

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259
(DCG-JES-JVB)
(consolidated cases)

MOTION FOR ENTRY OF AGREEMENTS GOVERNING DISCOVERY

The United States hereby moves for entry of a Confidentiality and Protective Order (Protective Order), an Order Regarding the Disclosure of Privileged Information (Rule 502 Order), and an Order Regarding Discovery of Electronically Stored Information (ESI Order). The parties have met and conferred regarding these documents. All parties to the consolidated litigation consent to the entry of the Protective Order and Rule 502 Order. As described below, all parties to the consolidated litigation also agree on the content of the ESI Order except for a single provision governing privilege logs.

Confidentiality and Protective Order

The United States moves for entry of a Protective Order, attached hereto as Exhibit 1, pursuant to Federal Rule of Civil Procedure 26(c) and Local Rule CV-26. The parties to the above-captioned consolidated litigation have met and conferred and anticipate production of confidential, sensitive, or private documents or information in the course of this action. Good cause exists to enter the proposed Protective Order, in order to expedite discovery, protect

confidential information, enable the parties to prepare for dispositive motions and trial, and address the handling of confidential material during and after the conclusion of this litigation.

The United States therefore respectfully requests entry of the proposed Protective Order.

Order Regarding the Disclosure of Privileged Information

The United States also moves for entry of a Rule 502 Order, attached hereto as Exhibit 2. Good cause exists to enter the proposed Rule 502 Order, in order to expedite discovery, protect privileged information, and streamline resolution of privilege waiver disputes. The United States therefore respectfully requests entry of the proposed Rule 502 Order.

Order Regarding Discovery of Electronically Stored Information

The United States moves for entry of an ESI Order, pursuant to Federal Rule of Civil Procedure 26(c) and Local Rule CV-26. The parties to the above-captioned consolidated litigation have met and conferred and anticipate production of electronically stored information (ESI) in the course of this action. Good cause exists to enter an ESI Order in order to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI and privilege, and to promote—to the fullest extent possible—the resolution of disputes regarding the discovery of ESI without Court intervention.

All parties to the consolidated litigation agree on the content of the ESI Order except for Paragraph IX(B)(5), which governs privilege logs. The United States, Private Plaintiffs, and Plaintiff-Intervenors respectfully request the Court to enter an ESI Order containing the following version of Paragraph IX(B)(5), including the underlined language:

Privilege logs may be produced on a rolling basis, but, in any event, no later than 30 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party shall have thirty (30) days from the date of receipt to review and register complaints about said log(s), and shall have the right to have those complaints resolved and have any non-privileged documents produced, regardless of the date of the close of fact discovery.

Defendants respectfully request the Court to enter an ESI Order containing the following version of Paragraph IX(B)(5) which omits the language underlined above:

Privilege logs may be produced on a rolling basis. If any log is produced less than 30 days before the close of discovery, the receiving party shall have thirty (30) days from the date of receipt to review and register complaints about said log(s), and shall have the right to have those complaints resolved and have any non-privileged documents produced, regardless of the date of the close of fact discovery.

Because all parties agree on all other aspects of the ESI Order, the parties respectfully request the Court to enter one of two versions of the otherwise-identical ESI Order. A copy of the proposed ESI Order containing Plaintiffs' version of Paragraph IX(B)(5) is attached hereto as Exhibit 3A. A copy of the proposed ESI Order containing Defendants' version of Paragraph IX(B)(5) is attached hereto as Exhibit 3B.

Dated: February 28, 2022

PAMELA S. KARLAN
Principal Deputy Assistant Attorney General
Civil Rights Division

/s/ Holly F.B. Berlin
T. CHRISTIAN HERREN, JR.
TIMOTHY F. MELLETT
DANIEL J. FREEMAN
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CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2022, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system, which will send notification of this filing to counsel of record

/s/ Holly F.B. Berlin

Holly F.B. Berlin

Voting Section

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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
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LEAGUE OF UNITED LATIN AMERICAN
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[PROPOSED] CONSENT CONFIDENTIALITY AND PROTECTIVE ORDER

Before the Court is the joint motion of the Parties for the entry of a confidentiality and protective order (“Protective Order”). Based on the Parties’ submissions and the record in this matter, the Court finds that disclosure and discovery activity in this action are likely to involve production of confidential, sensitive, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, a protective order for such information is justified in this matter:

- to expedite the flow of information;
- to facilitate the prompt resolution of disputes over confidentiality of discovery materials;
- to adequately protect information the Parties are entitled to keep confidential;
- to ensure that the Parties are permitted reasonably necessary uses of such material in preparation for and in the conduct of trial;
- to address the handling of confidential materials at the end of the litigation; and
- to serve the ends of justice.

This Protective Order does not confer blanket protections on all disclosures of responses to discovery, and the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to be treated as confidential.

After careful consideration, it is ORDERED that the motion is granted, and the Court ORDERS the following:

1. Confidential Information

“Confidential Information” means any information of any type, kind, or character that is designated as “Confidential” by any of the producing or receiving persons, whether it be a document, information contained in a document, information revealed during discovery, or otherwise.

