

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**America First Legal Foundation**  
611 Pennsylvania Avenue SE #231,  
Washington, DC 20003; and

**Richard Grenell,**  


*Plaintiffs,*

v.

**Alejandro Mayorkas**, in his official  
capacity as United States Secretary of  
Homeland Security  
2707 Martin Luther King Jr. Ave. SE,  
Washington, DC 20528;

**United States Department of Homeland  
Security**, an agency of the United States  
Eisenhower Executive Office Building  
2707 Martin Luther King Jr. Ave. SE,  
Washington, DC 20528; and

**Homeland Intelligence Experts Group**,  
an advisory committee established and  
utilized by Secretary of Homeland Security  
Alejandro Mayorkas  
2707 Martin Luther King Jr. Ave. SE,  
Washington, DC 20528,

*Defendants.*

Case No. 1:23-cv-3322

## COMPLAINT

(For Injunctive and Declaratory Relief)

### STATEMENT OF THE CASE

1. On September 19, 2023, the Department of Homeland Security (“Department”) launched the Homeland Intelligence Experts Group. The Department established the Experts Group “to provide advice” “on intelligence and national security efforts to the Office of Intelligence and Analysis and the Office of Counterterrorism Coordinator.” In the press release announcing the Experts Group, the Department said that “[t]he Experts Group will meet four times annually and leverage the expertise of each member to provide input on I&A’s [Office of Intelligence and Analysis] most complex problems and challenges, including terrorism, fentanyl, transborder issues, and emerging technology.” Another Department official said, “The Experts Group will be an invaluable asset as we navigate through this evolving threat and operating environment and continue to strengthen our efforts to protect the Homeland.” Yet another said, “The experience, expertise, and perspective offered by Experts Group members will undoubtedly put the Department in a strong position to confront this threat landscape, and we are grateful for the willingness of the Experts Group members to serve in this important capacity.”

2. In an interview that same day, a Department official said of the Experts Group that “they are giving us advice about a lot of the thorny issues we’re dealing with.” He continued: “these are people who have tremendous experience and insights,” and “we then walk out really enlightened about issues that we’re dealing with.” Emphasizing the group nature, he said, “[t]hat, to me, is the best way for people to get advice.” He compared the Group to “other panels around the government” but reiterated that “it’s really impactful.” The official confirmed that “we had a meeting.” Brookings Institution, *DHS Under Secretary for Intelligence and Analysis Kenneth*

*Wainstein: Current threat environment*, YouTube, [https://youtu.be/RGtxAwVHz\\_c](https://youtu.be/RGtxAwVHz_c) (Sept. 19, 2023) (beginning at 1:30.00).

3. Details about the Experts Group and its meetings are unavailable in the Federal Register or elsewhere.

4. Plaintiffs Richard Grenell and America First Legal Foundation are “‘directly affected, interested, and qualified’ with respect to the [Group’s] function of” advising on intelligence issues, yet they are not represented on the Group, either directly or indirectly. *NAACP Legal Def. & Educ. Fund. Inc. v. Barr*, 496 F. Supp. 3d 116, 144–45 (D.D.C. 2020) (quoting 41 C.F.R. § 102-3.60(b)(3)) (issuing an injunction that required the Attorney General to ensure that his advisory committee had a fairly balanced membership).

5. The Defendants have violated the Federal Advisory Committee Act (“FACA”), 5 U.S.C. app. 2 §§ 1-16. The Plaintiffs seek declaratory and injunctive in four broad respects.

6. First, the Defendants have violated the requirements under section 5 of FACA, 5 U.S.C. app. 2 § 5, that an advisory committee’s membership be “fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee,” *id.* § 5(b)(2); and that “appropriate provisions” be made “to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee’s independent judgment[,]” *id.* § 5(b)(3). The Experts Group’s members are political allies of the Biden Administration. Most members have applauded the Administration’s decisions and fervidly condemned former President Trump’s America First approach to foreign policy. They have overwhelmingly donated to President Biden or other Democrats. Defendant Mayorkas selected members that are agreeable, not balanced.

7. Second, the Defendants have already violated, and absent relief, will continue to violate, the non-discretionary transparency and public access requirements of section 10 of FACA, 5 U.S.C. app. 2 § 10. The Experts Group is meeting without public notice; without making those meetings open to the public; and without timely notice in the Federal Register. *Id.* § 10(a). It has also failed to make all “records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by” the Experts Group “available for public inspection.” *Id.* § 10(b).

8. Third, the Defendants have already violated, and absent relief, will continue to violate, FACA’s non-discretionary establishment requirements. 5 U.S.C. app. 2 § 9(a). No statute specifically authorizes the Experts Group’s establishment. *Id.* § 9(a)(1). Nor did the President specifically authorize the Experts Group’s establishment. *Id.* Nor did Secretary Mayorkas publish notice of the Experts Group’s establishment in the Federal Register. *Id.* § 9(a)(2).

