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By Federal Express

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, DC 20463

Dear Commissioners:

On behalf of our clients, the Socialist Workers Party, the Socialist Workers National Campaign Committee, and committees supporting candidates of the Socialist Workers Party, we hereby request an advisory opinion pursuant to 2 U.S.C. § 437f and 11 C.F.R. § 112.1 that the Socialist Workers Party and the committees supporting candidates of the Socialist Workers Party (hereinafter collectively, for convenience, "SWP"), continue to be entitled to the same exemptions from reporting and disclosure requirements of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, *et seq.* granted by the FEC in its 2012 Advisory Opinion, as well as to exemption from any new, post-2012 reporting and disclosure requirements that might otherwise be applicable.

In its 2012 Advisory Opinion, 2012-38 (hereinafter "*2012 AO*"), the Commission granted partial exemption from the FECA's provisions requiring, *inter alia*, disclosure of the names and

residential addresses, occupations, and employers of contributors to SWP committees (§ 434(b)(3)(A)); political, authorized, or affiliated committees making contributions or transfers to the reporting committee (§ 434(b)(3)(B), (C), (D)); lenders, guarantors, or endorsers of loans to the reporting committee (§ 434(b)(3)(E)); persons providing rebates, refunds, or other offsets to operating expenditures to the reporting committee (§ 434(b)(3)(F)); and persons to whom expenditures, loans, loan repayments, disbursements, or contribution refunds or other offsets or committees to which expenditures, transfers, contributions, disbursements, or loans have been made (§ 434(b)(5),(6)); of receipts and disbursements by political committees (§ 434(e)); electioneering communication disclosure (§ 434(f)); and independent expenditure reporting (§ 434(g)). *2012 AO* at 11.

The Commission has continuously granted these and comparable exemptions to the SWP's campaign committees since 1979. Copies of the Commission's 2012 Advisory Opinion, its 2009 Advisory Opinion (hereinafter, "*2009 AO*"), its 2003 Advisory Opinion (hereinafter, "*2003 AO*"), and its 1996 Advisory Opinion (hereinafter, "*1996 AO*") are attached as Exhibits A, B, C and D respectively, to this letter request for the Commission's convenience.

As shown below, the SWP continues to qualify for status as a minor political party for purposes of the constitutional analysis established by the Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976) and *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87 (1982) and, therefore, the government's interest in FECA reporting and disclosure for the SWP is *de minimis*. Moreover, based on: (i) the SWP's long history of being subject to both government and private threats, harassments and reprisals from at least 1941 through 2012; in addition to (ii)

evidence provided herein that such threats, harassments and reprisals have continued from 2013 to the present; and (iii) the federal, state and local government's well-publicized programs of stepped-up surveillance of advocacy groups engaging in protected First Amendment activities, especially those involved in protesting police killings in black communities and elsewhere, labor strikes and lockouts, activities in defense of Puerto Rican prisoners and activists fighting for Puerto Rican independence, nationwide protests for a $15 minimum wage and a union, and protests against surveillance of, and attacks on, Muslims and mosques, the SWP has established that there is a reasonable probability that persons identified with the SWP will be subject to threats, harassment, or reprisals.

For these reasons, the "threat to the exercise of First Amendment rights resulting from disclosure outweighs the government's insubstantial interest in disclosure by" the SWP, *2012 AO*, at 7 (*citing Buckley*, 424 U.S. at 71-72) and, under established Supreme Court precedent, the SWP's exemptions must be granted.

As with the SWP's prior submissions, the instant submission addresses the following:

I. Applicable Law and Prior Determinations

A. The Instant Request Is Timely

The 2012 Opinion granted exemptions to the SWP through December 31, 2016. *2012 AO* at 12. It further provided that:

> *[a]t least sixty days prior to December 31, 2016*, the SWP may submit a new advisory opinion request *seeking a renewal of the exemption.* If a request is submitted, the Commission will consider the factual information then presented as to harassment after December 31, 2012, or the lack thereof, and will make a decision at that time as to the renewal.

Id. at 12 (emphasis added). This request is being submitted on October 31, 2016; therefore, this request is timely filed.

B. The Commission's Previous Advisory Opinions Exempting the SWP

An exemption from the FECA reporting requirements for the SWP was first provided under a 1979 consent decree, which resolved *Socialist Workers 1974 National Campaign Committee v. Federal Election Commission,* Civ. A. No. 74-1338 (D.D.C.). The consent decree "exempted [the committees from the provisions requiring the] disclos[ure of]: 1) the names, addresses, occupations, and principal places of business of contributors to SWP committees; 2) other political committees or candidates to which or to whom the SWP committees made contributions; 3) lenders, endorsers or guarantors of loans to the SWP committees; and 4) persons to whom the SWP committees made expenditures." *2012 AO* at 2.

The exemptions were renewed in an updated settlement agreement approved by the court on July 24, 1985, and in an advisory opinion issued by the Commission in 1990. The 1990 advisory opinion "granted the same exemption provided for in the previous consent decrees," *2003 AO* at 2, as did the 1996 Opinion, the 2003 Opinion, the 2009 Opinion and the 2012 Opinion. *1996 AO* at 9 ("[t]he Commission...grants the committees supporting the candidates of the SWP the exemption provided for in the consent agreements and in Advisory Opinion 1990-13."); *2003 AO* at 10 ("the Commission grants the SWP and the committees supporting SWP candidates a further continuation of the partial reporting exemption provided for in the consent agreements as continued by Advisory Opinions 1990-13, and 1996-46."); *2009 AO* at 11 ("the Commission grants the SWP, the SWP's National Campaign Committee, the SWP's other party

committees, and the authorized committees of SWP candidates a further continuation of the partial reporting exemption provided for in the consent agreements and continued in previous advisory opinions."); *2012 AO* at 11 ("The Commission thus grants the SWP committees a further continuation of the partial reporting exemption provided for in the consent agreements and continued in previous advisory opinions.") Specifically, the SWP was exempted from filing "[r]eports that identify individuals and other persons who make contributions over $200, or who come within various other disclosure categories listed above in reference to the consent agreements." *1996 AO* at 2, citing 2 U.S.C. §§ 434(b)(3), 434(b)(5), and 434(b)(6).

In its 1996 Advisory Opinion, the Commission imposed a requirement that "each committee entitled to the exemption should assign a code number to each individual or entity from whom it receives in aggregate in excess of $200 in a calendar year" and should include that code number in its FEC filings. *1996 AO* at 7. In its 2003, 2009 and 2012 Advisory Opinions, the Commission did the same. *2003 AO* at 10 & n.9; *2009 AO* at 11-12 & n.13; *2012 AO* at 11 & n.9.

The showing made here requires renewal of the SWP's exemptions for the same reasons found compelling by the FEC in its prior opinions.

C. Constitutional Principles Requiring Exemption and Their Application to the SWP by the Courts

In its 2012 Opinion, the Commission found that exemption from the reporting and disclosure requirements of the Act was constitutionally required under the Supreme Court's decisions in *Buckley* v. *Valeo*, 424 U.S. 1 (1976) and *Brown* v. *Socialist Workers '74 Campaign*

Committee (Ohio), 459 U.S. 87 (1982). The Commission recognized the well-established Supreme Court precedent that "under certain circumstances, the Act's disclosure requirements are unconstitutional as applied to a minor party because the threat to the exercise of First Amendment rights resulting from disclosure outweighs the government's insubstantial interest in disclosure by that particular entity." *2012 AO* at 7 (*citing Buckley*, 424 U.S. at 71-72). The Commission considered various incidents demonstrating continuing harassment of the SWP, its members, and affiliates, and took into account the long history of governmental harassment that began in 1941 with the FBI's generalized investigation of the SWP and continued unabated for at least 35 years. Applying *Buckley* and *Socialist Workers*, the Commission granted an exemption from the disclosure requirements of the Act.

The fundamental constitutional principle recognized in *Buckley* and *Socialist Workers* is that the "First Amendment prohibits a State from compelling disclosure by a minor party that will subject those persons identified to the reasonable probability of threats, harassment, or reprisals," *Socialist Workers*, 459 U.S. at 101. In *Buckley*, the Supreme Court recognized that the requirements of the Federal Election Campaign Act as applied to minor parties and independent candidates in particular may be unconstitutional because of the danger of significant infringement of First Amendment rights. *Id.* at 71. The Court recognized that "the governmental interest in disclosure is diminished when the contribution in question is made to a minor party with little chance of winning an election." *Id.* at 70. Additionally, the Court noted that minor parties are unlike the major political parties because they "usually represent definite and

publicized viewpoints, [thus] there may be less need to inform the voters of the interests that specific candidates represent." *Id.*

The Court, while refusing to endorse a blanket exemption for all minor parties, held that particular minor parties might present circumstances similar "to those before the Court in *NAACP* v. *Alabama* [357 U.S. 449 (1958)] and *Bates* [*v. Little Rock*, 361 U.S. 516 (1960)], where the threat to the exercise of First Amendment rights is so serious and the state interest so insubstantial that the Act's requirements cannot be constitutionally applied." *Buckley*, 424 U.S. at 71. As an illustration of such a case, the Court referred to *Doe* v. *Martin*, 404 F. Supp. 753 (D.D.C. 1975) (three judge court), which concerned a branch of the Socialist Workers Party.[1]

As the Commission has recognized, the Court found in *Brown* v. *Socialist Workers '74 Campaign Committee (Ohio)* that the SWP had met the *Buckley* standard and "grant[ed] the SWP an exemption from state campaign disclosure requirements." *2012 AO* at 8. In *Socialist Workers*, the Court found that:

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[1] The *Martin* case, cited with approval by the Supreme Court, concerned the constitutionality of portions of the 1974 District of Columbia Campaign Finance Reform and Conflict of Interest Act, Pub. L. 93-376, 88 Stat. 446, requiring, *inter alia*, every political committee to keep records showing the name, address, and place of business of contributors of $10 or more, the designation of a depository bank through which the political committee will conduct all of its financial business, and the filing of publicly available reports listing the name, address, and place of business of each contributor of $50 or more, as well as civil penalties for non-compliance. *See Martin*, 404 F. Supp. at 755 n.1. In *Martin*, the plaintiffs asserted that the name, address, and places of employment of those supporting the SWP "will be noted by the FBI and others and that inquiries or other detrimental social pressures will ensue affecting employment and privacy." *Id.* at 755. The Court had before it affidavits showing that SWP members had been harassed by government agencies and others, and also the findings of the Minnesota Ethics Commission exempting the Minnesota Socialist Workers 1974 Campaign Committee from the disclosure requirements of the Minnesota Ethics in Government Act of 1974. *Id.* at 756-57 n.4.