2. Qualified Persons

“Qualified Persons” means:

- a. the party, if a natural person;
- b. if the party is an entity, such officers or employees of the party who are actively involved in the prosecution or defense of this case who, by their receipt of Confidential Information, are bound by the terms of this Protective Order;
- c. retained counsel for the parties in this litigation and their respective staff;
- d. this Court and its staff and any other tribunal, special master, or dispute resolution officer duly appointed or assigned in connection with this litigation;
- e. actual or potential independent experts or consultants (and their administrative or clerical staff) engaged in connection with this litigation (which shall not include the current employees, officers, members, or agents of parties or affiliates of

parties) who, by their receipt of Confidential Information, are bound by the terms of this Protective Order;

- f. jury and trial consultants and their staff and mock jurors who, by their receipt of Confidential Information are bound by the terms of this Protective Order;
- g. litigation vendors, court reporters, video camera operators, translators, and other litigation support personnel;
- h. any person who was an author, addressee, or intended or authorized recipient of the Confidential Information and who agrees to keep the information confidential, provided that such persons may see and use the Confidential Information but not retain a copy;
- i. such other person or persons as this Court may designate after notice and an opportunity to be heard.

3. Designation Criteria

a. A party shall designate as “Confidential” only such information that the party in good faith believes in fact is confidential. Information that is generally available to the public, such as public filings, catalogues, advertising materials, and the like, shall not be designated as Confidential.

Information and documents that may be designated as Confidential Information include, but are not limited to, personally identifiable information and trade secrets, confidential or proprietary financial information, operational data, business plans, competitive analyses, personnel files, personal information that is protected by law, and other sensitive information that, if not restricted as set forth in this Order, may subject the producing or receiving person to competitive or financial injury or potential legal liability to third parties.

Correspondence and other communications between the parties or with nonparties may be designated as Confidential Information if the communication was made with the understanding or reasonable expectation that the information would not become generally available to the public.

b. Confidential Information shall not include information that:

- i. is in the public domain at the time of disclosure, as evidenced by a written document;
- ii. becomes part of the public domain through no fault of the recipient, as evidenced by a written document;
- iii. the receiving party can show by written document was in its rightful and lawful possession at the time of disclosure; or
- iv. lawfully comes into the recipient's possession subsequent to the time of disclosure from another source without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.

4. Use of Confidential Information

All Confidential Information provided by any party or nonparty in the course of this litigation shall be used solely for the purpose of preparation, trial, and appeal of this litigation and for no other purpose, and shall not be disclosed except in accordance with the terms of this Order. However, nothing in this Protective Order shall prohibit counsel in this case with knowledge of Confidential Information from representing clients in other litigation adverse to parties to this Protective Order or from requesting production of materials designated as Confidential Information in this litigation in such other litigation.

5. Marking of Documents

Documents provided in this litigation may be designated by the producing person or by any party as Confidential Information by marking each page of the document(s) so designated with a stamp indicating that the information is “Confidential.” The designation should be made in a fashion or form that is conspicuous yet allows the Confidential Information to remain legible. In lieu of marking the original of a document, if the original is not provided, the designating party may mark the copies that are provided. Originals shall be preserved for inspection.

6. Disclosure at Depositions

Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents, consultants, representatives, or independent experts retained by counsel for the purpose of this litigation, or (b) the deposition of a nonparty, may be designated by any party as Confidential Information by indicating on the record at the deposition that the testimony is “Confidential.”

Any party also may designate information disclosed at a deposition as Confidential Information by notifying all parties in writing not later than 30 days of receipt of the transcript of the specific pages and lines of the transcript that should be treated as Confidential Information. All deposition transcripts shall be treated as Confidential Information for a period of 30 days after initial receipt of the transcript.

To the extent possible, the court reporter shall segregate into separate transcripts information designated as Confidential Information with blank, consecutively numbered pages being provided in a non-designated main transcript. The separate transcript containing

Confidential Information shall have page numbers that correspond to the blank pages in the main transcript.

Counsel for a party or a nonparty witness shall have the right to exclude from depositions any person who is not authorized to receive Confidential Information pursuant to this Protective Order, but such right of exclusion shall be applicable only during periods of examination or testimony during which Confidential Information is being used or discussed.

7. Disclosure to Qualified Persons

Confidential Information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons except as necessary to comply with applicable law or the valid order of a court of competent jurisdiction. But if a disclosure is compelled by law or court order, the receiving party will notify the producing party as promptly as practicable (if at all possible, before making such disclosure). The receiving party shall seek a protective order or confidential treatment of such information or cooperate with the producing party to protect the information.

8. Unintentional Disclosures

Documents unintentionally produced without designation as Confidential Information later may be designated and shall be treated as Confidential Information from the date written notice of the designation is provided to the receiving party.

If a receiving party learns of any unauthorized disclosure of Confidential Information, the party shall immediately upon learning of such disclosure inform the producing party of all pertinent facts relating to such disclosure and shall make all reasonable efforts to prevent disclosure by each unauthorized person who received such information.

9. Documents Produced for Inspection Prior to Designation

In the event documents are produced for inspection prior to designation, the documents shall be treated as Confidential Information during inspection. At the time of copying for the receiving parties, Confidential Information shall be marked prominently “Confidential” by the producing party.

10. Consent to Disclosure and Use in Examination

Nothing in this Order shall prevent disclosure beyond the terms of this Order if each party designating the information as Confidential Information consents to such disclosure or if the Court, after notice to all affected parties and nonparties, orders such disclosure. Nor shall anything in this Order prevent any counsel of record from utilizing Confidential Information in the examination or cross-examination of any person who is indicated on the document as being an author, source, or recipient of the Confidential Information, irrespective of which party produced such information.

