

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF KANSAS

3 PARKER BEDNASEK,

4 Plaintiff,

5 v.

Docket No. 15-9300-JAR

6 KRIS W. KOBACH,

7 Defendant.

8 -----
9 STEVEN WAYNE FISH, et al.,

10 Plaintiffs,

11 v.

Docket No. 16-2105-JAR

12 KRIS W. KOBACH,

13 Defendant.

Kansas City, Kansas

Date: 03/08/2018

Day 3 (A.M. Session)
Pages 618-722

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16 TRANSCRIPT OF BENCH TRIAL
17 BEFORE THE HONORABLE JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE

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25 (Appearances continued on next page)

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1 (9:22 a.m., proceedings commenced).

2 THE COURT: All right. You can be seated.
3 All right. First let me start with a word of caution.
4 I have checked with my IT people. Apparently at about
5 9:00 this morning our IT people got alarmed because they
6 were picking up several of the lawyers speaking. I
7 think it was you, Mr. Johnson. I don't know if it was
8 others. They heard multiple voices and they let us know
9 because they said they apparently don't know that the
10 mics are live. And the mics are live.

11 Now, when the system is on, as it is now,
12 and you mute your microphones at your table, nobody can
13 hear you, but apparently somebody's microphone was
14 unmuted so they were able to pick that up. So I just
15 caution you to make sure your mics are muted.

16 As you know, this is a closed-circuit
17 system, that down in Room 180 there's an overflow room
18 which we definitely needed the first day of trial
19 because there weren't enough seats in here, but it also
20 is a room where I've allowed the press to be and to have
21 their laptops, et cetera, to write stories, file
22 stories, whatever. And there was a process by which
23 they had to apply to get credentials to do that, et
24 cetera, et cetera. So anyway.

25 So a couple of things we're going to make

1 sure of. We bring the system up in the morning-- this
2 closed-circuit system that allows the people in 180 to
3 see and hear what's going on. When that system is
4 brought up, these microphones if they're not muted pick
5 up. So we're going to do that closer to 9:00 from now
6 on, rather than, you know, at 8:30 or 8:45. And also,
7 we're not going to open Room 180 to the public, press,
8 anyone to closer to 9:00.

9 So if you're in here and talking, you know,
10 until maybe 10 'til 9:00 or something, know that nobody
11 in Room-- there's nobody in Room 180. But at the same
12 time I caution you, because people can hear you in here,
13 you know. And those microphones on your desks, you
14 know, you're to mute them for a reason. During trial
15 people can pick things up if your microphone at the desk
16 is not muted. Just so by way of caution.

17 I mean, I will tell you I, as a trial
18 lawyer, started trying cases in this district in 1981.
19 And one of the first things I learned as a young lawyer
20 is the mics are always live and not because of
21 necessarily this closed-circuit system, it's because the
22 marshals monitor every courtroom. They do it
23 particularly for criminal trials, but they do it on a
24 spot-check basis for civil trials as well, because
25 they're not in here and the court security is not in

1 here, just to make sure there's no problems.

2 And so we learned very early on, you know,
3 on breaks or whatever, get away from the microphones.
4 That's why you have attorney/witness conference rooms,
5 et cetera. So the mics on your tables need to be muted.
6 This mic here is not muted. So if you're within range
7 of this lectern, anything you say could be used as well.

8 So I kind of learned this the hard way. As
9 a prosecutor during a break I was mad at the FBI agent
10 that was the case agent in my case and said some
11 unpleasant things. And the judge told me later that he
12 heard everything I said to the FBI agent. So that's
13 been my experience.

14 Anyway, any concerns, any questions about
15 this?

16 MR. HO: No, Your Honor.

17 THE COURT: All right. So let's turn to the
18 issue because I think at this point we're ready for Ms.
19 Lehman to be recalled for Mr. Kobach's cross
20 examination. And there's the issue of the summaries or
21 summary, I think that's Exhibit 1133. And I gave you a
22 so-called overnight project. There's an e-mail string
23 of, excuse me, e-mails back and forth that you all
24 copied my chambers on.

25 So my understanding is that plaintiff has

1 been provided with the underlying-- plaintiff already
2 was provided with most of the underlying documents
3 according to defendant back in March of 2017, but some
4 additional documents as of February 28th. And when I
5 say plaintiff, I mean Plaintiff Fish. Until last night
6 Plaintiff Bednasek wasn't provided with any of these
7 underlying documents. But it sounds like all of that
8 has been accomplished.

9 Has plaintiff had sufficient time now to
10 review those documents with the summary itself?

11 MS. LIU: Your Honor, we have.

12 THE COURT: All right. So under Rule 1006,
13 this summary is admissible if it is based-- if, in fact,
14 it's a summary of underlying documents that are either
15 admitted in evidence or admissible under evidence. And
16 this is based on ELVIS databases. I think they're
17 admissible. In fact, some of them have been admitted,
18 some select ones.

19 I think there was a further objection,
20 though, to there being hearsay within this document. I
21 asked Mr. Kobach to redact materials in that seventh
22 column that seemed to have come from statements that
23 people made. And the copy that I have has redactions in
24 red. Is there any further concern about column seven?

25 MS. LIU: Yes, there is, Your Honor.

1 THE COURT: All right. Let me hear from you
2 on that.

3 MS. LIU: So we believe that Defendant
4 Kobach has interpreted Your Honor's request to propose
5 redactions that essentially redact out concessions in
6 their document and undermine their position. So they
7 shouldn't be able to redact out their recorded
8 admissions about weaknesses. And so we'll consent to
9 the admission of the unredacted spreadsheet for the
10 limited purpose of-- of Ms. Lehman's state of mind but
11 not for the truth of the matter asserted.

12 THE COURT: So just with respect to the
13 portions that are redactable, you're asking that the
14 exhibit be admitted unredacted, but that you're asking
15 the Court to only consider those otherwise redactable
16 portions as not for the truth of the matter asserted but
17 as to Ms. Lehman's state of mind, which is an exception
18 to the hearsay rule which would allow this thing to come
19 in unredacted; is that what you're saying?

20 MS. LIU: We're asking it for all of--

21 THE COURT: It's not all hearsay, so I'm not
22 going to consider all of it as not for truth of the
23 matter asserted because it's not all hearsay.

24 MR. JOHNSON: As I understand, the position
25 is that we would not oppose admission of the unredacted

1 document as long as it is limited to demonstrate Ms.
2 Lehman's state of mind, not for the truth of the matter
3 contained therein.

4 THE COURT: The whole document or just the
5 parts that I consider--

6 MR. JOHNSON: I'm sorry, it would be the--
7 what is it, the sub-column--

8 THE COURT: Seven?

9 MR. JOHNSON: The right-hand column.

10 THE COURT: Yeah, I think that's sub-- the
11 problem, the narrative, the column with the narrative.

12 MR. JOHNSON: Yes, Your Honor.

13 THE COURT: All right. But as I found
14 yesterday, and Mr. Kobach used the word deducible, I
15 think that's a good word, some of this is just merely
16 material that was deduced from the record. I don't
17 think it's-- the records aren't-- the underlying records
18 are business records, they're public records, you know,
19 they're not hearsay.

20 And so matters that are just simply deduced
21 from the record I don't think are hearsay, but there
22 were things in here that I thought were. So for
23 example, look at the first line, June 16th, 1999, the
24 narrative-- the unredacted narrative says "was
25 registered for nearly 18 years prior to being a

1 citizen." That's deductible from the record because the
2 person became naturalized in March of 2017, yet the
3 original registration application was in 1999.

4 "The applicant was registered under a
5 different first name." That's deductible from the voter
6 registration records, which are admissible. "Sedgwick
7 County Election Office called the applicant to confirm
8 he was the same person." I don't know, I assume there's
9 a record in there, they keep a record of when they make
10 contact and it's not hearsay because there's not a--
11 it's not a declarant's statement.

12 "Applicant confirmed that he had previously
13 changed his name and also stated," and then that's
14 redacted. Actually that whole last sentence is
15 declarant stuff, so it should be redacted. So starting
16 with "applicant confirmed," I think the rest of it is
17 hearsay.

18 But so are you asking for the entire
19 narrative of that, I'm just using that as an example, to
20 be excluded as hearsay or just the part I've suggested
21 is-- is hearsay?