> [t]he District Court properly concluded that the evidence of private and Government hostility toward the SWP and its members establishes a reasonable probability that disclosing the names of contributors and recipients will subject them to threats, harassment and reprisals. There were numerous instances of recent harassment of the SWP both in Ohio and in other States. There was also considerable evidence of past Government harassment. Appellants challenge the relevance of this evidence of Government harassment in light of recent efforts to curb official misconduct. Notwithstanding these efforts, the evidence suggests that hostility toward the SWP is ingrained and likely to continue.

459 U.S. at 100-01.

The Commission also noted that *Socialist Workers* "clarified that the exemption recognized in *Buckley* extended to the names of recipients of disbursements in addition to names of contributors." *2012 AO* at 8 (citing *Socialist Workers*, 459 U.S. at 95).

In applying the *Buckley – Socialist Workers* standards to the SWP, the Commission has taken note of the admonitions of the Second Circuit in *Federal Election Commission* v. *Hall-Tyner Election Campaign Committee*, 678 F.2d 416 (2d Cir. 1982), *cert. denied*, 459 U.S. 1145 (1983), a case involving the Communist Party. *2009 AO* at 4. The Commission quoted with approval the Second Circuit's statement that:

> [W]e note that *Buckley* did not impose unduly strict or burdensome requirements on the minority group seeking constitutional exemption. A minority party striving to avoid FECA's disclosure provisions *does not carry a burden of demonstrating that harassment will certainly follow compelled disclosure of contributors' names.* Indeed, when First Amendment rights are at stake and the spectre of significant chill exists, courts have never required such a heavy burden to be carried because 'First Amendment freedoms need breathing space to survive.' [internal citations omitted]. Breathing space is especially important in a historical context of harassment based on political belief.

2009 AO at 4, quoting *Hall-Tyner*, 678 F.2d at 421-22 (emphasis added).

The Commission went on to quote as applicable here what the Second Circuit ruled as to the Communist Party: that, in light of "the treatment historically accorded persons identified with the Communist Party" and the statutes purporting to subject Communist Party members to civil and criminal liability, the minimal government interest in disclosure could not justify application of the FECA's requirements. *Hall-Tyner*, 768 F.2d. at 422.

The Commission has recognized that *Buckley*, *Socialist Workers*, and *Hall-Tyner* entitle the SWP to exemptions. *2012 AO* at 8. Moreover, as the Supreme Court has stated "hostility toward the SWP is ingrained and likely to continue." *2009 AO* at 3 (quoting *Socialist Workers*, 459 U.S. at 101).

The Supreme Court, in the course of holding the disclosure requirements of 2 U.S.C. § 441-a1 unconstitutional, reaffirmed in *Davis v. Federal Election Commission*, 554 U.S. 724, 744 (2008), the central premise of *Buckley*: that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment," and that therefore "disclosure requirements, including requirements governing independent expenditures made to further individuals' political speech" can only survive constitutional scrutiny if there is "a 'relevant correlation' or 'substantial relation' between the governmental interest and the information required to be disclosed.'" *Id.* at 274-75 (quoting *Buckley*, 424 U.S. at 64, 75). In other words, "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights," *id.* It is precisely this test that requires continuing exemption of the SWP from FECA's disclosure requirements.

The Supreme Court has continued to reaffirm this principle. *See, e.g., Citizens United v. Federal Election Commission*, 558 U.S. 310, 366-67 (2010) (emphasizing that because "[d]isclaimer and disclosure requirements may burden the ability to speak" the Court "has subjected these requirements to 'exacting scrutiny,' which requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest.") (quoting *Buckley*, 424 U.S. at 64, 66); *John Doe No. 1 v. Reed*, 130 S. Ct. 2811, 2818 (2010) (quoting *Davis*, 128 S. Ct. at 2774) ("[t]o withstand scrutiny, 'the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment Rights'").

Since 2012, the Supreme Court has continued to emphasize the importance of the First Amendment in "safeguard[ing] an individual's right to participate in the public debate through political expression and political association." *McCutcheon v. Federal Election Comm'n*, 134 S.Ct. 1434, 1448 (2014). "'[T]he First Amendment requires us to err on the side of protecting political speech rather than suppressing it.'" *Id.*, at 1451 (*quoting Federal Elections Comm'n v. Wisconsin Right to Life*, 551 U.S. 449, 457 (2007) (opinion of Robert, C.J.)) (referring to line between impermissible *quid pro quo* corruption and general influence).

D. The Required Showing: "Reasonable Probability" of Threats, Harassment or Reprisals

As the Commission recognized in its 2012 Opinion, *2012 AO* at 7-8, the required showing that a minor political party must make to qualify for an exemption under *Buckley* is as follows:

> Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The evidence offered need show only a

> *reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties.* . . . The proof may include, for example, specific evidence of ***past or present*** harassment of members due to their associational ties, or of harassment directed against the organization itself. A pattern of threats or specific manifestations of public hostility may be sufficient.

424 U.S. at 74 (emphasis added).

Longstanding Supreme Court case law establishes that the evidentiary standard for exemption requests by minor parties "must be low" and recognizing that minor parties can "rely on a wide array of evidence to meet" its burden. *John Doe No. 1 v. Reed*, 130 S. Ct. 2811, 2823, 2827 (2010) (J. Alito concur) (citing prior Supreme Court precedent; internal citations omitted). The evidentiary standard must not be "onerous." *Id.* ("From its inception ... the as-applied exemption has not imposed onerous burdens of proof on speakers who fear that disclosure might lead to harassment or intimidation.").

The Supreme Court established this low, non-onerous evidentiary standard for good reason, as statements acknowledging covert surveillance and/or harassment are not easy to obtain and, in most if not all cases, would require costly and time-consuming litigation that minor political parties, such as the SWP, can scarcely afford. This is unequivocally established by the SWP's own history of covert government surveillance and actions that only came to light through extensive, hard-fought litigation and congressional investigation. In addition, this is borne out, most recently, by the ACLU which has had to engage in costly and time consuming litigation to obtain "heavily or even entirely redacted" documents concerning the FBI's new

surveillance programs, after the FBI would only release a fraction of its files concerning this program. Ex. E, at 1.

The ACLU has concluded that the FBI is "using excessive secrecy to hide from the public both routine demands for information in criminal cases and its extraordinary covert intelligence abuses" and even "thwarts congressional oversight by withholding information, limiting or delaying responses to members' inquiries, or, worse, by providing false or misleading information to Congress and the American public." Ex. F, at 33 – 34.

The Texas Supreme Court, in *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371 (Tex. 1998), discussed what types of showings might be sufficient to meet the *Buckley* standard.

> In *Local 1814*, the court found it sufficient that longshoremen contributors would perceive a connection between contributing to a political fund and being called before the Waterfront Commission and would therefore discontinue their contributions. *Local 1814*, 667 F.2d at 272 [additional internal citation omitted]. And in *Pollard v. Roberts*, the Supreme Court affirmed the district court's recognition of the potential infringement on First Amendment rights that could result from political and economic reprisals, even though no factual showing of such reprisals had been made:
>
> > While there is no evidence of record in this case that any individuals have as yet been subjected to reprisals on account of the contributions in question, *it would be naive not to recognize that the disclosure of the identities of contributors ... would subject at least some of them to potential economic or political reprisals of greater or lesser severity*.....Disclosure or threat of disclosure well may tend to discourage both membership and contributions thus producing financial and political injury to the party affected.
>
> *Pollard v. Roberts*, 283 F.Supp. 248, 258 (E.D.Ark.), *aff'd. per curiam*, 393 U.S. 14 (1968).

> In sum, BACALA has offered factual, non-speculative evidence of economic and political reprisals against itself and its contributors. This evidence is sufficient to satisfy its burden of proof.

Id. (emphasis added).

In *Citizens United*, 130 S. Ct. 876, while upholding the constitutionality of the disclaimer and disclosure provisions of the Bipartisan Campaign Reform Act of 2002 as applied to Citizens United because the group "offered *no* evidence that its members may face [] threats or reprisals," the Court reiterated that "disclosure would be unconstitutional as applied to an organization if there were a reasonable probability that the group's members would face threats, harassment, or reprisals if their names were disclosed." 130 S. Ct. at 916 (citing *McConnell*, 540 U.S. at 198).

In a concurring opinion to the Court's decision in *Reed*, Justice Alito explained that "the as-applied exemption plays a critical role in safeguarding First Amendment rights" and stated:

> [S]peakers must be able to obtain an as-applied exemption without clearing a high evidentiary hurdle. We acknowledged as much in *Buckley*, where we noted that "unduly strict requirements of proof could impose a heavy burden" on speech. 424 U.S., at 74, 96 S.Ct. 612. Recognizing that speakers "must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim," we emphasized that speakers "need show only a reasonable probability" that disclosure will lead to threats, harassment, or reprisals. *Ibid.* (emphasis added). We stated that speakers could rely on a wide array of evidence to meet that standard, including "specific evidence of past or present harassment of [group] members," "harassment directed against the organization itself," or a "pattern of threats or specific manifestations of public hostility." *Ibid.*

Id. at 2823.

II. The SWP Remains a Minor Political Party

As the Supreme Court has repeatedly held, "the governmental interest in disclosure is diminished when the contribution in question is made to a minor party with little chance of

winning an election." *Buckley*, 424 U.S. at 70. Because minor party candidates are unlikely in the foreseeable future to win an election, contributors do not have "a reasonable expectation of exacting a *quid pro quo* from a current or potential elected official" and that therefore the governmental interest "in providing the FEC with data...is not sufficiently compelling to justify the injury resulting to important First Amendment rights." *Federal Election Commission v. Hall-Tyner*, 524 F. Supp. 955, 961 (S.D.N.Y. 1981), *aff'd* 678 F.2d 416 (2d. Cir. 1982) (Communist Party candidates could not in the foreseeable future have significant impact on election, therefore contributors did not have reasonable expectation of exacting *quid pro quo*). Additionally, minor parties are unlike the major political parties because they "usually represent definite and publicized viewpoints, [thus] there may be less need to inform the voters of the interests that specific candidates represent." *Buckley*, 424 U.S. at 70.

