacity as Secretary. *Barr*, 496 F. Supp. 3d at 144. The APA prohibits agencies from acting "without observance of procedure required by law," and acting in a manner that is "arbitrary, capricious," "or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A), (B), and (D). "The type of actions and inaction challenged here," including "holding meetings, refusing to disclose documents, [and] failure to comply with FACA's other procedural requirements, certainly fall within the broad category of 'agency power' Congress intended to include in [the APA's] definition of agency action." *Judicial Watch, Inc. v. Nat'l Energy Policy Dev. Grp.*, 219 F. Supp. 2d 20, 38 (D.D.C. 2002); accord *Judicial Watch, Inc. v. Dep't of Com.*, 736 F. Supp. 2d 24, 30–31 (D.D.C. 2010) (collecting cases showing that "a number of courts have allowed plaintiffs to proceed with APA actions based on alleged FACA violations"); *Am. First Legal*, 630 F. Supp. 3d at 177.

Thus, the Department and Defendant Mayorkas's FACA violations—particularly their failures to ensure that the membership of the Group is fairly balanced, 5 U.S.C. app. 2 § 5(b)(2), to appoint a DFO, *id.* § 10(e)–(f) and 41 C.F.R. § 102-3.120, to disclose the required information, 5 U.S.C. app. 2 § 10(a)–(b), and establishing the Group without publishing notice in the Federal Register, *id.* § 9(a)—constitute "final agency actions" that were taken in violation of law. *See* 5 U.S.C.

§ 704 (“[F]inal agency action for which there is no other adequate remedy in a court are subject to judicial review.”). “The decisions in question” “were not tentative or interlocutory.” *Nat’l Energy Policy Dev. Grp.*, 219 F. Supp. 2d at 40. And “[t]he decisions to hold meetings without public access to the meetings” and with an imbalanced membership “had a legal consequence—the denial of the public’s right of access to that information” and have representative voices on the Group. *Id.* As shown above, the Defendants’ actions have contradicted FACA’s requirements. Thus, the Plaintiffs are likely to succeed on their APA claim.

Next, under the Declaratory Judgment Act, the Court “may declare the rights and other legal relations of any interested party seeking such declaration.” 28 U.S.C. § 2201(a). Because the Plaintiffs have “a judicially remediable right to have the [Group] comply with its duties under FACA,” they are “entitled to a declaratory judgment that the [Group] is an advisory committee subject to the requirements of FACA, and that [D]efendants have violated FACA.” *Barr*, 496 F. Supp. 3d at 146.

Moreover, “mandamus relief is the appropriate vehicle” for claims against the Group. *Barr*, 496 F. Supp. 3d at 144–45; *accord Freedom Watch, Inc. v. Obama*, 807 F. Supp. 2d 28, 34 (D.D.C. 2011); *Dep’t of Com.*, 736 F. Supp. 2d at 31; *Nat’l Energy Policy Dev. Grp.*, 219 F. Supp. 2d at 41–44; *Am. First Legal*, 630 F. Supp. 3d at 186. “The party seeking mandamus has the burden of showing ‘(1) a clear and indisputable right to relief, (2) that the government agency or official is violating a clear duty to act, and (3) that no adequate alternative remedy exists.’” *Barr*, 496 F. Supp. 3d at 145 (quoting *Am. Hosp. Ass’n v. Burwell*, 812 F.3d 183, 189 (D.C. Cir. 2016)). The

Plaintiffs are likely to meet all three requirements. As shown, the Defendants have a clear “duty to comply with FACA and ha[ve] failed to do so.” *Id.* And “[m]andamus is the only vehicle for [the Plaintiffs’] claims against” the Group because “an advisory committee is not an agency subject to the APA and FACA provides no private right of action.” *Id.* The Plaintiffs are likely to succeed on the merits.

Finally, the Plaintiffs have standing. Most obviously, “[i]t is well established that in the FACA context, an informational injury” standing alone “is sufficient to confer Article III standing.” *Am. First Legal*, 630 F. Supp. 3d at 180. “[P]laintiffs allege just such a cognizable informational injury”: “They seek information and access to meetings to which they argue FACA entitles them and which they are presently being denied,” “[t]hat injury is traceable to defendants’ decision not to have the [Group] comply with FACA’s public-access and records requirements, and it is redressable by an order that the [Group] refrain from meeting until it has satisfied those requirements.” *Id.*; see Grenell Decl. ¶ 36; Zadrozny Decl. ¶¶ 2–3, 5–6.

