

1 KRIS KOBACH
 2 IN THE UNITED STATES DISTRICT COURT
 3 FOR THE DISTRICT OF KANSAS
 4

5 STEVEN WAYNE FISH, RALPH)
 ORTIZ, DONNA BUCCI,)
 6 CHARLES STRICKER, THOMAS)
 J. BOYNTON, DOUGLAS)
 7 HUTCHINSON, AND THE)
 LEAGUE OF WOMEN VOTERS)
 8 OF KANSAS, ON BEHALF OF)
 THEMSELVES AND ALL)
 9 OTHERS SIMILARLY)
 SITUATED,)

10 Plaintiffs,)

Case No. 2:16-cv-2105

11 vs.)
 12)

13 KRIS KOBACH, IN HIS)
 OFFICIAL CAPACITY AS)
 SECRETARY OF STATE FOR)
 14 THE STATE OF KANSAS; AND)
 NICK JORDAN, IN HIS)
 15 OFFICIAL CAPACITY AS)
 SECRETARY OF REVENUE FOR)
 16 THE STATE OF KANSAS,)

17 Defendants.)
 18

19 Kansas City, KS
 20 DEPOSITION OF KRIS KOBACH
 21 TAKEN ON BEHALF OF THE PLAINTIFFS
 22 AUGUST 3, 2017
 23

24 Reported By: Lauren N. Lawrence
 25 Job No. 127945

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10 OF KANSAS, on behalf of)
11 themselves and all)
12 others similarly)
13 situated,)
14 Plaintiffs,) Case No 2:16-cv-21-5
15 vs)
16)
17 KRIS KOBACH, in his)
18 official capacity as)
19 Secretary of State for)
20 the State of Kansas; and)
21 NICK JORDAN, in his)
22 official capacity as)
23 Secretary of Revenue for)
24 the State of Kansas,)
25 Defendants)
VIDEOTAPED DEPOSITION OF KRIS KOBACH,
produced, sworn, and examined on August 3, 2017, at
the offices of United States District Court of Kansas,
500 State Avenue, Kansas City, Kansas 66101, before
Lauren N. Lawrence, RPR, KS CCR, and Notary Public
within and for the State of Missouri, in a certain
cause now pending in the United States District Court
for the District of Kansas between STEVEN WAYNE FISH,
RALPH ORTIZ, DONNA BUCCI, CHARLES STRICKER, THOMAS J
BOYNTON, DOUGLAS HUTCHINSON, AND THE LEAGUE OF WOMEN
VOTERS OF KANSAS, on behalf of themselves and all
others similarly situated, Plaintiffs, versus KRIS
KOBACH, in his official capacity as Secretary of State
for the State of Kansas; and NICK JORDAN, in his
official capacity as Secretary of Revenue for the
State of Kansas, Defendants; on behalf of the
Plaintiffs

1 KRIS KOBACH
2 A P P E A R A N C E S
3 APPEARING FOR THE U S DISTRICT COURT:
4 Chief Magistrate Judge James P. O'Hara
5 U S DISTRICT COURT, DISTRICT OF KANSAS
6 United States District Court
7 500 State Avenue
8 Kansas City, Kansas 66101
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12 Mr. R. Orion Danjuma
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25 Ms. Amy Henson, Attorney/Law Clerk to
U S Magistrate Judge James O'Hara
Desiree Taliaferro, Secretary of State's Office
Michael Dennis, Videographer
Court Reporter:
Lauren N. Lawrence, RPR, KS CCR
Missouri Notary Public

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Q. You've reviewed the substantive briefs and dispositive briefs in the case?

A. This -- the dispositive briefs on the merits, absolutely, I have reviewed.

Q. Okay. I'm going to hand you a document that's been marked as Kobach Exhibit 1.

This is a draft amendment to Section 5 of the National Voter Registration Act or NVRA that your office produced to the plaintiffs in this case; correct?

A. It is a -- it is a -- I would refer to it as a draft of a draft. It's not actually anywhere near ready to be proposed or shown to anyone.

Q. When was this "draft of a draft," as you put it, drafted?

A. It would have been prepared by me sometime in the late summer or early fall of 2016. It would have been before the 10th Circuit ruled, but after -- on the preliminary injunction, but after Judge Robinson ruled. Sometime in there.

Q. But just to clarify the record, Judge Robinson issued a preliminary injunction decision on May 17, 2016, and you're saying that this document, Exhibit 1, was drafted after that ruling; correct?

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A. Yes.

Q. And you said that you drafted it; correct?

A. Yes.

Q. You physically typed it out?

A. Yes. I physically typed it into my computer.

Q. When you say your computer, do you mean your personal computer or a Kansas Secretary of State office computer?

A. I can't recall for cer- -- for certain.

I'm -- I'm not sure. If I were to speculate, I would say more likely my personal one, but I'm not certain.

Q. The language that you propose in this document, amendments to the National Voter Registration Act, you proposed three changes to the National Voter Registration Act; correct?

A. Well, the --

MS. BECKER: Objection. Mischaracterizes what it said about it being a draft of a draft. And there's no foundation too.

MR. HO: I'll re-ask the question.

Q. (By Mr. Ho) There are five items listed here in this document, Amendments to the National Voter Registration Act; correct?

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A. Yes, there are.

Q. The last two are redacted; correct?

A. That is correct.

Q. Okay. The second item here reads "In 52 U.S.C. Section 204 [sic] -- "20504(c)(2)(B)," colon, "delete," quote, "May require only the minimum amount of information necessary to," end quote, "and replace with," quote, "may require any information that the State deems necessary to"; is that correct?

A. You have read it correctly, yes.

Q. The language in this item is word for word exactly the same as what the plaintiffs in this case argued previously would be precisely how the NVRA would have to be rewritten in order for states to have authority to require documentary proof of citizenship for motor voter applicants; is that correct?

A. I have no idea what you argued. The -- this is -- the -- the reason for this is a contingency if Plaintiffs win this lawsuit after final summary judgment or a final bench trial. This is a -- the reason it is a draft of a draft and it is not anywhere near final form is it would only be necessary to file this amendment or propose this amendment if the defendant loses this case and Plaintiffs succeed in

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persuading federal judges to change the meaning of the NVRA.