22 MR. JOHNSON: We're asking for the entire
23 portion to be excluded. But if we could come to an
24 agreement with the defendant-- and I'm not speaking for
25 the Fish plaintiffs here obviously.

1 THE COURT: Okay.

2 MR. JOHNSON: But if we could come to an
3 agreement with the defendant-- I mean, I've taken a look
4 at their redactions and they are wholly inadequate.

5 MR. KOBACH: Your Honor, may I--

6 THE COURT: Well, I do think there's some
7 additional materials that need to be redacted and I was
8 going to make a record on that. But I think other than
9 the things that I think are redactable because they are
10 hearsay out-of-court statements by declarants, I've gone
11 through each one of these and I do think with respect to
12 most of this it's deducible from the record themselves.
13 It's just another way of saying what the record already
14 says, like how long somebody was registered. Well, you
15 can see that from comparing the date of the application
16 to the date of naturalization.

17 The references to the voter calling, is that
18 something, Mr. Kobach, that is in the election office's
19 records? I mean, they keep track when they have
20 contacts from the voter?

21 MR. KOBACH: That is correct, Your Honor.
22 And the phone calls are noted in the ELVIS file. And,
23 Your Honor, the reason why, for example in the sentence
24 you just described, "applicant confirmed that he had
25 previously changed his name and also stated," we kept in

1 the "confirmed he previously stated [sic] his name"
2 because that is deducible from the ELVIS record.

3 And if-- if Your Honor wishes and if
4 plaintiffs persist in their objections, we will have
5 Tabitha Lehman on the stand to show how she can deduce
6 each and every one of these things that remain redacted
7 and we'll go through all 38 files, probably take a
8 couple of hours, but we'd be happy to do that if they
9 are still insisting that this is not--

10 THE COURT: Well, when I see "applicant
11 confirmed," that means applicant said that he had
12 previously changed his name. That's actually a
13 statement. And I couldn't see how that was deducible
14 from the record that he-- I mean, it's deducible from
15 the record that he was registered under a different
16 name. But that he said that he was, that's a statement,
17 so that's why I'm suggesting that is redactable.

18 MR. KOBACH: And, Your Honor, I struggled
19 with this last night as we were going through this. And
20 it appeared to me that some of the things we left
21 unredacted were purpose of the call. Generally
22 speaking, when someone calls in, they're calling because
23 they've received a notice that you haven't proven your
24 citizenship and either they're calling in to acknowledge
25 that they're not a citizen or to clarify some problem

1 with the record, like a name, or to say I am a citizen
2 and I just need to know where to send my documents. So
3 we kept purpose of the call in.

4 THE COURT: Yeah, and that's the things I'm
5 going to have you take out.

6 MR. KOBACH: Right. And--

7 THE COURT: Because the purpose of the call
8 is based on the applicant's statement.

9 So all right, let me hear from Ms. Liu.
10 Any-- are you raising the same objection to column
11 seven, the narrative information in its entirety or not?

12 MS. LIU: So, Your Honor, we were, but we
13 are consenting right now to the admission of the
14 unredacted portions and we'll cross examine on the
15 inaccuracies of those portions.

16 THE COURT: On the inaccuracies of the
17 unredacted portions? Okay. Let's make a record then.
18 I'm going to overrule Mr. Johnson's objection to all of
19 the narrative in No. 7.

20 You don't need to fix this, let's just make
21 a record. And-- and for final purposes, you can redact
22 the additional parts that I'm going to tell you.

23 MS. LIU: Your Honor?

24 THE COURT: Yes.

25 MS. LIU: We-- we'll take it unredacted. We

1 find it to be misleading and far more prejudicial to us,
2 so we will go ahead and consent to the unredacted
3 admission of this exhibit.

4 THE COURT: So you are agreeing that the
5 statements-- these out-of-court statements by these
6 applicants or the applicant's niece, or the applicant's
7 daughter--

8 MS. LIU: Correct.

9 THE COURT: You're not objecting?

10 MS. LIU: We're planning on cross examining
11 on these.

12 THE COURT: All right. Mr. Johnson, you
13 take a different view?

14 MR. JOHNSON: If being admitted for the
15 truth of the statements, yes. I'm-- this document is
16 fundamentally flawed.

17 THE COURT: Well, they're agreeing--
18 Plaintiff Fish is agreeing that they are being offered
19 for the truth, because that-- you know, so we've got
20 inconsistent-- so my plan is to redact. I'm going to
21 live and die by the rules.

22 So here's what I'm going to have Mr. Kobach
23 redact, but I don't want to slow this train down
24 anymore. You can fix the exhibit later. You've done
25 some redactions, but I think there's some other

1 redactions that should happen here.

2 So for the first line, June 16, 1999, the
3 redactions should begin with "applicant confirmed that,"
4 the rest of it should be redacted.

5 October 12, 2004, that redaction is
6 appropriate.

7 October 2008, the fourth entry on Page 2,
8 this is one of these purpose of the call redactions, Mr.
9 Kobach, so it should begin redacted with "applicant
10 requested printouts of voter registration card," et
11 cetera. The rest of that should be redacted. The next
12 redaction is fine.

13 Moving over to Page 3, no-- well, Page 3,
14 the first entry under the bottom half of this, the entry
15 for February 13 where it says, "he admitted that he was
16 not a citizen," that should come out. The other part is
17 fine. "Sedgwick County Election Office contacted,"
18 that's not a statement or a declarant statement. But
19 "he admitted that he was not a citizen" is hearsay.

20 Going over to Page 4, the entry for
21 February 21, 2014. The last part, "to report that he is
22 not a citizen" should be redacted. Actually all of it
23 should be redacted because "applicant called in
24 response," that had to come from something the applicant
25 said. So that entire column on 2-21-14 should be

1 redacted.

2 Moving over to Page 5, the entry for
3 January 20, 2016. Beginning with "applicant
4 subsequently went to report that she is not a citizen"
5 should be redacted. That's based on an applicant's
6 statement. The rest of it is fine.

7 February 12, 2016. "Applicant's sister
8 called to report applicant is not a citizen" should be
9 redacted.

10 November 8th, 2016. "On February 14th," et
11 cetera, "election office received a call from daughter
12 to notify applicant wasn't a U.S. citizen," that
13 sentence needs to come out. That's it.

14 MS. LIU: Your Honor?

15 THE COURT: Yes.

16 MS. LIU: We'd like to be able to submit an
17 unredacted version of this as an admission by defendants
18 so we can cross examine the-- we can cross examine based
19 on this unredacted.

20 THE COURT: As an admission by defendants?

21 MR. STEINER: Your Honor, this is part of
22 the investigation. And what's going on here is, what
23 they're trying to redact out is instances of clear
24 mistakes, right, that's what they're trying to do.

25 And so with Ms. Lehman, this spreadsheet

1 is-- we're entitled to cross examine her, for example,
2 on things being mistakes, not instances of fraud. And
3 what defendants have now done and I think it's being
4 furthered is attempted to--

5 THE COURT: They haven't done it, I've done
6 it.

7 MR. STEINER: Well--

8 THE COURT: Because you raised the hearsay
9 objection and this is hearsay.

10 MR. STEINER: Right. But if some of it is
11 coming in, we should be able to use this spreadsheet in
12 its unredacted form. I don't think Ms. Lehman prepared
13 it, but if Ms. Lehman prepared it--

14 THE COURT: All right. Mr. Johnson, do you
15 withdraw--

16 MR. STEINER: -- it's an admission by the
17 defendant.

18 THE COURT: Do you withdraw your objection
19 or not?

20 MR. JOHNSON: I withdraw my objection.

21 THE COURT: All right. It comes in
22 unredacted. All right. Let's get Ms. Lehman on the
23 stand. Exhibit 1133 admitted without any redactions. I
24 know you probably need time to fix that. Maybe you
25 still have the original, I don't know.

1 MR. KOBACH: We do have the original one.
2 Can we just-- can we just make a moment, a couple
3 minutes to make sure we have the right ones and
4 everything ready?

5 THE COURT: Sure, yes.

6 MR. ROE: Ten minutes, Your Honor.

7 THE COURT: Ten minutes?

8 MR. ROE: Yes.

9 THE COURT: All right. I'm going to sit
10 here and do some other work.

11 (Off the record).