The Defendants’ several FACA violations injure the Plaintiffs in other cognizable ways too, including by denying them representation that is guaranteed by FACA and by forcing America First Legal to divert resources from its normal operations to respond to the Defendants’ violations. See Grenell Decl. ¶¶ 28–35; Zadrozny Decl. ¶¶ 7–9. These harms are independently sufficient to establish injury in fact. See *Barr*, 496 F. Supp. 3d at 127–132 (holding that a similarly situated plaintiff had standing over nearly identical claims). And these injuries are traceable to the Defendants’ conduct and are likely to be redressed by a favorable decision from

this Court. *Id.* at 130 (“[Plaintiff’s] injuries are redressable by mandamus and injunctive relief.”).

II. The remaining factors weigh in favor of a preliminary injunction.

The other preliminary injunction factors also support injunctive relief.

Irreparable Harm. The Plaintiffs face irreparable harm absent an injunction. Should the Group continue its meetings, “plaintiffs will be denied, perhaps for all time, but at a minimum during the on-going course, that which Congress expressly protected through FACA.” *Pub. Citizen v. Nat’l Econ. Comm’n*, 703 F. Supp. 113, 129 (D.D.C. 1989) (granting an injunction). “The right to view the advisory committee’s discussion of policy matters in public and the right to confront, through observation, the decision-making process as it occurs, will be obviated.” *Id.*; *see also Ala.-Tombigbee Rivers Coal. v. Dep’t of Interior*, 26 F.3d 1103, 1106 (11th Cir. 1994) (“If public commentary is limited to retrospective scrutiny, [FACA] is rendered meaningless.”).

“District courts in this circuit have recognized that, where an obligation to disclose exists, plaintiffs may suffer irreparable harm if they are denied access to information that is highly relevant to an ongoing public debate.” *Dunlap v. Presidential Advisory Comm’n on Election Integrity*, 286 F. Supp. 3d 96, 110 (D.D.C. 2017) (collecting cases), *rev’d on other grounds*, 944 F.3d 945 (D.C. Cir. 2019). Thus, courts routinely grant equitable relief in FACA cases. *See, e.g., Barr*, 496 F. Supp. 3d at 145; *Dunlap*, 286 F. Supp. 3d at 107, 109–11; *Ass’n of Am. Physicians & Surgeons, Inc. v. Clinton*, 813 F. Supp. 82, 93-95 (D.D.C. 1993), *rev’d on other grounds*, 997 F.2d 898; *Nat’l Econ. Comm’n*, 703 F. Supp. at 129 (granting an injunction because “[t]he

right to view the advisory committee's discussion of policy matters in public and the right to confront, through observation, the decision-making process as it occurs, will be obviated"); *Gates v. Schlesinger*, 366 F. Supp. 797, 800–01 (D.D.C. 1973).

Likewise irreparably harmed will be the Plaintiffs' right to have a representative voice on the Group. As explained, "[a]dvisory committees are not just mechanisms for transmitting policy advice on a particular subject matter to the government. These committees also possess a kind of political legitimacy as representative bodies." *AAPS*, 997 F.2d at 913. "Membership on a committee is often highly prized and sought after because it carries recognition and even prestige." *Id.* And "[w]hen the executive branch endorses its advice and seeks to promote the policy course suggested by the committee, the executive branch draws upon the committee's political legitimacy." *Id.*; *see also Cummock*, 180 F.3d at 292 ("[T]he Government obtains valuable advice and political legitimacy with respect to its policy decisions").

Permitting the Defendants' disregard of FACA to continue would thus triply harm the Plaintiffs: imposing informational and diversion-of-resources injuries on them, preventing them from having a voice on the Group, and forcing them to respond to an imbalanced government entity draped in undeserved legitimacy. *See Cal. Forestry*, 102 F.3d at 614 ("[A]n injunction might be appropriate . . . if the unavailability of an injunctive remedy would effectively render FACA a nullity."); *W. Org. of Res. Councils v. Bernhardt*, 412 F. Supp. 3d 1227, 1243–44 (D. Mont. 2019) (granting a use injunction because "[t]he agency had the obligation and opportunity to comply with FACA from the start" but "did not do so"); *Idaho Wool Growers Assoc.*