Q. You're aware that the plaintiffs in this case previously argued, during preliminary injunction briefing, that in order for states to have the authority to require documentary proof of citizenship for motor voter applicants, then the NVRA would have to be rewritten; correct?

A. I do not recall you making that argument. No, I do not.

(Kobach Exhibit 2 was marked for identification.)

Q. (By Mr. Ho) Okay. I'm going to hand you what's marked as Plaintiffs -- sorry -- Kobach Exhibit 2. It's a brief that was filed in this case. This is Plaintiffs' reply brief on their motion for preliminary injunction dated April 21, 2016, Document 94.

Do you see that?

A. I see that, yes.

Q. Could you turn to page 17, please?

The third and fourth sentences in this brief on this page read, "In essence, Defendants' interpretation of the statute would require rewriting

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the statute as follows." Quote, "The voter registration application portion of an application for a state motor vehicle driver's license" --

A. I -- I'm sorry. Counsel, which page are you on? You said 14 or 17?

MS. BECKER: Objection. This is already in the record, as you've told me. I -- I object to reading this document into the record and then you asking for his comment on your argument.

THE COURT: Overruled.

Q. (By Mr. Ho) Are you on page 17?

A. I am now on page 17.

Q. Okay. The third sentence starts "In essence, Defendants' interpretation of the statute would require rewriting the statute as follows," quote, "The voter registration application portion of an application for a state motor vehicle driver's license," dot, dot, dot, and then in strikethrough, "only the minimum amount of," end strikethrough and in brackets, "any information that the State deems necessary," closed brackets, "to enable state election officials to assess the eligibility of the applicant."

Other than a few punctuation issues, did I

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read that correctly?

A. Yes, you did.

Q. Okay. So the language in this brief that the plaintiffs identified as being necessary to change the NVRA in order to provide states with the authority to require documentary proof of citizenship for motor voter applicants is identical to Item 2 in your draft of draft amendments to the National Voter Registration Act; correct?

A. It is similar, but I did not consult your brief in drafting what might be necessary if the ACLU and plaintiffs in this case succeed in persuading a federal judge to change the meaning of the NVRA. The document is a contingency if the plaintiffs prevail in the 10th Circuit and if the Supreme Court denies cert. Then, at that point, it would be necessary for Congress to restore the original meaning of the NVRA and to correct the misinterpretation that Plaintiffs have urged the courts to make.

Q. Your draft amendment was written after the Plaintiffs' brief in this case that we just quoted from, Exhibit Number 2; correct?

A. Yes. It was written after April 21, 2016.

Q. And your testimony today is that it is a

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coincidence that the language in Item 2 in your draft amendments to the NVRA is essentially identical to what the plaintiffs had previously argued would be necessary in order to provide states with authority to require documentary proof of citizenship for motor voter applicants; is that correct?

MS. BECKER: Objection. Mischaracterizes the evidence. He didn't say "coincidence."

MR. HO: You can answer the question.

MS. BECKER: Mischaracterizing. I'd like an objection ruling, please.

THE COURT: Certainly. The objection is overruled.

You may answer, sir.

A. The -- I'm actually surprised to see the similarity right now. So I don't recall ever looking at your brief of April 21. I don't normally look at your briefs to take guidance in anything that I do and certainly wouldn't look at your briefs in drafting a contingent plan for months, if not years, in the future if you succeed in persuading the 10th Circuit to change the meaning of the NVRA. So, no, I -- I don't consult your legal writing in anything that I do.

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Q. (By Mr. Ho) You reviewed the preliminary injunction briefing in this case; correct?

A. Of course.

A. I did review the preliminary injunction briefing in this case, yes.

Q. (By Mr. Ho) And your testimony is that you did not remember this argument in Plaintiffs' reply brief in the preliminary injunction -- on -- on the preliminary injunction motion about what would need to change about the language of the National Voter Registration Act in order for you to have authority to require documentary proof of citizenship for motor vehicle -- motor voter applicants at the time that you drafted your draft amendments to the NVRA; correct?

A. You've asked a question that has lots of components. I'll try to give you a very direct answer to what I think you were asking.

I did not remember the portion of your brief that you were referring to when I drafted a contingency amendment for the future if the plaintiffs in this case succeed in persuading a federal judge or judges to change the meaning of the NVRA.

I would also add that your -- the plaintiffs' entire case hinges on the words "may require only the minimum amount of information necessary," which I think you would agree with. And

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it is obvious that that phrase would have to -- if you persuade the federal judiciary to somehow read into that a prohibition on proof of citizenship that the -- the -- the clarification by Congress in the future would have to say that the State has discretion, and there really aren't that many ways to say that the State has discretion. So I find it interesting that your brief of April 21 has similar language.

Q. (By Mr. Ho) And just so that the record is clear, your use of the phrase in your draft amendment "may require any information that the State deems necessary," which is identical to the language in Plaintiffs' preliminary injunction reply brief, that similarity in the language is a coincidence; correct?

A. I think that it is so unlikely as to be almost impossible that I would take one of the ACLU's briefs in hand and look at the ACLU's brief if I were trying to make sure that, in the future, if the ACLU won this case, that Congress were able to clarify the original meaning of the -- of the NVRA as stated by Senator Wendell Ford in the United States Senate when he said that nothing in this bill prohibits a state from requiring proof of citizenship. So I think it is inconceivable that I would have had your brief in my

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hand when drafting this.

Q. Are you aware of any other draft amendments to the National Voter Registration Act that would require -- I'm sorry. Let me start that again. It -- it -- let me ask a different question.

Is it your understanding that these amendments would supersede the preliminary injunction ruling in this case and permit you to impose a documentary proof of citizenship requirement on motor voter applicants?

MS. BECKER: Objection. Calls for -- form.

THE COURT: Counsel, I want to make sure you're not -- you're -- that you're understanding correctly where I'm coming from. What I want you to do is, if you have an objection to, say, for instance, in this situation, "I object to the form," and then precisely state what's wrong with the form as opposed to then transcending into -- as coaching the witness as to what you want him to do.

MS. BECKER: I just --

THE COURT: So maybe more specificity here would be helpful.

MS. BECKER: Okay.

THE COURT: So if there's something --

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MS. BECKER: Just --

THE COURT: -- specific about the form of this question that troubles you...

MS. BECKER: Well, he's asking for a -- a legal conclusion, and the witness is being deposed as a fact witness as to the creation of the document.