Minor parties are in a particularly unique position compared to other parties because, as the Supreme Court held in *Buckley*, the damage caused by disclosure to minor parties is potentially much more significant than damage caused to other parties, as "fear of reprisal may deter contributions to the point where the movement could not survive" and "[t]he public interest ... suffers if that result comes to pass, for there is a consequent reduction in the free circulation of ideas both within and without the political arena." *Buckley*, 424 U.S. at 71.

Indeed, the governmental interest in disclosure for the SWP, whose candidates do not hold public office, have never won an elected position and whose list of contributors over $200 is less than 90, is almost *nil*.

Since 1990, the Commission has continuously recognized SWP's status as a minor political party for purposes of constitutional analysis and exemption from FECA's reporting and disclosure requirements. Dispositively, the current submission is comparable to prior SWP factual submissions that this Commission previously found sufficient to justify SWP's status as a minor political party. No SWP candidate has won a federal, state or local election in the four years since the last exemption was granted nor has it ever won an election for any federal, state or municipal office. Ex. G. SWP candidates for U.S. President received 3,509 votes nationwide in 2012. *2012 AO* at 2 ("SWP candidates for President received only 10,791 votes in 2004, 9,827 votes (not including write-ins) in 2008, and 3,509 votes in 2012"). Further, the SWP has not had any candidates for the U.S. Senate or the U.S. House of Representatives on the ballot since 2012. Ex. G. This represents less SWP ballot presence than in 2012, 2008, 2004 and 2000. *AO 2012* at 2-3 ("SWP candidates for President received only 10,791 votes in 2004, 9,827 votes (not including write-ins) in 2008, and 3,509 votes in 2012. Further, in 2010 and 2011, none of the three SWP candidates on the ballot for U.S. House of Representatives received more than 6,300 votes. The SWP has not had any candidates on the ballot for the U.S. Senate since 2009").

Additionally, as of October 20, 2012, a total of 406 people nationwide contributed funds to the Socialist Workers National Campaign Committee for the 2016 election. Ex. H. In 2016, there were only 86 contributions nationwide to the committee of over $200. Additionally, the SWP has not received any "bundled" contributions that would require disclosure and does not foresee receiving any such contributions. The SWP also does not currently have any registered lobbyist, has never had any registered lobbyists, nor does it plan on having such lobbyists. *Id.*

Furthermore, the SWP, which was founded in 1938 and has run candidates on the ballot for President and Vice-President of the United States since 1948, has consistently represented a definite and well-publicized viewpoint over many decades. *See Socialist Workers Party* v. *Attorney General*, 642 F. Supp. 1357, 1366 (S.D.N.Y. 1986)

Thus, the levels of electoral and financial support of the SWP and its chances of success at the polls are such that the governmental has almost no interest in reporting and disclosure.

III. The SWP's Long History of Systematic Harassment

Before turning to recent harassment, we discuss the extraordinary history of government and private threats, violence and harassment of the SWP – its long duration, exceptional intensity, and gross illegality, all as determined by the federal courts,[2] by Congress[3] and by the Commission. As the Commission explicitly found in its 2012 opinion, this history of harassment is an important factor favoring exemption:

> [T]here is a long history of threats, violence, and harassment against the SWP and its supporters by Federal and local law enforcement agencies and private parties. The Commission has consistently viewed the SWP's requests for exemption from the Act's reporting requirements in light of this "long history of governmental harassment of the SWP." [*citing AO 2009*]. Courts have detailed this history. *See generally Socialist Workers Party v. Attorney General*, 642 F. Supp. 1357 (S.D.N.Y. 1986); *Socialist Workers Party v. Attorney General*, 666 F. Supp. 621 (S.D.N.Y.

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2 *Socialist Workers Party v. Attorney General*, 642 F. Supp. 1357 (S.D.N.Y. 1986).

3 Sen. Rep. No. 94-755, Senate Select Committee to Study Governmental Operations With Respect to Intelligence Activities, Book II, Intelligence Activities and the Rights of Americans, and Book III, Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans.

> 1987). The Supreme Court has previously referred to "'the substantial evidence of both governmental and private hostility toward and harassment of SWP members and supporters.'" *Brown*, 459 U.S. at 98-99 (quoting the underlying district court opinion).

2012 AO at 4, 10-11.

A. Evidence of Government Harassment from at least 1941 to 1990

In its previous opinions, *2012 Opinion* at 8-9, *2009 Opinion* at 5-6, *2003 Opinion* at 6, *1996 Opinion* at 3-5; *1990 Opinion* at 11,634-35, the Commission has described some of the extraordinary history of federal misconduct and animus. While there is no need to establish once again the facts already found by the Commission, we do believe it important to summarize here again that prior showing, lest the full force of what transpired be lost.

This history is especially resonant today when revelations continue to be made of mass surveillance by the government of protests, demonstrations and political and advocacy groups engaged in constitutionally protected activity, such as union and Black Lives Matter activities, as well as government surveillance of the Muslim community – all activities and communities that the SWP actively engages and supports. Indeed, this current surveillance is eerily similar to the extensive surveillance of the SWP by the FBI that the Commission has recognized. *1990 AO* at 11,635. As the *New York Times* reported this year concerning a recent discovery of a trove of documents detailing secret police surveillance of public protest demonstrations and organizations, such as the Nation of Islam and the Black Panthers, in New York in the mid-1950s to early 1970s, "[t]he files are bound to resonate not only among those subjected to surveillance decades ago, *but also among current activists and organizations that have faced police*

surveillance and infiltration in the years since Sept. 11, 2001. After the terrorist attacks, the Police Department bolstered its spying capabilities; Muslim organizations and mosques in particular reported extensive surveillance. Others, including activists associated with causes ranging from the antiwar movement to cycling, have also found themselves watched." Ex. I (emphasis added). These files were created by "a secretive police unit that began as the anti-Communist 'Red Squad' … Today it is called the Intelligence Division." *Id.*

Since 2001 there have been a profusion of new government surveillance units established at every level – federal, state and municipal, including Fusion Centers, Joint Terrorism Task Forces, specialized local agencies, like New York City's Muslim division, and others. Numerous revelations have shown these agencies have targeted political groups, protests, labor activity and ethnic groups, like Muslims. Ex. J (*e.g.*, Brennan Center for Justice, "National Security and Local Police," at 1 (2013): "Since 9/11, some police departments have established counterterrorism programs to collect and share intelligence information about everyday activities of law-abiding Americans, even in the absence of reasonable suspicion … Many state and local intelligence programs lack adequate oversight. … Very few local governments have built the kind of oversight structures that should accompany such a significant expansion of police functions".

Given the intensity, duration, and pervasiveness of government persecution, it is hardly surprising that the history of FBI disruption ("COINTELPRO"), warrantless burglaries, warrantless wiretaps, informant penetration, and the like – as demonstrated below – combined with the recent, frequent and highly public revelations of government surveillance intimidates

and hampers the ability of the SWP to solicit contributions and to engage in educational and political activities.

Beginning in 1941, the Federal Bureau of Investigation began a generalized investigation of the SWP which was to last for at least the next 35 years. *Socialist Workers Party* v. *Attorney General*, 642 F. Supp. 1357 (S.D.N.Y. 1986).[4] The investigation began in roughly the same time period that 28 supporters of the SWP were prosecuted and convicted for conspiring to advocate the violent overthrow of the government under the Smith Act, 18 U.S.C. § 2385. *Dunne* v. *United States*, 138 F.2d 137 (8th Cir. 1943), *cert. denied*, 320 U.S. 790 (1943).

In the course of its investigation, the FBI amassed over 8 million documents. Between the years 1960 and 1976, the FBI employed approximately 1,300 informers, of whom approximately 300 became or were supporters of the SWP, and paid over $1.6 million to the informers alone. The informers routinely and regularly reported upon the lawful political activities, discussions, and debates of the SWP as well as reported the names, addresses, descriptions and places of employment of supporters and their families. The informers reported, again on a regular basis, a

[4] The facts concerning the government's generalized investigation of the Socialist Workers Party are drawn from this decision unless otherwise noted. In 1976, over the objections of the FBI, the Attorney General ostensibly terminated the generalized domestic security investigation of the SWP, 642 F. Supp. at 1400. In doing so, he specifically left open the possibility of reopening the investigation in the future, instructing that information concerning an asserted link between the SWP and a foreign-based political group "should be carefully watched" and that the emergence of "new facts or circumstances" may "justify investigation" and "a reconsideration would be in order." 642 F. Supp. at 1401. As set forth in Section IV, *infra*, the government continues to investigate and harass U.S. advocacy groups engaged in constitutionally protected activity.

host of personal information including information on marital or cohabitational status, marital strife, health, travel plans and personal habits.

As the Commission recognized, the SWP was the subject of the FBI COINTELPRO Program in the 1960s and 1970s. *1990 AO* at 11,635. The avowed purpose of the program was "designed to disrupt the SWP on a national, as well as local level." *Id.* (quoting *Socialist Workers Party* v. *Attorney General*, 642 F. Supp. at 1348). Under the COINTELPRO Program directed specifically at the SWP,[5] at least 46 specific disruption operations were conducted by the FBI. The disruption included, among other activities,[6] attempts to embarrass SWP candidates, cause the arrest of candidates, foment racial strife within the SWP and between the SWP and other groups, and cause strife between SWP supporters and others in a variety of political movements and coalitions.

The Commission found that the FBI conducted warrantless electronic surveillance of the SWP on an extensive basis. *1990 AO* at 11,635. Electronic eavesdropping resulted in the collection of all manner of information on political matters as well as a host of information on more personal matters.

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[5] The SWP was also targeted for disruption under the auspices of the COINTELPRO Programs directed against the Communist Party and the "New Left." 642 F. Supp. at 1385.