11. Challenging the Designation of Confidential Information

A party shall not be obligated to challenge the propriety of a designation of Confidential Information at the time such designation is made, and a failure to do so shall not preclude a subsequent challenge to the designation. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation of any information as Confidential Information, the parties shall first try to resolve the dispute in good faith on an informal basis, such as by production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this Protective Order by objecting in writing to the party who designated the document or information as Confidential Information. The designating party shall then have 14 days to move the Court for an order preserving the designated status of the disputed information.

The disputed information shall remain Confidential Information unless the Court orders otherwise. Failure to move for an order shall constitute a termination of the status of such item as Confidential Information.

12. Challenging Release of Confidential Information to Qualified Persons

In the event that any party in good faith believes that a particular Qualified Person or the disclosure of particular Confidential Information to such person should be precluded, the objecting party shall give written notice to the opposing party and the parties shall first try to resolve the dispute in good faith on an informal basis. If the dispute cannot be resolved, the objecting party shall have 21 days from the date of the written notice to move the Court for an order denying the disputed person (a) status as a Qualified Person, or (b) access to particular Confidential Information. The objecting party shall demonstrate that disclosure to the disputed person would expose the objecting party to a substantial risk of harm. Upon the timely filing of such a motion, no disclosure of Confidential Information shall be made to the disputed person unless the Court enters an order preserving the designation.

13. Manner of Use in Proceedings

In the event a party wishes to use any Confidential Information in affidavits, declarations, briefs, memoranda of law, or other papers filed in this litigation, the party shall do one of the following: (a) with the consent of the producing party, file only a redacted copy of the information; (b) where appropriate (e.g., in connection with discovery and evidentiary motions) provide the information solely for *in camera* review; or (c) file such information under seal with the Court consistent with the sealing requirements of the Court.

Nothing in this Order shall limit the parties' rights or ability to offer evidence at a hearing or trial. The manner of using any Confidential Information at a hearing or trial and the status of Confidential Information resulting from any such use will be determined by the court.

14. Filing Under Seal

The clerk of this Court is directed to maintain under seal all documents, transcripts of deposition testimony, answers to interrogatories, admissions, and other papers filed under seal in this litigation that have been designated, in whole or in part, as Confidential Information by any party to this litigation consistent with the sealing requirements of the Court.

15. Return of Documents

Not later than 120 days after conclusion of this litigation and any appeal related to it, and to the extent consistent with any obligation to maintain records consistent with any law or court order, any Confidential Information, all reproductions of such information, and any notes, summaries, or descriptions of such information in the possession of any of the persons specified in Paragraph 2 shall be returned to the producing party or destroyed, except as this Court may otherwise order or to the extent such information has been used as evidence at any trial or hearing. Notwithstanding this obligation to return or destroy information, counsel may retain attorney work product, including document indices, so long as that work product does not duplicate verbatim substantial portions of the text of any Confidential Information.

16. Ongoing Obligations

Insofar as the provisions of this Protective Order, or any other protective orders entered in this litigation, restrict the communication and use of the information protected by it, such provisions shall continue to be binding after the conclusion of this litigation, except that (a) there shall be no restriction on documents that are used as exhibits in open court unless such exhibits

were filed under seal, and (b) a party may seek the written permission of the producing party or order of the Court with respect to dissolution or modification of this, or any other, protective order.

17. Duty to Ensure Compliance

Any party providing Confidential Information to a Qualified Person shall have the duty to reasonably ensure that such person observes the terms of this Protective Order and shall be responsible upon breach of such duty for the failure of such person to observe the terms of this Protective Order.

18. Waiver

Pursuant to Federal Rule of Evidence 502 and the separately entered Stipulated Order Regarding the Disclosure of Privileged Information, ECF No. ____, neither the attorney-client privilege nor work product protection is waived by disclosure connected with this litigation.

19. Modification and Exceptions

The parties may, by stipulation, provide for exceptions to this order and any party may seek an order of this Court modifying this Protective Order.

So ORDERED and SIGNED this ____ day of February, 2022.

HON. DAVID G. GUADERRAMA
UNITED STATES DISTRICT JUDGE

And on behalf of:

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals, Fifth Circuit

-and-

Jeffrey V. Brown
United States District Judge
Southern District of Texas

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS (LULAC), et al.,

Plaintiffs,

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GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259
(DCG-JES-JVB)
(consolidated cases)

**[PROPOSED] STIPULATED ORDER REGARDING THE
DISCLOSURE OF PRIVILEGED INFORMATION**

Pursuant to Rules 502(d)-(e) of the Federal Rules of Evidence and the stipulated agreement of the Parties, this Stipulated Order Regarding the Disclosure of Privileged Information (“Order”) is made by and between counsel for all Private Plaintiffs,¹ counsel for the