12 MR. KOBACH: Your Honor, we're ready to go
13 when you are.

14 THE COURT: Okay. Ms. Lehman.

15 TABITHA LEHMAN,
16 called as a witness on behalf of the Defendant, having
17 first been duly sworn, testified as follows:

18 CONSOLIDATED EXAMINATION

19 BY MR. KOBACH:

20 Q. Ms. Lehman, when we last left off yesterday we
21 were talking about Exhibit 1133, which was a chart, and
22 we were talking about that. Do you recall it?

23 A. Yes.

24 Q. Okay.

25 MR. KOBACH: Do we have her copy still?

1 Q. (BY MR. KOBACH) I'll give you another one.

2 A. I left them up here, I'm sorry.

3 Q. Okay.

4 A. Thank you.

5 MR. KOBACH: This is unredacted.

6 THE COURT: All right. Exhibit 1133 has
7 been admitted.

8 Q. (BY MR. KOBACH) Ms. Lehman, how did you compile
9 the information in this chart?

10 A. Over the course of several years, you know, just
11 as we were conducting registration activities we would
12 come across individuals who were already on the rolls
13 prior to becoming citizens and we began just gathering
14 that information and reporting it on up to the state.

15 Q. Is each of the fields-- is each of the rows in
16 this chart based on an individual who was in the ELVIS
17 database?

18 A. Yes. Correct.

19 Q. Did you examine the ELVIS files of each of these
20 individuals to compile the information in this chart?

21 A. Yes.

22 MR. KOBACH: Your Honor, I don't think it's
23 technically necessary since this is a 1006 document
24 summary, but I'm wondering if it would be prudent since
25 opposing counsel have said they wish to cross examine to

1 introduce the underlying files. Do I need--

2 THE COURT: It's up to you.

3 MR. KOBACH: Your Honor, I introduce into
4 evidence the underlying ELVIS files.

5 MS. LIU: We have no objection.

6 MR. JOHNSON: No objection.

7 THE COURT: All right. Is there an exhibit
8 number?

9 MR. KOBACH: Yeah, why don't we give this
10 Exhibit No. 1201-- 1202.

11 THE COURT: All right. Exhibit--

12 MR. KOBACH: It is--

13 THE COURT: -- 1202 admitted. It's the
14 files that underlie Exhibit 1133.

15 MR. KOBACH: And it is Tab 5 on this
16 document here. I'm sure you already have them, but if
17 you want-- do you need a copy of them, Mark? You were
18 e-mailed them.

19 MR. JOHNSON: No.

20 THE COURT: Do you guys need a copy?

21 MS. LIU: (Nods head up and down).

22 MR. KOBACH: Okay. He'll get it to you.

23 Q. (BY MR. KOBACH) All right. Ms. Lehman, could
24 you describe what is in the chart generally?

25 A. Well, we have three different categories. The

1 first category is people who successfully registered to
2 vote prior to becoming U.S. citizens. The next category
3 would be people who attempted to register to vote but
4 were stopped by the proof-of-citizenship law.

5 And then the final category are people who were
6 prevented from registering to vote due to the SAFE Act
7 and then were subsequently registered pursuant to the
8 preliminary injunction prior to becoming a U.S. citizen.

9 Q. Does your office-- do representatives of your
10 office attend naturalization ceremonies in Sedgwick
11 County?

12 A. Yes. Yes.

13 Q. When did you start doing so or when did your
14 office start doing so?

15 A. I believe mid-2013.

16 Q. Why did you start attending these ceremonies?

17 A. Because our office received a couple of phone
18 calls from newly-naturalized citizens who had completed
19 a voter registration application and then we had
20 subsequently sent them a request for
21 proof-of-citizenship document and they reported to us
22 that they were being told by the INS officials at the
23 naturalization ceremony that they were not allowed to
24 copy their document.

25 So we called the immigration officials and we

1 talked that over with them and they said that we could
2 come as government agents and copy those documents, but
3 that they were still going to advise people not to copy
4 those documents. So that's why we began attending.

5 Q. And so when you began-- when your office began
6 attending, did you copy documents at the naturalization
7 ceremony?

8 A. Yes.

9 Q. And how do you do that?

10 A. It's morphed over time. The very beginning we
11 actually carried a very heavy copier in with us and we
12 found a much more-- a better way. And we actually just
13 have hand scanners that we just scan over the document
14 and it saves that. And then we bring it back to the
15 office and put those in the file.

16 Q. And does that scanned copy suffice for your
17 office's purposes to confirm citizenship?

18 A. Yes.

19 Q. Is the scanned copy attached to the ELVIS file in
20 some--

21 A. Yes--

22 Q. -- in some way?

23 A. -- it is.

24 Q. Is there a notation in the ELVIS file that a
25 scanned copy of the document was obtained at the

1 naturalization ceremony?

2 A. I don't know that there's a notation in the ELVIS
3 file that it was obtained at the naturalization
4 ceremony, it's just part of their file.

5 Q. Okay.

6 A. The document itself is.

7 Q. So you attend the ceremony as you just said. And
8 at what point is the information you collect at the
9 ceremonies entered into the ELVIS database for that
10 person?

11 A. It really depends upon our workload because you
12 get-- we bring everything back to the office and then
13 just as we're working our way through voter
14 registration, it would be entered into the system. So
15 it might be the same day, it might be the next business
16 day.

17 Q. Were some of these cases on this chart,
18 Exhibit 1133, were some of these cases discovered at
19 naturalization ceremonies?

20 A. They-- they were registered at naturalization
21 ceremonies and discovered when we came back to the
22 office to process the applications and documents.

23 Q. And what did your staff discover when they came
24 back to the office to process the documents?

25 A. In some of these cases that the individuals were

1 already on the rolls or had attempted to register prior
2 to becoming a U.S. citizen.

3 Q. So let's just look at a few of those cases. In
4 fact, we can start on the first page. Can you look at
5 the-- the first entry on the first page, which is the
6 date of registration 6-16-1999?

7 A. Yes.

8 Q. How long was that person registered to vote as a
9 non-citizen prior to your discovery-- prior to your
10 office discovering it?

11 A. Nearly 18 years.

12 Q. Let's look at the second entry, the one on
13 4-16-2003 as the date of original application for
14 registration. How long was that person on the voter
15 rolls as a non-citizen?

16 A. Almost 12 years.

17 Q. Let's look at the third entry. Date of
18 registration, 5-18-2004. How many years was that person
19 on the voter rolls as a non-citizen?

20 A. Over 12 years.

21 Q. Are those times of span typical for the others in
22 this chart?

23 A. The rest of them would be less because that date
24 of original registration is kind of how it starts being
25 sorted, so the oldest are first and then it goes

1 through.

2 Q. Okay. Okay. So let's look at Page 2 then.
3 Let's just pick-- let's just pick the one in the middle,
4 October 2008. Now, it appears that there's a day
5 missing there. Is that a typo or what-- what is that?

6 A. I can't say that I know. I think it may have
7 just been that it may have-- the date-- the day may have
8 not been entered in the spreadsheet.

9 Q. Oh, I see. And can you tell us how long that
10 person was registered prior to becoming a citizen?

11 A. Over eight years.

12 Q. And let's go to the next one, October 7th, 2008.
13 How long was that person registered to vote prior to
14 becoming a U.S. citizen?

15 A. Over six years. And I would like to amend the
16 previous one, the October of 2008. That person, to my
17 knowledge, is still not a U.S. citizen.

18 Q. Is still not a U.S. citizen?

19 A. Correct.

20 Q. How did you discover that that individual was not
21 a U.S. citizen?

22 A. They-- let me look at the notes here. It looks
23 like they were going through the naturalization process
24 and were informed that they were not to be registered
25 and voting, so they called our office to cancel their

1 registration and then get documentation of that. And
2 they may now be a citizen, I just do not know because we
3 have not received a new registration from them at this
4 point.

5 Q. So you stated earlier that you discovered some of
6 these cases at naturalization ceremonies when they
7 registered for a second time; is that correct?

8 A. Correct.

9 Q. And now it sounds like you're describing a second
10 way you discovered some of these cases, when the
11 individual calls the office; is that correct?

12 A. There are multiple ways that this has occurred.
13 The first category would be when we attend a
14 naturalization ceremony, some of them called in, some of
15 them mailed us something saying they weren't. And it's
16 all in the descriptions.