THE COURT: Objection is overruled, given the fact that the witness serves as lead counsel, or at least has at many times and is a skilled lawyer, so presumably confident to give a legal opinion.

MS. BECKER: Okay. Well, we'd also object on -- as to work product. So...

THE COURT: That objection, being unspecified, is overruled.

Secretary, you remember the question?

THE WITNESS: Actually, I don't remember precisely. Could you state it again?

Q. (By Mr. Ho) It's --

THE COURT: Have the reporter read it back, please.

THE REPORTER: I'm going to need a second to clarify.

(The requested portion of the record was read by the reporter.)

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A. Evidently, Counsel, you haven't been listening carefully to my answers. I said that this amendment would be after the litigation in this case is concluded. So this draft amendment has no bearing whatsoever on any preliminary injunction, on any briefing in this case, or anything, until this case is reviewed by the 10th Circuit, and cert is denied by the Supreme Court. I'm presuming if cert is granted by the Supreme Court, Defendants will win.

Q. (By Mr. Ho) You're aware that Judge Robinson, in her preliminary injunction ruling, held that Section 5 of the NVRA does not, on the record in this case, permit Kansas to impose a documentary proof of citizenship requirement on motor voter applicants; correct?

A. I'm aware that Judge Robinson ruled that the Plaintiffs were likely to prevail in that argument, but, of course, Judge Robinson has issued no final rule on that argument, as you are aware.

Q. And it is your understanding that this amendment, if it were enacted after the Judge's -- after Judge Robinson's preliminary injunction ruling, would supersede that preliminary injunction ruling and permit Kansas's documentary proof of citizenship

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requirement for motor voter applicants to go into effect; correct?

A. I have told you multiple times, this amendment is not intended for the present. This amendment is a contingency plan in the future. If after final judgments on the merits -- not preliminary injunction -- on the merits, if you succeed in persuading the judges of the 10th Circuit to change the meaning of the NVRA contrary to Senator Wendell Ford's expressed meaning on the floor of the Senate, then it would be incumbent upon Congress in the future to restore the original meaning of the NVRA. And this was my first exercise in preparing for that eventuality.

Q. Okay.

A. Because, frankly, after the -- I -- I -- I was surprised that you persuaded Judge Robinson to grant the preliminary injunction. I thought your argument was so incredible that it had no merit at all.

Q. Secretary Kobach, I didn't ask you about contingency plans or --

A. That's what this is. It is --

Q. -- Senator -- or Senator Ford.

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A. -- a contingency plan.

Q. I asked you:

Is it your understanding that if this amendment were adopted, -- well, let me -- let me start over again.

Okay. At present Kansas's documentary proof of citizenship requirement is not in effect for motor voter applicants pursuant to Judge Robinson's preliminary injunction order; is that correct?

A. That is correct.

Q. Okay. Is it your understanding that this amendment, if it were adopted today, would permit Kansas to impose a documentary proof of citizenship requirement on motor voter applicants and supersede Judge Robinson's preliminary injunction order?

A. It -- it's not even intended to have anything to do with her order. I guess, if the appli- -- if it were to magically become law, then at that point, the case would have -- Judge Robinson, if it were -- the case were still in front of her, would have to decide what effect it -- that's not the intent of this, to be cha- -- to be drafted or to be submitted in Congress or to be enacted while this litigation is ongoing. So --

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Q. I didn't ask you a question about the intent of this. I asked you a question about your understanding of the effect of it.

Is your understanding that if this amendment were adopted today that the effect of it would be to supersede Judge Robinson's preliminary injunction ruling and permit Kansas to impose a documentary proof of citizenship requirement on motor voter applicants today?

A. I -- I don't know what the effect of it would be because you would have a pending case, and you would have -- you know, I have no idea how Judge Robinson would look at it. Judge Robinson might say that the -- that -- that this case was brought under the -- the law as written at the time, and, therefore, the case would be adjudicated under that law and this would be a subject -- I have no idea how she would do that, and I -- this is not intended to be presented to Congress for consideration until after, if and only if, you, the Plaintiffs win on final judgment in the case and the Supreme Court denies cert.

In that eventuality, this would be -- it wouldn't even be this. This is just -- and -- and it wouldn't even be this. This is just -- this document

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2 is just the -- an initial thought piece on what would
3 need to be done to restore the original meaning of the
4 NVRA if Plaintiffs in this case succeed in persuading
5 the judiciary to change the meaning of the NVRA.

6 Q. You're aware the 10th Circuit has
7 unanimously affirmed Judge Robinson's preliminary
8 injunction ruling; correct?

9 A. I am aware that the 10th Circuit affirmed
10 Judge Robinson's preliminary injunction, yes.

11 Q. And you're aware that the 10th Circuit
12 ruled that Kansas cannot impose a documentary proof of
13 citizenship requirement on motor voter applicants
14 absent a showing of, among other things, a substantial
15 problem with noncitizen registration in this state;
16 correct?

17 A. I don't think that's a fair
18 characterization of the 10th Circuit's ruling, no.
19 And, also, the 10th Circuit ruled on the probability
20 of success. It did not rule conclusively that states
21 were prohibited from requiring proof of citizenship.

19 Is it your understanding that the effect of
20 these amendments to the National Voter Registration
21 Act, Exhibit 1, would make it such that whether or not
22 a substantial number of noncitizens have registered to
23 vote would be irrelevant to the issue of whether or
24 not Kansas may impose a documentary proof of
25 citizenship requirement on motor voter applicants?

8 A. No. That is not my impression. The -- the
9 purpose, as I have said multiple times, of this is
10 to -- if Plaintiffs prevail on final judgment, then it
11 might be necessary for Congress -- it would be
12 necessary, I would hope, for Congress to clarify its
13 original intent in drafting the NVRA.

14 I suppose it's conceivable that a
15 subsequent court with the changed language in the
16 future hypothetical case could say, "Well, there's
17 still" -- you know, "There still has to be a
18 substantial number of noncitizens registering for
19 this" -- "for states to take this step." I mean,
20 the -- I have no idea how a future court would rule in
21 a future case.

