

Congress of the United States
Washington, DC 20515

November 24, 2020

Mr. Kenneth T. (Ken) Cuccinelli
Senior Official Performing the Duties of the Director

Mr. Joseph Edlow
Deputy Director for Policy

U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, N.W.
Washington, D.C. 20001

Re: Record and Document Preservation Requirements

Dear Mr. Cuccinelli and Deputy Director Edlow:

As the 116th Congress and the Trump Administration approach the conclusion of our respective terms, we write to remind you that you and your employees, including all component agencies and offices, must comply with the record preservation obligations set forth in federal law and to remind you of your and your agency's ongoing obligations to preserve information relevant to congressional oversight.

Over the last four years, the Administration obstructed numerous congressional investigations by refusing to provide responsive information. You are obligated to ensure that any information previously requested by Congress—and any other information that is required by law to be preserved—is saved and appropriately archived in a manner that is easily retrievable.

It is imperative that you remind all employees and officials within your organization of their legal responsibility to take appropriate measures to collect, retain, and preserve all documents, communications, and other records in accordance with federal law, including the Federal Records Act and related regulations.¹ This includes electronic messages involving official business that are sent using both official and personal accounts or devices, including records created using text messages, phone-based message applications, or encryption software.² Any employee who conceals, destroys, or attempts to conceal or destroy a federal record may be subject to fine and imprisonment for up to three years.³ We urge you to ensure that your employees and officials do not delete or destroy any official government records, including “information created, manipulated, communicated, or stored” electronically.⁴

¹ See 44 U.S.C. §§ 3101-3107 (Chapter 31, Records Management by Federal Agencies); 44 U.S.C. §§ 3301-3314 (Chapter 33, Disposal of Records); and 36 C.F.R., Chapter XII, Subchapter B (Records Management).

² See 44 U.S.C. § 2911.

³ See 18 U.S.C. § 2071.

⁴ See 44 U.S.C. § 3301(a)(2) (defining “records” as inclusive of “all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital

In addition to meeting the requirements of federal laws and regulations, we request that you preserve all information that relates to all investigations conducted during the 116th Congress, including all oversight requests or demands from Congress. Specifically, this preservation request should be construed as an instruction to preserve all documents, communications, and other information, including electronic information and metadata, that is or may be potentially responsive to a congressional inquiry, request, investigation, or subpoena that was initiated, continued, or otherwise undertaken during the 116th Congress. For purposes of this request, “preserve” means securing and maintaining the integrity of all relevant documents, communications, and other information, including electronic information and metadata, by taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, mutation, or negligent or reckless handling that could render the information incomplete or inaccessible. This includes preserving all compilations of documents that have already been gathered in response to requests, even if copies of individual documents may still exist elsewhere in the agency.

We also request that that you:

1. Exercise reasonable efforts to identify and notify all relevant individuals, including current and former employees, officials, detailees, contractors, subcontractors, and consultants who may have access to potentially relevant information that they should preserve and return such information to the agency;
2. Exercise reasonable efforts to identify, recover, and preserve any potentially relevant electronic information that has been deleted or marked for deletion but is still recoverable;
3. Remind all relevant individuals, including current and former employees, officials, detailees, contractors, subcontractors, and consultants that any federal records sent or received using a nonofficial account must be forwarded to the agency for proper archiving;⁵ and
4. If it is the routine practice of any relevant individuals, including current and former employees, officials, detailees, contractors, subcontractors, or consultants to destroy or otherwise alter potentially relevant information, either halt such practices as they relate to the potentially relevant information or arrange for the preservation of complete and accurate duplicates (including metadata) of such documents, communications, or other information.

Thank you for your cooperation in this matter.

or electronic form”).

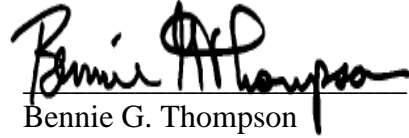
⁵ See 44 U.S.C. § 2911 (requiring disclosure of official business conducted on nonofficial electronic messaging accounts).

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Mr. Joseph Edlow
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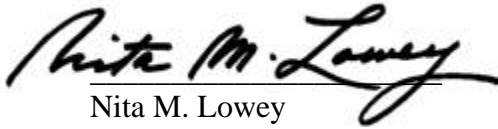
Sincerely,



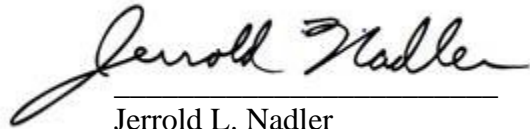
Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Bennie G. Thompson
Chairman
Committee on Homeland Security



Nita M. Lowey
Chairwoman
Committee on Appropriations



Jerrold L. Nadler
Chairman
Committee on the Judiciary



James P. McGovern
Chairman
Committee on Rules

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Mike Rogers, Ranking Member
Committee on Homeland Security

The Honorable Kay Granger, Ranking Member
Committee on Appropriations

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

The Honorable Tom Cole, Ranking Member
Committee on Rules



U.S. Citizenship
and Immigration
Services

December 4, 2020

The Honorable Carolyn Maloney
U.S. House of Representatives
Washington, DC 20510

Dear Representative Maloney:

Thank you for your November 24, 2020 letter.

Each year U.S. Citizenship and Immigration Services (USCIS) requires all its employees and contractors to take training that outlines their responsibilities under the Federal Records Act and Department of Homeland Security (DHS) Records and Information Management Directive 141.01.001. This recurring training includes reminders that federal records may be destroyed only in accordance with NARA-approved record schedules. Furthermore, all senior officials and political appointees are reminded during on-boarding of their record-keeping responsibilities. They are also apprised when exiting service that they must secure all records in their possession by ensuring their placement into a Government record-keeping system prior to their departure.

USCIS has a NARA-approved Capstone email retention schedule. The email inboxes of all senior officials and political appointees are scheduled as permanent and are kept indefinitely on agency servers or in cloud storage regardless of actions taken by end users. The emails of USCIS staff and contractors who are not senior official or political appointees are kept for 10 years prior to backend deletion. However, USCIS has yet to begin deleting any email older than 10 years.

The records management staff routinely advises all offices that, according to DHS Electronic Mail Maintenance Directive 142.03.001, agency business is to be conducted only using .gov email accounts, and if, in an emergency, a personal email account is used to conduct agency business, the email must be forwarded to a .gov account within 20 days. The annual recurring records management training also refers to this requirement.

Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in blue ink, appearing to read "J. Edlow", written over a horizontal line.

Joseph B. Edlow
Deputy Director for Policy