v. Schafer, 637 F. Supp. 2d 868, 880 (D. Idaho. 2009) (granting a use injunction “[b]ecause Plaintiffs were denied their right to participate in the Committees’ processes”). A preliminary injunction is crucial to the Plaintiffs because “absent a preliminary injunction,” the Plaintiffs will be precluded “from obtaining in a timely fashion information vital to the current and ongoing debate surrounding” national security issues. *Elec. Privacy Info. Ctr. v. Dep’t of Justice*, 416 F. Supp. 2d 30, 41 (D.D.C. 2006); *see also Protect Democracy Project, Inc. v. U.S. Dep’t of Def.*, 263 F. Supp. 3d 293, 301 (D.D.C. 2017) (determining that the plaintiff faced irreparable harm “because ongoing public and congressional debates about issues of vital importance cannot be restarted or wound back” (cleaned up)).

Balance of Equities and the Public Interest. The balance of equities and public interest support relief. First, the Plaintiffs’ “extremely high likelihood of success on the merits is a strong indicator that a preliminary injunction would serve the public interest,” for “[t]here is generally no public interest in the perpetuation of unlawful [executive] action.” *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). Second, FACA states the public interest, which is in line with “the essence of our democratic society”: “providing the public its right to know how its government is conducting the public’s business” (*Nat’l Econ. Comm’n*, 703 F. Supp. at 129) and to have a say. *See Pub. Citizen*, 491 U.S. at 453 (“FACA was enacted to cure specific ills, above all . . . biased proposals.”); *Am. First Legal*, 630 F. Supp. 3d at 178; *see also* H.R. Rep. No. 92-1017, at 3496 (1972) (“One of the great dangers in this unregulated use of advisory committees is that special interest groups may use

their membership on such bodies to promote their private concerns.”). Third, the public has an interest in preventing “agency decision makers” from relying on any recommendations or reports issued by an improperly constituted Group. *Cummock*, 180 F.3d at 293. Last, the Defendants suffer no cognizable harm from following the law. *See Nat’l Econ. Comm’n*, 703 F. Supp. at 129; *see Shawnee Tribe v. Mnuchin*, 984 F.3d 94, 102 (D.C. Cir. 2021) (“[T]here is generally no public interest in the perpetuation of unlawful agency action.”).

Bond. “[Federal Rule of Civil Procedure] 65(c) vests broad discretion in the district court to determine the appropriate amount of an injunction bond, including the discretion to require no bond at all.” *Sutton Invs. LLC v. Perlmutter*, No. 1:21-cv-3226, 2021 WL 6062635, at *6 n. 4 (D.D.C. Dec. 22, 2021) (cleaned up). Courts have determined that bonds are not necessary where the defendants would not be substantially injured by issuance of an injunction, *Council on Am.-Islamic Relations v. Gaubatz*, 667 F. Supp. 2d 67, 81 (D.D.C. 2009), and only required a nominal bond where the public interest favored granting equitable relief, *Armstrong v. Bush*, 807 F. Supp. 816, 823 (D.D.C. 1992) (\$100). Because the Defendants will not be harmed by being required to comply with FACA, and because the public interest strongly favors granting an injunction, this Court should waive any bond.

CONCLUSION

For these reasons, the Court should grant a preliminary injunction enjoining Defendants Mayorkas, the Department, and the Group and all of its working groups, from holding any meetings, sessions, or hearings, or conducting any official business

whatsoever on behalf of the Group, whether remotely or in person, until their violations of FACA are remedied. The Court should also enjoin the Defendants from submitting, accepting, publishing, employing, or relying upon any report or recommendations produced by the Group for any official purpose whatsoever, directly or indirectly, including indicating in any way that any report or recommendation of the Group reflects the views of a lawfully constituted advisory committee, until their violations of FACA are remedied.

Respectfully submitted,

/s/ Gene P. Hamilton

Gene P. Hamilton
D.C. Bar No. 1619548
Reed D. Rubinstein
Andrew Block
AMERICA FIRST LEGAL FOUNDATION
611 Pennsylvania Avenue SE #231
Washington, DC 20003
(202) 964-3721
gene.hamilton@aflegal.org

/s/ Christopher E. Mills

Christopher E. Mills
D.C. Bar No. 1021558
SPERO LAW LLC
557 East Bay Street #22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

NOVEMBER 22, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

America First Legal Foundation and Richard
Grenell,

Plaintiffs,

v.