Q. Are there any other versions of this document Exhibit 1 that you're aware of?

A. No.

Q. You drafted this document in preparation for a meeting with the President-elect; correct?

A. No.

Q. Okay.

A. I drafted this document for a future time -- I didn't even know I was going to meet with the President-elect when I drafted this. As I said, it was late summer, earlier fall. So that would have been, at the earliest, July; at the latest, October. I didn't know I was going to meet with the President until November -- President-elect until November of 2016. So, no, it was not -- there was no anticipation of any meeting with the President when this was drafted.

(Kobach Exhibit 3 was marked for identification.)

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Q. (By Mr. Ho) I'm going to show you a document that's been marked as Kobach Exhibit 3. This is an emergency motion for a stay that you filed in the 10th Circuit yesterday. Could you turn to page 6 of this document?

The last full paragraph on this page, the last sentence reads "In sum, the information surrounding the mental thought processes of the Secretary when he drafted two pages in preparation for meeting the President-elect, is not relevant to the case at hand and should not be the subject of a special deposition."

Did I read that correctly?

A. Yes, you read that correctly.

Q. Is that not a reference to Exhibit 1, your draft amendments to the National Voter Registration Act?

A. I don't know what it's a reference to. I didn't draft this, but I'm telling you flatly that I did not know I would ever be meeting with the President-elect when I drafted this because he was not elected as of -- I know I drafted this before October when the -- the date in October when the 10th Circuit ruled. So I could not have possibly drafted this in

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preparation for a meeting with the President-elect.

Q. Okay. Did you draft this document, Exhibit 1, before the oral argument in the 10th Circuit on the preliminary injunction?

A. You'll have to tell me the date of the oral argument. I can't re- -- recall off the top of my head.

Q. I believe it was in mid-August.

A. I -- I honestly don't know.

(Kobach Exhibit 4 was marked for identification.)

Q. (By Mr. Ho) Okay. I'm going to show you a document that's been marked as Kobach Exhibit 4. This is an e-mail chain, and it includes an e-mail from you to Gene Hamilton dated November 9, 2016; is that correct?

A. Yes, that is correct.

Q. Who is Gene Hamilton?

A. At the time, Gene Hamilton was one of the people on the presidential transition team -- President Trump's transition team.

Q. What was his role on President Trump's transition team?

A. So I should be more specific. There were

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several transition teams. This was the transition team having to do with the Department of Homeland Security and the issue of immigration. He was on that team. I was on that team, and he was kind of one of the people who was organizing it, coordinating phone calls, things like that.

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Q. (By Mr. Ho) In your e-mail to Mr. Hamilton, you write "Thanks. Cindy mentioned it that we will also be putting together information on legislation drafts for submission to Congress early in the administration. I have already" -- "I have some already started regarding amendments to the NVRA to make clear that proof of citizenship requirements are permitted," in parentheses, "based on my ongoing litigation with the ACLU over this."

Did I read that right?

A. Yes.

Q. Mr. Kobach, my question was a lot simpler than that. It was:

When you wrote to Mr. Hamilton in reference to amendments to the NVRA that, in your words, you had "already started," was that a reference to Exhibit 1, the document we discussed earlier titled Amendments to the National Voter Registration Act?

MS. BECKER: Objection. Asked and answered.

THE COURT: Overruled. He did not answer that question.

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A. Okay. I -- yes. In -- in the sense that I had -- I was simply telling him "I had started work on that. If the" -- again, I made reference to the litigation with the ACLU. If the ACLU won in this litigation, then it might be necessary for the Trump Administration to -- if the Trump Administration agreed that the -- it changed the meaning of the NVRA -- such a victory by the ACLU, that is -- then this might be something that they -- they wish to consider. But at the end of the day, I don't think the transition team ever put together any legislative drafts. So...

Q. (By Mr. Ho) But in your e-mail you reference "legislation drafts for submission to Congress early in the administration"?

A. Right.

Q. Right?

A. Yes.

Q. So the draft amendments to the NVRA are included in the category of "legislation drafts for submission to Congress early in the administration"; correct?

A. I would note that the transition team never did produce any legislative drafts that I'm aware of.

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So I think there -- there was a discussion of it on one of the conference calls. But, to my knowledge, the transition team -- at least the transition team I was involved in never produced any legislative drafts.

Q. No. My question wasn't what the transition team did or didn't do. My question was:

When you referenced "legislation drafts for submission to Congress early in the administration," included among that idea of drafts of legislation for early in the administration, was amendments to the NVRA; correct?

A. No. You'll see that the e-mail discusses two amendments. The other one was an amendment to 8 U.S.C. 1623 regarding in-state tuition to illegal aliens. That issue is not in litigation, and that would be something that, if the li- -- administration wanted to do early in its first year, they could do right away. Drafts -- amendments to the NVRA were -- are not necessary yet because the NVRA fully supports states that want to provide -- that want to require proof of citizenship. So the "early in administration" would be more of a reference to 1623.

Q. So just so I understand your testimony, Mr. Kobach, your first sentence after "Thanks"

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 2 references "legislation drafts for submission to
 3 Congress early in the administration"; correct?
 4 A. Yes.
 5 Q. Your second sentence immediately thereafter
 6 is "I have some already" -- "I have some already
 7 started regarding amendments to the NVRA." And what
 8 you are testifying today is that the amendments to the
 9 NVRA are not among what you intended to reference when
 10 you described "legislation drafts for submission to
 11 Congress early in the administration; correct?
 12 A. I find it interesting that you didn't read
 13 the full second sentence because the rest of the
 14 second sentence refers to the amendment regarding
 15 in-state tuition to illegal aliens in violation of
 16 8 U.S.C. 1623. And so that is what I was referring to
 17 in that -- the "early in the administration" part. As
 18 I've told you multiple times, there's no need to amend
 19 the NVRA to restore the original understanding of
 20 Congress that states may require proof of citizenship
 21 unless and until the 10th Circuit rules on final
 22 jud- -- judgment in this case and the Supreme Court
 23 denies cert that -- that -- that your attempt to
 24 change the NV- -- NVRA is correct. So, no, there --
 25 it is not necessary early in the administration.

