

Message

From: Molina, Michael [molina.michael@epa.gov]
Sent: 7/2/2025 7:56:14 PM
To: Voyles, Travis [voyles.travis@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]
Subject: FW:

CUI//PRIVILEGE

For situational awareness.

M

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From: Wells, Krysti <Wells.Krysti@epa.gov>
Sent: Wednesday, July 2, 2025 3:48 PM
To: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Molina, Michael <molina.michael@epa.gov>
Subject: FW:

CUI//PRIVILEGE

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Krysti Wells

Director, Office of Human Capital Operations (OHCO)
Office of Mission Support (OMS)
U.S. Environmental Protection Agency
Office: [REDACTED] | Cell: [REDACTED]



Please note that I sent this at a time that was convenient for me without expectation for a response outside of business hours. If you receive this email outside of your normal working hours, please know that I do not expect a response until you are back at work during your normal hours.

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From: Nichols, Nathanael <nichols.nathanael@epa.gov>
Sent: Wednesday, July 2, 2025 3:25 PM

To: Wells, Krysti <Wells.Krysti@epa.gov>
Cc: Smith, Kathryn <Smith.Kathryn@epa.gov>
Subject: RE:

CUI//PRIVILEGE

I forgot to mention that Elise planned to share my legal analysis with David Fotouhi this afternoon.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

NATHANAEL NICHOLS

Assistant General Counsel, Employment Law Practice Group
Office of General Counsel, U.S. EPA
1200 Pennsylvania Ave., NW
WJC North, Mail Code 2377A
Washington, DC 20460
phone: [REDACTED] | nichols.nathanael@epa.gov

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From: Nichols, Nathanael
Sent: Wednesday, July 2, 2025 3:12 PM
To: Wells, Krysti <Wells.Krysti@epa.gov>
Cc: Smith, Kathryn <Smith.Kathryn@epa.gov>
Subject: RE:

Krysti and Kathryn,

As a follow-up to our conversation, Elise checked with Justina and there are no ethics concerns with employees signing the “stand up for science” letter. Additionally, my legal advice is that the agency should not take personnel actions against employees who signed the letter or take any other action against them that may be viewed as retaliatory or that may have a chilling effect on other employees taking similar actions. Taking any such action would present significant legal risk, as the letter is likely protected speech under the First Amendment.

Under *Pickering v. Bd. of Educ. of Twp High Sch. Dist. 205, Will Cnty*, 391 U.S. 563 (1968), “the State has interests as an employer in regulating the speech of its employees.” *Pickering* established a balancing test for first amendment-protected government employee speech, weighing the government interests in efficiency, workplace harmony and satisfactory performance of employee duties against employees’ First Amendment rights. Generally, government employee speech is protected under the First Amendment if the employee (1) speaks as a private citizen (and not on behalf of the agency), (2) about a matter of public concern, and (3) the speech does not interfere with the employee’s job.

Based on an initial read of the document, the signatories assert that it “was written and signed by EPA employees across Offices, Regions, and Labs in our personal capacity, on our own time, and without Agency resources.” Assuming this is true, the document appears to meet the *Pickering* test and the Agency would be prohibited from retaliating against employees who signed the document. The document is unquestionably about matters of public concern (as opposed to personal grievances between employees and supervisors, for example. See *Connick v. Myers*, 461 US 138 (1983)). Additionally, courts have found that “where . . . an employee serves no confidential, policymaking, or public contact role, the danger to the agency’s successful function from that employee’s private speech is minimal.” *Rankin v. McPherson*, 483 U.S. 378, 390-91 (1987).

If the agency retaliates against the employee signatories, we should expect a litigation with significantly increased publicity surrounding the letter.

Nate

NATHANAEL NICHOLS

Assistant General Counsel, Employment Law Practice Group

Office of General Counsel, U.S. EPA

1200 Pennsylvania Ave., NW

WJC North, Mail Code 2377A

Washington, DC 20460

phone: [REDACTED] | nichols.nathanael@epa.gov

From: Wells, Krysti <Wells.Krysti@epa.gov>

Sent: Wednesday, July 2, 2025 2:10 PM

To: Nichols, Nathanael <nichols.nathanael@epa.gov>

Subject: FW:

Krysti Wells

Director, Office of Human Capital Operations (OHCO)

Office of Mission Support (OMS)

U.S. Environmental Protection Agency

Office: [REDACTED] | Cell: [REDACTED]



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From: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>

Sent: Wednesday, July 2, 2025 9:43 AM

To: Wells, Krysti <Wells.Krysti@epa.gov>; Smith, Kathryn <Smith.Kathryn@epa.gov>

Subject: FW:

Making sure you all have what I sent to MM. The list has increased as of this am and assuming ITIM has a list.

Helena Wooden-Aguilar

Deputy Assistant Administrator for Workplace Solutions

Office of Mission Support - U.S. EPA

[REDACTED] (work cell)

[REDACTED] (work desk phone)

From: Wooden-Aguilar, Helena

Sent: Tuesday, July 1, 2025 11:24 AM

To: Molina, Michael <molina.michael@epa.gov>

Subject:

Please see the attached.

I did some color coding to make some of the anomalies clearer.

HR Data:

- There was a total of 215 entries with names. Of the 215, **160 were current employees with employee ID's** and 53 were not employees.

- **18** of the 160 were DRP (either DRP 1 on adm leave or DRP 2 with signed agreements on adm leave).

- **Some** of the names were common and there was more than one employee historically with that name. (i.e.

Ex. 6 Personal Privacy (PP)

- Where applicable I checked all employee ID's against both the active roster and the DRP Lists.

- There were some where I had to make assumptions about preferred names, middle name being used as first name, etc.

- ~~There was one line that listed two names.~~

- **Ex. 6 Personal Privacy (PP)**

- we also color coded those where initials were used, so no lookup was performed.

OGC Guidance:

Ex. 5 Deliberative Process (DP)

Helena Wooden-Aguilar

Deputy Assistant Administrator for Workplace Solutions

Office of Mission Support - U.S. EPA

██████████ (work cell)

██████████ (work desk phone)