9. Fourth, the Defendants have violated—and continue to violate—the oversight provisions of FACA and its interpreting regulations by failing to prepare and file a charter for the Experts Group with all necessary political bodies, including but not limited to the Congressional committees that would otherwise exercise oversight responsibility over the Experts Group. 5 U.S.C. app. 2 § 9(c). The Defendants have not assigned a Designated Federal Officer to the Experts Group to ensure compliance with FACA and any other applicable laws and regulations. In other words, the Defendants have shielded the Experts Group from any meaningful oversight.

10. In sum, despite benefiting from the “political legitimacy” that comes with invoking an official advisory committee, *Cummock v. Gore*, 180 F.3d 282, 292 (D.C. Cir. 1999), the Defendants have shirked nearly all FACA requirements.

11. Each Plaintiff is particularly and concretely injured by the Defendants' violations of FACA. By establishing an advisory committee composed of members holding common views—and excluding organizations with competing views—and trying to conduct meetings behind closed doors without disclosing the matters discussed in those meetings, the Defendants have impaired America First Legal Foundation's mission, and the Plaintiffs have no opportunity to have a representative voice on the Experts Group.

#### JURISDICTION AND VENUE

12. This Court has jurisdiction under 5 U.S.C. § 704 and 28 U.S.C. §§ 1331 and 1361.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (e) because all the Defendants reside in this district, where a substantial part of the acts and omissions giving rise to this action took place.

#### PARTIES

14. Plaintiff America First Legal Foundation is a nonprofit corporation that promotes government transparency and accountability by gathering official government information, analyzing it, and disseminating it to the public through reports, press releases, media platforms including social media, and by posting government records on its website for use by the public, scholars, and others. Among other things, America First Legal conducts oversight of the Department of Homeland Security to educate the public about the Department, particularly when the Department fails to meet its statutory obligations and its mission. America First Legal has filed lawsuits previously to stop the Department's lawless open borders policies, including when the Department illegally tried to end Title 42, when the Department illegally ended the Migrant Protection Protocols, when the Department illegally dispensed of its removal authorities under the

guise of “discretion,” and when the Department created—out of whole cloth—a new visa program, all of which are globalist, America-last initiatives being pursued by the current Administration.

15. Plaintiff Richard Grenell is the former ambassador to Germany and the former Director of National Intelligence. Mr. Grenell brings an America First approach to his intelligence work—an approach that is skeptical of the institutional interests being furthered by the Biden Administration and the current members of the “Experts Group.” Mr. Grenell is qualified to serve on the Experts Group, having previously held the position of Director for National Intelligence, as did Mr. Clapper (a Group member), and a post at the Department of State, similar to Mr. Taylor and Mr. Bellinger (both Group members).

16. Defendant Alejandro Mayorkas is the Secretary of Homeland Security. Plaintiffs sue him in his official capacity.

17. Defendant Department of Homeland Security is the federal agency of the United States in which the Experts Group is housed.

18. Defendant Homeland Intelligence Experts Group is an advisory committee established by the Department around September 19, 2023.

#### LEGAL FRAMEWORK

19. FACA applies to “any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof . . . established or utilized by one or more agencies . . . in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government,” defining such groups as “advisory committees.” 5 U.S.C. app. 2 § 3(2).

20. Only those committees that are “composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government” or “created by the National Academy of

Sciences or the National Academy of Public Administration” fall outside the definition of “advisory committee” under the Act. 5 U.S.C. app. 2 § 3(2). And all of the provisions of FACA apply to advisory committees except when an “Act of Congress establishing any such advisory committee specifically provides otherwise.” *Id.* § 4(a).

21. FACA mandates that “[n]o advisory committee shall be established unless such establishment is (1) specifically authorized by statute or by the President; or (2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.” 5 U.S.C. app. 2 § 9(a).

22. FACA also orders that “[u]nless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.” 5 U.S.C. app. 2 § 9(b).

23. FACA requires that in establishing an advisory committee, the agency heads “shall” follow the guidelines of the statute, 5 U.S.C. app. 2 § 5(c), including that the directive establishing the advisory committee must, among other things, “require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee” and “contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee’s independent judgment.” *Id.* § 5(b)(2)-(3).

24. FACA's implementing regulations, promulgated by the General Services Administration, require each advisory committee to have a plan to attain fairly balanced membership. The plan must "ensure that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee. Advisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed." 41 C.F.R. § 102-3.60(b)(3).

25. The charter of each advisory committee must be filed by the "Committee Management Officer designated in accordance with section 8(b) of the Act, or . . . another agency official designated by the agency head." 41 C.F.R. § 102-3.70.

26. No advisory committee "shall meet or take any action until an advisory committee charter has been filed with . . . the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency." 5 U.S.C. app. 2 § 9(c). The advisory committee charter must also be filed with the Library of Congress and the Secretariat. *See* 41 C.F.R. § 102-3.70(a)(3)–(4).