17 Q. Are there cases where a person's family member
18 called in?

19 A. Yes.

20 Q. And why typically are these people calling in?

21 A. Like in this-- in this particular case, it was
22 because they were going through the naturalization
23 process. There are a couple of those in here. There
24 was-- I think there was at least one where we sent a
25 notification to them requiring-- or requesting proof of

1 citizenship and they responded saying that they were not
2 a citizen.

3 Q. Let's look at the bottom one on Page 1. How
4 did-- how did you discover this one?

5 A. This was an individual who was I believe going
6 through the-- let me look at it again, I'm sorry, just a
7 second.

8 She was applying to become a U.S. citizen and
9 then realized that she should not have been voting or
10 registered and requested that we cancel her registration
11 and then send her the supporting documents.

12 Q. And how many-- just for the sake of clarity, I
13 see your notations here, but how many times-- in what
14 elections did this person vote?

15 A. She voted in the presidential election of 2004,
16 city/school general of 2005, a special election in 2007
17 and the presidential election of 2008.

18 Q. When it's subsequently discovered that an
19 ineligible person has voted like this individual, is
20 there any way to remove that vote from the tally of that
21 election?

22 A. No.

23 Q. Why not?

24 A. Because it's already certified and we don't tie a
25 vote to a person's name. So once that ballot is cast,

1 it's done, there's no taking it back.

2 Q. Do you know which way that person voted?

3 A. Absolutely not.

4 Q. So is this a-- when it happens that a non-citizen
5 voted, is there any practical way to erase that
6 violation of law?

7 A. No, there would not be any way to erase any
8 improper vote.

9 Q. So you stated earlier that there are three
10 categories of cases described by the three headings in
11 this folder. Let's-- I'll just repeat them and we can
12 see them written. The first one is "Aliens Who
13 Successfully Registered." How many are in that
14 category?

15 A. 18.

16 Q. The second category which begins on Page 3 is
17 "Aliens Who Attempted to Register." How many are in
18 that category?

19 A. 16.

20 Q. And then the last category begins on Page 5 and
21 it says, "Aliens Successfully Prevented When Law Was in
22 Effect, Subsequently Registered Pursuant to Preliminary
23 Injunction." How many are in that category?

24 A. Four.

25 Q. So does that make a total of 38 non-citizens in

1 this chart?

2 A. Yes.

3 Q. And how many of the 38-- well, let me-- sorry.
4 How many of the 18 who were successfully-- who
5 successfully registered to vote it appears prior to the
6 law, how many of those actually voted?

7 A. I believe it's five.

8 Q. And did any of those five vote multiple times?

9 A. Yes. I'm checking to see how many. Three of
10 them did.

11 Q. I think I see one of them as the fourth row on
12 Page 1. Is it correct that that person voted three
13 times?

14 A. The fourth row on page--

15 Q. The person--

16 A. Yes.

17 Q. -- who registered--

18 A. Yes, three times.

19 Q. And then the one immediately below that, the last
20 one I think we just discussed you said voted four times;
21 is that correct?

22 A. Correct.

23 Q. And then where is the-- I see one on the fourth
24 row of Page 2. How many times did that person vote?

25 A. One time.

1 Q. I also see a notation, did the person sign a
2 petition?

3 A. Yes, they signed a-- a water fluoridation
4 petition in 2012.

5 Q. Are signers of petitions in Sedgwick County
6 required to be U.S. citizens?

7 A. Yes.

8 Q. And then I see on Page 3 the last one before the
9 section break, 12-27-2001 is the date of registration.
10 How many times did that person vote?

11 A. That person voted three times. But you skipped
12 one on Page 2, the last one on Page 2 voted once.

13 Q. Okay. Going back to the one on Page 3 we were
14 just discussing who voted three times. I see in the
15 notation column, the seventh column, three different
16 notations for the elections. Could you explain what
17 those mean?

18 A. Yes. It would be a special election in 2012 for
19 the city of Wichita, the general election of 2012 which
20 would be presidential and then the general elections of
21 2014 which would be gubernatorial.

22 Q. Okay. And then I see one-- an individual two
23 rows above that, that's September 27th, 2010. It
24 appears you have a notation that says, "applicant
25 requested an absentee ballot." Could you explain what

1 happened there?

2 A. They filled out an application to receive a
3 ballot for the general election of 2012. We sent them a
4 ballot but they did not return it voted.

5 Q. For the purposes of background, how often does
6 your-- not just talking about non-citizens now, but just
7 generally, can you estimate how often you send out a
8 ballot to someone who has requested an absentee ballot
9 and then they don't return it?

10 A. It really depends upon the size of the election.
11 We have-- in Kansas we have permanent advanced voting
12 lists, so we have about 6 or 7,000 people, it varies
13 year-to-year, who are on a permanent advanced list. So
14 every single election they automatically get a ballot.

15 And so for those elections we see a smaller rate
16 of return on those than we do like-- like city/school
17 election, we'll have a smaller rate of return than a
18 presidential. But there are times where we may have-- I
19 think in 2016 we had 3 or 4,000 people who requested a
20 ballot that didn't return it. But that was out of over
21 70,000 people.

22 Q. And I should've asked this information at the
23 beginning of your-- of your examination yesterday, but
24 what's the registered voter population in Sedgwick
25 County?

1 A. We have a little over 290,000 registered voters,
2 including the number of people covered by the
3 preliminary injunction.

4 Q. You're including that number in the 290,000-plus?

5 A. Yes, uh-huh.

6 Q. Okay. So we've just discussed several-- I
7 believe we discussed five non-citizens who voted, some
8 of whom voted multiple times. Were any of these five
9 prosecuted?

10 A. Yes, one of them was-- or two, I'm sorry, two of
11 them were. I apologize. Two.

12 Q. Which ones were prosecuted, if you know?

13 A. The one on the bottom of Page 2 and then the one
14 with the date of-- original registration date of
15 12-27-2011 on Page 3.

16 Q. Were some of these cases discovered after the
17 five years-- five years or more after they originally
18 registered to vote?

19 A. Yes.

20 Q. Do you know why the other cases were not
21 prosecuted?

22 A. Because by the time it was discovered, the
23 statute of limitations had run out on the elections that
24 they voted in so they could not be prosecuted.

25 Q. Okay. Now, let's talk about the second category.

1 Those are aliens who attempted to register but were
2 prevented from doing so. So I believe that begins on
3 Page 3 with the one on 2-13-2013 as the date of
4 registration. Do you see that?

5 A. Yes.

6 Q. If the-- well, why were they-- how were they
7 prevented from registering, the people in this category?

8 A. People in this category were either before the
9 preliminary injunction or had used the Kansas form. And
10 so we sent them a notification requesting proof of
11 citizenship. And like in this first one, our office
12 actually contacted them via phone, because if we have
13 their phone number we will call them as well as mailing
14 something to them. When we called them, he admitted
15 that he was not a citizen.

16 The other ones may be through this-- the same
17 process with naturalizations here. Many are receiving a
18 naturalization document. Let me see, I'm just looking
19 through a couple of these to cover those categories.
20 One of them-- I think we've already addressed this, but
21 one of them returns the notice with a note on it saying
22 they were not a citizen. But that was after they had
23 completed-- or we had received a registration
24 application for them.

25 Q. It appears that some of these were discovered

1 through a naturalization ceremony; is that correct?

2 A. Yes.

3 Q. Okay. So just walk us through that, please. So
4 if-- let's just say-- let's just look, for example, at
5 the second one after the section break on Page 3, so the
6 one that was registered 8-20-2013. So explain what
7 happened in that person's case.

8 A. This would be where they had completed a voter--
9 we'd received a registration for them on 8-20 of 2013
10 and then when we attended naturalization ceremonies on
11 9-27 of 2013, that is when they were sworn in as a U.S.
12 citizen.

13 Q. So would this person have been placed on the
14 suspense list immediately after 8-20-2013?

15 A. Yes.

16 Q. And would this person have been on the suspense
17 list on 9-27-2013 when he or she became a U.S. citizen?

18 A. That is correct.

19 Q. Let's look at the first full category on page--
20 or first complete row on Page 4, 2-21-2014. Can you
21 describe what happened in this case?

22 A. It says the applicant called the Sedgwick County
23 Election Office in response to a second notice
24 requesting proof of citizenship to report that they were
25 not a citizen.

1 Q. And I think we may have covered this yesterday,
2 but just if we didn't, does your office send out notices
3 to individuals who have not provided proof of
4 citizenship yet?

