

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NATIONAL ASSOCIATION FOR THE	)	
ADVANCEMENT OF COLORED	)	
PEOPLE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 20-cv-2295 (EGS)
	)	
UNITED STATES POSTAL SERVICE,	)	
et al.,	)	
	)	
Defendants.	)	
_____	)	

**NOTICE OF PLAINTIFF’S PROPOSED ORDER**

Pursuant to the oral Order issued by the Court, Plaintiff submits the attached Proposed Order. Plaintiff sent a draft of the Proposed Order to Defendants but, as of the time of this filing, Defendants is still reviewing. Given the 3:00 p.m. deadline ordered by the Court, Plaintiff is submitting this Notice but will continue efforts to confer with Defendants by their 3:30 p.m. deadline for submitting a response.

Plaintiff states below its position on the paragraphs of the Proposed Order that may be in dispute.

**I. Paragraphs 1–3**

Defendants’ daily report on Election Mail processing scores includes data on the volume of ballots that were processed in a given District and exited the processing system for delivery on a given day. However, the data does not show what number of those ballots were delivered *in that District* as opposed to being sent from that District and delivered elsewhere.

Plaintiff requests that Defendants produce data on daily processing scores for election ballots that allow the parties and the Court to determine whether the return ballots identified for a

given District are ballots that originated in that district, had a destination in that district, or both. This data is highly relevant to this case for several reasons.

*First*, Plaintiff's claims and injuries in this case are predicated on, among other things, the risk that USPS' recent operational changes and associated mail delivery delays would cause ballots to be delivered after the relevant state deadline, and therefore too late to be counted. The data that Plaintiff seeks is directly probative of that question. It will allow Plaintiff to match the processing delays for ballots with the relevant deadline in the state to which those ballots have been sent. Given the variation in state deadlines for receipt of ballots, this is significant to understanding whether a ballot that was not timely processed was nonetheless delivered by the relevant state deadline or, instead, was delivered after the relevant state deadline.

*Second*, the data will help the parties and Court assess the need for any targeted relief with respect to certain facilities in certain states that continue to accept mail ballots. Specifically, it will allow the parties to determine whether processing delays attributed to particular Districts are attributable solely to that District—which would be the case if the ballots were both sent and received from that District—or whether they may be the result of delays at other facilities from which the ballot originated or to which the ballot was sent.

*Third*, the production of this data for November 4–6, 2020, in particular, will better allow the parties and the Court to assess the effects of Defendants' non-compliance with the Court's Election Day order requiring Postal Service Inspectors to supervise a sweep of certain facilities that would ensure that any outstanding ballots were delivered by Election Day. The data will show whether ballots at a particular facility were delivered late despite having arrived at that facility before Election Day.

Defendants' suggestion that it would be unduly burdensome to produce this data lacks merit. Plaintiffs note that they initially asked for this data on Friday, October 30, and included it in a proposed order that was sent to Defendants that day. Defendants never responded to this provision of Plaintiff's proposed order. Since then, Plaintiffs in these parallel cases have reached out to Defendants numerous times to ask that this data be included in the daily Election Mail report. Defendants have noted that they continue to look into this issue but have not provided any substantive response over the past week. And although Plaintiffs advised Defendants that they intended to raise the issue at today's hearing, Defendants were still unable to explain why it would be burdensome to produce the requested information.

Furthermore, as noted at today's hearing, and as reflected in paragraphs 2 and 3 of Plaintiff's Proposed Order, Plaintiff is prepared to scale back many of the USPS reporting requirements created by the Court's recent orders, including: daily processing scores for all First-Class Mail and Marketing Mail (though Plaintiffs still request weekly processing scores for these categories on a timely basis), daily reporting of processing scores for outbound ballots (*i.e.*, blank ballots sent to voters rather than completed ballots returned by voters), daily processing scores for non-ballot election mail, daily explanations of low processing scores for underperforming Districts, and reports produced to Congress, other courts, and other litigants. This should substantially reduce the daily reporting burden on Defendants. In return, simply differentiating the District-specific data to identify the ballots that originated in a given District, were delivered there, or both, is an exceedingly modest request.

## **II. Paragraphs 4–5**

Fifteen states have extended ballot receipt deadlines after today. USPS processing facilities in eight of those states have had relatively low processing scores for Inbound Ballots

(i.e., ballots returned by voters to election officials)—including processing scores of less than 90 percent for ballots delivered just yesterday. Accordingly, Plaintiff asks that Defendants document with the Court their plans for ensuring that these facilities are prepared to collect and deliver all ballots in their facilities to relevant boards of elections on the relevant state deadline. This requirement is identical to one of the provisions that was included in the Court’s November 5 Order for USPS processing facilities in North Carolina and Pennsylvania.

Moreover, this request is consistent with what USPS witnesses have said their processing plants should be doing—coordinating with local boards of elections for deadline day deliveries—and thus imposes no operational burdens or requirements beyond what USPS has already said it expects to do. The request simply seeks to ensure that these coordination efforts have been made by requiring USPS to document them in a Court filing.

November 6, 2020

Respectfully submitted,

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