27. Each advisory committee must also have a Designated Federal Officer ("DFO") designated by the agency head. 41 C.F.R. § 102-3.120; *see* 5 U.S.C. app. 2 § 10(e). A committee's DFO is responsible for calling meetings of the committee, approving the agenda for all committee meetings, attending meetings, adjourning any meeting when they determine it to be "in the public interest," and chairing the meeting when directed by the agency head. 41 C.F.R. § 102-3.120.

28. FACA demands transparency in the procedures and meetings of advisory committees. All advisory committee meetings must be open to the public and must be timely noticed in



the Federal Register. 5 U.S.C. app. 2 § 10(a)(1)-(2). Meetings must be noticed in the Federal Register at least fifteen days before the meeting is to be held. 41 C.F.R. § 102-3.150(a).

29. Interested members of the public must “be permitted to attend, appear before, or file statements with any advisory committee,” subject only to “reasonable” regulations set by the Administrator of General Services. 5 U.S.C. app. 2 § 10(a)(3). Although portions of meetings may be closed where the President determines that closure is provided for under 5 U.S.C. § 552b(c) (the federal Open Meetings statute), any such determination must be made in a writing that sets forth the reasons for the conclusion. 5 U.S.C. app. 2 § 10(d).

30. Subject to the Freedom of Information Act, 5 U.S.C. § 552, “the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports.” 5 U.S.C. app. 2 § 10(b).

31. FACA mandates that “[d]etailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.” 5 U.S.C. app. 2 § 10(c). Advisory committees must make available copies of transcripts of advisory committee meetings to “any person” at only the “actual cost of duplication.” 5 U.S.C. app. 2 § 11(a).

32. These requirements reflect FACA’s goal of ensuring that “agencies should seek to be as inclusive as possible.” 41 C.F.R. § 102-3.95(d).

33. Each of the requirements of FACA is mandatory on the appointing authority, in this case, Secretary Mayorkas, and on the advisory committee itself.

FACTS

34. No statute specifically authorizes the establishment of the Experts Group.

35. The President has not purported to specifically authorize the establishment of the Experts Group.

36. Notice of the establishment of the Experts Group has not been published in the Federal Register.

37. Defendant Mayorkas has not purported to appoint a DFO for the Experts Group as FACA requires. 41 C.F.R. § 102-3.120.

38. No Defendant has purported to file an advisory committee charter with the Department; Senate Committee on Homeland Security and Governmental Affairs; House Committee on Homeland Security; Library of Congress; or Secretariat.

39. According to the Department, “[t]he Experts Group will meet four times annually.”

40. The Experts Group’s membership is skewed because it is disproportionately composed of the Biden Administration’s supporters and fails to reflect the diversity of opinions held by Americans, as it must for an objective and competent deliberative process.

41. The official press release announcing the Experts Group’s creation lists the following seventeen Group members:

- a. John Bellinger, Partner, Arnold & Porter (Former Legal Advisor, Department of State and National Security Council)
- b. John Brennan, Distinguished Fellow, Fordham University School of Law and University of Texas at Austin (Former Director, Central Intelligence Agency)

- c. James Clapper, CNN National Security Analyst (Former Director of National Intelligence)
- d. Rajesh De, Partner, Mayer Brown (Former Principal Deputy Assistant Attorney General for Legal Policy and NSA General Counsel)
- e. Thomas Galati, Senior Vice President, East Coast Security Operations, NBC Universal (Former New York Police Department, Chief, Intelligence and Counterterrorism)
- f. Tashina Gauhar, Senior Director, Compliance, Strategy and Policy, The Boeing Company (Former Associate Deputy Attorney General and Deputy Assistant Attorney General, National Security Division, Department of Justice)
- g. Asha M. George, Executive Director, Bipartisan Commission on Biodefense (Former Subcommittee Staff Director, House Committee on Homeland Security)
- h. Karen Greenberg, Director, Center on National Security, Fordham University School of Law
- i. Emily Harding, Senior Fellow and Deputy Director of the International Security Program, Center for Strategic and International Studies (Former Deputy Staff Director, Senate Select Committee on Intelligence)
- j. Paul Kolbe, Senior Fellow and former Director of the Intelligence Project, Harvard Kennedy School Belfer Center (Former Operations Officer, Central Intelligence Agency)
- k. David Kris, Co-Founder, Culper Partners LLC (Former Assistant Attorney General, National Security Division, Department of Justice)

- l. Michael Leiter, Partner, Skadden, Arps, Slate, Meagher & Flom (Former Director, National Counterterrorism Center)
- m. Elisa Massimino, Executive Director, Human Rights Institute, Georgetown Law
- n. Gregory Nojeim, Senior Counsel and Director, Security and Surveillance Project, Center for Democracy & Technology
- o. Francis Taylor, Principal, Cambridge Global Advisors (Former Under Secretary for Intelligence and Analysis, DHS)
- p. Caryn Wagner, Former Under Secretary for Intelligence and Analysis, DHS
- q. Benjamin Wittes, Senior Fellow in Governance Studies, The Brookings Institution, and Co-Founder and Editor in Chief, Lawfare

