

Congress of the United States
House of Representatives

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March 16, 2022

The Honorable Kristen M. Clarke
Assistant Attorney General
Civil Rights Division
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Assistant Attorney General Clarke:

We are referring to you for review potential ongoing civil rights violations arising from a canvass of voters in Otero County, New Mexico. In the latest purported effort to prove non-existent voter fraud, the Otero County Commission has employed contractors and volunteers to conduct a door-to-door canvass and “audit” of the Otero County voter database. The canvass is being run by volunteers from a conspiracist group whose leaders said they plan to “pinpoint” a “list of suspects” for “criminal prosecution,” and called for “arrests,” “prosecutions,” and “firing squads.”¹ The audit is overseen by a company, EchoMail, with a history of involvement in election-related conspiracy theories. The New Mexico Secretary of State’s office has confirmed that the “vigilante audit” is under way and volunteer canvassers are already knocking on doors.² More than sixty Otero County residents have contacted state and local officials expressing concerns about interactions with the canvassers.³ This canvass raises pressing concerns of potential voter intimidation in violation of Section 11(b) of the Voting Right Act and urgently needs to be reviewed by the Department of Justice (DOJ).⁴

¹ *Election “Vigilante” Group Posing as County Workers, Says New Mexico’s State Auditor*, Daily Beast (Mar. 14, 2022) (online at www.thedailybeast.com/vigilante-new-mexico-audit-force-posing-as-county-workers-says-state-auditor?ref=scroll).

² *New Mexico Leaders Warn Otero County Voters Not to Share Personal Information Amid “Vigilante Audit,”* Alamogordo Daily News (Mar. 2, 2022) (online at www.alamogordonevents.com/story/community/2022/03/02/otero-county-voters-warned-new-mexico-audit-force-private-information-maggie-toulouse-oliver/9349256002/).

³ *Election Audit Rattles Residents of Otero County*, KUNM (Mar. 2, 2022) (online at www.kunm.org/local-news/2022-03-02/election-audit-rattles-residents-of-otero-county).

⁴ *Otero County to Spend \$49,750 on 2020 Election Audit*, Alamogordo Daily News (Jan. 18, 2022) (online at www.alamogordonevents.com/story/community/2022/01/18/otero-county-spend-49-7550-2020-election-audit/6527530001/).

In May 2021, the Civil Rights Division of the Department of Justice sent a letter warning the Arizona State Senate that a similar planned canvass of voters in Maricopa County could result in the “potential intimidation of voters” in violation of the Voting Rights Act. The letter emphasized that “[p]ast experience with similar investigative efforts around the country has raised concerns that they can be directed at minority voters.”⁵ As a result of that letter, the Arizona State Senate chose not to follow through with its planned canvass.⁶ We ask the Department of Justice to consider whether similar potential federal civil rights violations may occur if the Otero County canvass continues.

EchoMail’s History of Election Conspiracy Theories

EchoMail is a private company hired by Otero County to conduct an “audit” of the 2020 election in that county and to oversee a door-to-door canvass run by volunteers. The company and its founder, Dr. Shiva Ayyadurai, have a lengthy history of involvement in election-related conspiracy theories.⁷ EchoMail was hired in 2021 as a subcontractor on the Maricopa County “audit” by Arizona State Senate President Karen Fann and the consulting firm Cyber Ninjas. As part of that contract, the company investigated Maricopa County’s early voting envelopes and claimed to find anomalies in the signature matching system.⁸ However, journalists, outside experts, and election professionals demonstrated quickly and conclusively that EchoMail’s claims were false and were premised on “complete misunderstandings of state laws and election procedures.”⁹ In particular, Dr. Ayyadurai’s claim that the existence of multiple images of the same envelope was evidence of ballot fraud was immediately debunked as “blatantly false.”¹⁰

⁵ Letter from Pamela S. Karlan, Principal Deputy Assistant Attorney General, Civil Rights Division, Department of Justice, to Karen Fann, President, Arizona State Senate (May 5, 2021) (online at www.justice.gov/crt/case-document/file/1424586/download).

⁶ Letter from Karen Fann, President, Arizona State Senate, to Pamela S. Karlan, Principal Deputy Assistant Attorney General, Civil Rights Division, Department of Justice (May 7, 2021) (online at s3.documentcloud.org/documents/20700735/fann-response-to-doj-5-7-21.pdf).