¹ Counsel for Private Plaintiffs includes counsel for the League of United Latin American Citizens, Voto Latino, Southwest Voter Registration Education Project, Mi Familia Vota, American GI Forum of Texas, La Union del Pueblo Entero, Mexican American Bar Association of Texas, Texas Hispanics Organized for Political Education, William C. Velasquez Institute, Fiel Houston, Inc., Texas Association of Latino Administrators and Superintendents, Proyecto Azteca, Reform Immigration for Texas Alliance, Workers Defense Project, Emelda Menendez, Gilberto Menendez, Jose Olivares, Florinda Chavez, Joey Cardenas, Paulita Sanchez, Jo Ann Acevedo, David Lopez, Diana Martinez Alexander, Jeandra Ortiz, Damon James Wilson, Roy Charles Brooks, Akilah Bacy, Orlando Flores, Marilena Garza, Cecilia Gonzales, Agustin Lored, Cinia Montoya, Ana Ramon, Jana Lynne Sanchez, Jerry Shafer, Debbie Lynn Solis, Angel Ulloa, Mary Uribe, Mexican American Legislative Caucus, Rosalinda Ramos Abuabara, Felipe Gutierrez, Phyllis Goines, Eve Bonilla, Clara Faulkner, Deborah Spell, Beverly Powell, Texas State Conference of the NAACP, Fair Maps Texas Action Committee, OCA-Greater Houston, North Texas Chapter of the Asian Pacific Islander American Public Affairs Association, Emgage, Turner Khanay, Angela Rainey, Austin Ruiz, Aya Eneli, Sofia Sheikh, Jennifer Cazares, Niloufar Hafizi, Lakshmi Ramakrishnan, Amatulla Contractor, Deborah Chen, Arthur Resa, Sumita Ghosh, Anand Krishnaswamy, Trey Martinez Fischer, Congresswoman Veronica Escobar, Congresswoman Eddie Bernice Johnson, Congresswoman Sheila Jackson Lee, Congressman Alexander Green, and Jasmine Crockett.

United States, and counsel for all Defendants² (collectively, the “Parties”), and with the Court being fully advised as to the same, it is hereby **ORDERED**:

I. Applicability

This Order shall be applicable to all communications, documents, tangible things, and electronically stored information (“ESI”) (collectively, “Material” or “Materials”) produced, made available for inspection, or otherwise disclosed by any of the Parties to this litigation. This Order applies to the Parties; their counsel; and their agents, assignees, and contractors, including but not limited to expert witnesses and litigation consultants.

II. Production of Discovery Materials Containing Potentially Privileged Information

A. The disclosure of any privileged Material, or Material otherwise protected or exempted from disclosure, shall not operate as a waiver or impairment of any claim of privilege or protection, including but not limited to the attorney-client privilege, work product protection, or governmental privileges, if:

1. The disclosure is inadvertent and made in connection with this litigation; and
2. The holder of the privilege or protection took reasonable precautions to prevent disclosure and took reasonably prompt measures to rectify the error.

B. Any Party receiving Material that it believes may have been inadvertently produced that includes privileged or protected information shall promptly notify the producing

² Counsel for Defendants includes counsel for Greg Abbott, in his official capacity as the Governor of Texas; Jose Esparza, in his official capacity as the Deputy Secretary of State of Texas; the State of Texas; Dade Phelan, in his official capacity as the Speaker of the Texas House of Representatives; Dan Patrick, in his official capacity as the Lieutenant Governor and the Presiding Officer of the Texas Senate; and John Scott, in his official capacity as the Texas Secretary of State.

Party. Within 14 days after such notification, the producing Party may request in writing that such materials be returned or destroyed. Upon such written request—except in the event that the Party or Parties receiving the request dispute the claim of privilege or protection—any materials that the producing Party deems to contain inadvertently disclosed materials shall be promptly returned to the producing Party or destroyed. All copies—electronic or otherwise—shall likewise be returned or destroyed, and the Parties agree that no further copies of the inadvertently disclosed Material will be made.

- C. If the producing Party does not request the return or destruction of material within 14 days after receiving notice under Paragraph II(B) that it produced potentially privileged material, the producing Party waives any claim of privilege or protection as to the material.
- D. If inadvertently produced privileged or protected material is contained within an item that contains otherwise discoverable Material, the Parties recognize that the Party receiving the request may not be able to return or destroy only the portion of the item containing privileged or protected Material. In the event that the Party receiving the request is not able to reasonably separate the privileged or protected material for destruction or return, the Party receiving the request shall destroy or return the privileged or protected information along with the discoverable portions of the Material, and the producing Party shall provide the requesting Party with a replacement copy of the Material that is not privileged or protected, and is otherwise discoverable, within 14 days of sending the request for return or destruction of the inadvertently disclosed Material.

- E. A producing Party that discovers or otherwise becomes aware without receiving notice from another Party under Paragraph II(B) that it has inadvertently produced privileged or protected Material must notify the receiving Party or Parties promptly in writing within 14 days after it becomes aware of such inadvertent production, that such Material has been produced. Upon receiving written notice from the producing Party that privileged or protected material has been produced—and except in the event that the receiving Party disputes the claim of privilege or protection—the receiving Party shall return or destroy all such Material under the terms and timelines of Paragraphs II(B)-(D).
- F. In the event that a receiving Party disputes the producing Party’s assertions of privilege or protection with respect to the disclosed Material, such material shall be sequestered and retained by and under the control of the receiving Party for the purpose of seeking determination of the issue from the Court. If the Court determines that privilege or protection has been waived or that the Material at issue is not subject to any applicable privilege or protection, the receiving Party may use the material for any purposes otherwise permitted by rule or law. If the Court determines that the inadvertently disclosed Material is subject to an applicable privilege or protection, the receiving Party must return or destroy the Material at issue, as provided in Paragraphs II(B)-(E).
- G. On receipt of a notice under Paragraph II(B) or II(E), any analyses, memoranda, or notes which were generated by the receiving Party based upon such produced Material shall not be used, shall be placed in sealed envelopes or otherwise sequestered in relevant part, and shall be destroyed if (1) the receiving Party does not contest that the Material is privileged or (2) the Court rules that the Material is privileged. Such