5 A. Yes.

6 Q. And it appears that you send out more than one
7 notice?

8 A. Yes, in compliance with K.A.R.-- I think it's
9 15-- with K.A.R.s, with rules and regulations. I'm
10 sorry, this morning I'm not remembering the number off
11 the top of my head. But we are required to--

12 Q. That's all right. If you started spouting rules,
13 they'd probably object that you were interpreting law,
14 so--

15 A. Okay. So, yes, we are required by rules and
16 regulations to send more than one notice at that point,
17 yes.

18 Q. And do you sometimes make-- does your office
19 sometimes make phone calls as well?

20 A. Yes. If we have a phone number on file for them,
21 we call them as well.

22 Q. In all cases where there's a phone number on
23 file?

24 A. Yes.

25 Q. Okay. Now, let's look at-- on Page 5 at the last

1 one before the break, so 11-8-2016. Tell me about that
2 case.

3 A. This is a person who came to a polling location
4 on election day for a presidential election and cast a
5 provisional ballot. Their ballot was not counted
6 because they were not a registered voter.

7 We then began sending them notices. And then on
8 February 14th of 2017, we received a call from the
9 daughter of the applicant saying that they were not a
10 citizen. We mailed them a cancellation form and the
11 voter signed that cancellation form and returned it to
12 our office to cancel their voter registration
13 application.

14 Q. And then let's look at the-- let's look at the
15 one immediately above that, February 12th, 2016. Could
16 you explain what happened in that case?

17 A. Applicant applied to register to vote on
18 2-12-2016. The applicant's sister then called the
19 election office to report that they were not a citizen.
20 We sent and got them a cancellation form which they
21 completed and returned to our office to cancel their
22 application-- or their registration.

23 Q. So is it fair to say that all of the non-citizens
24 in this second section of your chart, with the possible
25 exception of the last entry in the chart, would've

1 been-- would've been fully registered and able to vote
2 if the proof-of-citizenship requirement were not into
3 effect?

4 MS. LIU: Objection, a legal conclusion.

5 THE COURT: I'll sustain to the form of the
6 question. You can rephrase.

7 Q. (BY MR. KOBACH) Would your office have permitted
8 these people to vote if there had been-- under the old
9 system before the proof-of-citizenship law?

10 A. I would point out that there is one entry on
11 Page 3, the last one that goes into Page 4, that the
12 applicant did not checkmark either of the top two
13 questions on the form. And so we did not know if they
14 were a citizen, so we called them on the phone and they
15 stated they were not a citizen. So other than that one,
16 I would say yes.

17 Q. Okay. So of the-- let me just check then. In
18 this category we have 16. And so of the 16, you're
19 saying the other 15 under the old system prior to proof
20 of citizenship, they would have been fully registered to
21 vote; is that correct?

22 A. Yes.

23 Q. Have you discovered every non-citizen who is on
24 the voter rolls in Sedgwick County now?

25 A. I have no idea.

1 Q. Do the-- do you continue to discover them as the
2 months go on?

3 A. Yes.

4 Q. When is the most recent one in this chart that
5 your office discovered?

6 A. Just give me a minute while I verify that. It
7 looks like December of 2017.

8 Q. And which one are you looking at?

9 A. It would be on Page 3. It's highlighted in
10 yellow.

11 Q. May not be highlighted on all versions.

12 A. Okay. Sorry. That would be the one with the
13 registration date of 10-1-2010, the original
14 registration date.

15 Q. Okay. And now let's talk about the last category
16 in your chart. And that's beginning on Page 5. It's
17 entitled "Alien Successfully Prevented When Law Was in
18 Effect, Subsequently Registered Pursuant to Preliminary
19 Injunction."

20 Could you please-- it appears that they all have
21 the same notation in column seven; is that correct?

22 A. I think very similar, yes, notations.

23 Q. Okay. Well, then we may walk through each. But
24 just walk me through the first one then, please, August
25 20th-- 8-20-2014. What happened in that case?

1 A. The applicant submitted a voter registration
2 prior to becoming a citizen. Our office placed the
3 applicant in suspense. It was subsequently cancelled in
4 compliance of K.A.R. 7-23-15, that's the number I was
5 looking for earlier. In compliance with the preliminary
6 injunction, the applicant was then placed back in
7 suspense with the status reason of DMV federal elections
8 so that they could vote and be registered on June 18th,
9 2016.

10 It was subsequently determined after a
11 naturalization ceremony that the applicant was not a
12 citizen when they applied to register to vote. Their
13 registration has now been completed because they are--
14 they now meet all legal requirements to be registered.

15 Q. So the-- let me make sure I understand this. Is
16 it correct that the individual registered in August of
17 2014-- when would the individual have been cancelled for
18 failure to send in a citizenship document?

19 A. June 18th, 2016. I'm sorry, I'm sorry. No,
20 that's not right. That's when they would've been put
21 back in compliance with the temporary injunction. I
22 don't-- it doesn't look like I notated the date as to
23 when they would've been cancelled, but when we complied
24 with the new K.A.R.s was when they would've been
25 cancelled.

1 Q. When you talk about complying with that K.A.R.,
2 are you talking about the 90-day rule or what--

3 A. Yes, the 90-day rule.

4 Q. And just explain, please, what that is.

5 A. K.A.R. 7-23-15 stipulates that we send three
6 notices to applicants. And then after 90 days if they
7 don't complete the application process, then their
8 registration is cancelled.

9 Q. Okay.

10 A. Their registration application is cancelled.

11 Q. So when was the individual placed back into a
12 eligible-to-vote category?

13 A. June 18th, 2016.

14 Q. And then was it subsequent to that date that you
15 determined that the individual was, in fact, a
16 non-citizen at that point?

17 A. Yes, it would've been July 15th, 2016.

18 Q. Okay. Let's go to-- and just to clarify. If
19 there had been an election between the date that the
20 individual was placed back into the active and able to
21 vote or able-to-vote category and the date that the
22 individual became a citizen, would that person have been
23 able-- would that person have been permitted to vote by
24 your office?

25 MS. LIU: Objection, speculation.

1 THE COURT: Overruled. Answer it if you
2 can.

3 A. Yes.

4 Q. (BY MR. KOBACH) Okay. Let's look at the second
5 in this category, the top on Page 6. Could you walk us
6 through that one, please?

7 A. It's very similar. The applicant submitted a
8 registration on 9-12 of 2014. They were placed in
9 suspense. They were subsequently cancelled in
10 compliance with K.A.R. 7-23-15. And then in compliance
11 with the preliminary injunction, they were placed back
12 into voting status is probably the easiest way to
13 explain it on June 16th-- or June 18th, 2016.

14 Then on September 15th, 2017, it was discovered
15 through the naturalization ceremony and registration
16 that they were not a citizen at that time but they are
17 now fully registered.

18 Q. So if there had been an election after they were
19 placed back into the able-to-vote category, I'll use
20 that layman's notation, on June 18th, 2016-- well,
21 indeed there was. Let me rephrase it.

22 MS. LIU: Object--

23 Q. (BY MR. KOBACH) Would they have been permitted
24 to cast a ballot in the November-- in the August or the
25 November elections of 2016?

1 A. Yes.

2 MS. LIU: Objection. Objection.

3 THE COURT: I'll overrule. I think this is
4 based on-- it's not speculative in the sense that I
5 think the question is really meant to determine whether
6 they-- the office would've considered them otherwise
7 qualified to-- to vote.

8 Q. (BY MR. KOBACH) And let's look at the next one
9 then, that's the one who registered on 7-23-2015. Can
10 you walk us through that one?

11 A. The applicant submitted a registration on
12 9-23-2015. They were placed in suspense and
13 subsequently cancelled in compliance with K.A.R.
14 7-23-15. And then in compliance with the preliminary
15 injunction, the applicant was placed back into voting
16 status on June 18th, 2016.

17 It was determined on 8-19-2016 when they
18 completed a new registration and submitted
19 naturalization documents that they were not a citizen at
20 the time of the original application in 2015.

21 Q. And there was a primary election in the first
22 week of August of 2016; is that correct?

23 A. Yes.

24 Q. Would this non-citizen at the time have been
25 permitted to vote in that primary election?

1 A. Yes.

2 Q. And then finally the last case, please, could you
3 walk us through it?

4 A. The applicant submitted an application on
5 January 28th, 2016. Prior to becoming a citizen, the
6 applicant was placed in suspense, was subsequently
7 cancelled in compliance with K.A.R. 7-23-15. In
8 compliance with the preliminary injunction, the
9 applicant was placed back into voting status on
10 June 18th, 2016.