Alejandro Mayorkas, United States
Department of Homeland Security, and
Homeland Intelligence Experts Group,

Defendants.

Civil Action No. 1:23-cv-3322

**[PROPOSED] ORDER
GRANTING PLAINTIFFS'
APPLICATION FOR
PRELIMINARY
INJUNCTION**

Upon consideration of the parties' arguments regarding Plaintiffs' Application for a Preliminary Injunction, it is

ORDERED that Plaintiffs' Application is **GRANTED** this ____ day of _____, 2023, for the reasons set forth in the Application and its supporting documents.

It is ordered that Secretary of Homeland Security Alejandro Mayorkas, the United States Department of Homeland Security, and the Homeland Intelligence Experts Group and all of its working groups, are enjoined from holding any meetings, sessions, or hearings, or conducting any official business whatsoever on behalf of the Group, whether remotely or in person, until their violations of the Federal Advisory Committee Act, as identified by Plaintiffs, are remedied.

It is further ordered that Secretary of Homeland Security Alejandro Mayorkas, the United States Department of Homeland Security, and the Homeland Intelligence Experts Group and all of its working groups, are enjoined from submitting, accepting, publishing, employing, or relying upon any report or recommendations produced by the Group for any official purpose whatsoever, directly or indirectly, including

indicating in any way that any report or recommendation of the Group reflects the views of a lawfully constituted advisory committee, until their violations of the Federal Advisory Committee Act, as identified by Plaintiffs, are remedied.

Because Defendants will not be harmed by being required to comply with the Federal Advisory Committee Act, and because the public interest strongly favors an injunction, the Court does not impose a security requirement under Fed. R. Civ. P. 65(c).

SO ORDERED.

United States District Judge Christopher R. Cooper

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

America First Legal Foundation and
Richard Grenell,

Plaintiffs,

v.

Alejandro Mayorkas, United States
Department of Homeland Security, and
Homeland Intelligence Experts Group,

Defendants.

Civil Action No. 1:23-cv-3322

DECLARATION OF CHRISTOPHER MILLS

1. I am an attorney at Spero Law LLC, and counsel for plaintiff America First Legal Foundation.

2. I am over the age of 18 and under no mental disability or impairment. I have personal knowledge of the following facts and, if called as a witness, I would competently testify to them.

3. Attached as Exhibit 1 is a true and accurate copy of a press release published on the U.S. Department of Homeland Security's website on Sept. 19, 2023, and available at <https://www.dhs.gov/news/2023/09/19/secretary-mayorkas-announces-establishment-homeland-intelligence-experts-group>.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing declaration is true and correct. Executed on November 21, 2023.

/s/ Christopher Mills
Christopher E. Mills

EXHIBIT 1



U.S. Department of Homeland Security

Secretary Mayorkas Announces Establishment of Homeland Intelligence Experts Group

Release Date: September 19, 2023

Experts Group to provide advice and perspectives on intelligence and national security efforts to the Office of Intelligence and Analysis and the Office of Counterterrorism Coordinator to support DHS' vital work to protect our country

WASHINGTON – Today, U.S. Department of Homeland Security (DHS) Secretary Alejandro N. Mayorkas, Under Secretary for Intelligence and Analysis (I&A) Ken Wainstein, and Counterterrorism Coordinator Nicholas Rasmussen announced the establishment of the Homeland Intelligence Experts Group (Experts Group). The group is comprised of private sector experts who will provide their unique perspectives on the federal government's intelligence enterprise to DHS's I&A and the Office of the Counterterrorism Coordinator.

"The security of the American people depends on our capacity to collect, generate, and disseminate actionable intelligence to our federal, state, local, territorial, tribal, campus, and private sector partners," **said Secretary of Homeland Security Alejandro N. Mayorkas**. "I express my deep gratitude to these distinguished individuals for dedicating their exceptional expertise, experience, and vision to our critical mission."

"The Homeland Intelligence Experts Group is being formed at a time of unprecedented challenge, with the U.S. intelligence enterprise facing threats from a range of malign actors, to include foreign nation-state adversaries, domestic violent extremists, cyber criminals, drug-trafficking cartels and other transnational criminal organizations," **said Under Secretary for Intelligence and Analysis Ken Wainstein**. "The Experts Group will be an invaluable asset as we navigate through this evolving threat and operating environment and continue to strengthen our efforts to protect the Homeland."