42. These members do not represent a fair balance of viewpoints, as required by law. Overwhelmingly, these members broadly support the current Administration and strongly oppose an America First approach to national security. Specifically:

- a. John Bellinger: He is a globalist who opposes America First policies to protect the homeland and our allies. Bellinger is a staunch advocate of international agreements that infringe on U.S. sovereignty and supports engagement with Iran, notwithstanding Iran's support for terrorism and the destruction of the State of Israel. Bellinger supported the Obama Administration's policy of transferring billions of dollars to the Iranian regime, knowing that it would be used to fund the Iranian nuclear program and its terrorist proxies, including Hamas and Hezbollah.

- b. John Brennan: He knowingly participated in the conspiracy fabricated by Democrat political operatives to falsely accuse former President Trump of colluding with Russia during the 2016 election. In the 2020 election, Brennan publicly and falsely declared that Hunter Biden's laptop had all the hallmarks of "Russian disinformation" to cover up the Biden family's political corruption. But the Federal Bureau of Investigation obtained the Biden laptop in or about November 2019 and shortly thereafter verified the authenticity of its contents. Upon information and belief, Brennan had actual knowledge that the Biden laptop was genuine and that its contents had been verified by federal law enforcement at the time he cast aspersions on its origins. Brennan has long opposed America First policies.
- c. James Clapper: He knowingly participated in the Russia collusion conspiracy by leaking information from the fake "Steele dossier" to friendly reporters, and in the Biden laptop coverup to hide Biden family corruption and influence peddling. A former Obama Administration official, he falsely testified that the National Security Agency did not collect American's telephone records. He opposes America First policies to protect the homeland and our allies.
- d. Rajesh De: He is a Democrat who served in various executive positions in the Obama Administration. He opposes America First policies to protect the homeland and our allies. His political contributions of over \$15,000 have gone exclusively to Democrat candidates for office or the Democrat party.

- e. Thomas Galati: He is a career law enforcement official with no obvious political ties. While he may bring operational expertise, he is highly unlikely to bring any countervailing opinions to the table.
- f. Tashina Gauhar: She was extensively involved in the FBI's corrupt, partisan probe into the baseless allegations that former President Trump's campaign colluded with Russia before the 2016 election, including drafting the FISA applications that were used to spy on the Trump campaign. Upon information and belief, Gauhar was individually involved in the Obama Administration's Iran nuclear deal and side agreements, which transferred billions of dollars to the Iranian regime with knowledge that these funds would be used to subsidize the regime's terrorist proxies Hamas and Hezbollah, and in wrongfully targeting Gen. Michael Flynn. She opposes America First policies to protect the homeland and our allies.
- g. Asha M. George: She has made the rounds through Congress, the Executive Branch, academia, and non-profits. She has an institutional stake in the intelligence and security state and will not bring an America First perspective to the group. Her political contributions totaling over \$15,000 have been given exclusively to Democrats.
- h. Karen Greenberg: She praised the Biden Administration for "implicitly rebuk[ing] the indulgence, vagueness, and imprecision that had defined . . . the Trump presidency." She is an advocate of censorship and declared that America First foreign policy views are part of "dismantling America."

- i. Emily Harding: She has held roles throughout the intelligence community and “led the [Senate Intelligence] Committee’s multiyear investigation into Russian interference in the 2016 elections.” She has no record of supporting bold America First policies and will not bring such a viewpoint to the Group.
- j. Paul Kolbe: Like Mr. Brennan and Mr. Clapper, he tried to falsely discredit and cover up the Hunter Biden laptop and its evidence of Biden family corruption and influence peddling.
- k. David Kris: An Obama DOJ attorney, he opposes America First policies to protect the homeland and our allies.
- l. Michael Leiter: He endorsed President Biden in the 2020 election. He joined Mr. Brennan, Mr. Clapper, and Mr. Michael Hayden, each of whom played a major role in weaponizing the intelligence community to advance the 2016 Russia collusion hoax and the 2020 Biden laptop disinformation campaign, in attacking the Trump Administration for replacing “nonpartisan experts” with persons allegedly “beholden” to Trump political officials, thereby making America “less safe.” He has also rationalized the Biden Administration’s humiliating retreat from Afghanistan. Mr. Leiter opposes America First policies to protect the homeland and our allies.
- m. Elisa Massimino: She is a senior fellow at the leftist “Center for American Progress.” In an article attacking “America First” policies, she claimed they unravel “the international structures and norms that have helped secure American interests.” Her 79 political contributions totaling over \$10,000 have gone exclusively to Democrats.