⁷ *GOP Election Truthers Tap a Failed Politician and Conspiracy Theorist for Sham Audit*, Yahoo (Sept. 17, 2021) (online at ca.sports.yahoo.com/news/gop-election-truthers-tap-failed-084409216.html?src=rss).

⁸ See Maricopa County, Arizona, *Arizona Senate Contract Records with Maricopa County – Schedule A* (online at www.documentcloud.org/documents/21060123-arizona-senate-contract-records-regarding-maricopa-county-election-audit) (detailing EchoMail’s statement of work regarding election envelope analysis).

⁹ *“Audit” Expert Shiva Ayyadurai Didn’t Understand Election Procedures. He Made a Number of False Signature Claims*, AZ Mirror (Oct. 1, 2021) (online at www.azmirror.com/2021/10/01/audit-expert-shiva-ayyadurai-didnt-understand-election-procedures-he-made-a-number-of-false-signature-claims/); Maricopa County, Arizona, *Maricopa County Analysis of Senate Review – Envelopes (EchoMail Report)* (Oct. 6, 2021) (online at recorder.maricopa.gov/justthefacts/pdf/Maricopa%20County%20Analysis%20of%20Senate%20Review%20%E2%80%93%20EchoMail%20Report.pdf).

¹⁰ *“Audit” Expert Shiva Ayyadurai Didn’t Understand Election Procedures. He Made a Number of False Signature Claims*, AZ Mirror (Oct. 1, 2021) (online at www.azmirror.com/2021/10/01/audit-expert-shiva-ayyadurai-didnt-understand-election-procedures-he-made-a-number-of-false-signature-claims/).

In addition to propagating false information regarding Maricopa County's ballot envelopes, Dr. Ayyadurai has repeatedly embraced election conspiracy theories.¹¹ In 2020, Dr. Ayyadurai joined advocates of the "Big Lie" to cast doubt on the legitimacy of the election results, appearing alongside Rudy Giuliani, Jenna Ellis, Steve Bannon, and Mike Lindell to spread misinformation about the election.¹²

New Mexico Audit Force's Role in the Canvass

EchoMail's contract with Otero County and accompanying cover letter state that, in addition to "auditing" the ballots and election machinery, the company will "[p]erform [a] door-to-door canvass of Otero County voter registration database to determine accuracy of voter registration database."¹³ The documents state that the company will not be conducting the canvass itself. Instead, the canvass will be conducted by "volunteers under the direction of New Mexico Audit Force ('Volunteers') with guidance from EchoMail."¹⁴

According to press reports, New Mexico Audit Force is not a legally incorporated entity, but a loosely organized group on the Telegram messaging application led by "Big Lie" conspiracy theorists.¹⁵ In presenting the details of the "audit" to the Otero County Commissioners, the group's leaders, Erin Clements, and her husband, David Clements, emphasized that the volunteers would act independently of county supervision. Ms. Clements stated, "I know there's fraud in voter rolls," and said the canvass would seek to "pinpoint at least a pretty small list of suspects and then hand it over for criminal prosecution from there."¹⁶ Mr. Clements, speaking about the plan to a church group in February 2022, laid bare the goals of the

¹¹ *GOP Election Truthers Tap a Failed Politician and Conspiracy Theorist for Sham Audit*, Yahoo Finance (Sept. 8, 2021) (online at finance.yahoo.com/news/gop-election-truthers-tap-failed-084409216.html); see also *Fact Check: Massachusetts Election Officials Have Not Destroyed Ballots or Committed Election Fraud*, Reuters (Oct. 2, 2020) (online at www.reuters.com/article/uk-factcheck-election-ballot-massachuset/fact-check-massachusetts-election-officials-have-not-destroyed-ballots-or-committed-election-fraud-idUSKBN26N2AF).

¹² *Madhouse on McDowell: An Unabashedly Premature Oral History of the Election Recount*, Phoenix Magazine (July 7, 2021) (online at www.phoenixmag.com/2021/07/07/madhouse-on-mcdowell-an-unabashedly-premature-oral-history-of-the-election-recount/); VA Shiva, *Steve Bannon Interviews Dr. Shiva at Mike Lindell's Cyber Symposium* (Aug. 18, 2021) (online at vashiva.com/steve-bannon-interviews-dr-shiva-at-mike-lindells-cyber-symposium/).