analyses, memoranda or notes may be removed from the sealed envelopes and returned to its intended purpose only if the producing Party agrees in writing that the Material is not privileged, or the Court rules that the Material is not privileged. If copies of inadvertently produced Materials are located or stored on the receiving Party's Backup System(s), those copies need not be affirmatively removed but, rather, the receiving Party may overwrite those copies according to its normal records management procedures.

- H. The inadvertent production of privileged or protected Material is not a waiver of the privilege or protection from discovery in this case or in any other proceeding, except as expressly provided in Paragraph II.C.

Based on the foregoing, IT IS SO ORDERED.

DATED: _____

HON. DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE

And on behalf of:

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals, Fifth Circuit

-and-

Jeffrey V. Brown
United States District Judge
Southern District of Texas

EXHIBIT 3A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
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**[PROPOSED] STIPULATED ORDER REGARDING DISCOVERY OF
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for all Private Plaintiffs,¹ counsel for the

¹ Counsel for Private Plaintiffs includes counsel for the League of United Latin American Citizens, Southwest Voter Registration Education Project, Mi Familia Vota, American GI Forum of Texas, La Union del Pueblo Entero, Mexican American Bar Association of Texas, Texas Hispanics Organized for Political Education, William C. Velasquez Institute, Fiel Houston, Inc., Texas Association of Latino Administrators and Superintendents, Proyecto Azteca, Reform Immigration for Texas Alliance, Workers Defense Project, Emelda Menendez, Gilberto Menendez, Jose Olivares, Florinda Chavez, Joey Cardenas, Paulita Sanchez, Jo Ann Acevedo, David Lopez, Diana Martinez Alexander, Jeandra Ortiz, Damon James Wilson, Roy Charles Brooks, Akilah Bacy, Orlando Flores, Marilena Garza, Cecilia Gonzales, Agustin Loredo, Cinia Montoya, Ana Ramon, Jana Lynne Sanchez, Jerry Shafer, Debbie Lynn Solis, Angel Ulloa, Mary Uribe, Mexican American Legislative Caucus, Voto Latino, Rosalinda Ramos Abuabara, Felipe Gutierrez, Phyllis Goines, Eve Bonilla, Clara Faulkner, Deborah Spell, Beverly Powell, Texas State Conference of the NAACP, Fair Maps Texas Action Committee, OCA-Greater Houston, North Texas Chapter of the Asian Pacific Islander American Public Affairs Association, Emgage, Turner Khanay, Angela Rainey, Austin Ruiz, Aya Eneli, Sofia Sheikh, Jennifer Cazares, Niloufar Hafizi, Lakshmi Ramakrishnan, Amatulla Contractor, Deborah Chen, Arthur Resa, Sumita Ghosh, Anand Krishnaswamy, Trey Martinez Fischer, Congresswoman

United States, and counsel for Defendants² (collectively, the “Parties”), in connection with the above-styled cause.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

IT IS HEREBY ORDERED that:

I. Overview

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant

Veronica Escobar, Congresswoman Eddie Bernice Johnson, Congresswoman Sheila Jackson Lee, Congressman Alexander Green, and Jasmine Crockett.

² Counsel for Defendants includes counsel for Greg Abbott, in his official capacity as the Governor of Texas; Jose Esparza, in his official capacity as the Deputy Secretary of State of Texas; the State of Texas; Dade Phelan, in his official capacity as the Speaker of the Texas House of Representatives; Dan Patrick, in his official capacity as the Lieutenant Governor and the Presiding Officer of the Texas Senate; and John Scott, in his official capacity as the Texas Secretary of State.

data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

II. Definitions

- A. “Defendant” as used herein shall mean the State of Texas, Gregory Wayne Abbott, in his official capacity as the Governor of Texas; Jose Esparza, in his official capacity as the Deputy Secretary of State of Texas; the State of Texas; Dade Phelan, in his official capacity as the Speaker of the Texas House of Representatives; Dan Patrick, in his official capacity as the Lieutenant Governor and the Presiding Officer of the Texas Senate; and John Scott, in his official capacity as the Texas Secretary of State.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).
- C. “Parties” refers to all Private Plaintiffs, the United States, and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Private Plaintiffs” as used herein shall refer to League of United Latin American Citizens, Southwest Voter Registration Education Project, Mi Familia Vota, American GI Forum of Texas, La Union del Pueblo Entero, Mexican American Bar Association of Texas, Texas Hispanics Organized for Political Education, William C. Velasquez Institute, Fiel Houston, Inc., Texas Association of Latino Administrators and Superintendents, Proyecto Azteca, Reform Immigration for Texas Alliance, Workers Defense Project, Emelda Menendez, Gilberto Menendez, Jose Olivares, Florinda Chavez, Joey Cardenas, Paulita Sanchez, Jo