[6] An overview of the disruption activities is set forth in *Socialist Workers Party* v. *Attorney General*, 642 F. Supp. at 1385-89. A more detailed description of many of the disruption activities can be found in Nelson Blackstock, COINTELPRO: THE FBI'S SECRET WAR ON POLITICAL FREEDOM (3rd ed. 1988).

During the same time period, the FBI conducted at least 204 "surreptitious entries," *Id.*, or black bag jobs, *i.e.,* burglaries of the offices of the SWP. These burglaries were, of course, not the only means by which the government obtained documents, for the government also maintained an extensive network of informants who, as the Commission found, "reported on the activities, discussions, and debates of the SWP." *Id.*

As the Commission noted, over a period of many years, the FBI maintained lists of the names, addresses, and employers of SWP members – successively identified as the Custodial Detention List, the Security Index and the Administrative Index – which targeted individuals for detention in the event of a "national emergency." *Id.* at 11,635. The FBI intended to include all SWP members on these lists. *Id.*

Beginning in 1948, the SWP was included on the Attorney General's list of organizations designated pursuant to Executive Order 9835 establishing the Employee Loyalty Program for certain employees of the executive branch of the government.[7] Under the program, any member of a listed organization who applied for a job was subjected to a full field investigation by the

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[7] Executive Order 9835 provided that in determining loyalty to the government, one of the factors to be considered was an individual's membership in an organization designated by the Attorney General:

> as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

Executive Order 9835 was substantially amended by Executive Order 10241 and superseded by Executive Order 10450 so as to include *all* government civilian employees. The Attorney General continued to maintain his list including the SWP throughout these changes.

FBI and was questioned concerning his or her loyalty. The loyalty determination was then used in determining whether to hire the individual.[8] *Socialist Workers Party v. Attorney General,* 642 F. Supp. at 1396-97.

Even after the Attorney General's list was terminated in 1974, the FBI continued to report an individual's membership in the SWP. Post-1974, the FBI described the SWP as follows:

> The SWP is a revolutionary, Trotskyist-communist organization which has as its purpose the overthrow of the U.S. Government and the institution of a dictatorship of the working class and the eventual achievement of a communist society.

642 F. Supp. at 1399.

In 1986, after 13 years of litigation, the court in *Socialist Workers Party v. Attorney General* awarded damages against the United States for this sustained and systematic violation of the SWP's rights. 642 F. Supp. at 1417-25. It found that the FBI had acted "with a malign purpose," with the intent of causing harm, and without any legal authority or justification. *Id.* at 1419-20.

As the Commission has found, there is reason to believe that the federal animus against the SWP continued after 1986, *1990 Opinion* at 11,635, reinforcing the chilling effect on First Amendment rights created by past misconduct. The Commission noted that, even after the

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[8] There have been a number of instances in which the fact of the individual's association with the SWP affected his or her employment, including numerous instances since 1990. *See* 642 F. Supp. at 1389-99.

federal court had issued its 1986 judgment holding the FBI's decades-old campaign against the SWP unconstitutional, *Socialist Workers Party*, 642 F. Supp. 1357, and had further found that, as the Commission summarized the holding, the SWP was engaged in "peaceful, lawful political activity," *1990 AO* at 11,635, the federal government submitted affidavits in 1987 asserting a continuing need to access information about the SWP, its members, and supporters. The Commission found these affidavits to be significant evidence of continued governmental hostility, and that the government continued to view the SWP as a "hostile organization which has consistently posed a threat to free government." *Id.* (internal quotations omitted).

Indeed, the government continued to insist that "it was – *and is* – reasonable for the FBI and other agencies of the Government to believe that the SWP and its members have a revolutionary ideology whose goal is the violent overthrow of our democratic processes and form of government." Ex. B to SWP's November, 1, 1996 Advisory Opinion Request to the FEC ("1996 Request") at 9 (emphasis supplied); this "revolutionary ideology . . . poses a threat to the fundamental interest of self-preservation," *id.* at 10. On this basis, the federal government asserted an interest in and need to know and record the names of members and individuals associated with the SWP. *See Socialist Workers Party v. Attorney General*, 666 F. Supp. 621, 623 (S.D.N.Y. 1987).

This is of considerable moment here. There is no reason to believe that the federal government has altered its understanding of the SWP's "ideology" since it made this assessment. It must therefore be assumed, absent the federal government expressly and credibly disavowing its prior assessment, that the government continues to have an interest in, and believes it has a

need to know and record, the names of members and individuals associated with the SWP. There is no such disavowal as far as the SWP knows.

Various government agencies expressed their intent to use such information, and their fundamental antagonism toward the SWP, in clear terms. For example, the Office of Personal Management argued that such "information [is] important because these organizations in the past were opposed to our form of Government and the national interest." Declaration of Gary B. McDaniel ¶ 6, Ex. C to 1996 Request. The Department of State asserted its need for access to these files because of a need for information about, in its words, "interaction with a group advancing a hostile ideology" for security clearances, and "information about any hostile organization which has consistently posed a threat to free governments. . . ." Declaration of Roger H. Robinson, ¶¶ 4, 6 Ex. D to 1996 Request. The Immigration and Naturalization Service claimed a need to know the identities of SWP supporters in order to enforce laws making an individual who advocates world communism or the establishment of totalitarian dictatorship deportable from this country, excludable from this country or ineligible for naturalization. Declaration of Edwin W. Dornell, ¶¶ 5, 6, Ex. E to 1996 Request.

These immigration laws remain in effect – persons are ineligible for naturalization and excludable from admission into this country, if they have been members of or affiliated with the Communist or any other totalitarian party or if they advocate the economic, international, and governmental doctrines of world communism. *See* 8 U.S.C. §§ 1182(a)(3)(D)(i) (inadmissibility provision); 8 U.S.C. 1424(a)(2) – (6) (prohibiting naturalization).

Indeed, as shown below, the SWP has provided evidence that at least one immigration attorney has advised his client not to associate with the SWP for fear that this would jeopardize her pending application of immigration status. *See* Ex. 26. It only stands to reason that this immigration attorney would provide similar advice to other immigrants wanting to associate with the SWP and that there are other attorneys and immigrants who share these same fears.

There are numerous statutes, in addition to these immigration provisions, which place supporters of the SWP in danger of legal sanctions or harassment if their associations were made public. In addition to the Smith Act, 18 U.S.C. § 2385, there is a host of other legislation which potentially exposes individuals to civil and criminal sanctions. *See* discussion in *FEC v. Hall-Tyner Election Campaign Committee*, 678 F.2d at 422 and statutes surveyed in Appendix to Brief of Defendants-Appellee filed in that case.

In the 1986 litigation, the court ruled against the government's demand for access to the names of SWP members and associated individuals. *Socialist Workers Party v. Attorney General*, 666 F. Supp. at 623. Nonetheless, the government's assertions of need for information and its pronouncements of its intended use reinforce the lesson reasonable persons draw from the historical record of federal misconduct and animus: that disclosure of their relations with or support of the SWP or its candidates might provide, now or sometime in the future, a basis for federal investigation or other prejudicial actions.

The Commission has continuously granted this exemption since 1990 because, *in addition to* the significant evidence of threats, harassment and reprisals that the SWP has experienced since 1990, the Commission has recognized, as it must, that "the governmental

hostility and public and private harassment against the SWP was pervasive and threatened the group's existence for decades. It thus continues to provide support for the SWP's current request for a prospective partial reporting exemption. It is against this historical backdrop that the present evidence presented by the requesters *must be* considered. *Buckley*, 424 U.S. at 74." *AO* 2012 at 9 (emphasis added).

B. Evidence of Threats, Harassment and Reprisals from Both the Government and Private Individuals and Entities from 1990 to 2012

In addition, in prior Opinions, the Commission has recognized that threats, harassment and reprisals, both government and private, *continued* from 1990 through the end of 2012 and beyond.

Since 1990, the SWP and its supporters have suffered a long and continuous list of serious threats, violence and harassment, including, but not limited to, having "incendiary material … thrown … into a local SWP headquarters … setting the front part of the building on fire and causing considerable damage" (2009-01, at 7); bullets fired through windows of SWP's headquarters (1996-46, at 5; 1990-13, at 6); a continuous string of broken windows (2009-01, at 7; 1996-46, at 5; 1990-13, at 6); a swastika and a "White Power" slogan spray-painted on the building that housed the SWP office in Alabama (1996-46, at 5); animal parts and products, such as pigs feet, chicken livers and eggs, strewn over and shoved in the SWP's campaign headquarters in Iowa (2002 AO Request, at 33); physical assaults at informational tables (2012-38, at 33; 2009-01, at 7; 1996-46, at 5; 1990-13, at 6); threats of harm made in person, by phone and by letter (2012-38, at 42-43 – e.g., a threatening voicemail at SWP headquarters - "The

president of the campaign must leave town now or he will be shot on sight"; 2009-01, at 7-8 – *e.g.*, an individual said he wanted to "put a bullet in every one of your heads"; 1996-46, at 5; 2003-02, at 7; 1990-13, at 6); and sanctions at work or termination of employment (2012-38, at 34; 2009-01, at 8; 2003-02, at 7; 1996-46, at 5).

Government surveillance and harassment of the SWP also has continued. For example, on May 16, 2007, two FBI agents arrived unannounced at the home of David Arguello, the 2006 Socialist Workers Party candidate for U.S. Congress, in San Diego, California, on the pretense that they had information from an anonymous source that Mr. Arguello advocated violence against the U.S. Government. *See* SWP Submission to the FEC, dated October 30, 2008, at Ex. 19. The agents interrogated Mr. Arguello about his political views and activities and his interest in unionizing his workplace. *Id.*

While crossing the U.S.-Canada border in 2012, Maura DeLuca, the 2012 SWP candidate for Vice-President of the U.S., was stopped and extensively questioned for over two hours by Canadian immigration authorities about her participation in a campaign meeting of the Communist League, a Canadian organization, and her prior trip to Cuba and her reason for traveling to Canada. The officer also questioned DeLuca concerning some political information that would not be readily available on-line. The Canadian immigration authorities also had "a sizable dossier" concerning DeLuca and her prior activities – such as that she is on the National Committee of the SWP and she had traveled to Cuba for *The Militant* newspaper. The only possible explanation for this is that the U.S. federal government has been gathering information

and monitoring the SWP and its members and sharing this information with Canada, and possibly other countries. SWP Submission to the FEC, dated November 7, 2012, at 36.