- n. Gregory Nojeim: He worked at a host of left-leaning organizations, including the ACLU and the American Bar Association. He has been cited in press articles as defending or legitimizing using FISA warrants to spy on President Trump's 2016 campaign. He opposes America First policies to protect the homeland and our allies, programs to identify potential Muslim terrorists, and American support for Israel. Mr. Nojeim is a former director of legal services for the "American-Arab Anti-Discrimination Committee," an organization that has for decades supported and justified terrorist attacks against Israelis and Jews.
- o. Francis Taylor: He was a political appointee for the Obama Administration and has been publicly hostile towards America First policies to protect the homeland and our allies. Since 2018, he has made 649 contributions to candidates for federal political office totaling \$31,675.71—all to Democrat candidates. He has also defended the role of the Cybersecurity and Infrastructure Security Agency ("CISA") in policing speech online under the guise of "misinformation, disinformation, and mal-information"—an activity the Fifth Circuit recently enjoined due to its likelihood of violating the First Amendment. He also now serves on the Atlantic Council, which was an integral part of setting up the censorship regime that censored political speech ahead of the 2020 election, including stories like the Hunter Biden laptop story.
- p. Caryn Wagner: She held positions in the Intelligence Community for Presidents Clinton through Obama, including being nominated to the Senate-con-



firmed position of Undersecretary for Intelligence and Analysis at the Department of Homeland Security by President Obama. As a career intelligence official, she will not bring a point of view to the group that challenges set norms or embraces an America First position. She has made 56 political contributions totaling \$14,625 that have gone exclusively to Democrats.

- q. Benjamin Wittes: He is an internationalist who takes a very narrow view of U.S. sovereignty and the rights of Americans to secure their borders and protect their homes. He has repeatedly and harshly criticized America First policies to defend the homeland and our allies. He supported the Obama Administration's payments of billions to the Iranian regime with knowledge that the funds would be used to fund nuclear bomb development and the regime's terrorist proxies of Hamas and Hezbollah. He played a major role in advancing and disseminating the false Russia collusion conspiracy. Confirming the disparity between the Group's membership and others' views, he said: "there is a huge gap between the vision of national security that the community devoted to security sees itself as protecting and the vision of national security Trump [has] and that a large number of people seem to want." "They are radically different in kind and in aspiration."

43. All the individuals named to the Experts Group, regardless of partisan affiliation, have long and vested interests in supporting the Biden Administration and an internationalist view that is hostile to America First notions of U.S. sovereignty. There is no ideological diversity or balance. Thus, none will bring a point of view held by a large proportion of the American public, and the Group is not ideologically balanced.

44. Many in the Group accepted and/or knowingly promoted the lie that President Trump was a Russian agent or that he was elected only because of “Russian disinformation.” Others have intentionally misled the American public by insinuating that they had access to classified information that would discredit legitimate news stories that show Joe Biden and his son in a negative light. None has taken a significant public position against the vested interests of the intelligence state.

45. Of the 17 people named to the Group, 13 have an apparent history of political contributions since January 1, 2012. In that time, these 13 individuals have made a collective 945 contributions to candidates for political office that are reportable to the Federal Election Commission.

- a. Of those 945 contributions, 932 (98.62%) were made to Democrat candidates for office, while only 12 (1.27%) were made to Republican candidates for office. (One contribution was made to an independent.)
- b. Of the 13 contributors, 9 contributed only to Democrats, whereas 1 contributed only to a Republican (with a single donation of \$250). Three contributed to members of both parties, but of those, 2 were heavily lopsided in favor of Democrat candidates. The other contributor gave 8 contributions to Democrat candidates and 7 to Republican candidates.

46. Collectively, the apparent political contributions of people named to the Group total \$168,526.47 since January 1, 2012. Of that, \$156,036.47 went to Democrat candidates.

47. To have a fair balance of viewpoints and competent deliberation, there must be representation from different parts of the ideological spectrum. That is not the case here, as the

Experts Group consists overwhelmingly of individuals who already support the Biden Administration and the intelligence state. The Experts Group is far from balanced.

48. No member of the group served in an Administration where “America First” was a guiding principle.

49. The members of the Group were apparently appointed when the Group was established. Mr. Grenell thus had no opportunity to formally apply to be on the Group. If there had been such an opportunity, Mr. Grenell would have applied to be on the Group. Alternatively, if Mr. Grenell had been invited to be a member of the Group, he would have joined.

50. Including Mr. Grenell on the Group would have led to greater balance. Mr. Grenell has fundamentally different viewpoints than the Group’s current members on matters of national security and intelligence work.