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1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 Q. Was Exhibit 1 ever shared with anyone other
 6 than Garrett Roe or Bryan Caskey?
 7 A. It was not shared with anyone other than
 8 those two individuals.
 9 Q. Did you ever have -- other than this e-mail
 10 that we've talked about with Gene Hamilton -- any
 11 other communications with anyone regarding the
 12 existence of Exhibit 1, the draft amendments?
 13 A. Yes. I -- I did.
 14 Q. And who were those communications with?
 15 A. I can recall specifically telling a friend
 16 of mine who is a congressman from Ohio -- Iowa, Steven
 17 King, that in the future, if we lose this case, an
 18 amendment might be necessary to restore the meaning of
 19 the NVRA, and that I -- would he be willing to
 20 introduce that amendment at that future date if -- if
 21 it were necessary.
 22 Q. Any other communications with anyone else
 23 regarding draft amendments to the NVRA?
 24 MS. BECKER: Objection. Are -- are you
 25 referring to the document?

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 2 MR. HO: Yes.
 3 MS. BECKER: Correct? Okay.
 4 A. Not -- no, not specifically regar- --
 5 regarding this -- this Document Number 1.
 6 Obviously, I -- you're going to -- another
 7 document, which talks in more general terms about
 8 amending the NVRA, but as far as this one, no. The
 9 only other person I can recall is -- is Congressman
 10 King. And, again, it was never sent to him, and it
 11 was just "If" -- "If ever the time comes, would you be
 12 willing to carry this amendment?"
 13 Q. (By Mr. Ho) Any communications with anyone
 14 else regarding what you described as the "idea" of
 15 amending the NVRA?
 16 MS. BECKER: Objection. Scope.
 17 A. Yeah. The --
 18 THE COURT: Overruled.
 19 A. Yes. The idea of amending the NVRA is --
 20 yeah -- is -- I've had multiple communications with
 21 people.
 22 Q. (By Mr. Ho) And with whom have you had
 23 those communications?
 24 A. Well, obviously, the idea of amending the
 25 NVRA is in the final line of the document you have in

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your hand, and since that doc- -- gosh.

So to the extent that the idea is written, that is certainly out there, and -- because it's been publicized, but I can't recall communications about it, no.

MR. ROE: Hey, Dale, can I -- one more thing. For clarification, you asked about whether there were -- whether the document was shared, Exhibit 1. I assume you're not referring to -- I mean, obviously, it was shared with the Judge and opposing counsel. You were asking beyond the people in this case; correct? You asked earlier, Exhibit 1, whether it's been shared with anyone else, and his response was only with myself and Bryan Caskey. Obviously --

MR. HO: And the Court.

MR. ROE: Right, obviously. So it's the Court and opposing counsel. Okay. I just wanted to clarify that for the record.

A. Okay. Your question was about the idea of amending the NVRA.

Q. (By Mr. Ho) Yes. Have you had communications with anyone else other than the people we've already discussed about the idea of amending the

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NVRA?

A. It -- I don't recall any specific conversations is -- is the answer to your question. Is it possible? Yes, but I -- I don't recall any.

(Kobach Exhibit 5 was marked for identification.)

Q. (By Mr. Ho) I'm going to show you what's been marked as Kobach Exhibit 5.

This is a document titled Department of Homeland Security Kobach Strategic Plan for First 365 Days; correct?

A. Yes.

Q. What is this document?

A. This --

MS. BECKER: Objection. The document speaks for itself -- or form. Could you ask a specific question about it?

THE COURT: Overruled.

A. This document is a document that I prepared before having a meeting with President-elect Trump in November of 2016.

Q. (By Mr. Ho) Did anyone else assist in the preparation of this document?

A. No.

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Q. How many page- -- full -- total pages is this document?

A. It is one page.

Q. Okay. When did you say it was created?

A. In November of 2016.

Q. There are 23 items on this document; correct?

A. Yes.

Q. And you took this document with you to a meeting with then President-elect Trump on November 20, 2016, in New Jersey; correct?

A. I don't recall the exact date, but it was in New Jersey, yes, that sounds about right.

Q. Did you also bring your Exhibit 1, your draft NVRA amendment to that meeting?

A. No.

Q. What was the purpose of that meeting?

A. The purpose of the meeting was to discuss the future of the Department of Homeland Security and also to discuss the possibility that I might become Secretary of Homeland Security.

Q. You were photographed holding this document, Exhibit 5, outside of that meeting; correct?

A. Yes.

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Q. The last header on this document, Roman numeral five, reads "Stop aliens from voting"; correct?

A. Correct.

Q. And that header has three items under it, the first two of which are redacted; correct?

A. Correct.

Q. The third item, Item Number 23, reads "Draft Amendments to National Voter Registration Act to," underlined, "promote proof of citizenship requirements"; right?

A. Correct.

Q. And that is a reference to Exhibit 1, your draft amendments to the NVRA; correct?

A. No.

MS. BECKER: Objection. Form. Mischaracterized the evidence.

THE COURT: It's moot. He's already answered question.

A. No, it's not.

MS. BECKER: Slow down.

A. It -- it refers to an un- -- as yet uncreated amendment.

Q. (By Mr. Ho) And what exactly does this

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refer to, if not your Exhibit 1?

A. Well, the --

MS. BECKER: Object- -- I'm sorry.

Objection. It assumes facts not in evidence.

THE COURT: Overruled.

A. The -- the draft of a draft amendment, Exhibit 1, would be a contingency if -- if ever Plaintiffs prevail in this case. It doesn't encourage states to do anything. The concept on line number 23 of Exhibit 5 is if -- I mean, again, it's more just a conceptual statement. If it could be -- you know, if you guys prevail in this case, then that future amendment might need to in -- incorporate some of Exhibit 1. But, really, it's -- it's more of a -- as you may recall, the NVRA, when it was drafted in 1993, encouraged an implicit incentive to encourage states to do same-day registration, or it gave -- in essence, it gave states that did same-day registration a sort of benefit, if you will, under the Act. And the idea would be, at some point in the future, the administration might want to give an incentive to do proof of citizenship.

Q. (By Mr. Ho) And what do you mean by incentive for proof of citizenship?

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A. Well, it -- I don't have the text of the original NVRA in front of me, but I think the -- and, again, this is just a thought or -- you know, more of a thought. So there's no specific text I'm referring to, but the NVRA said that a state that had same-day registration by a certain date would not be subject to certain constraints in the NVRA. And, you know, in theory, one could try to -- and -- and that was an encouragement for same-day registration, and so one could -- if the NVRA were ever assessed in the future and reassessed and -- and amended, you could conceivably try to encourage states in the same way by saying that states that are protecting their voter rolls with proof of citizenship, you know, may not be subject to some other provision in time -- intended to secure the accuracy of the voter rolls.