In 2000, the FBI refused to provide security clearance to an SWP supporter and presidential elector so he could become a federal census worker, even though he had scored a 97 on the exam and was labeled a "priority hire." *See* 2000 AO Request, at 37-38. In 1998, two federal officers from the Federal Protective Service were seen taking close-up pictures of SWP supporters at a picket line protesting the U.S. policy in Iraq. *See id.*, at 42.

Moreover, over this 22 year period (1990 – 2012), the SWP has also been subjected to scores upon scores of incidents of harassment by police officers, who frequently demonstrate their explicit, deep-seated and politically-based bias toward the SWP (2012-38, at 44-50; 2009-01, at 8-9; 2003-02, at 7; 1996-46, at 5).

These examples must reasonably be considered just the tip of the iceberg. As was revealed through long and hard-fought litigation as well as congressional investigations, most of the government's surveillance and harassment is conducted covertly and is nearly impossible to detect. *See Socialist Workers Party* v. *Attorney General*, 642 F. Supp. 1357, 1404-07 (S.D.N.Y. 1986) (FBI's SWP Disruption Program was "a covert program … intended not to be traceable to the FBI." It only came to light after hard-fought litigation. "[T]he FBI consumed a substantial amount of time … trying to conceal from [the SWP] the actual facts about the SWP Disruption Program."). As just one known example discovered through the SWP's litigation, the more than 200 covert burglaries of the SWP offices and its members' homes that occurred in the 1940s-1960s were "intended … [to] be carried out with complete secrecy." *Id.* at 1393-95, 1407. The

Government, at the FBI's recommendation, at first falsely deny involvement in these burglaries during the course of the legal proceeding. *Id.* at 1408.

IV. Recent Well-Publicized Exposure of Increased Federal, State and Local Government Surveillance and Relaxed Government Surveillance Guidelines and Practices Powerfully Reinforce the Chilling Effect of the Government's Long History of Systematic Harassment of the SWP and Make the Recent Instances of Violence and Intimidation Even More Weighty

Recent well-publicized revelations of mass government surveillance and examples of specific incidents of government surveillance of U.S. advocacy groups, such as the protesters against police killings and brutality, labor strikes and fights against company lock-outs, protests for a $15 minimum wage and a union, and attacks on Muslims and mosques, all four of which the SWP closely supports and advocates, together with changes in government surveillance guidelines and practices, powerfully reinforce the chilling effect of the government's long history of systematic harassment of the SWP and make the recent instances of violence and intimidation against the SWP and its supporters even more weighty.

Indeed, as the American Civil Liberties Union summarized after a detailed review of just some of the FBI practices it has recently been able to reveal after hard-fought FOIA litigations throughout the U.S.:

> FBI is repeating mistakes of the past and is again unfairly targeting immigrants, racial and religious minorities and political dissidents for surveillance, infiltration, investigation, and 'disruption strategies.'
>
> ...
>
> It has harassed non-violent political activists with surveillance, unwarranted investigations, and even aggressive nationwide raids that resulted in no criminal charges.
>
> ...

> It has frustrated congressional, judicial, and public oversight through excessive secrecy, official misrepresentations of its activities, and suppression of government whistleblowers and the press.
>
> ...
>
> In a document [recently obtained by the ACLU] *that reads as if it were written during the Hoover era*, an FBI agent describes the peace group Catholic Worker as having "semi-communistic ideology." ... The FBI reports exposed the agents' disdain for the activists they investigated, with one suggesting that nonviolent direct action was an "oxymoron" and another stating that attendees at an activist camp "dressed like hippies" and "smelled of bad odor."
>
> ...
>
> [T]he FBI's Baseline Collection Plan authorizes agents to implement a so-called "disruption strategy," which permits FBI agents to continue using investigative techniques "including arrests, interviews, or source-directed operations to effectively disrupt [a] subject's activities." *This resurrection of reviled Hoover-era terminology is troubling, particularly because FBI counterterrorism training manuals recently obtained by the ACLU indicate the FBI is once again improperly characterizing First Amendment-protected activities as indicators of dangerousness.*

Ex. F, at i, 11, 13 (emphasis added; citations omitted).

A. Recent Well-Publicized Increase in Federal, State and Local Government Surveillance, as well as Surveillance by Private Actors

The U.S. government has itself recognized that the FBI has improperly investigated several U.S. advocacy groups since September 11, 2001. In a widely-reported September 2010 report concerning the FBI's domestic surveillance ("OIG Report"), the Inspector General of the Department of Justice cited several cases in which agents put activists on terrorist watch lists even though they were planning constitutionally protected nonviolent civil disobedience and discloses investigations by the FBI of groups such as People for the Ethical Treatment of Animals (PETA), Greenpeace, the Catholic Worker Movement, and the Thomas Merton Center. *See* U.S. Department of Justice, A REVIEW OF THE FBI'S INVESTIGATIONS OF CERTAIN DOMESTIC

ADVOCACY GROUPS, 23, 187, *available at* https://oig.justice.gov/special/s1009r.pdf (Sept. 2010) (noting FBI's investigations of such activist groups for "factually weak" reasons or "without adequate basis" and that the FBI "improperly collected and retained First Amendment information" about activist groups in its files); Ex. CC (media reports); *see also* U.S. Senate, Committee on Homeland Security and Governmental Affairs (Permanent Subcommittee on Investigations,), FEDERAL SUPPORT FOR AND INVOLVEMENT IN STATE AND LOCAL FUSION CENTERS – MAJORITY AND MINORITY STAFF REPORT (OCT. 2012), *available at* https://www.hsgac.senate.gov/download/?id=49139e81-1dd7-4788-a3bb-d6e7d97dde04 (finding that state and local law enforcement intelligence "fusion centers" "created or expanded" – post 9/11 – "in part to strengthen U.S. intelligence capabilities, particularly to detect, disrupt, and respond to domestic terrorist activities" produced little information of value and frequently overstepped laws designed to protect American's civil liberties and privacy). In the case of the Thomas Merton Center, the OIG Report stated that documents "gave the impression that the FBI's Pittsburgh Field Division was focused on the Merton Center as a result of its anti-war views." OIG Report, at 186. The SWP also advocates and joins activities against U.S. military activities, calling for the immediate withdrawal of all U.S. troops from Afghanistan, the Middle East and elsewhere.

The New York Police Department's Inspector General has also recently found that N.Y. police investigators have consistently failed to obtain proper authorization for surveillance, violating long-standing court-ordered guidelines, and that 95% of the reviewed cases targeted Muslims. Ex. K. This is in addition to prior widespread reporting that the N.Y. police

department had unconstitutionally infiltrated Muslim student groups, mosques, religious bookstores, hookah bars and other predominantly Muslim areas to spy on people, resulting in the dismantling of the N.Y.P.D.'s demographics unit in 2014. Ex. L. The SWP actively works and supports the Muslim community in the U.S., including through protests of government surveillance of Muslims and mosques and attacks on the same. Ex. M.

Since 2012, independent civil liberties groups, such as the ACLU and the Partnership for Civil Justice Fund, as well as the media, have revealed and reported on several other advocacy groups and organizations and individuals engaged in constitutionally protected political activity that the FBI or other federal, state or local government agents have put under surveillance. These include instances of FBI surveillance of the Muslim community, the Occupy movement, the Black Lives Matter movement, the Freedom Road Socialist Organization and the Antiwar Committee, *all of which engage in activism concerning issues that are also the subject of SWP activity*, including racial equality, economic justice, labor rights, the political rights of Muslims, and criticism of current U.S. military policy. Exs. M & N (articles from *The Militant*); *see also Socialist Workers Party v. Attorney General*, 642 F. Supp. 1357, 1369 (S.D.N.Y. 1986) (detailing SWP program of bringing power to the working class majority and away from the "capitalist class [that] only refers to 1% or 2% of the population); Ex. O (articles on government surveillance of Muslims).

For many years, the SWP has associated, supported and advocated for the rights of the Muslim community in the United States, the very same community that the FBI and other federal, state and local officials have been extensively surveilling for a number of years. *See* Ex.

M (*The Militant* articles), O (*N.Y. Times* and *L.A. Times* articles), Ex. P. For example, the Socialist Workers Party has spoken out in public events organized in response to attacks on several Florida mosques and has supported Muslim Somali meatpackers after they were fired in a dispute over their right to pray. Ex. M. It has denounced U.S. government efforts – by both Democrats and Republicans – to surveil Muslim communities. *Id.* At the same time, it has recently been widely reported that various government agencies have been engaging in widespread monitoring of the Muslim community. For example, in New York, the police have: engaged in photo and video surveillance of mosques; recorded license plate numbers of individuals entering and leaving mosques; used police informants to infiltrate Muslim communities; tracked individual Muslims; and used intelligence databases to maintain files on thousands of Muslims. Ex. P. The FBI has engaged in similar monitoring efforts as well. Ex. O (detailing FBI informant in Los Angeles paid to infiltrate mosques and "gather as many cellphone numbers and email addresses as possible," write down the license plate numbers of the cars in the parking lot" of mosques, "secretly record" Muslims" working out at a gym, and secretly videotape Muslims) .

As the ACLU, the *New York Times* and other groups have been able to reveal through litigation and FOIA petitions, the federal, state and local police authorities have also been surveilling and disrupting Occupy groups all throughout the United States, including in New York, Washington, Boston, Kansas City, Buffalo, Denver, Houston, Las Vegas, Phoenix, Milwaukee and Tennessee. *See* Ex. Q. The SWP has had its candidates and members go to

Occupy rallies to meet protesters and discuss politics, looking for workers and youth who were interested in the SWP's political views. *See* Ex. R.

As just an example of the kind of information that the government obtained about the Occupy movement, "[a]n analyst working with a fusion center in Tennessee, seeking to create a nationwide overview of the Occupy movement, distributed [a] sample worksheets to an official with the Washington Regional Threat and Analysis Center … ask[ing] whether groups involved in the Occupy movement were also concerned with issues like the environment, animals, abortion or war." *See* Q. The SWP has strong anti-war, pro-Choice and environmental protection policies. Ex. S.