¹³ Letter from V.A. Shiva Ayyadurai, President and Chief Executive Officer, Echomail, Inc., to Gerald Matherly, Couy Griffin, and Vickie Marquardt, Otero County Commissioners, Otero County, New Mexico (Dec. 29, 2021) (online at agendasuite.org/iip/otero/file/getfile/22352); see also Echomail, *Master License and Services Agreement Between EchoMail, Inc. and Otero County Commission and Its Subordinates and Affiliates* (online at agendasuite.org/iip/otero/file/getfile/22351) (accessed Feb. 11, 2022).

¹⁴ Letter from V.A. Shiva Ayyadurai, President and Chief Executive Officer, Echomail, Inc., to Gerald Matherly, Couy Griffin, and Vickie Marquardt, Otero County Commissioners, Otero County, New Mexico (Dec. 29, 2021) (online at agendasuite.org/iip/otero/file/getfile/22352).

¹⁵ *This Pro-Trump County Is Carrying Out a Wild Audit of Its Own 2020 Votes*, Daily Beast (Feb. 7, 2022) (online at www.thedailybeast.com/pro-trump-otero-county-in-new-mexico-is-carrying-out-a-wild-audit-of-2020-votes?ref=author).

¹⁶ Otero County, *County Commission Regular Meeting January 13, 2022* (Jan. 13, 2022) (online at youtu.be/C3oETQGHtnA?t=14302).

audit and canvass: “I want arrests, I want prosecutions, I want firing squads.”¹⁷ Advocates of the “audit” have begun privately fundraising with the support of election conspiracist Lin Wood, who has called for former Vice President Mike Pence to face execution by firing squad.¹⁸

Potentially illegal canvassing is already taking place in New Mexico and elsewhere. In February 2022, Erin and David Clements told Otero County Commissioners that their organization has already canvassed several hundred voters “all over the state” and that it currently “oversees 30 canvassing operations in 30 states.”¹⁹ Just this week, dozens of Otero County residents began reporting canvassing visits from these volunteers. In one instance recorded on video, the canvasser claimed to be acting on behalf of the county.²⁰

The Voting Rights Act

Section 11(b) of the Voting Rights Act states:

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote.²¹

The Otero County canvass raises many of the same concerns that DOJ articulated in its May 5, 2021, letter to Arizona State Senate President Fann, which warned that a similar proposed canvass in Maricopa County may “implicate the anti-intimidation prohibitions of the Voting Rights Act” and could “have a significant intimidating effect on qualified voters that can deter them from seeking to vote in the future.”²²

¹⁷ *Election “Vigilante” Group Posing as County Workers, Says New Mexico’s State Auditor*, Daily Beast (Mar. 14, 2022) (online at www.thedailybeast.com/vigilante-new-mexico-audit-force-posing-as-county-workers-says-state-auditor?ref=scroll).

¹⁸ Otero County agreed to pay EchoMail \$49,750 in taxpayer funds for the proposed canvass and audit. *This Pro-Trump County Is Carrying Out a Wild Audit of Its Own 2020 Votes*, Yahoo News (Feb. 7, 2022) (online at uk.style.yahoo.com/pro-trump-county-carrying-wild-085050391.html?soc_src=social-sh&soc_trk=ma).

¹⁹ Otero County, *County Commission Regular Meeting January 13, 2022* (Jan. 13, 2022) (online at youtu.be/C3oETQGHtnA?t=14302) (02:12:51–02:33:01); see also *New Mexico State University Professor Who Bucked COVID-19 Vaccine, Mask Mandates Reportedly Fired*, Las Cruces Sun-News (Oct. 11, 2021) (online at www.lcsun-news.com/story/news/education/nmsu/2021/10/11/nmsu-professor-david-clements-fired-for-bucking-covid-19-mandates/6090555001/).

²⁰ *New Mexico Leaders Warn Otero County Voters Not to Share Personal Information Amid “Vigilante Audit,”* Alamogordo Daily News (Mar. 2, 2022) (online at www.alamogordonevents.com/story/community/2022/03/02/otero-county-voters-warned-new-mexico-audit-force-private-information-maggie-toulouse-oliver/9349256002/).

²¹ Voting Rights Act of 1965, Pub. L. No. 89-110 (codified at 52 U.S.C. § 10307(b)).