51. If asked to serve in the Group, Mr. Grenell would have advocated for a new and novel approach to the orientation of the DHS intelligence enterprise. He would recommend that DHS I&A work to create products that inform policymakers of, among other issues:

- a. The root causes of migration to the southwest border;
- b. How sanctuary policies contribute to crime and violence in American communities;
- c. How malign foreign actors exploit vulnerabilities in the border to facilitate human trafficking and flood the country with drugs like fentanyl;
- d. Which actors pose the greatest risk to United States cyber networks;
- e. Which actors pose the greatest risk to United States economic security and supply chain security; and

- f. Which countries might be suitable trading partners to replace China as the primary industrial base for United States manufacturing.

52. The members of the Experts Group as announced are unlikely to advocate for any of these ideas or America First-oriented policies. Indeed, none is likely to advocate doing anything new or different from what has been done before and failed.

53. The Defendants' failure to comply with FACA—including their failure to publicize the Experts Group's creation, charter, and activities as required by law, and their failure to ensure a proper balance of views on the Group—causes injury to Mr. Grenell's and America First Legal Foundation's interests in intelligence and security policy, stopping the weaponization of the Department of Homeland Security against the American public, and having representative voices on government advisory committees.

54. The Defendants have limited Mr. Grenell's and America First Legal Foundation's abilities to have a representative voice on the Experts Group on issues with which they are engaged.

55. The Defendants' failure to comply with FACA—particularly their failure to publicize its creation, charter, and activities as required by law—causes injury to Plaintiff America First Legal's interest in promoting government transparency and accountability and preventing efforts by the current leadership of the Department of Homeland Security to use official government resources to target and silence Americans who voice different opinions.

56. Because of the Defendants' violations, America First Legal Foundation must expend additional resources to investigate and monitor the Experts Group and its activities, so that it can fulfill its mission of holding the government accountable and educating the public about the government's activities and policies.

57. Further, the Defendants' failure to publicize information as required by FACA inhibits America First Legal Foundation's ability to scrutinize the Experts Group's activities and limits its opportunity for oversight of the Group.

58. America First Legal Foundation must therefore expend additional resources to investigate, monitor, and respond to the Group and its activities so that it can fulfill its missions. By devoting resources in response to the Group, America First Legal Foundation must divert resources from its normal operations.

59. Judicial relief against the Defendants for their legal violations would likely redress Plaintiffs' injuries by, *inter alia*, giving them a representative voice on a properly constituted Experts Group, allowing them to access information that should be publicly available, and permitting America First Legal Foundation to maintain its resources as allocated on other priorities relevant to its mission.

## CLAIMS FOR RELIEF

### COUNT I

#### Administrative Procedure Act; 5 U.S.C. § 706

#### Appointment of Group Members and Public Notice and Access in Violation of FACA

60. The Plaintiffs incorporate the allegations above by reference as if fully set forth herein.

61. Defendant Mayorkas is the agency head responsible for appointing members to the Experts Group.

62. FACA requires that Defendant Mayorkas ensure that the membership of the Experts Group is "fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee." 5 U.S.C. app. 2 § 5(b)(2).

63. Defendant Mayorkas has appointed members who are like-minded and are supportive of the Biden Administration and the intelligence state. Defendant Mayorkas did not appoint members with differing viewpoints. Because the points of view exclude any America First approaches to foreign policy and intelligence, the Experts Group is not fairly balanced.

64. FACA requires that Defendant Mayorkas, as head of the agency to which the Experts Group reports, “designate a Federal officer . . . to be the [Designated Federal Officer]” for the Group. 41 C.F.R. § 102-3.120.

65. FACA forbids “any meeting in the absence of [a Designated Federal Officer].” 5 U.S.C. app. 2 § 10(e).

66. FACA orders that “[a]dvisory committees shall not hold any meetings except at the call of, or with the advance approval of, a [Designated Federal Officer].” 5 U.S.C. app. 2 § 10(f).

67. Defendant Mayorkas has not appointed a DFO for the Experts Group, yet the Group has met (or, at minimum, intends to meet soon).

68. FACA requires that “records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at . . . the agency to which the advisory committee reports until the advisory committee ceases to exist.” 5 U.S.C. app. 2 § 10(b).

69. The Department has failed to ensure that the documents made available to, prepared for, or prepared by the Experts Group are available through its offices.

70. FACA orders that “[n]o advisory committee shall be established unless establishment is (1) specifically authorized by statute or by the President; or (2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator, with

timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.” 5 U.S.C. app. 2 § 9(a).

71. The Defendants established the Experts Group with no specific authorization by statute or by the President, and notice of the establishment of the Experts Group was not published in the Federal Register.

72. By violating FACA, the Defendants are (a) acting without observance of procedure required by law; and (b) acting in a manner that is arbitrary, capricious, and contrary to law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A), (B) and (D).

73. The Defendants’ violations have injured the Plaintiffs by limiting the Plaintiffs’ ability and right to have a representative voice on the Experts Group on issues with which the Plaintiffs are engaged, and limiting their access to documents and information that is required to be public.