11 It was subsequently determined when the applicant
12 was sworn in as a U.S. citizen and registered to vote on
13 August 19th, 2016, that they were not a citizen at the
14 time they completed the original registration in January
15 of 2016.

16 Q. So is it correct to say that in all four cases,
17 because of the preliminary injunction, a non-citizen was
18 for a period of time placed in a category of being
19 eligible to vote?

20 A. Yes.

21 Q. Does your office field calls from the public?

22 A. Yes.

23 Q. Switching subjects now a little bit. I'm going
24 to represent to you that one of the plaintiffs yesterday
25 claimed that he called your office and was told that

1 your office could not tell whether he was registered or
2 not. Have you heard anything about that call?

3 A. I read it in a news article.

4 Q. You read it in a news article?

5 A. Yes.

6 Q. When did you read it in a news article?

7 A. What was it, Wednesday night after the testimony.

8 Q. Did the news article refer to the person's
9 testimony here?

10 A. Yes.

11 Q. Okay. So let's go back and talk about it then.
12 Is it-- is it-- in your experience, is it common for
13 members of your staff to respond to calls that they do
14 not know whether the person is registered or not?

15 A. No.

16 Q. Why not?

17 A. They have access to the voter registration
18 database and should be able to look and tell.

19 Q. So if you look at a person's file in the voter
20 registration database, can you tell definitively whether
21 the person is registered to vote or not?

22 A. Yes.

23 Q. So have you ever heard any member of your staff
24 respond to a voter or a person calling in asking if
25 they're registered by saying they cannot tell?

1 A. The only ambiguity that has taken place has been
2 as a result of the preliminary injunction when we're
3 trying to explain that to someone and they may be
4 pressing, well, am I registered? And we will try to
5 explain you are registered now, but this is a
6 preliminary injunction, you may not be registered
7 subsequently.

8 So we-- it's kind of difficult if somebody is
9 really pressuring you, so from now on am I registered?
10 Well, you are right now, but we don't know later. It's
11 all up to the courts at this point. So there could've
12 been an explanation like that.

13 Q. Okay. So setting aside explanations relating to
14 the preliminary injunction that-- that flowed from this
15 case, have you ever heard any member of the Sedgwick
16 County Election Office staff tell a person that the
17 staff member is unable to determine whether they are
18 registered or not?

19 A. No. But just to clarify, I do not listen to
20 every phone call, but I have not heard it.

21 Q. Is it your view that all of your staff are
22 competent in looking at a file, at ELVIS and making that
23 deduction?

24 A. Yes.

25 Q. Is it your view that every person on your staff

1 must know how to-- well, let me rephrase it. Is it your
2 policy as head of your office to make sure that every
3 person is competent in reading ELVIS files before they
4 are allowed to respond to the public?

5 A. Yes.

6 Q. Is it your view that every member of your staff
7 is capable of looking at an ELVIS file and determining
8 whether a person is registered to vote or not registered
9 to vote?

10 MS. LIU: Objection, leading, Your Honor.

11 THE COURT: Watch your leading. You can
12 answer.

13 THE WITNESS: I'm sorry, what?

14 Q. (BY MR. KOBACH) She said you can answer.

15 A. Oh, yes.

16 THE COURT: Actually this is cross
17 examination. No, actually it's a direct.

18 MR. KOBACH: A direct, yeah. You're right.

19 THE COURT: I'm confused because we've
20 consolidated.

21 MR. KOBACH: I'm doing my best not to lead,
22 Your Honor, I'm just trying to be specific here without
23 belaboring it.

24 Q. (BY MR. KOBACH) Okay. I want to discuss a
25 particular case with you, and this is the case we're

1 talking about. This is the ELVIS file of Charles
2 Stricker, it is Exhibit 838, and it was discussed
3 yesterday. Do you have a copy of it?

4 A. Is it in here?

5 Q. It should be in there, right. Let's see, yes, it
6 is. It's under tab-- yeah, JT 838.

7 Okay. Do you-- do you see the Joint Exhibit 838
8 that says that down in the bottom right corner of the
9 page?

10 A. Yes.

11 Q. What is this?

12 A. This is-- are screenshots from the voter
13 registration database for Mr. Stricker.

14 Q. For whom?

15 A. I'm sorry, Charles Stricker.

16 Q. Okay.

17 A. I apologize if I'm not pronouncing the last name
18 correctly.

19 Q. Does it appear that Mr. Stricker's registration
20 was incomplete when he left the Department of Vehicles
21 in 2014?

22 A. Give me a moment, there's a lot to flip through
23 here. Yes.

24 Q. Was he thereafter sent any notices that proof of
25 citizenship was still required from him?

1 A. Give me a moment. According to the notes that we
2 have on file, on October 21st, 2014 our office sent him
3 a-- a notice requesting proof of citizenship. Then
4 subsequent to an updated registration because of voting
5 provisionally in 2014 general election, our office then
6 sent him another notice, another first notice.

7 Then on-- we have a note that in 2015, February
8 2015, our office called Mr. Stricker regarding his
9 suspense status. And then we have additional notices
10 that were scanned into the file. We changed our process
11 from just putting a note in to actually scanning the
12 notice into the file. So we have those additional
13 notices into the file.

14 Q. So tell me again, when was that first notice sent
15 to him?

16 A. October 21st, 2014.

17 Q. Was that before the election of-- the general
18 election of 2014?

19 A. Yes.

20 Q. Do you remember on what date the 2014 election
21 occurred?

22 A. I can look, give me just a moment. Maybe.

23 MS. LIU: Mr. Kobach, can you please clarify
24 which page numbers you're looking at?

25 A. Oh, I'm sorry.

1 Q. (BY MR. KOBACH) Go ahead and explain to us.

2 A. When I'm looking at the notes, it's the very last
3 page of that document.

4 THE COURT: These aren't Bates stamped? Did
5 you find it?

6 MS. LIU: (Nods head up and down).

7 MR. KOBACH: There are not individual stamps
8 on each page.

9 THE COURT: All right. She found it.

10 MR. KOBACH: Okay.

11 A. I'm sorry, could you repeat the last question?

12 Q. (BY MR. KOBACH) Well, the last question was when
13 was the-- the general election of 2014.

14 A. It would've been in the first week of November,
15 but I don't remember the exact date.

16 Q. Okay. And you said he was called as well by
17 telephone?

18 A. Yes, but that was in 2015.

19 Q. It appears-- is it correct-- well, is this person
20 now fully registered?

21 A. Yes.

22 Q. Has proof of citizenship been provided by this
23 person?

24 A. We received it from the state of Kansas, not from
25 the individual.

1 Q. Okay. And when did you receive it from the state
2 of Kansas?

3 A. It looks like we received it in October of 2016.

4 Q. Was there-- were there any changes that were made
5 in the way-- well, let's talk about that. So how do you
6 receive things from the state of Kansas-- how do you
7 receive proof-of-citizenship documents from the state of
8 Kansas?

9 A. At the beginning it was a spreadsheet coming only
10 from the Kansas Department of Health and Environment and
11 we would get a spreadsheet from individuals' identifying
12 information and then just a notation as to whether or
13 not they had proof of citizenship on file.

14 Then as we kind of progressed and we got into the
15 fall of 2016, we began getting records from the DMV as
16 well that we were not getting prior to that.

17 Q. Okay. So to make sure I understand. Prior to
18 the fall of 2016, you were getting citizenship documents
19 only from Kansas Department of Health and Environment?

20 A. Correct.

21 Q. And then after that transition, you were getting
22 them from both agencies?

23 A. Correct.

24 Q. Was there any change in-- sometime near the end
25 of 2016 that your office made in the notices that were

1 sent to individuals?

2 A. Well, after the election we updated our notice
3 that we sent out to no longer say we received your birth
4 certificate from KDHE, but now it says something to the
5 effect of we have received notification from a state
6 agency that you have a proof-of-citizenship document on
7 file. I'm sure I'm butchering that exact terminology.
8 But we did change that. Unfortunately, we did not
9 change it prior to Mr. Stricker's notice going out. It
10 was just an oversight on our part to get that notice
11 updated.