Q. (By Mr. Ho) And my question is, specifically:

What are those other requirements --

A. I --

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Q. -- to keep the --

A. I --

Q. -- voter rolls clean that you would exempt states from if they adopted --

A. It --

Q. -- a proof of citizenship requirement?

A. It -- it's not -- there -- there are none in the -- in the existing NVRA, as I'm sure you know, other than the general admonition at the beginning of the "Purposes" section of the NVRA, which talks about maintaining accurate voter rolls. So -- well, there are. There -- you could -- you could argue that the provisions regarding how obsolete registrations when -- when a person moves are designed to keep voter rolls clean.

The point is that, it -- it doesn't refer to anything specific. It's -- if there were a future bill to bring the NVRA up to date with the Internet age, this is something that the administration can consider. The purpose of this document, Exhibit 5, is it's just a -- it's a discussion piece. It's intended to provide elements for possible discussion in a meeting.

Q. And it's a discussion piece for the first

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365 days of the Trump Administration; correct?

A. Mostly -- actually, Item Number 23 doesn't really fall within the first 365 days. I don't think it's -- A, we wouldn't have had any finality in this litigation. So you wouldn't know whether you guys in the ACLU had succeeded in changing the meaning of the NVRA. I think it wouldn't be prudent to -- to draft any amendment to the NVRA until after this case is concluded because you wouldn't want to kind of open up the hood and start tinkering with the engine of the NVRA until you know whether you had succeeded in changing the meaning of the NVRA.

So, really -- and so that -- so you don't know yet whether any of the language in Exhibit 1 would have to be -- you know, would be -- would be wise to be included in it. So I would say that Item Number 23 doesn't really fall within the first 365 days. It would be more accident, you know.

Q. So the title of this document is something of a misnomer? When you say for first 365 days --

A. No.

Q. -- not everything in the document relates to the first 365 days of --

A. Correct. Not everything, but the vast

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anyone at that meeting?

A. Yes. I did give a copy of the document to probably all of those individuals I just named. I -- I -- I think I brought in -- I don't know -- five or six copies.

Q. Did you give a copy of this document to anyone outside of that meeting?

A. No.

MR. ROE: And, again, obviously, the Court and opposing counsel?

Q. (By Mr. Ho) With the --

A. Yeah. I mean --

Q. -- exception of the Court and opposing counsel?

A. -- at -- at -- right. At -- at the time, yeah.

Q. So I understand Item 23 on this document refers to an idea to amend the NVRA. That's your testimony; right?

A. It's -- it's an idea in the future, as I said, that if the NVRA were modernized at some point after this case is done, then you -- you might want to do a number of things.

You might want to correct any misimpression

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majority of what's redacted does. Absolutely.

Q. How long was your meeting with President-elect Trump?

MS. BECKER: Objection. Scope.

THE COURT: Sustained.

MS. BECKER: Wait. Don't answer.

Q. (By Mr. Ho) Did anyone else attend your meeting with President-elect Trump when you carried this document into it?

MS. BECKER: Objection. Scope.

THE COURT: As to that objection --

MS. BECKER: And privileged.

THE COURT: -- the objection is overruled.

A. Yes. The other attendees were, to the best of my recollection, Reince Priebus, who subsequently became Chief of Staff; Steve Bannon, who became the President's strategic advisor; Stephen Miller, who is the President's -- now the President's domestic -- sort of a domestic policy advisor. I'm not sure what his title is exactly -- Jared Kushner, the President's son-in-law. I think that's it.

Q. (By Mr. Ho) Did you give --

A. And -- and the President-elect, of course.

Q. Did you give a copy of this document to

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that is created by a judgment in this case that goes against the original meaning of the NVRA. You might want to modernize the NVRA and bring it into the Internet age, and you might want to, you know, consider incentives, like in the original NVRA language to -- which incentivized same-day registration.

Q. Were any of those ideas discussed during your meeting with President-elect Trump?

A. I don't think so. In -- in other words, I don't think we got to Item 23.

Q. Did you discuss the National Voter Registration Act during that meeting with President Trump?

A. I don't think so.

Q. Did you discuss documentary proof of citizenship requirements during the November 20 meeting with President-elect Trump?

MS. BECKER: Objection. Scope.

THE COURT: Overruled.

A. I don't recall specifically. I don't think we -- I don't think so. I think I may have discussed the general issue of aliens voting, but I don't recall documentary proof of citizenship requirements being

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discussed.

Q. (By Mr. Ho) When you say you may have discussed "the general issue of aliens voting," what do you mean by that?

A. That we may have discussed the problem of noncitizens voting illegally in U.S. elections.

Q. Did you discuss the extent of the problem of noncitizens voting illegally in U.S. elections?

MS. BECKER: Objection. Scope.

THE COURT: Overruled.

A. I don't -- I don't remember.

Q. (By Mr. Ho) What -- when you say that you discussed the problem of noncitizens voting in -- illegally in U.S. elections, what do you mean by that?

A. I mean that noncitizens have regis- -- have successfully registered and have successfully voted in Kansas, and that I believe this problem extends beyond Kansas to the other states as well, and that it has the potential to -- well, it over- -- it effectively nullifies a citizen's vote every time a noncitizen votes, and it potentially can swing the result of an election if the election is close.

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7 Q. (By Mr. Ho) Have you had any other
8 meetings with President Trump or members of the Trump
9 Administration where documentary proof of citizenship
10 for voter registration was discussed?

11 MS. BECKER: Objection. Scope.

12 THE COURT: Overruled.

13 A. Yes. Because I am -- President Trump named
14 me to be the vice chairman of his Commission on
15 Election Integrity, and that issue has been discussed
16 in the context of the Commission on Election
17 Integrity, and that Commission includes, as staff,
18 members of his administration.

19 Q. (By Mr. Ho) This document was drafted
20 before the formation of that commission; correct?

21 THE COURT: Which -- which are you
22 referring to, Mr. Ho?

23 MR. HO: Oh, I'm sorry.

24 Q. (By Mr. Ho) Document -- Exhibit Number 5,
25 your strategic plan for Homeland Security was drafted

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1 before the formation of the Commission; correct?

2 A. That is correct.
3

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Q. (By Mr. Ho) Have you -- you testified earlier that you've had discussions about documentary proof of citizenship requirements for voter registration with members or staff of the Commission; correct?