"The homeland threat environment is more diverse, dynamic, and challenging than at any point in our post 9/11 history, with threats tied to an array of different terrorist and violent extremist ideologies and narratives," **said Counterterrorism Coordinator Nicholas Rasmussen**. "The experience, expertise, and perspective offered by Experts Group members will undoubtedly put the Department in a strong position to confront this threat landscape, and we are grateful for the willingness of the Experts Group members to serve in this important capacity."

The Experts Group will provide DHS with a wide range of views and perspectives, with a membership that includes former senior intelligence officials, journalists, and prominent human rights and civil liberties advocates.

The Experts Group members are the following:

- **John Bellinger**, Partner, Arnold & Porter (Former Legal Advisor, Department of State and National Security Council)
- **John Brennan**, Distinguished Fellow, Fordham University School of Law and University of Texas at Austin (Former Director, Central Intelligence Agency)
- **James Clapper**, CNN National Security Analyst (Former Director of National Intelligence)
- **Rajesh De**, Partner, Mayer Brown (Former Principal Deputy Assistant Attorney General for Legal Policy and NSA General Counsel)
- **Thomas Galati**, Senior Vice President, East Coast Security Operations, NBC Universal (Former New York Police Department, Chief, Intelligence and Counterterrorism)
- **Tashina Gauhar**, Senior Director, Compliance, Strategy and Policy, The Boeing Company (Former Associate Deputy Attorney General and Deputy Assistant Attorney General, National Security Division, Department of Justice)
- **Asha M. George**, Executive Director, Bipartisan Commission on Biodefense (Former Subcommittee Staff Director, House Committee on Homeland Security)
- **Karen Greenberg**, Director, Center on National Security, Fordham University School of Law
- **Emily Harding**, Senior Fellow and Deputy Director of the International Security Program, Center for Strategic and International Studies (Former Deputy Staff Director, Senate Select Committee on Intelligence)
- **Paul Kolbe**, Senior Fellow and former Director of the Intelligence Project, Harvard Kennedy School Belfer Center (Former Operations Officer, Central Intelligence Agency)
- **David Kris**, Co-Founder, Culper Partners LLC (Former Assistant Attorney General, National Security Division, Department of Justice)
- **Michael Leiter**, Partner, Skadden, Arps, Slate, Meagher & Flom (Former Director, National Counterterrorism Center)

- **Elisa Massimino**, Executive Director, Human Rights Institute, Georgetown Law
- **Gregory Nojeim**, Senior Counsel and Director, Security and Surveillance Project, Center for Democracy & Technology
- **Francis Taylor**, Principal, Cambridge Global Advisors (Former Under Secretary for Intelligence and Analysis, DHS)
- **Caryn Wagner**, Former Under Secretary for Intelligence and Analysis, DHS
- **Benjamin Wittes**, Senior Fellow in Governance Studies, The Brookings Institution, and Co-Founder and Editor in Chief, Lawfare

The Experts Group will meet four times annually and leverage the expertise of each member to provide input on I&A's most complex problems and challenges, including terrorism, fentanyl, transborder issues, and emerging technology.

For more information on I&A's vital work, please visit [Office of Intelligence and Analysis | Homeland Security \(dhs.gov\)](https://www.dhs.gov/office-intelligence-and-analysis) (<https://www.dhs.gov/office-intelligence-and-analysis>).

###

Topics

[PREVENTING TERRORISM \(/TOPICS/PREVENTING-TERRORISM\)](#)

Keywords

[COUNTERTERRORISM \(/KEYWORDS/COUNTERTERRORISM\)](#)

[SECRETARY ALEJANDRO MAYORKAS \(/KEYWORDS/SECRETARY-ALEJANDRO-MAYORKAS\)](#)

Last Updated: 09/19/2023

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

America First Legal Foundation and
Richard Grenell,

Plaintiffs,

v.

Alejandro Mayorkas, United States
Department of Homeland Security, and
Homeland Intelligence Experts Group,

Defendants.