74. These injuries to the Plaintiffs are likely to continue as long as the Defendants continue to operate and direct the operation of the Experts Group out of compliance with the law.

75. Each of these failures to comply with FACA’s requirements constitutes final agency action under the APA. 5 U.S.C. § 706.

COUNT II  
Mandamus, 28 U.S.C. § 1361  
Violation of FACA — Establishment

76. The Plaintiffs incorporate the allegations above by reference as if fully set forth herein.

77. FACA orders that “[n]o advisory committee shall be established unless such establishment is (1) specifically authorized by statute or by the President; or (2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator,

with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.” 5 U.S.C. app. 2 § 9(a).

78. The Experts Group was established without specific authorization by a statute or by the President, and the notice of its establishment was not published in the Federal Register, in violation of FACA.

79. “[B]ecause an advisory committee is not an agency subject to the APA and FACA provides no private right of action,” “[m]andamus is the only vehicle for [the Plaintiffs’] claims against” the Experts Group. *Barr*, 496 F. Supp. 3d at 145.

COUNT III

Mandamus, 28 U.S.C. § 1361

Violation of FACA — Fairly Balanced Group Free of Inappropriate Influence

80. The Plaintiffs incorporate the allegations above by reference as if fully set forth herein.

81. The Experts Group was established “to provide advice” and “input” “on I&A’s most complex problems and challenges, including terrorism, fentanyl, transborder issues, and emerging technology.”

82. Because the Experts Group is a “council . . . established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for . . . one or more agencies or officers of the Federal Government,” 5 U.S.C. app. 2 § 3(2), it is an “advisory committee” as defined in FACA.

83. The Experts Group is not an “intergovernmental committee” exempted from FACA’s requirements.



84. Because the Experts Group is not exempted from FACA’s requirements, it must be “fairly balanced in terms of the points of view represented and the functions to be performed.” 5 U.S.C. app. 2 § 5(b)(2).

85. As set forth above, the Experts Group’s members are not fairly balanced in terms of their points of view on the issues being studied and addressed by the Group. The Group disproportionately represents views that align with the Biden Administration and fails to reflect the diversity of opinions held by the American public.

86. The Defendants further failed to make any “appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee’s independent judgment.” 5 U.S.C. app. 2 § 5(b)(3).

COUNT IV  
Mandamus, 28 U.S.C. § 1361  
Violation of FACA — Charter Filing

87. The Plaintiffs incorporate the allegations above by reference as if fully set forth herein.

88. FACA states that “[n]o advisory committee shall meet or take any action until an advisory committee charter has been filed with . . . the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency.” 5 U.S.C. app. 2 § 9(c).

89. The Experts Group reports to the Department and is subject to the legislative jurisdiction of the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Homeland Security.

90. The Experts Group has a nondiscretionary duty to file an advisory committee charter with the Department, the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Homeland Security before “meet[ing] or tak[ing] any action.”

91. The Experts Group has not filed an advisory committee charter with the Department, the Senate Committee on Homeland Security and Governmental Affairs, or the House Committee on Homeland Security.

92. FACA’s implementing regulations also require that an advisory committee charter be filed with the Library of Congress and the Secretariat. *See* 41 C.F.R. § 102-3.70(a)(3)–(4).

93. The Experts Group has not filed an advisory committee charter with the Library of Congress or with the Secretariat.

94. According to Department officials, the Experts Group has already met. If the Experts Group has not met, it has still “take[n] . . . action” because it is preparing to meet.

COUNT V  
Mandamus, 28 U.S.C. § 1361  
Violation of FACA — Designated Federal Officer

95. The Plaintiffs incorporate the allegations above by reference as if fully set forth herein.

96. FACA requires that Defendant Mayorkas, as head of the agency to which the Experts Group reports, “designate a Federal officer . . . to be the [Designated Federal Officer]” for the Group. 41 C.F.R. § 102-3.120.

97. FACA forbids “any meeting in the absence of [a Designated Federal Officer].” 5 U.S.C. app. 2 § 10(e).

98. FACA orders that “[a]dvisory committees shall not hold any meetings except at the call of, or with the advance approval of, a [Designated Federal Officer].” 5 U.S.C. app. 2 § 10(f).

99. The Experts Group has no Designated Federal Officer, yet the Group is actively or imminently meeting.

COUNT VI  
Mandamus, 28 U.S.C. § 1361  
Violation of FACA — Public Notice and Access

100. Plaintiffs incorporate the allegations above by reference as if fully set forth herein.

101. FACA requires that “[e]ach advisory committee meeting shall be open to the public.” 5 U.S.C. app. 2 § 10(a)(1).

102. The Experts Group thus has a nondiscretionary duty to ensure its meetings are open to the public.

103. Because the Group has met or is preparing to meet without providing the public with the opportunity to participate or listen in, its meetings have not been “open to the public.”