A. I think I testified that it -- it's possible I could -- that we have -- could have discussed that. We -- we have discussed the issue of noncitizen voting. I -- I don't know if -- I don't recall a specific discussion of documentary proof of citizenship requirements; although, I think in the open -- this would be public record.

In the first meeting of the Commission in the month of July, in my opening statement, I might have said something about Kansas having a documentary proof of citizenship requirement. So there might be a reference to it in that -- in that public statement.

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Q. Other than that reference, can you recall any other conversations or communications with members of the Commission regarding documentary proof of citizenship requirements for voter registration?

A. I think it's --

MS. BECKER: Objection. Asked and answered.

THE COURT: That objection is overruled.

A. I can't -- let's see. I am -- I am certain that I have discussed this lawsuit with staff of the Commission. So since this lawsuit principally concerns documentary proof of citizenship, I would say that the answer is probably, yes, that we -- that in -- in some sense, I have discussed the issue with them.

Q. (By Mr. Ho) Who have you discussed the issue with specifically?

A. Most likely, it would be the designated federal officer of the Commission, who is Andrew Kossack. And, possibly, also -- but I'm not certain -- the general counsel to the Vice President, Mark Paoletta. But, again, those are the two members of the Commission staff that I most frequently talk to, and I'm sure -- I just don't recall specifically.

Q. (By Mr. Ho) Mr. Kobach, you testified earlier about conversations you had with Congressman Steve King --

A. Yes.

Q. -- about documentary proof of citizenship requirements and am- -- amending the NVRA.

Do you remember that?

MS. BECKER: Objection. Mischaracterizes the evidence.

A. I had a conversation with Steve --

THE COURT: Excuse me. The -- the

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objection is overruled.

THE WITNESS: I'm sorry.

A. I had a conversation -- well, maybe more than one conversation with Steve King about in the -- if in the future, if we lost this lawsuit, if we -- if it were necessary to amend the NVRA to restore the original meaning of the NVRA because you had succeeded in changing it through litigation, would he be willing to carry an amendment if I ever gave one to him, and he said yes.

Q. (By Mr. Ho) You said you may have had more than one conversation?

A. Well, I -- I talk with Steve King -- we're friends. So I -- I -- it's -- yeah. I think I probably have said it to him on more than one telephone -- usually telephone conversations.

Q. Do you know roughly when these communications happened where you asked him to potentially carry one of these amendments to the NVRA?

A. One would have been roughly about the time that I drafted this in the -- in the late summer earlier fall -- "this" being Exhibit 1 -- just thinking to myself -- again, planning ahead -- if ever this is necessary, you know, who would I consider if

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we lost this case to -- to -- to restore the original meaning by -- by carrying the amendment, the original meaning of the NVRA? And then probably -- I think I've -- I think I've discussed it with him subsequently, maybe, late fall, early winter. Just, you know, checking to be sure, you know, "If ever this happens, can I" -- "would you be willing to carry it?"

Q. Any time -- have you had any follow-up conversations since that time?

A. Not about this subject. I -- I think I just had a conversation with him last week, but it had nothing to do with this.

[REDACTED]

MS. BECKER: Secretary Kobach has one clarification. He recalled an additional fact that he would like to -- to let Counsel know about in response to one of their early questions.

A. Counsel, you asked if there were any other members of the administration that I had spoken to about -- I don't remember your exact phrasing, but about the issue of noncitizens -- the scope of

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noncitizens registering. And you're already aware of this one, but I just wanted to -- because it's in some of our communication, but I did speak with -- his last name is Ragsdale. He was at the time -- I think he was acting -- he might have been acting director of ICE at the time, maybe in January. And when we produced -- I can't remember the context, but when we -- we produced the number of noncitizens we had discovered, we -- and you may recall, we ran some of those noncitizens on our voter rolls. We -- we gave those names to ICE to confirm that they were indeed noncitizens. And I spoke to Mr. Ragsdale about it, so he is -- and he's a member of the administration. He was also a member of the Obama Administration, but he's -- I just wanted to clarify. That's someone else that -- that I discussed the issue with.

MR. HO: Is that your only clarification?

MS. BECKER: It is.

Q. (By Mr. Ho) What exactly did you communicate to Mr. Ragsdale about noncitizens registering?

A. It was a request. Could you -- I explained that we were in litigation, and that we were trying to dial in on the number of -- we were trying to

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2 determine the number of noncitizens on our voter
3 rolls, and that we had some names that we would like
4 ICE to confirm their alien status of.

5 Q. And when you sought to have ICE confirm the
6 alien status of these individuals, what information
7 about these individuals did you send to ICE?

8 A. I think we sent -- I didn't send it
9 personally. I think we sent their names, maybe their
10 dates of birth. That's probably it. I don't know if
11 we sent any other data fields, but just "Here are some
12 names. Can you clarify whether these are
13 noncitizens or -- or not? What their -- you know,
14 have they naturalized? Things like that.

15 Q. Roughly, how many names did you send to
16 Mr. Ragsdale to confirm the alien status of such
17 individuals?

18 A. I think that's des- -- des- -- I don't know
19 the exact number, but I think it's described in the
20 expert report that Mr. Rickman did.

21 Q. And, roughly, when did these communications
22 with Mr. Ragsdale occur?

23 A. I think it was January or February, but
24 I -- it would be sometime early in the year.

25 Q. And you said that you --

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2 A. Of 2017.

3 Q. And you said that you didn't have these
4 communications with Mr. Ragsdale. Who did?

5 A. No. I had the communication with
6 Mr. Ragsdale. I -- I spoke to him on the telephone.

7 Q. I see. But you did not send the actual
8 names to Mr. Ragsdale; correct?

9 A. I can't recall. Either --

10 MS. BECKER: Personally.

11 A. -- either I -- either I forwarded -- either
12 the names would have been given to me by Bryan Caskey,
13 who you know is our director of elections, and then I
14 would have forwarded them to Mr. Ragsdale or
15 Mr. Caskey would have given them directly to
16 Mr. Ragsdale.

17 Q. (By Mr. Ho) And was this information
18 communicated -- these names, I mean, communicated to
19 Mr. Ragsdale, verbally or in writing?