Civil Action No. 1:23-cv-3322

DECLARATION OF RICHARD A. GRESELL

- 1) My name is Richard Grenell.
- 2) I was formerly the United States Ambassador to Germany and the Acting Director of National Intelligence.
- 3) My first top-secret security clearance briefing was in 2001. I have vast personal experience as a consumer of intelligence products produced by the United States Intelligence Community.
- 4) I have personal experience in using intelligence products to inform the development and implementation of policy goals.
- 5) There are ways that the Department of Homeland Security (“DHS”) can use its intelligence enterprise—including the Office of Intelligence and Analysis (“I&A”), the United States Coast Guard, Immigration and Customs Enforcement’s

“ICE”), and Homeland Security Investigations (“HSI”)—to support U.S. America First officials, initiatives, and policy outcomes.

6) For example, DHS could use its intelligence enterprise to make products that assess the vulnerabilities of the current visa system and explain how it is being exploited to the detriment of public safety. Such products could be used by policymakers within the Department to make improvements to and changes that make visa programs more secure and make Americans safer.

7) DHS could use its intelligence enterprise to create products that assess the root causes of migration, which would inform policymakers of actions they could take to address those underlying causes that are drawing millions of people to cross the border illegally each year.

8) DHS could use its intelligence enterprise to assess vulnerabilities in border security and how cartels and other transnational criminal organizations exploit those weaknesses to achieve their goals.

9) DHS could use its intelligence enterprise to create products that inform policymakers how the lack of immigration law enforcement and sanctuary cities contribute to crime, violence, and increased illegal immigration to the United States.

10) DHS I&A could implement policies and practices that reduce or eliminate the partisan skew of intelligence assessments.

11) DHS I&A could implement policies that reduce the selective partisan intelligence leaks.

12) DHS could use its intelligence enterprise to create products that assess how malign actors exploit weaknesses in border security to facilitate narcotic, weapon, and human trafficking over the southwest border so that policymakers can take steps and implement measures to counteract the criminal activity.

13) DHS could use its intelligence enterprise to create products that inform decision-makers of how many terrorists are entering the country through the southwest border, including providing assessments of who they are, what organizations they are affiliated with, what their likely motivations are, and where they are likely to go within the United States.

14) DHS could use its intelligence enterprise to create products that assess the leading threats for cyber intrusions and attacks on United States networks and systems to inform policymakers of what individuals, groups, or nation-state actors pose the greatest risk and their motivating factors.

15) DHS could use its intelligence enterprise to create products that inform policymakers of leading causes of customs evasion, and how private actors seek to avoid compliance with United States trade policy, so that they can implement measures to increase trade and economic security.

16) DHS could use its intelligence enterprise to create products that provide robust assessments of Western Hemisphere nations, focusing on their suitability to serve as an industrial trading partner, so that policymakers develop strategies to protect the United States supply chain from over-reliance on China.

17) DHS could use its intelligence enterprise to create products that assess the threat of Muslim Jihad extremists currently in the United States or those who are attempting to come to the United States, who pose a radicalization, lone wolf, or coordinated violent threat.

18) DHS could use its intelligence enterprise to create products that assess the causes of the recent rise in antisemitic attacks.

19) DHS could use its intelligence enterprise to create products that inform policymakers of the identity of individuals who are the driving force behind support for Hamas, Hezbollah, and Iran within the United States, including whether such support is being coordinated by visa holders, individuals with pending asylum or refugee claims, illegal aliens, foreign actors, or other non-citizens present in the United States.

20) DHS could use its intelligence enterprise to create products that inform policymakers of any networks, on or between college campuses in the United States, coordinating demonstrations in support of Hamas, Hezbollah, Iran, or Jihadists.

21) DHS could use its intelligence enterprise to create products that map the influence of the Chinese Communist Party (“CCP”) on college campuses across the United States and identify any influence operations or joint ventures that are likely run by the CCP.

22) DHS could use its intelligence enterprise to create products that assess threats to the sovereignty of the United States posed by multinational corporations.

23) DHS could use its intelligence enterprise to create products that assess threats to the sovereignty of the United States posed a lack of control of the southern border.

24) DHS could use its intelligence enterprise to create products that inform policymakers of the likely identity and sources and funding for “refugee” caravans to the United States.

25) DHS could use its intelligence enterprise to create products that assess the threat posed by Antifa cells and other violent leftist extremist groups.

26) DHS could use its intelligence enterprise to create products that identify likely agents of foreign principals in the United States, and work with the Department of Justice to investigate and prosecute them.

27) The DHS intelligence enterprise, including I&A and the Cybersecurity and Infrastructure Security Agency (“CISA”) could undertake a comprehensive evaluation of its participation in domestic censorship of the lawful political speech of United States citizens, and identify and implement guardrails to prevent such activities in the future.