In one instance, an analyst from the Boston Regional Intelligence Center ("BRIC") who was monitoring Occupy activities commented on Occupy's "[o]ngoing communications" with and participation by "known anarchist / socialist groups" without identifying to which socialist groups the analyst was referring. *See* Ex. T (documents declassified after litigation from the ACLU and National Lawyers Guild; complete set of documents available at https://www.dhs.gov/sites/default/files/publications/nppd-occupy-wall-street-redacted_Part4_0_0.pdf). In another comment, a BRIC analysist notes that an "[a]n offshoot of Occupy Boston calling themselves Occupy JP … [is] promoted by the socialist organized Socialist Alternative." *Id.*

The government authorities have engaged in similar monitoring efforts of organizations protesting police killings and beatings, including the Black Lives Matter movement, which the SWP has supported and associated with since its inception. Exs. U & N

Private surveillance of protected First Amendment activities has also increased. For example, as was recently reported by *Bloomberg Businessweek* and other media, Walmart has actively surveilled its workers who have been engaged in labor organizing at its stores and has disciplined and fired scores of others for their participation in organizing and protest activities. Ex. V. As reported by *Bloomberg Businessweek*, Walmart has "hired an intelligence-gathering service from Lockheed Martin, contacted the FBI, staffed up its labor hotline, ranked stores by labor activity, and kept eyes on employees (and activists) prominent in the group." *Id.* An Administrative Law Judge has recently found that Walmart violated labor law by "disciplining or discharging several associates because they were absent from work while on strike." *Id.* Over the last several years, dozens of SWP candidates, members and supporters of its campaigns have worked at Walmart and been active in these activities, including the SWP's presidential and vice-presidential candidates.

These documents, reports and articles detail: police activity on both a local and national level reflecting stepped-up spying, use of undercover informers, and other measures aimed at organizations and individuals engaged in constitutionally protected political activity, including use of the FBI's terrorist watch list to track political activists. The articles also demonstrate that this kind of spying and harassment is becoming increasingly well known to the public at large in this country. Ex. W. However, these instances must only scratch the surface of the government's current surveillance and harassment programs of political activists, such as the SWP, as the FBI and other state officials have conducted thousands of domestic surveillance operations. Ex. X (four-month survey conducted by the Justice Department from December

2008 to March 2009 revealed that the FBI initiated 11,667 "assessments" of people and groups, the vast majority of which lacked sufficient basis to lead to more intensive investigations). The federal, state and local authorities have also refused to release a complete version of all of the details and documents concerning their monitoring of these movements and communities.

B. Relaxed Government Surveillance Guidelines and Practices

In addition, as has been widely reported, since 9/11, the U.S. government has:

> vastly expanded the FBI's power by amending the Attorney General's Guidelines governing FBI investigative authorities four times over 8 years. Each change lowered the evidentiary threshold necessary for the FBI to initiate investigations, increasing the risk that FBI agents would improperly target people for scrutiny based on their First Amendment activities, as they had in the past.

Ex. F (ACLU, UNLEASHED AND UNACCOUNTABLE), at 9. The updated manual allows agents to search for information about a person in a commercial or law enforcement database without making a record about their decision. Under the previous rules, agents were required to open a formal inquiry in order to search databases. The new rules also ease restrictions on searching people's trash, remove certain limitations on the use of surveillance squads to surreptitiously follow targets, and reflect a relaxed interpretation of what constitutes "undisclosed participation" in an organization by an FBI agent or informant, which is subject to special rules. The new manual allows an agent or an informant to surreptitiously attend up to five meetings of a group before the special rules for "undisclosed participation" would apply. Ex. Z.

The authorities' use of this "vastly expanded" authority is not speculative. As the New York Times and others have reported, between March 2009 and March 2011, the FBI opened 82,325 "assessments" on individuals and groups, only 3,315 of which results in preliminary or

full investigations, indicating that the FBI is investigating "tens of thousands of entirely innocent people under its assessment authority." Ex. F, at 13.

Yet, as the ACLU reports, "the FBI often violates and/or ignores" even these relaxed "internal rules, along with other legal and constitutional limitations." ACLU, at 4; *see also* ACLU, at 30 (citing Inspector General audit of the Attorney General's Guidelines and finding one rule's violation in 87% of the FBI informant files, a significant deficiency that threatened people's rights); ACLU, at 29 (Inspector General found three times more legal violation by the FBI than the FBI had self-identified).

The N.Y. Police Department has also relaxed its surveillance guidelines, established after the decision in the *Handschu* case, a case in which the SWP was a party, and has been found by its own Inspector General to have engaged in widespread violence of even these relaxed standards. *See supra*, Ex. K; Ex. L. It only stands to reason that there are other relaxations – and violations – of other state and local police guidelines.

Furthermore, as the Snowden revelations made clear to all in the U.S., the U.S. government has engaged, over the last 15 years, in widespread surveillance of telephone, email and internet communications and this has greatly increased concern in the U.S. on individuals' privacy. Ex. AA (*Washington Post*, "New study: Snowden's disclosures about NSA spying had a scary effect on free speech," Apr. 27, 2014: "The sudden, new knowledge about the surveillance programs ha[s] increased [individuals'] concerns about their privacy.") Even though it may be too soon to know the full extent of these programs or judge their legality, the Commission cannot ignore this fact in engaging in the required Constitutional analysis for FECA

exemption here, since widespread knowledge of this surveillance is more than sufficient to provide a reasonable basis for potential supporters to fear that their association with a group like the SWP will subject them to threats, harassment and reprisal, particularly in light of the SWP's long history.

In sum, because the federal, state and local government's monitoring and infiltration of groups and movements with which the SWP is closely aligned, together with their expanded surveillance authority and revelations of still further instances of unauthorized surveillance, have become well-known, any person interested in the SWP could have a reasonable fear that association with the SWP may well subject them to government surveillance and harassment. This makes the need for continued exemption particularly compelling.

V. Continuing Harassment: 2013-2016

A. Summary

As the Supreme Court has made clear and as the Commission itself has recognized, applicants do not need to show evidence of *present* threats, harassment or reprisals in order to obtain exemption from FECA requirements. *See Buckley*, 424 U.S. at 74; *2012 AO*, at 7-8. "Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. … The proof may include, for example, specific evidence of ***past or present*** harassment of members due to their associational ties, or of harassment directed against the organization itself. A pattern of threats or specific manifestations of public hostility may be sufficient." *Id.* (emphasis added). As the SWP has demonstrated above, there is well-established evidence that the SWP has been subject to threats, harassment and reprisals from

both government and private actors for more than 70 years – from at least 1941 to 2012. This alone is more than sufficient evidence to establish a reasonable probability that the compelled disclosure of the Socialist Workers Party's contributors and recipients will subject them to threats, harassment or reprisals by private persons and organizations and by government officials, especially when combined with the well-publicized evidence of government surveillance of advocacy groups and communities with which the SWP associates and supports. *See* Section IV, above.

Nonetheless, in addition to this showing, the SWP provides still further examples of threats, harassment and reprisals that it has experienced in the period from 2013 to 2016. These include threats of violence on SWP campaign supporters both in person and by telephone and harassment of SWP supporters and campaign efforts by local law enforcement as well as private individuals. In addition, there was evidence of the federal government's continued information gathering concerning the SWP and its candidates.

As with the prior request, this description of incidents is not meant to be exhaustive, as acts of intimidation and harassment against the SWP and its supporters are frequent enough that they often go unreported to any central body.

For the present period, as with our prior submission, each incident is documented by the sworn declaration of a person with personal knowledge of the matter.

This submission meets even a high evidentiary standard. However, it is worth repeating Judge Alito's explanation, citing prior Supreme Court precedent, that this exemption *does not* need to clear a high evidentiary hurdle. *Reed*, 130 S. Ct. at 2823 (internal citations omitted). As

Justice Alito stated, the evidentiary burden for exemption is "low." *Id.*, 130 S. Ct. at 2823 (J. Alito concur).

It is also important to note that the potential exposure of SWP supporters to threats, harassment and reprisals based on political contribution information provided to the Commission is greater today – and, therefore, potential supporters' fear of public association with the SWP is more reasonable today – than it has ever been in the past. It is easier than ever today to find out a neighbor's or employee's, or potential employee's, political affiliation or contributions merely by searching for their name on Google or one of several websites, such as http://www.opensecrets.org/indivs/ or www.campaignmoney.com that access FEC public databases with political contribution information. As stated on the Campaignmoney.com website, "you can check on people you know to see if and how they help finance these campaigns. What you learn may surprise you!" Ex. Y.

As the Supreme Court has held, "[w]ith modern technology, disclosure now offers a particularly effective means of arming the voting public with information. … In 1976 [when the Supreme Court issued its decision in *Buckley*] information about campaign contributions was filed at FEC offices and was therefore virtually inaccessible to the average member of the public." *McCutcheon v. FEC*, 134 S.Ct. 1434, 1460 (2014). By contrast, today, "[r]eports and databases are available on the FEC's Web site almost immediately after they are filed, supplemented by private entities such as OpenSecrets.org and FollowTheMoney.org." *Id.*

As shown in detail below:

- Harassment of the SWP supporters continues to take place wherever the SWP campaigns. Indeed, the SWP provides evidence of threats, harassment and reprisal in more than half of the states where the SWP has its presidential candidate on the ballot (Colorado, Louisiana, Minnesota, New Jersey, Tennessee, Utah, and Washington).

- The harassment has included:

    - A politically-motivated burglary of the SWP's candidate for Omaha City Council, after threats of physical violence against him and his campaign supporters earlier in the year – Ex. 1;
    - An attack of the SWP campaign headquarters in Los Angeles after a public Militant Labor Forum opposing Washington's war in Iraq and Syria – Ex. 2;
    - Widespread improper refusal by prison officials to allow prisoners access to *The Militant* – Ex. 5-12;
    - Documented threats of physical violence against SWP campaign supporters – Exs. 1-4, 16, 18-20, 24;
    - Singling out of the SWP Vice-President candidate for multiple extensive screenings by airport government agents – Ex. 13.
    - Harassment by local law enforcement officials – Exs. 14-15.