Ann Acevedo, David Lopez, Diana Martinez Alexander, Jeandra Ortiz, Damon James Wilson, Roy Charles Brooks, Akilah Bacy, Orlando Flores, Marilena Garza, Cecilia Gonzales, Agustin Loreda, Cinia Montoya, Ana Ramon, Jana Lynne Sanchez, Jerry Shafer, Debbie Lynn Solis, Angel Ulloa, Mary Uribe, Mexican American Legislative Caucus, Voto Latino, Rosalinda Ramos Abuabara, Felipe Gutierrez, Phyllis Goines, Eve Bonilla, Clara Faulkner, Deborah Spell, Beverly Powell, Texas State Conference of the NAACP, Fair Maps Texas Action Committee, OCA-Greater Houston, North Texas Chapter of the Asian Pacific Islander American Public Affairs Association, Emgage, Turner Khanay, Angela Rainey, Austin Ruiz, Aya Eneli, Sofia Sheikh, Jennifer Cazares, Niloufar Hafizi, Lakshmi Ramakrishnan, Amatulla Contractor, Deborah Chen, Arthur Resa, Sumita Ghosh, Anand Krishnaswamy, Trey Martinez Fischer, Congresswoman Veronica Escobar, Congresswoman Eddie Bernice Johnson, Congresswoman Sheila Jackson Lee, Congressman Alexander Green, and Jasmine Crockett.

- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

III. Custodians

- A. The Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.

- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

IV. Preservation and Production of Documents

A. Preservation

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order or administrative order, or in response to other anticipated litigation.

- B. Limitations on Obligations to Preserve. For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
 - a) Delivery or read receipts of e-mail;
 - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Private Plaintiffs in this litigation (and their staff); (2) counsel of record for the United States in this

litigation (and their staff); and/or (3) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for the Private Plaintiffs in this litigation (and their staff); (2) counsel of record for the United States in this litigation (and their staff); and/or (3) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Private Plaintiffs in this litigation (and their staff); (2) counsel of record for the United States in this litigation (and

their staff); and/or (3) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies³ of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree

³ “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

on how and when the ESI will be preserved or produced. If the Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for the Private Plaintiffs in this litigation (and their staff); (b) counsel of record for the United States in this litigation (and their staff); and/or (c) counsel of record for Defendants in this litigation (and their staff).

- C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

V. Production Format for ESI

A. Production Format and Numbering

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at

300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color images.

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents (*i.e.*, Texas _____). For native files, which cannot be Bates-stamped, the Parties will rename the file as [Document Identification Number].[extension] with a placeholder image in the production containing the original name of the file.
- B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).
- C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image containing the file name must be included in the production.
- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image containing the file name must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played

using Windows Media Player. For each audio or video file, a placeholder image containing the file name shall be included in the production.

- F. Social Media Content. Social media content (including comments, “likes,” sharing, and other interactions with the post(s)) should be produced as individual images with extracted text, including information about the participants and the date and time of the communications.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.
- I. Embedded Files. Embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.

- K. Load File Format. The Parties shall meet and confer to the extent necessary to facilitate the import and use of the produced materials with commercially available document management or litigation support software such as Relativity.
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information is within the producing party's possession, custody, or control, and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.
- N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI. If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.

- O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads by producing the most recent email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.
- P. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify acceptable, less burdensome alternative production formats.

VI. Production Format for Hard Copy Documents

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level extracted text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

VII. Production Specifications

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. Any documents and ESI produced by the United States or produced in response to a discovery request from the United States will be produced via .zip file(s) uploaded to the Justice Enterprise File Sharing System (“JEFS”).
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

VIII. Third-Party Discovery

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

IX. Privileged Documents, Things, and ESI

A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.

B. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
 - a) Bates number range, with the start and end bates numbers or, for native files, the Document ID number;
 - b) Date the document was prepared or created;
 - c) Document type;
 - d) Name and title of author(s)
 - e) Custodian;
 - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);

- g) Name and title of any attorney(s) included in the communication;
 - h) The privilege or protection asserted;
 - i) The basis for the privilege or protection asserted;
 - j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
 - k) Purpose of preparing the document.
3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
5. Production Timeline. Privilege logs may be produced on a rolling basis, but no later than 30 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

Based on the foregoing, IT IS SO ORDERED.

DATED: _____

HON. DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE

And on behalf of:

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals, Fifth Circuit

-and-

Jeffrey V. Brown
United States District Judge
Southern District of Texas

APPENDIX A

Field Name	Definition	Include for Emails and Text Messages	Include for other electronic files	Include for Paper documents
Begin_Bates	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).	Y	Y	Y
End_Bates	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).	Y	Y	Y
Begin_Attach	<u>Only</u> for document families, ⁴ provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.	Y	Y	Y
End_Attach	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.	Y	Y	Y

⁴ Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

Parent ID	Bates number of the parent document (filled in only for “child” documents).	Y	Y	Y
PgCount	The number of images produced for this document (1 for placeholder).	Y	Y	Y
All Custodians	Name of all custodians who had a copy of the document before deduplication.	Y	Y	Y
From	“From” field in email.	Y		
To	“To” field in email.	Y		
CC	“CC” field in email.	Y		
BCC	“BCC” field in email.	Y		
Subject	“Subject” field in email.	Y		
Attachments	File names of the attachments.	Y		
DateSent	DateSent field from email. Include both date and time (format: 9/28/2012 1:16 PM or 9/28/2012 13:16:34).	Y		
Redacted	“Yes” if the document has been redacted.	Y	Y	Y