28) None of the people announced as members of the “Experts Group” will advocate for new or novel uses of intelligence reporting or the use of intelligence to secure the homeland using America First policies. Instead, each of these individuals is merely part of the Obama-Biden status quo.

29) There are plenty of well-qualified people who could have brought different viewpoints to this group, people who want to see the intelligence community serve an America First agenda, not be used against American citizens.

30) But that is clearly not a goal or a consideration of this Group. Three of the individuals the Secretary selected signed a letter calling the Hunter Biden laptop story “Russian disinformation” and leveraging their intelligence expertise to sway public opinion ahead of the 2020 presidential election despite the fact that the FBI had verified the authenticity of the laptop and its contents in 2019.

31) None of the people named to the Experts Group served the Trump Administration, and therefore, there is a severe lack of ideological diversity, as America First ideas are not represented.

32) I know many people who could represent such a viewpoint and are well-qualified to do so. But to my knowledge, none were asked to serve on this group.

33) I was not asked to serve on this group.

34) Had I been asked to serve on this group, I would have.

35) Had I served on this group, I would have suggested approaches for DHS that would allow it to leverage its intelligence resources to make policy decisions that support an America First agenda, including having a secure border, knowing who visa entrants are, knowing who visa overstays are, reporting intelligence in a non-partisan manner so that policymakers can make informed decisions based on facts and assessments that are not tainted by political opinions, and prioritizing the removal of millions of aliens who are eligible for removal from the United States.

36) Apart from the official Department press release issued on Sept. 19, 2023, and some limited interviews, I am not aware of any information about the Group, its meetings, its plans, or its proposals being made public. Were this information appropriately made public, I would use it to monitor the Group and respond to it.

richard grenell

richard grenell (Nov 21, 2023 11:10 PST)

Hon. Richard A. Grenell

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

America First Legal Foundation and
Richard Grenell,

Plaintiffs,

v.

Alejandro Mayorkas, United States
Department of Homeland Security, and
Homeland Intelligence Experts Group,

Defendants.

Civil Action No. 1:23-cv-3322

DECLARATION OF ANDREW BLOCK

1. I am an attorney at America First Legal Foundation.
2. I am over the age of 18 and under no mental disability or impairment. I have personal knowledge of the facts contained herein.
3. I reviewed publicly available data from the Federal Election Commission's (FEC) website. I looked at the individual political campaign contributions of the individuals named to the Homeland Intelligence Experts Group.
4. The findings are compiled in an attachment to this declaration. See Block Ex. 1.
5. I attest that the exhibit is a fair and accurate summary of FEC information, which I have reviewed.
6. After reviewing the information, I learned the following about the political contributions of the people named to the Experts Group:

- a. Of the 17 people named to the Group, 13 have an apparent history of political contributions since January 1, 2012.
- b. In that time, these 13 individuals have made a collective 950 contributions to candidates for political office that are reportable to the Federal Election Commission.
- c. Of those 950 contributions, 937 (98.63%) were made to Democrat candidates for office, while only 12 (1.26%) were made to Republican candidates for office. One contribution was made to an independent candidate.
- d. Of the 13 contributors:
 - i. Nine contributed only to Democrats, totaling \$118,161.47.
 - ii. One contributed only to a Republican, with a single contribution of \$250.
 - iii. Three contributed to candidates from both parties.
- e. Of the three that contributed to candidates of both parties, two were heavily lopsided in favor of Democrat candidates. One was Michael Leiter who made 36 contributions totaling \$31,640 to Democrat candidates and three contributions totaling \$3,000 to Republican candidates. The other was Paul Kolbe who made 17 contributions totaling \$10,975 to Democrats and one contribution totaling \$250 to a Republican.

- f. The last contributor made eight contributions to Democrat candidates and seven to Republican candidates.
7. Since being named to the Experts Group, Michael Leiter and Rajesh De have each contributed \$2,000 to Democratic candidates for office.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing declaration is true and correct to the best of my knowledge based on publicly available campaign finance reporting. Executed on November 21, 2023.