20 A. What do you mean "this information"?

21 Q. The names of the individuals --

22 A. Oh, no. I wouldn't have communicated them
23 verbally. I wouldn't -- I would not have read through
24 names. No. It would have been -- it would have been
25 a data file.

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1 KRIS KOBACH
2 CERTIFICATE OF REPORTER
3

4 I, Lauren N. Lawrence, Registered
5 Professional Reporter, Kansas Certified Court
6 Reporter #1690, and Notary Public within and for the
7 State of Missouri, do hereby certify that the witness
8 whose testimony appears in the foregoing deposition
9 was duly sworn by me; that the testimony of said
10 witness was taken by me to the best of my ability and
11 thereafter reduced to typewriting under my direction;
12 that I am neither counsel for, related to, nor
13 employed by any of the parties to the action in which
14 this deposition was taken, and further, that I am not
15 a relative or employee of any attorney or counsel
16 employed by the parties thereto, nor financially or
17 otherwise interested in the outcome of the action.
18 Dated: August 15, 2017
19
20

21 _____
22 Lauren N. Lawrence, RPR, KS CCR #1690
23 Notary Public, State of Missouri
24
25

1 J U R A T
2
3

4 I, _____, do hereby certify under
5 penalty of perjury that I have read the foregoing
6 transcript of my deposition taken on _____;
7 that I have made such corrections as appear noted
8 herein in ink, initialed by me; that my testimony as
9 contained herein, as corrected, is true and correct.

10 DATED this ____ day of _____, 20____, _____
11 at _____, _____.
12
13
14
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18 _____
19 SIGNATURE OF WITNESS
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A				
a m (1) 5:12 ability (2) 65:4 80:10 able (4) 6:13 19:20 59:8 64:24 absent (1) 26:14 absolutely (2) 10:5 55:2 accident (1) 54:19 account (7) 33:9,15,23,25 34:7 36:2,10 accounts (1) 33:22 accuracy (2) 51:17,18 accurate (4) 7:10 52:11,12 53:12 accurately (1) 65:5 ACLU (7) 15:12 19:19 37:17 40:5,5,9 54:7 ACLU's (2) 19:17,18 Act (15) 2:10 10:9 11:16,17,25 15:10 18:10 20:4 28:21 31:18 39:21 43:22 49:10 50:20 57:14 acting (2) 73:6,6 action (2) 80:13,17 actual (1) 75:7 add (2) 18:22 39:12 additional (1) 72:19 addressing (1) 7:17 adjourned (1) 79:11 adjudicated (1) 25:17 administration (25) 37:13 39:6 40:7,7,16 40:22 41:9,11,17,23 42:3,11,17,25 44:2 44:4 50:22 53:20	54:2 61:25 62:9,18 72:23 73:14,15 admonition (1) 53:10 adopt (1) 51:20 adopted (4) 24:5,13 25:6 53:5 advise (2) 64:24 65:4 advisor (2) 55:18,20 affirmed (2) 26:7,9 age (2) 53:20 57:5 ago (2) 7:17 34:5 agree (1) 18:25 agreed (3) 5:2 7:5 40:8 ahead (3) 34:20 60:18 70:24 al (1) 8:9 alien (5) 74:4,6,16 76:9,21 aliens (5) 41:16 42:15 49:3 57:24 58:4 allow (2) 5:17 59:6 amend (4) 42:18 56:19 68:23 70:7 amended (1) 51:12 amending (7) 45:8,15,19,24 46:22 46:25 69:20 amendment (29) 6:23 10:8 12:24,24 15:21 18:19 19:11 22:4,5,22 23:5,6 24:5,13 25:6 30:4 35:18 41:14 42:14 44:18,20 45:12 48:16 49:24 50:7,14 54:9 70:10 71:3 amendments (38) 2:9 11:15,24 15:9 16:3 17:11 18:13 20:3,8 28:20 29:23 30:5 31:17 36:12,14 36:17,22 37:14,20	37:22 39:18,20 40:20 41:11,14,19 42:7,8 43:21 44:12 44:23 49:10,15 62:2 64:4 68:13 70:20 71:17 AMERICAN (1) 4:10 amount (3) 12:8 14:20 18:24 Amy (1) 4:19 and/or (1) 59:23 Andrew (1) 67:20 answer (10) 9:12 16:10,15 18:15 39:24 47:4 55:7 60:18 62:6 67:14 answered (7) 17:6 39:23 49:20 59:20 65:20 67:8 68:5 answers (2) 22:3 59:6 anticipate (1) 7:14 anticipation (1) 30:22 anticipatory (1) 6:9 Anyway (1) 38:13 Appeal (1) 2:16 appear (1) 81:6 appearance (1) 8:12 APPEARING (3) 4:3,8,14 appears (1) 80:8 appli (1) 24:19 applicant (1) 14:24 applicants (15) 12:17 13:8 15:8 16:7 18:12 20:11 22:15 23:2 24:9,15 25:10 26:13 27:18 28:25 29:24 application (4) 14:3,3,17,18	appointed (1) 64:22 appropriate (1) 6:15 April (5) 7:12 13:18 15:24 16:18 19:9 argue (1) 53:13 argued (4) 12:14,18 13:5 16:4 argument (9) 13:10 14:10 17:9 18:6 22:19,20 23:20 32:4 32:7 arguments (1) 65:12 asked (18) 17:5 18:14 24:3 25:3 27:15 35:12 37:4 39:10,22 46:8,13 59:19 65:19 67:7 68:5 70:19 72:22 78:22 asking (8) 5:19 6:2 14:10 18:16 21:5 27:5 46:12 79:8 assess (2) 14:23 28:3 assessed (1) 51:11 assessment (1) 38:17 assist (1) 47:23 assume (4) 6:10 46:10 76:23 77:11 assumes (1) 50:5 attempt (1) 42:23 attend (1) 55:8 attendeess (1) 55:15 attorney (7) 27:6 29:3 34:10 63:15 63:23 68:6 80:15 attorney-client (1) 33:19 attorney-work (1) 65:12 Attorney/Law (1) 4:19	August (4) 1:22 3:17 8:7 80:18 authority (5) 12:16 13:7 15:6 16:5 18:10 Avenue (4) 3:18 4:5,16 6:25 aware (16) 9:13 13:4 20:3 22:11 22:17,20 26:6,9,11 29:22 30:8 40:25 73:2 78:11,14,21
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