12 Q. So let's go to that notice that you're talking
13 about. Where is it in this file?

14 A. Just give me a moment to find it. I apologize,
15 there's a lot of notices in here to read through. It
16 looks like it is on page--

17 Q. If you can just count from the beginning.

18 A. Yeah, that's what I was working on doing. It
19 would be Page 9 that-- and the notice is dated
20 October 26th, 2016.

21 Q. So--

22 A. No. Yes, that's correct.

23 Q. Yeah, I think I found it.

24 A. Uh-huh.

25 Q. So in the-- the last two sentences then does it

1 say, "We have since received information from the Kansas
2 Department of Health and Environment, Office of Vital
3 Statistics indicating that you have a Kansas birth
4 certificate on file. Based on that determination, your
5 registration is deemed complete and we have granted you
6 full voter registration status." Is that correct?

7 A. Correct.

8 Q. And so are you saying that this statement that
9 the proof of citizenship came from KDHE is incorrect and
10 that it actually came from the KDOV?

11 MS. LIU: Objection, leading.

12 Q. (BY MR. KOBACH) Could you explain-- you said
13 earlier that this would be an oversight.

14 A. Right.

15 Q. Explain what happened.

16 A. We received the proof of citizenship from the
17 Department of Motor Vehicles, not from the Kansas
18 Department of Health and Environment. But because of
19 the timing of everything and just being in the middle of
20 a presidential election, we failed to update this
21 notice, didn't--

22 Q. And what-- what does the new notice state, if you
23 can--

24 A. In summary, that we received a
25 proof-of-citizenship document from a state agency.

1 Q. And does the new notice specify which state
2 agency?

3 A. No.

4 Q. So it's an all-purpose notice?

5 A. Correct.

6 Q. And would you use the new notice regardless of
7 whether the person-- person's citizenship document came
8 from KDHE or the Department of Vehicles?

9 A. That is correct.

10 Q. In the fall of 2016, did the Department of
11 Vehicles make any special efforts that you are aware of
12 to verify citizenship that you saw from your office's
13 perspective?

14 A. Yes. We received a large number of-- I believe
15 it was in a spreadsheet of individuals that they had
16 gone back more in depth through their files was my
17 understanding and looked further into their files and
18 found something on file that they had not previously
19 reported to us.

20 Q. This individual, Mr. Stricker, claimed when he
21 was testifying before this Court that when he cast a
22 provisional ballot he was exposed to scrutiny and other
23 voters could potentially see his votes.

24 Can you please explain for the Court how
25 provisional ballots are cast in Sedgwick County?

1 A. When someone-- you know, there are many reasons
2 why someone might need to cast a provisional ballot.
3 But if they go to the check-in table and either their
4 name is not on the rolls or their name is changed,
5 address is changed, they are directed to the provisional
6 balloting table which is also kind of the same area as
7 paper balloting.

8 A judge there will look up, figure out what
9 ballot status should be given. They will be given
10 paperwork to fill out and a paper ballot and they will
11 be directed to sit in a privacy booth, which is a-- a
12 booth that goes about, I don't know, that tall
13 (indicating) off of the table that they sit in to fill
14 out their paperwork and their ballot. They're sitting
15 at a table to do that. And then they seal their ballot
16 in the envelope and then return it to the election
17 worker.

18 Q. All right. Is it possible for someone to see
19 when-- see the votes that are being cast by someone
20 voting in a privacy booth?

21 A. I would say without them coming and standing over
22 their shoulder, it would be very difficult to do that.

23 Q. In my county in the past where I live I'm given
24 the choice, do I want to cast a paper ballot or do you
25 want to vote on the electronic equipment. Are voters in

1 Sedgwick County given that choice?

2 A. Yes.

3 Q. Do some voters choose to vote by paper ballot?

4 A. Yes.

5 Q. Those-- are those paper ballots provisional?

6 A. No.

7 Q. So when a non-provisional voter votes a paper
8 ballot, does he sit in the same type of booth that Mr.
9 Stricker sat in?

10 A. Well, I was not physically there to see where Mr.
11 Stricker sat. But the policy is and what our procedures
12 are is they sit in the exact same booth. In fact, those
13 booths are interchangeable for provisional balloting or
14 paper balloting. So anybody could be sitting there for
15 either a paper ballot or a provisional ballot.

16 Q. So I just want to make sure I understand. So if
17 I'm in the-- voting in that-- in Sedgwick County and I
18 want to cast a paper ballot, which I usually do, would I
19 be voting from the same booths that people who are
20 voting a provisional ballot vote from?

21 A. Yes.

22 Q. And throughout the day is it typical that those
23 tables and booths where people are voting paper or
24 provisional are used multiple times?

25 A. Yes, interchangeably, yes.

1 Q. Do a significant number of people who are not
2 voting paper-- who are not provisional but are like me,
3 preferring to vote a paper ballot, do a significant
4 number of people choose to vote paper ballots in
5 Sedgwick County?

6 MS. LIU: Objection, it's leading and
7 irrelevant.

8 THE COURT: Overruled.

9 A. Yes, particularly in larger elections or in the
10 last couple of years prior to us updating our voter
11 equipment when we were using DRE voting machines,
12 people's trust in the machines went down and they began
13 voting paper ballots in greater number.

14 Q. (BY MR. KOBACH) Can you give us some sort of
15 sense of-- countywide, are the number of paper ballots
16 cast in a particular, you know, November even-year
17 election, is it in the hundreds, can you give us a
18 ballpark? Thousands?

19 A. It would be several thousand.

20 Q. So is it safe to say that at a particular polling
21 place there would be multiple people throughout the day
22 voting a paper ballot?

23 A. Yes.

24 Q. Including people not voting a provisional ballot?

25 A. Correct.

1 Q. I'm going to show you another exhibit, which
2 should be in this folder. Yes. It is Exhibit JT 22.

3 MR. KOBACH: Do you have a copy, Your Honor,
4 JT 22?

5 THE COURT: That's not the same exhibit
6 number scheme for trial.

7 MR. KOBACH: It's Joint Exhibit 22.

8 THE COURT: Oh, okay. I'm sorry.

9 MR. KOBACH: I'm sorry, our little tabs say
10 JT 22.

11 THE COURT: Exhibit 22, yes. It's admitted
12 by stipulation.

13 MR. KOBACH: Correct. Yes.

14 Q. (BY MR. KOBACH) Ms. Lehman, that's the one that
15 is under our Tab JT 22--

16 A. Yes.

17 Q. -- but it states Joint Exhibit 22. So what is
18 this-- what is this in front of you?

19 A. This is an e-mail between myself and then state
20 election director Brad Bryant.

21 Q. And if you go down to the e-mail message from Mr.
22 Bryant to you on March 28th, 2014, it's the one in the
23 middle of the first page. What does Mr. Bryant say?

24 A. He says, "I think you did the right thing
25 cancelling the registration. I just wish the DMV would

1 not register people who they know to be non-citizens."

2 Q. And then-- and what is your response to him on
3 the same day, three minutes later?

4 A. "I agree."

5 Q. What is your understanding of what you and Mr.--
6 the-- the phenomenon that you and Mr. Bryant are talking
7 about, what is your understanding of why that occurs?

8 A. Of--

9 Q. Of why--

10 A. -- why the DMV registered someone who's not a
11 citizen?

12 Q. Correct.

13 A. I would assume human error.

14 Q. Changing topics now again. Did your office at
15 one time do a study of several hundred people on the
16 suspense list?

17 A. I did, yes.

18 Q. And how many voters did you study?

19 A. The first 700 who were in suspense.

20 Q. Say that again.

21 A. The first 700 who were in suspense. So from
22 January 1, 2013 until I hit the 700 mark.

23 Q. Did your study reach any conclusions about how
24 many people had moved away from their address at which
25 they first registered?

1 MS. LIU: Objection. It sounds like it's
2 calling for expert testimony.

3 THE COURT: Have you-- is there a report on
4 this study? Is this something that's been discovered?

5 MS. LIU: We haven't seen one. There's no
6 foundation for this.

7 MR. KOBACH: Your Honor, I think this is
8 analogous to the anecdotal study that Ms. Ahrens
9 described where she counted people who-- they went to
10 their door in Douglas County. And this is Ms. Lehman
11 merely stating that she looked at a number of cases and
12 drew some conclusions from those cases.