- Not surprisingly, there continues to be persistent widespread fear, frequently articulated, of associating, or even appearing to be interested in the SWP that leads people to refrain from supporting the SWP in any way. Exs. 26-31;

- There is also evidence that contributions to the SWP will diminish if exemption is not granted – Ex. 32-33.

These examples echo numerous other encounters throughout the country in which people interested in the campaign or *The Militant*, a newspaper that editorially supports SWP candidates, declined either to sign a nominating petition or to purchase a subscription to *The Militant* expressly for fear of being placed on an FBI or other government list and being harassed. *See* Exs. 26-31.

The SWP's 2016 presidential campaign has shifted its campaign strategy away from public tables and has focused on "going door-to-door in working-class neighborhoods, engaging

workers in more extensive discussions about the character of the crisis our class faces today and the need to build the SWP and join the effort to break from bourgeois politics and take political power." Ex. BB. Because of this new, targeted approach, many more incidents of threats and harassment of SWP campaigners involved canvassers knocking on doorsteps in working-class neighborhoods and fewer at public campaign tables. Where the SWP did set up tables since the last application, it continued to encounter harassment and violence. *See* Ex. 3.

B. Specific Incidents

We summarize below post-2012 incidents of harassment, threats, and reprisals. The supporting declarations and the evidence are bound in a separate volume with the corresponding exhibit numbers.

DEATH THREATS, ATTACKS AND THREATS PHYSICAL VIOLENCE

1. In July 2013, an outspoken and well-known Socialist Workers Party member and candidate for Omaha City Council in the 4th District had his home broken into, after his campaign, his participation as a public SWP spokesperson in and promotion of protests against the beating of two black members in this community by Omaha police and his recent hosting, just two days earlier, of a publicized social event to discuss his participation as an SWP representative in an upcoming conference in Venezuela in solidarity with the Cuban revolution. It was not an ordinary robbery, but had the hallmark of an attempt at political intimidation and harassment because the burglar did not steal items such as a laptop, an e-reader and a tablet computer that were all out in plain sight but did leave clear evidence in infiltration. The burglar went through the whole house,

looking through drawers, files, and leaving things strewn about. The only thing taken was a smart phone that contained his political contact list and records of people the SWP candidate had called and emailed during his activism and candidacy. Earlier in the year, while the SWP candidate and other SWP supporters were collecting signatures to put him on the ballot, they encountered threats of violence, with one campaign supporter being accosted in February 2013 by a man who told him, "You deserve to die, you commie bastard" and asking a friend to, "Come down right away. We need to beat the shit out of him." A police report was filed on the burglary but the police did not apprehend the culprit or provide further updates.

2. On October 4, 2014, the SWP campaign headquarters in Los Angeles was attacked. After a public Militant Labor Forum opposing Washington's war in Iraq and Syria that attracted 29 people concluded, and 15 people were still in the meeting room discussing the issues informally, the plate glass window at the front of the office shattered. This event was publicly advertised, including on a notice posted in the window. Everyone at the meeting was taken aback by the attack. The plate glass window was largely shattered into small pieces and one section had a hole about one inch in diameter. The SWP filed a police report and was interviewed by police officers, but still has not heard back from the police. There has been a history over decades of violent attacks against the Socialist Workers Party offices in Los Angeles, including firebombings, physical assaults and vandalism. For example, in 2005, a U.S. postal inspector reported that "hate mail" had

been sent to the SWP L.A. office and, shortly after, the campaign headquarters had the front window attacked, sending shattered glass flying 30 feet inside.

3. In October 2016, the Socialist Workers Party candidate for president of the United States as well as three other SWP campaigners staffed a table in Washington, D.C. during a political rally. At the end of the day, a man came to the SWP table and pushed one of the campaigners as he verbally insulted another, saying that socialists were child molesters, and that he would protect people from the socialist dictators. Previously, the same man had approached the table four separate times, becoming more aggressive and provocative, and calling one of the campaigners a "boy" and a "fag." He came very close to each one of the campaigners physically, leering at them. The campaigners asked him to cease his disrespectful abusive behavior, and leave. When the campaigners were packing up their materials, the same man became more agitated and kicked the car door on the rear driver's side. He gestured as if he would throw a punch through the window. He ran after the SWP campaigners, screaming and yelling for three blocks through traffic until they were able to drive away.
4. On October 15, 2016, someone called the Socialist Workers Party headquarters in New York City at about 11 p.m. after a well-attended forum where Socialist Workers Party candidates spoke. The caller stated that the most important thing in the U.S. Constitution is the right to life and said that he was "willing to die for the right to life," which was perceived as a threat.

GOVERNMENT RESTRICTIONS ON ACCESS TO *THE MILITANT* IN PRISONS

Several prisons in the last four (4) years have improperly refused to permit inmates to receive issues of *The Militant*, the newspaper that editorially supports the Socialist Workers Party. These prisons are located throughout the United States – New York, Washington, Colorado and Florida. These actions by the prison officials were contrary to law and regulation and, in addition, violated *The Militant*'s and the prisoners' First Amendment rights. In each instance, attorneys for *The Militant* were able to obtain reversal of the prison ban on administrative appeal.

The government officials' animus against the SWP is demonstrated not only by their repeated violation of the law and the prisons' own regulations but also by the fact that the banned issues merely contained articles reporting on events that had been covered widely by media across the country, including *Time* magazine, *Ebony* magazine, and daily papers from *The New York Times* to the *Miami Herald,* none of which had any difficulties with prison authorities.

5. In February 2014, the Warden at the U.S. Penitentiary in Florence, Colorado prohibited a prisoner from receiving a copy of the December 2013 issue of *The Militant* because it was "inappropriate for the orderly running of the institution due to it containing articles pertaining to Revolutionary Community Party in the USA and the need to overthrow the system" without identifying any articles that pertain to, or otherwise reference or even mention, the Revolutionary Communist Party in the USA, or any other Revolutionary Communist Party, and/or "the need to overthrow the system." *The Militant* has no connection, affiliation or association with the Revolutionary Communist Party in the

USA, either today or in the past. As described prominently on its masthead, *The Militant* is "a socialist newsweekly published in the interests of working people." The rejection of this issue of *The Militant* violated the constitutional rights of *The Militant* and the inmate, and was clearly directed at limiting the prisoner's exposure to articles sympathetic to SWP ideology. After an appeal by *The Militant*'s attorneys, the Warden recognized that he "may not reject a publication solely because its content is religious, philosophical, political, social or sexual, or because its content is unpopular or repugnant" and, upon reconsideration, permitted the issue to be received in prison.

6. In June 2016, officials at Northwest Florida Reception Center impounded the May 30, 2016 edition of *The Militant* because "Page 4 – [it] encourages activities which may lead to the use of physical violence or group disruption (inmate strike)." The same issue of *The Militant* was impounded from an inmate at Santa Rosa Correctional Institute because "Page 4 – [it] encourages activities which may lead to the use of physical violence or group disruption (inmate strike)." Although not specified, presumably, the article at issue was "Prisoners strike to protest abuse, little or no pay." The article apparently at issue reports that inmates at several Alabama prisons engaged in a work stoppage to protest unpaid or poorly paid labor and other complaints about conditions of confinement and claimed abuse, the response of Alabama prison authorities to the work stoppage, and various facts concerning the Alabama prison system. The article does not advocate any action by prisoners in Alabama or elsewhere, and does not encourage any inmates anywhere to do anything, including engaging in "inmate strikes," "physical violence," or

"group disruption." Rather, the article simply reports a current events story, written for a general audience that is concerned about prison conditions and abuses. No penological reason, let alone a legally sufficiently one, justifies excluding prison inmates from this widely-covered current event topic of public importance. The impoundment violated the First Amendment rights of *The Militant*, and its subscribers. After an appeal by *The Militant*'s attorneys, the Literature Review Committee of the Florida Department of Corrections reversed its decision and allowed the issue to enter the prison.

7. In June 2016, another issue of *The Militant* (from June 13, 2016) was impounded at Santa Rosa because "PG7 AND PG 13 – HANG/GANG SIGNS." There were no gang signs (or "hang/gang signs") on page 7 or any other page of the issue. Page 7 consists of two articles on the run-up to the UK's "Brexit" vote and a box article with a photo, titled, "Thousands in Puerto Rico say 'Free Oscar López,'" which shows marchers in Puerto Rico protesting the continued incarceration of Sr. López. This is the only article in the issue that concerns prisoners or prisons. There is no reference to gangs and no images of "gang signs" or "hang/gang signs." There is no possible basis to find that this article presents a "threat to the security, good order, or discipline of the correctional system or the safety of any person." Rather, it appears that Santa Rosa banned this issue simply because it disagreed with the sympathetic viewpoint toward Sr. López and Puerto Rican independence expressed in the article. After an appeal by *The Militant*'s attorneys, the issue was ultimately released.

8. In September 2013, officials at Santa Rosa impounded an issue of *The Militant* (July 22,

2013) because they alleged that an article covering a hunger strike against solitary confinement and other abuses in the California penal system "present[ed] a threat to the security, order or rehabilitative objectives of the correctional system or the safety of any person"; "encourage[d] hunger strikes." After an initial denial of an appeal to the Literature Review Committee, the Committee held a rehearing, overturned its denial, and authorized delivery of that issue to inmate subscribers.

9. In September 2013, an inmate in the Washington State Penitentiary and subscriber of *The Militant*, requested that *The Militant* resend certain issues containing articles related to the California prison hunger strike because officers confiscated the original issues before he was done reviewing them. The prisoner received a mail rejection notice from the prison stating that Department of Corrections had rejected some of his mail because it was "unauthorized," "deemed a threat to legitimate penological objectives," and a "[t]hreat to the safty [sic] and security of the institution." The hunger strike was a current event of public importance that was covered by most national and local television networks, cable news providers, and major news magazines and newspapers; all of which the prisoner had access to while in prison. The only conceivable difference between coverage of the protest that was allowed into the facility and *The Militant*'s articles would be *The Militant*'s socialist editorial policy. The issue was ultimately released.
10. In January 2014, prison authorities at Blackwater River Correctional Facility in Milton, Florida withheld *The Militant* from subscribers on basis "the entire publication is viewed as a threat to security." The Department of Corrections' Literature Review Committee

originally denied an appeal by *The Militant*; however, after being contacted by the Florida ACLU, authorities said it was a "clerical error" and delivered the issue to the subscriber. In the course of this, it came up that four subscribers at the institution had been denied from three to five recent issues and were told that all issues of *The Militant* would be banned in the future. After protest by the ACLU, the correctional institution reversed the ban, blaming it on "miscommunication."