/s/ Andrew J. Block

Andrew Block

EXHIBIT 1

Name	Total Contributions	# of Donations	# of Donations to Ds	# of Donations to Rs	\$ to Ds	\$ to Rs	Total Donations to Rs and Ds	\$ to Rs Excl. Liz Cheney PAC
Michael Leiter	\$34,640.00	39	36	3	\$31,640.00	\$3,000.00	\$34,640.00	
Francis X. Taylor	\$31,675.71	649	649	0	\$31,675.71	\$0.00	\$31,675.71	
David Kris	\$10,250.00	5	5	0	\$10,250.00	\$0.00	\$10,250.00	
John Bellinger III*	\$16,830.28	16	8	7	\$7,480.28	\$8,350.00	\$15,830.28	\$5,450.00
Asha George	\$15,582.50	35	35	0	\$15,582.50	\$0.00	\$15,582.50	
Rajesh De	\$17,250.00	11	11	0	\$17,250.00	\$0.00	\$17,250.00	
Caryn Wagner	\$14,625.50	56	56	0	\$14,625.50	\$0.00	\$14,625.50	
Elisa Massimino	\$14,540.98	79	79	0	\$14,540.98	\$0.00	\$14,540.98	
Paul Kolbe	\$11,225.00	18	17	1	\$10,975.00	\$250.00	\$11,225.00	
Benjamin Wittes	\$3,185.00	5	5	0	\$3,185.00	\$0.00	\$3,185.00	
Karen Greenberg	\$2,200.00	15	15	0	\$2,200.00	\$0.00	\$2,200.00	
James Clapper	\$1,621.50	21	21	0	\$1,621.50	\$0.00	\$1,621.50	
Emily Harding	\$250.00	1	0	1	\$0.00	\$250.00	\$250.00	
John Brennan	\$0.00	0	0	0	\$0.00	\$0.00	\$0.00	
Thomas Galati	\$0.00	0	0	0	\$0.00	\$0.00	\$0.00	
Tashina Gauhar	\$0.00	0	0	0	\$0.00	\$0.00	\$0.00	
Gregory Nojem	\$0.00	0	0	0	\$0.00	\$0.00	\$0.00	

* This individual made one contribution to an independent campaign in 2022 in the amount of \$1,000.

Total	Total # of Donations	Total # of Donations to Ds	Total # of Donations to Rs	Total \$ to Ds	Total \$ to Rs	Total \$ to R excl. Cheney PAC
\$173,876.47	950	937	12	\$161,026.47	\$11,850.00	\$8,950.00
		98.63%	1.26%	92.61%	6.82%	4.43%

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

America First Legal Foundation and
Richard Grenell,

Plaintiffs,

v.

Alejandro Mayorkas, United States
Department of Homeland Security, and
Homeland Intelligence Experts Group,

Defendants.

Civil Action No. 1:23-cv-3322

DECLARATION OF JOHN A. ZADROZNY

I, John A. Zadrozny, declare:

1. I am the Deputy Director of Investigations for America First Legal Foundation, a 501(c)(3) corporation.
2. Plaintiff America First Legal Foundation is a nonprofit corporation that promotes government transparency and accountability by gathering official government information, analyzing it, and disseminating it to the public through reports, press releases, media platforms including social media, and by posting government records on its website for use by the public, scholars, and others.
3. Among other things, America First Legal conducts oversight of the Department of Homeland Security to educate the public about the Department, particularly when the Department fails to meet its statutory obligations and its mission.

4. America First Legal has filed lawsuits previously to stop the Department's lawless open borders policies, all of which are globalist, America Last initiatives being pursued by the current Administration.

5. The Defendants' failures to be open and transparent about the activities of the Homeland Intelligence Experts Group ("Group") are unlawful, and their activities in this regard fall squarely within the ambit of America First Legal's mission.

6. The Defendants have not provided public information about the Group or its meetings, including agendas, minutes, reports, or any specifics other than the Group will meet four times annually.

7. In response to the Group's lack of transparency, America First Legal has been forced to divert its resources from other priorities and instead expend extra time and money investigating and monitoring the Group's activities.

8. No member of the current Group shares America First Legal's viewpoint on homeland security and intelligence policy issues, and the vast majority of members have been openly hostile to America First policy positions.

9. For instance, America First Legal has been forced to develop and file Freedom of Information Act requests about the Group's creation, which would have been unnecessary had the Defendants followed FACA's requirements. It is at least reasonably likely that America First Legal will be forced to litigate in order to force the Defendants to comply with these requests.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing declaration is true and correct. Executed in Bristow, Virginia, on November 21, 2023.

/s/John A. Zadrozny
John A. Zadrozny