²² Letter from Pamela S. Karlan, Principal Deputy Assistant Attorney General, Civil Rights Division, Department of Justice, to Karen Fann, President, Arizona State Senate (May 5, 2021) (online at www.justice.gov/crt/case-document/file/1424586/download).

EchoMail has a documented history of trafficking in destructive election conspiracy theories, while the leaders of the New Mexico Audit Force have publicly stated their goal of using the canvass to “pinpoint” individuals for “criminal prosecution” and their interest in “firing squads.” The Otero County canvass appears to present a serious risk that EchoMail and the New Mexico Audit Force will intimidate qualified voters and deter them from seeking to vote in the future.²³ The canvass may have a particular impact on minority communities in Otero County. Nearly 40% of the county’s population is non-white Hispanic, 11% of the county’s population was born outside of the United States, and 6% identify as Native American or Alaskan.²⁴ Otero County’s diversity makes it susceptible to the same threat identified by DOJ in Maricopa County—that canvasses of this nature, even when sponsored by local governments, can result in intimidation directed at minority voters.²⁵

At least one local official, Otero County Attorney R.B. Nichols, has raised similar concerns. At the County Commission meeting authorizing the County’s contract with EchoMail, Mr. Nichols warned that the canvass “could be potentially reported and viewed as voter intimidation,” and expressed concerns that “there are potential consequences” such as “litigation as well as violations of the elections code.”²⁶ Mr. Nichols also raised concerns about EchoMail’s demonstrated lack of election knowledge in the Maricopa County “audit” and noted that the proposed contract mentioned checking signature verifications that were not relevant under New Mexico law.²⁷ New Mexico’s State Auditor discovered potential violations of state law in the contract between EchoMail and Otero County, and New Mexico’s Attorney General has reportedly begun an investigation into allegations of intimidation by canvassers.²⁸

²³ See Letter from Pamela S. Karlan, Principal Deputy Assistant Attorney General, Civil Rights Division, Department of Justice, to Karen Fann, President, Arizona State Senate (May 5, 2021) (online at www.justice.gov/crt/case-document/file/1424586/download); 52 U.S.C. § 10307(b) (“No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote.”); 52 U.S.C. § 10101(b) (“No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right . . . to vote or to vote as he may choose, or of causing such other person to vote . . . or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.”).

²⁴ Data USA, *Otero County, NM* (online at <https://datausa.io/profile/geo/otero-county-nm>) (accessed Feb. 11, 2022).

²⁵ See *Otero County to Spend \$49,750 on 2020 Election Audit*, Alamogordo Daily News (Jan. 18, 2022) (online at www.alamogordonews.com/story/community/2022/01/18/otero-county-spend-49-7550-2020-election-audit/6527530001/).

²⁶ Otero County, *County Commission Regular Meeting January 13, 2022* (Jan. 13, 2022) (online at youtu.be/C3oETQGHtnA?t=14302) (01:57:57–01:59:06).

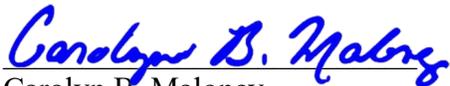
²⁷ *Id.* (02:00:51–02:02:26).

²⁸ *State Auditor Finds Problems with Otero County's 2020 Election Audit Contract*, Alamogordo Daily News (Mar. 15, 2022) (online at www.alamogordonews.com/story/community/2022/03/15/state-auditor-finds-problems-otero-countys-audit-contract-echomail-trump-ballot-election/7035789001/); *Otero County Election Audit Worries State Officials*, KRQE (Mar. 2, 2022) (online at www.krqe.com/news/new-mexico/otero-county-election-audit-worries-state-officials/).

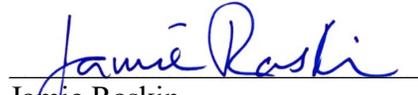
Protecting the constitutionally guaranteed right to vote and the integrity of our elections is a priority for the Committee.²⁹ We call on the Department of Justice to review these potential ongoing civil rights violations and take any necessary steps to prevent further violations of federal law.

Thank you for your prompt attention to this important matter.

Sincerely,



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Jamie Raskin
Chairman
Subcommittee on Civil Rights and
Civil Liberties

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

The Honorable Nancy Mace, Ranking Member
Subcommittee on Civil Rights and Civil Liberties

²⁹ U.S. Const., amend. XV (“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The Congress shall have power to enforce this article by appropriate legislation.”); U.S. Const. art. I, §. 4 (“The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations.”).