October 30, 2018

Melissa Golden
Lead Paralegal and FOIA Specialist
Room 5511
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
202-514-2053

Re: Freedom of Information Act Request for the Office of Legal Counsel

Dear Ms. Golden:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, we hereby request that your office produce within 20 business days the following records:

1. Any legal opinion or other document addressing the citizenship clause of the Fourteenth Amendment as it relates to birthright (or "jus soli") citizenship that amends, departs from, disagrees with, distinguishes from, invalidates, repudiates, or supersedes the views put forward by Assistant Attorney General Walter Dellinger in his "Statement before the Subcommittees on Immigration and Claims and on the Constitution of the House Committee on the Judiciary" dated December 13, 1995, which is reproduced in volume 19 of *Opinions of the Office of Legal Counsel* and available online at https://www.justice.gov/file/20136/download.

In addition to the above, we request any records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

FEE WAIVER

FOIA provides that any fees associated with a request are waived if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

We are the Editor-in-Chief and Senior Editor for *Lawfare*, an online publication dedicated to informing public understanding on operations and activities of the government. *Lawfare* is published by The Lawfare Institute, a 501(c)(3) not-for-profit educational organization, and in cooperation with The Brookings Institution, a 501(c)(3) nonprofit public policy organization. *Lawfare* does not have commercial interests. This request is submitted in connection with *Lawfare*'s mission to publish information that is likely to contribute

significantly to the public understanding of executive branch activities related to law and national security. President Trump's recent statements indicating that he intends to end U.S. birthright citizenship by executive order marks a significant departure from long-standing executive branch legal positions and raises important concerns regarding constitutional authority and executive power.

In addition to satisfying the requirements for a waiver of fees associated with the search and processing of records, we are entitled to a waiver of all fees except "reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(II). Federal law mandates that fees be limited to document duplication costs for any requester that qualifies as "a representative of the news media." *Id.* *Lawfare* is a "news media organization[]" that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). We intend to give the public access to documents transmitted via FOIA on our website, https://www.lawfareblog.com, and to provide information about and analysis of those documents as appropriate.

RESPONSIVE RECORDS

If you make a determination that any responsive record, or any segment within a record, is exempt from disclosure, we ask that you provide an index of those records at the time you transmit all other responsive records. In the index, please include a description of the record and the reason for exclusion with respect to each individual exempt record or exempt portion of a record, as provided by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). When you deem a portion of a record exempt, we ask that the remainder of the record to be provided, as required by 5 U.S.C. §§ 552(a)(8)(A)(ii) & 552(b).

Given the 20-day statutory deadline, we hope to be as helpful as possible in clarifying or answering questions about our request. Please contact me by phone or email if you require any additional information. We appreciate your cooperation, and look forward to hearing from you very soon.

Sincerely,

/s/ Benjamin Wittes

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s/ Scott R. Anderson

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