UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

CAMPAIGN FOR ACCOUNTABILITY, Plaintiff, v. UNITED STATES DEPARTMENT OF JUSTICE, Defendant.	No. 1:16-cv-1068 (Calendar Committee)

DEFENDANT'S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

Pursuant to Local Civil Rule 7(h), Defendant United States Department of Justice hereby submits the following statement of material facts as to which Defendant contends there are no genuine issues in connection with its motion for summary judgment under Federal Rule of Civil Procedure 56(b):

(1) A statute deriving from the Judiciary Act of 1789 charges the Attorney General with providing advice and opinions on questions of law when required by the President and rendering opinions on questions of law when requested to do so by the heads of executive departments. Stipulation ¶ 2 (ECF No. 56).

(2) The Attorney General has delegated that function to the Office of Legal Counsel ("OLC"), a component of the Department of Justice. Stipulation ¶¶ 1, 3.

(3) Under current regulations, OLC renders opinions and legal advice to agencies of the Government. Stipulation ¶ 4.

(4) OLC assists the Attorney General in the performance of his functions as legal adviser to the President and as a member of, and legal adviser to, the Cabinet. Stipulation ¶ 4.

(5) OLC rarely issues opinions unless it is requested to do so by one or more agencies. Requests may be made through formal letters or memoranda, informally by email, or orally, in person or by telephone. Stipulation ¶ 5.

(6) OLC is often asked to provide advice and analysis with respect to very difficult and unsettled issues of law. Stipulation ¶ 6.

(7) Requests for OLC opinions may arise in connection with highly complex activities of the executive branch on matters that can be controversial. Stipulation ¶ 6.

(8) OLC is occasionally asked to provide legal opinions in order to resolve disputes between two or more agencies about questions of law. Stipulation ¶ 7.

(9) Interagency disputes may come to OLC through a joint request from two or more agencies, or through a submission by a single agency. Stipulation ¶¶ 8-9.

(10) OLC opinions resolving interagency disputes are not stored separately or separately identified within OLC's records. Stipulation ¶ 12.

(11) OLC's process for providing formal written opinions addressing interagency disputes is set forth in the OLC's Best Practices Memo, which speaks for itself. Stipulation ¶ 13 (citing Memorandum from David J. Barron, Acting Assistant Attorney General to Attorneys of the Office of Legal Counsel, Best Practices for OLC Legal Advice and Written Opinions (July 16, 2010)) (ECF No. 56-1).

(12) *Applicability of the Cargo Preference Act to the Transportation of Alaskan Oil to the Strategic Petroleum Reserve*, 7 Op. O.L.C 139 (1983), is an OLC opinion that addresses an interagency dispute.

(13) *Scope of the Environmental Protection Agency's Discretion to Adopt Any One of Three Alternative Interpretations of the Mitchell-Conte Amendment to the Clean Air Act*, 13 Op. O.L.C. 105 (1989), is an OLC opinion that addresses an interagency dispute.

(14) *Applicability of Government Corporation Control Act to "Gain Sharing Benefit" Agreement*, 24 Op. O.L.C. 212 (2000), is an OLC opinion that addresses an interagency dispute.

(15) *The Authority of the Equal Employment Opportunity Commission To Order a Federal Agency To Pay a Monetary Award To Remedy a Breach of a Settlement Agreement*, 38 Op. O.L.C. 22 (2014), is an OLC opinion that addresses an interagency dispute.

(16) *Payment of Back Wages to Alien Physicians Hired Under H-IB Visa Program,* 32 Op. O.L.C. 47 (2008), is an OLC opinion that addresses an interagency dispute.

Dated: July 15, 2021

Respectfully submitted,

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