104. FACA also requires that “timely notice of each such meeting shall be published in the Federal Register, and the Administrator shall prescribe regulations to provide for other types of public notice.” 5 U.S.C. app. 2 § 10(a)(2).

105. To constitute “timely notice,” the Experts Group’s notice must be published in the Federal Register at least 15 days prior to the meeting and must include: (1) the name of the advisory committee; (2) the time, date, and place of the meeting; (3) a summary of the agenda and topics to be discussed; (4) a statement of whether any parts of the meeting will be closed, along with an explanation for such closure; and (5) contact information for a designated officer for those who wish to learn more information. 41 C.F.R. § 102-3.150(a).

106. The Experts Group has a nondiscretionary duty to publish notice of its meetings and hearings in the Federal Register at least 15 days prior to any such meeting or hearing.

107. The Defendants have failed to provide timely notice of the Experts Group’s meetings.

108. FACA also requires that “the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports.” 5 U.S.C. app. 2 § 10(b).

109. The Defendants thus have a nondiscretionary duty to make all documents “available to or prepared for or by” the Experts Group, including meeting agendas, witness bios, hearing transcripts, and record evidence, available to the public.

110. The Defendants have failed to make all necessary documents publicly available.

COUNT VII  
Declaratory Judgment Act, 28 U.S.C. § 2201  
The Defendants Are in Violation of FACA

111. The Plaintiffs incorporate the allegations above by reference as if fully set forth herein.

112. When statutory duties are violated, courts may also act under the Declaratory Judgment Act, including as an alternative or in addition to granting mandamus relief. *Citizens for Responsibility & Ethics in Wash. v. Cheney*, 593 F. Supp. 2d 194, 222 (D.D.C. 2009).

113. All Experts Group meetings must be noticed in advance in the Federal Register; by planning meetings without notice, the Defendants have violated § 10(a)(2) of FACA.

114. All meetings of the Experts Group must be open to the public; by failing to grant public access to its meetings, the Defendants have violated § 10(a)(1), (3) of FACA.

115. By not ensuring that the “membership of the advisory committee . . . be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee,” Defendant Mayorkas has violated § 5(b)(2) of FACA.

116. By failing to make any “appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee’s independent judgment,” the Defendants have violated § 5(b)(3) of FACA.

117. By establishing the Experts Group without an authorizing statute or authorization from the President, and without publishing the establishment in the Federal Register, the Defendants have violated § 9(a) of FACA.

118. By meeting prior to filing the Experts Group’s charter, the Defendants have violated § 9(c) of FACA. In the alternative, by preparing to meet prior to filing the Group’s charter, the Defendants are “tak[ing] . . . action” in violation of § 9(c) of FACA.

119. By meeting or preparing to meet without an appointed Designated Federal Officer, the Defendants are in violation of § 10(e) and § 10(f) of FACA.

120. By failing to make available all “the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by” the Experts Group, the Defendants are in violation of § 10(b) of FACA.

121. By failing to make transcripts of each Experts Group meeting available, the Defendants are in violation of § 11 of FACA.

122. The Plaintiffs are entitled to a declaration under 28 U.S.C. § 2201 that the foregoing conduct violates FACA.

DEMAND FOR RELIEF

WHEREFORE, the Plaintiffs respectfully pray that this Court enter judgment in their favor and against the Defendants, and:

- a. Declare that the Homeland Intelligence Experts Group is an advisory committee subject to the requirements of the Federal Advisory Committee Act, 5 U.S.C. app. 2 §§ 1-16; and that the Defendants have violated FACA by (1) failing to ensure that the Group's membership is fairly balanced; (2) establishing the Group without specific authorization from the President or a statute, and failing to publish the establishment in the Federal Register; (3) failing to file an advisory committee charter with all required entities; (4) failing to appoint necessary officers for oversight; (5) failing to provide members of the public with timely notice of the Group's meeting(s); (6) failing to grant the public access to Group meetings; (7) failing to make agendas, minutes, transcripts, witness bios, and other record evidence available to the public; and (8) failing to make appropriate provisions to ensure that the Group would not be inappropriately influenced by the appointing authority or any special interest;
- b. Declare the Experts Group is not properly constituted;
- c. Enjoin Defendants Mayorkas, the Department, and the Experts Group, and all of its working groups, from holding any meetings, sessions, or hearings, or conducting any official business whatsoever on behalf of the Experts Group, whether remotely or in person, until their violations of FACA are remedied;

- d. Enjoin Defendants Mayorkas, the Department, and the Experts Group from submitting, accepting, publishing, employing, or relying on any report or recommendations produced by the Group for any official purpose whatsoever, directly or indirectly, including indicating in any way that any report or recommendation of the Group reflects the views of a lawfully constituted advisory committee, until their violations of FACA are remedied;
- e. Vacate the establishment of the Experts Group; and
- f. Such other and further relief the Court deems just, proper, or equitable.

Respectfully submitted,

/s/ Gene P. Hamilton

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