Confidential	Confidential Designation (if any).	Y	Y	Y
MD5Hash	The MD5 hash value calculated when the file was collected or processed.	Y	Y	
Orig_File Paths	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.	Y	Y	
Prod_FilePath	The path to the native file on the production media.		Y	
Native_filename	Original name of the native file when the file was collected or processed.	Y	Y	
Text File Path	Path to the text file on the production media.	Y	Y	Y
Date File Created	The date the ESI was created.		Y	
Date File Last Modified	The date the ESI was last modified.		Y	

EXHIBIT 3B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259
(DCG-JES-JVB)
(consolidated cases)

**[PROPOSED] STIPULATED ORDER REGARDING DISCOVERY OF
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for all Private Plaintiffs,¹ counsel for the

¹ Counsel for Private Plaintiffs includes counsel for the League of United Latin American Citizens, Southwest Voter Registration Education Project, Mi Familia Vota, American GI Forum of Texas, La Union del Pueblo Entero, Mexican American Bar Association of Texas, Texas Hispanics Organized for Political Education, William C. Velasquez Institute, Fiel Houston, Inc., Texas Association of Latino Administrators and Superintendents, Proyecto Azteca, Reform Immigration for Texas Alliance, Workers Defense Project, Emelda Menendez, Gilberto Menendez, Jose Olivares, Florinda Chavez, Joey Cardenas, Paulita Sanchez, Jo Ann Acevedo, David Lopez, Diana Martinez Alexander, Jeandra Ortiz, Damon James Wilson, Roy Charles Brooks, Akilah Bacy, Orlando Flores, Marilena Garza, Cecilia Gonzales, Agustin Loredo, Cinia Montoya, Ana Ramon, Jana Lynne Sanchez, Jerry Shafer, Debbie Lynn Solis, Angel Ulloa, Mary Uribe, Mexican American Legislative Caucus, Voto Latino, Rosalinda Ramos Abuabara, Felipe Gutierrez, Phyllis Goines, Eve Bonilla, Clara Faulkner, Deborah Spell, Beverly Powell, Texas State Conference of the NAACP, Fair Maps Texas Action Committee, OCA-Greater Houston, North Texas Chapter of the Asian Pacific Islander American Public Affairs Association, Emgage, Turner Khanay, Angela Rainey, Austin Ruiz, Aya Eneli, Sofia Sheikh, Jennifer Cazares, Niloufar Hafizi, Lakshmi Ramakrishnan, Amatulla Contractor, Deborah Chen, Arthur Resa, Sumita Ghosh, Anand Krishnaswamy, Trey Martinez Fischer, Congresswoman

United States, and counsel for Defendants² (collectively, the “Parties”), in connection with the above-styled cause.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

IT IS HEREBY ORDERED that:

I. Overview

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant

Veronica Escobar, Congresswoman Eddie Bernice Johnson, Congresswoman Sheila Jackson Lee, Congressman Alexander Green, and Jasmine Crockett.

² Counsel for Defendants includes counsel for Greg Abbott, in his official capacity as the Governor of Texas; Jose Esparza, in his official capacity as the Deputy Secretary of State of Texas; the State of Texas; Dade Phelan, in his official capacity as the Speaker of the Texas House of Representatives; Dan Patrick, in his official capacity as the Lieutenant Governor and the Presiding Officer of the Texas Senate; and John Scott, in his official capacity as the Texas Secretary of State.

data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

II. Definitions

- A. “Defendant” as used herein shall mean the State of Texas, Gregory Wayne Abbott, in his official capacity as the Governor of Texas; Jose Esparza, in his official capacity as the Deputy Secretary of State of Texas; the State of Texas; Dade Phelan, in his official capacity as the Speaker of the Texas House of Representatives; Dan Patrick, in his official capacity as the Lieutenant Governor and the Presiding Officer of the Texas Senate; and John Scott, in his official capacity as the Texas Secretary of State.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).
- C. “Parties” refers to all Private Plaintiffs, the United States, and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Private Plaintiffs” as used herein shall refer to League of United Latin American Citizens, Southwest Voter Registration Education Project, Mi Familia Vota, American GI Forum of Texas, La Union del Pueblo Entero, Mexican American Bar Association of Texas, Texas Hispanics Organized for Political Education, William C. Velasquez Institute, Fiel Houston, Inc., Texas Association of Latino Administrators and Superintendents, Proyecto Azteca, Reform Immigration for Texas Alliance, Workers Defense Project, Emelda Menendez, Gilberto Menendez, Jose Olivares, Florinda Chavez, Joey Cardenas, Paulita Sanchez, Jo

Ann Acevedo, David Lopez, Diana Martinez Alexander, Jeandra Ortiz, Damon James Wilson, Roy Charles Brooks, Akilah Bacy, Orlando Flores, Marilena Garza, Cecilia Gonzales, Agustin Loreda, Cinia Montoya, Ana Ramon, Jana Lynne Sanchez, Jerry Shafer, Debbie Lynn Solis, Angel Ulloa, Mary Uribe, Mexican American Legislative Caucus, Voto Latino, Rosalinda Ramos Abuabara, Felipe Gutierrez, Phyllis Goines, Eve Bonilla, Clara Faulkner, Deborah Spell, Beverly Powell, Texas State Conference of the NAACP, Fair Maps Texas Action Committee, OCA-Greater Houston, North Texas Chapter of the Asian Pacific Islander American Public Affairs Association, Emgage, Turner Khanay, Angela Rainey, Austin Ruiz, Aya Eneli, Sofia Sheikh, Jennifer Cazares, Niloufar Hafizi, Lakshmi Ramakrishnan, Amatulla Contractor, Deborah Chen, Arthur Resa, Sumita Ghosh, Anand Krishnaswamy, Trey Martinez Fischer, Congresswoman Veronica Escobar, Congresswoman Eddie Bernice Johnson, Congresswoman Sheila Jackson Lee, Congressman Alexander Green, and Jasmine Crockett.

- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

III. Custodians

- A. The Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.

- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

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2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order or administrative order, or in response to other anticipated litigation.

- B. Limitations on Obligations to Preserve. For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
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 - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Private Plaintiffs in this litigation (and their staff); (2) counsel of record for the United States in this

- litigation (and their staff); and/or (3) counsel of record for Defendants in this litigation (and their staff);
- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
 - d) Internally facing server system logs;
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 - f) System data from photocopiers or fax machines;
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 - k) Voicemail messages on the voicemail systems of (1) counsel of record for Private Plaintiffs in this litigation (and their staff); (2) counsel of record for the United States in this litigation (and

their staff); and/or (3) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies³ of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree

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on how and when the ESI will be preserved or produced. If the Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for the Private Plaintiffs in this litigation (and their staff); (b) counsel of record for the United States in this litigation (and their staff); and/or (c) counsel of record for Defendants in this litigation (and their staff).

- C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

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2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
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8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents (*i.e.*, Texas _____). For native files, which cannot be Bates-stamped, the Parties will rename the file as [Document Identification Number].[extension] with a placeholder image in the production containing the original name of the file.
- B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).
- C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image containing the file name must be included in the production.
- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image containing the file name must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played

using Windows Media Player. For each audio or video file, a placeholder image containing the file name shall be included in the production.

- F. Social Media Content. Social media content (including comments, “likes,” sharing, and other interactions with the post(s)) should be produced as individual images with extracted text, including information about the participants and the date and time of the communications.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.
- I. Embedded Files. Embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.

- K. Load File Format. The Parties shall meet and confer to the extent necessary to facilitate the import and use of the produced materials with commercially available document management or litigation support software such as Relativity.
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information is within the producing party's possession, custody, or control, and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.
- N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI. If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.

- O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads by producing the most recent email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.
- P. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify acceptable, less burdensome alternative production formats.

VI. Production Format for Hard Copy Documents

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level extracted text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

VII. Production Specifications

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. Any documents and ESI produced by the United States or produced in response to a discovery request from the United States will be produced via .zip file(s) uploaded to the Justice Enterprise File Sharing System (“JEFS”).
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

VIII. Third-Party Discovery

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

IX. Privileged Documents, Things, and ESI

A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.

B. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
 - a) Bates number range, with the start and end bates numbers or, for native files, the Document ID number;
 - b) Date the document was prepared or created;
 - c) Document type;
 - d) Name and title of author(s)
 - e) Custodian;
 - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);

- g) Name and title of any attorney(s) included in the communication;
 - h) The privilege or protection asserted;
 - i) The basis for the privilege or protection asserted;
 - j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
 - k) Purpose of preparing the document.
3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
5. Production Timeline. Privilege logs may be produced on a rolling basis. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

Based on the foregoing, IT IS SO ORDERED.

DATED: _____

HON. DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE

And on behalf of:

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals, Fifth Circuit

-and-

Jeffrey V. Brown
United States District Judge
Southern District of Texas

APPENDIX A

Field Name	Definition	Include for Emails and Text Messages	Include for other electronic files	Include for Paper documents
Begin_Bates	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).	Y	Y	Y
End_Bates	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).	Y	Y	Y
Begin_Attach	<u>Only</u> for document families, ⁴ provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.	Y	Y	Y
End_Attach	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.	Y	Y	Y

⁴ Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

Parent ID	Bates number of the parent document (filled in only for “child” documents).	Y	Y	Y
PgCount	The number of images produced for this document (1 for placeholder).	Y	Y	Y
All Custodians	Name of all custodians who had a copy of the document before deduplication.	Y	Y	Y
From	“From” field in email.	Y		
To	“To” field in email.	Y		
CC	“CC” field in email.	Y		
BCC	“BCC” field in email.	Y		
Subject	“Subject” field in email.	Y		
Attachments	File names of the attachments.	Y		
DateSent	DateSent field from email. Include both date and time (format: 9/28/2012 1:16 PM or 9/28/2012 13:16:34).	Y		
Redacted	“Yes” if the document has been redacted.	Y	Y	Y

Confidential	Confidential Designation (if any).	Y	Y	Y
MD5Hash	The MD5 hash value calculated when the file was collected or processed.	Y	Y	
Orig_File Paths	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.	Y	Y	
Prod_FilePath	The path to the native file on the production media.		Y	
Native_filename	Original name of the native file when the file was collected or processed.	Y	Y	
Text File Path	Path to the text file on the production media.	Y	Y	Y
Date File Created	The date the ESI was created.		Y	
Date File Last Modified	The date the ESI was last modified.		Y	