11. In March 2015, prison authorities at Taylor Correctional Institution in Florida withheld the January 2015 issue of *The Militant* from a subscriber because of an article titled "'Militant' beats back censorship at Fla. Prison." When *The Militant*'s legal counsel told authorities it would challenge the ban, the officials said they had reversed their decision.
12. In October 2016, prison authorities at Attica Correctional Facility in New York impounded the October 3 issue of *The Militant* because of an article titled "Fight continues 45 years after Attica rebels said, 'We are men, not beasts.'" Dozens of daily newspapers and magazines had run news stories on this anniversary, including the *Washington Post*, *Time*, *Ebony* and the *Wall Street Journal*. *The Militant* and its attorneys are in the process of appealing the confiscation.

GOVERNMENT SURVEILLANCE AND HARASSMENT

SWP candidates and supporters continue to be subjected to other forms of harassment and surveillance by government officials.

13. The Socialist Workers Party's candidate for Vice President was singled out and subjected to multiple extensive searches before boarding an American Airlines flight traveling back

from a campaign and fact-finding trip to New Zealand and Australia. Despite the fact that the Vice-Presidential candidate had already cleared security in New Zealand and had not left the secured boarding area, he was placed in a small room and subjected to an extensive check of his carry-on luggage and person. When he arrived in Los Angeles for a connection to New York, he was again singled out and subject to an extensive search by two agents, including a supervisor, after the TSA saw his ticket and passport. His luggage was extensively searched and all the contents were emptied and examined. He was also patted down twice, separately, by the two agents. The agents refused to state the reason for this treatment.

14. While campaigning in Kearney, New Jersey in October 2016 to introduce people to the Socialist Workers Party's candidates for U.S. president and Vice President, someone called the police. Two police then arrived, who initially told them that "in Kearney you need a permit" to campaign. After calling their supervisor at the request of the SWP campaigners, the police backed off, but the police continued to monitor their activity.

15. While the Socialist Workers Party candidate for governor of Washington was campaigning door-to-door in Spokane, Washington in June 2016 both for herself and for the Socialist Workers Party candidate for president, the police were twice summoned, disrupting the campaign efforts for a substantial portion of the day.

PRIVATE HARASSMENT

16. In September 2016, as soon as an SWP campaigner introduced himself as a member of the Socialist Workers Party to a resident in Manassas, Virginia, the resident replied, "You

can't be serious … You Socialists are the problem. You were the problem in Russia. Now you are the problem in the United States." He then got agitated and said, "Get the hell out of my face before I snap," and slammed the door in the campaigner's face.

17. In July 2016, while campaigning door-to-door for the Socialist Workers Party and its presidential ticket in Provo, Utah, a resident yelled out, "Get your communist self away from my door and don't you dare ever come back here" as soon as the resident found out that the campaigner was a member of the Socialist Workers Party. As the campaigner walked away, the resident demanded that he "move to another country."
18. In August 2016, as soon as a resident in Salt Lake City, Utah heard that the campaigner was from the Socialist Workers Party, he said, "Out! Get out now! You have 20 seconds to get out and then I'm releasing my dogs on you."
19. In July 2016, while campaigning for the Socialist Workers Party presidential candidate in Huntington Utah, a man, upon learning that the SWP is for immigrants, yelled "You're for immigrants for Muslims how dare you, get the fuck out of here before I put a bullet in your ass." Although the campaigners left immediately, the man followed them and yelled "You are allowing them to come and rape our daughters. I told you to get the fuck out of here."
20. In September 2015, while campaigning door-to-door for the Socialist Workers Party in an apartment complex in Omaha, Nebraska, one man said "I don't want any of that communist shit" and closed the door. A few seconds later this over six (6) feet tall man came out into the hallway, stood over one of the campaigners in a menacing manner and

said he would beat them up if the campaigners "didn't get the hell out of there."

21. On October 8, 2016, while campaigning door-to-door in San Leandro, California for the candidates of the Socialist Workers Party, as soon as a man the campaigners approached found out that they were members of the Socialist Workers Party, he said, "Socialists? Like in communists?" He interrupted their attempt to reply, yelling and demanding that they "Get off of [his] property right now!"

22. While several Socialist Workers Party campaigners were campaigning door-to-door for the Socialist Workers Party candidate for president at an apartment complex in White Pine, Tennessee in June 2016, a woman became aggressive when she heard that the campaigners were with the Socialist Workers Party. She told them us to "get [their] people and get out of here" and that the landlord was going to call the police. The same woman had told other SWP campaigners in the complex "You all have to leave. I'm on the phone with the landlord. He's going to call the police if you don't leave immediately." Another resident in the apartment complex discussed the Socialist Workers Party campaign, signed the nominating petition and was considering becoming an elector when the landlord called. This man abruptly ended the discussion. The landlord confronted the SWP campaigners outside the complex, telling them that they "[had] to leave" and taking photographs of their license plate.

23. In September 2016, while campaigning door-to-door in San Leandro, California, one couple that was approached, upon learning that the campaigners were from the Socialist Workers Party, told them to leave immediately and stated that they had no interest in

talking with them. They also started yelling, "Communists, they are communists," hoping they could get others in the neighborhood not to talk to the SWP.

24. In September 2015, while campaigning for the Socialist Workers Party candidate for Mayor of Philadelphia in Philadelphia, Pennsylvania, one hostile person told an SWP member that he had Ku Klux Klan views and that if the SWP member did not get away from him, he would punch the SWP member in the face and the member would be sorry he ever came there.

25. While campaigning for the Socialist Workers Party in Spanish Fork, Utah in July 2016, a man demanded that the SWP campaigner get off his property immediately upon learning that the campaigner was with the SWP.

FEAR OF REPRISAL

26. In May 2016, in Hutchinson, Minnesota, a woman who was supportive of the SWP's platform and who had initially offered to organize a gathering of friends and family in a local park to meet the SWP candidate for U.S. House of Representatives from Minnesota, ultimately refused to organize the activity and has not otherwise supported or associated with the SWP to date because her immigration lawyer advised her to not have anything to do with the SWP, because she was in the process of applying for immigration papers and he feared her activity with the Socialist Workers Party would become known to immigration authorities and it would jeopardize her approval.

27. While campaigning door-to-door in Salt Lake City, Utah in July 2016 for the Socialist Workers Party candidate for President of the U.S., several people declined to sign the

petition citing their fear of getting on a list that could be used by the government to target them.

28. In October 2016, while canvassing in Culver City, California, for the Socialist Workers Party candidates for President and Vice President and the SWP candidate for U.S. Senate, a woman had a long discussion with two SWP campaigners and was interested in the SWP and its literature. However, at the end of the discussion, she said she feared giving the SWP her contact information because she "didn't want to end up on some government list." She said she was afraid it would jeopardize the work she does in helping prisoners defend their rights.

29. While going door-to-door collecting signatures to put the Socialist Workers Party candidate for President on the ballot in June, 2016 in Glencoe, Minnesota, one potential signer declined to sign, saying that he feared it might lead to the government's targeting him. He said he was afraid it would jeopardize help he was getting from a government program to pay his medical bills. Other volunteers who were collecting signatures to put the Socialist Workers Party on the ballot in Minnesota had similar experiences of people refusing to sign based on their fear of being targeted by the government for signing for the SWP candidate.

30. In September 2016, while campaigning door-to-door in San Leandro, California, a man was interested in the literature and positions of Socialist Workers Party and engaged in a back and forth discussion of the SWP's perspectives; however, he said he could not subscribe to *The Militant* newspaper or buy the book *Are They Rich Because They're*

Smart? because he believed it would endanger his job.

31. In October 2016, a former-immigrant and union member in San Leandro, California was open to considering the SWP's revolutionary perspectives and bought copies of several Pathfinder Press books but he declined to subscribe to *The Militant*, the newspaper the editorially supports the SWP, citing fears of "getting on a list" and possibly being open to harassment and victimization.
32. An individual from Renton, Washington who has made financial contributions to the SWP National Campaign Committee in the past has submitted a declaration that he would not want to continue to make financial contributions to the Socialist Workers Party campaigns if his financial contributions were made public out of concern that his employment in the aerospace industry might be effected because of his support for the SWP.
33. An individual from Seattle, Washington, who is employed in a managerial position in a publishing firm and who has made financial contributions to the SWP National Campaign Committee in the past has submitted a declaration that if her financial contributions to the SWP were a matter of public record, she is not certain if she would continue to make these contributions to the SWP out of concern that her employer would disapprove of her support for the SWP.

CONCLUSION

There is a reasonable probability that the compelled disclosure of the Socialist Workers Party's contributors and recipients will subject them to threats, harassment or reprisals by private

persons and organizations and by government officials. This is demonstrated by the totality of the evidence submitted here: the harassment since 2012; the long history of federal surveillance and harassment of the SWP and its supporters; the never disavowed position of the federal government that it has an interest in and need to know who are the members and supporters of the SWP, based on a federal perception and understanding of the SWP's "ideology" which the federal government has had no reason to alter; the long history of surveillance and harassment of the SWP and its supporters by local government and by private persons; the expanded government authority under relaxed surveillance guidelines; the well-established and well-known pattern of current government surveillance and investigation of U.S. advocacy groups involved in First Amendment activities around issues which the SWP also addresses in its advocacy, often in solidarity or conjunction with those groups; the "Snowden" revelations of massive surveillance; and the resulting pervasive contemporary fear among potential SWP supporters.

On the other hand, the legitimate government interest in compelled disclosure is *nil,* given the SWP's status as a minor political party, with *de minimis* electoral and financial support and its consistently held definite and publicized viewpoint over many decades.

The constitutional principles established by the Supreme Court and recognized by the Commission require renewal of the exemption granted by the Commission in its 2012 Advisory Opinion and grant of an exemption from any applicable new, post-2012 reporting requirements.

Respectfully yours,

Michael Krinsky
Lindsey Frank