13 THE COURT: All right. Mr. Johnson.

14 MR. JOHNSON: Your Honor, if I could just
15 make the observation this is wholly different from what
16 Ms. Ahrens testified to yesterday. This is a state
17 election official with access to official state records
18 and she's going to testify to what she saw in those
19 records and personally observed and by all indication
20 made no further notation.

21 MR. KOBACH: That is right. It's very
22 different. Ms. Ahrens didn't even participate in any
23 interviews at the door. She can't--

24 THE COURT: I'm sorry? I'm sorry?

25 MR. KOBACH: It is very different, I agree.

1 Ms. Ahrens didn't participate in the interviews at the
2 door and Ms.--

3 THE COURT: All right. Well, first of all,
4 there was no--

5 MR. JOHNSON: And I heard no objection to
6 that testimony.

7 THE COURT: I was going to say there was no
8 objection to Ms. Ahrens' testimony. But I'm concerned
9 that, I mean, what we're talking about is analysis of
10 data from a database in the state and there's been no--

11 MR. KOBACH: May I rephrase the question
12 then?

13 THE COURT: -- discovery.

14 MR. KOBACH: I'll just merely ask what she
15 knows.

16 THE COURT: All right. Go ahead.

17 Q. (BY MR. KOBACH) Did you look at the first 700
18 cases of people in the suspense list at any time?

19 A. Yes.

20 MS. LIU: Same objection, Your Honor.

21 THE COURT: I'm going to allow you to make a
22 foundation. I'm not sure I'm going to allow this
23 testimony but proceed.

24 Q. (BY MR. KOBACH) What did you do when you looked
25 at them?

1 A. I was just-- my original intent was to make sure
2 that they were properly in suspense and that no errors
3 had been made in our office. But then I noticed that
4 they were-- there was a large number of them that
5 notices we were sending to them were bouncing back from
6 the post office, that they were no longer at the address
7 where they had registered.

8 Q. And how many bounced back from the post office?

9 A. It was around 30 percent.

10 Q. So when a notice bounces back from the post
11 office, does that usually mean that the person no longer
12 lives at that address?

13 MS. LIU: Your Honor, I-- I object to this
14 line of questioning and move to strike all of this
15 testimony. She-- we haven't received any of the
16 records, underlying records.

17 THE COURT: All right. I'll sustain and not
18 allow any further testimony about this analysis of the
19 records.

20 MR. KOBACH: Are you striking also what she
21 just said about the records?

22 THE COURT: No, no. But going further, I
23 don't-- I think it's unfair surprise. It really does
24 involve an analysis of records and a summary of the
25 records without giving the other side fair notice that

1 you're going to do that.

2 MR. KOBACH: So her questions up to this
3 point are allowed into evidence, and her answers?

4 THE COURT: I've allowed that, that
5 30 percent bounce back.

6 MR. KOBACH: Okay. No further questions,
7 Your Honor.

8 MS. LIU: Your Honor, could we take a break?

9 THE COURT: Yes, let's take a 15-minute
10 break.

11 MS. LIU: Thank you.

12 (Recess).

13 THE COURT: All right. You can be seated.

14 CROSS EXAMINATION

15 BY MS. LIU:

16 Q. Good morning, Ms. Lehman. I wanted to ask you a
17 few questions about the spreadsheet that Secretary
18 Kobach just asked you about, it's Defendant's
19 Exhibit 1133.

20 And before we get to this spreadsheet. During
21 Mr. Kobach's examination you gave testimony about Mr.
22 Stricker's testimony. Correct?

23 A. Yes.

24 Q. And your testimony was based on media reports
25 regarding that testimony. Correct?

1 A. Correct.

2 Q. And you understand that prior to taking the stand
3 you were to be sequestered. Correct?

4 A. I did not understand that, no.

5 Q. So no one told you you were supposed to be
6 sequestered?

7 A. No.

8 Q. And that meant that you weren't really supposed
9 to hear-- you weren't supposed to hear the testimony of
10 other witnesses. Correct?

11 A. I was unaware of that.

12 Q. No one told you?

13 A. No.

14 Q. Yet you read articles about the trial and what
15 other witnesses testified about. Correct?

16 A. Correct, uh-huh.

17 Q. So I'd like to move to Defendant's Exhibit 1133.
18 I just want to ask you a few questions about this
19 spreadsheet. This spreadsheet only covers Sedgwick
20 County. Correct?

21 A. Yes, I believe so, yes.

22 Q. And just to be clear, you did not create this
23 spreadsheet. Correct?

24 A. Correct.

25 Q. It was created by someone at the Secretary of

1 State's Office. Correct?

2 A. Correct.

3 Q. And you're aware that the effective date of the
4 proof-of-citizenship law was January 1st, 2013.
5 Correct?

6 A. Correct.

7 Q. So you mentioned that this spreadsheet lists a
8 total of 18 alleged non-citizen registrations in
9 Sedgwick County prior to 2013. Correct?

10 A. Yes, I believe so. Let me-- yes.

11 Q. And these instances range from 1999 to 2012.
12 Correct?

13 A. I think the most recent was 2011.

14 Q. So 1999 to 2011?

15 A. Correct.

16 Q. And of-- of those 18, nine purportedly registered
17 to vote through the Department of Vehicles before 2013.
18 Correct?

19 A. I'm going to check that because I don't know off
20 the top of my head.

21 Q. Feel free to take your time.

22 A. Correct.

23 Q. And only two who registered to vote at the DOV
24 before 2013 actually cast a vote. Correct?

25 A. I'm going to double-check that again. That looks

1 to be correct, yes.

2 Q. And you also mentioned that this spreadsheet also
3 lists 16 alleged non-citizens who purportedly attempted
4 to register to vote after the documentary
5 proof-of-citizenship law came into effect in 2013.
6 Correct?

7 A. Correct.

8 Q. And 12 of those 16-- 12 of the 16 of those
9 alleged non-citizens attempted to register at the DOV.
10 Correct?

11 A. I will double-check that. Give me a moment.
12 That is correct.

13 Q. And all the entries on this spreadsheet are
14 between 1999 and 2017. Correct?

15 A. Yes.

16 Q. So that's almost 20 years. Correct?

17 A. Correct.

18 Q. And during that time you mentioned you found only
19 38 cases. Correct?

20 A. Yes.

21 Q. And that's less than an average of two per year.
22 Correct?

23 A. Yes.

24 Q. And you testified since April-- or excuse me.
25 And since April 2017, there have only been two new

1 instances of purported non-citizen registration.

2 Correct?

3 A. Correct.

4 Q. And the majority of the entries on this
5 spreadsheet, they never cast a single ballot. Correct?

6 A. Correct.

7 Q. So let's just go through some of these entries
8 that Mr. Kobach talked to you about. And you see the
9 top row it has a category for "voted." Correct?

10 A. Correct.

11 Q. And the first entry, do you see the-- do you see
12 that this applicant was registered for nearly 18 years.
13 Correct?

14 A. Correct.

15 Q. And this applicant never voted. Correct?

16 A. Correct.

17 Q. And let's go to the second entry. This applicant
18 was registered for nearly 12 years. Correct?

19 A. Correct.

20 Q. And this applicant never voted. Correct?

21 A. Correct.

22 Q. Let's go to the October 7th, 2008 entry. This
23 applicant was registered for over six years. Correct?

24 A. Correct.

25 Q. And this applicant, again, never voted. Correct?

1 A. That's correct.

2 Q. And let's go to the September 27th, 2010 entry.
3 This applicant was registered for over seven years and
4 this applicant never voted. Correct?

5 A. Correct.

6 Q. So the majority of the entries on this
7 spreadsheet never cast a single ballot. Correct?

8 A. Correct.

9 Q. And let's go, let's see, to Page 3. There's a
10 highlighted entry. This applicant was registered for
11 over seven years and never voted. Correct?

12 A. Correct.

13 Q. And none of these people voted before they became
14 citizens. Correct?

15 A. The ones that we have just discussed, that is
16 correct.

17 Q. And the majority, again, never have cast a single
18 ballot. Correct?

19 A. Correct.

20 Q. And only five people on the whole list voted
21 since the-- or since the 2004 election. Correct?

22 A. That's going to take me a minute to confirm. You
23 said five people since 2004?

24 Q. Correct.

25 A. Okay.

1 Q. Ms. Lehman, I--

2 A. I apologize.

3 Q. -- I'll re-ask the question.

4 A. Okay.

5 Q. Only five people ever voted on the whole list and
6 the earliest was in 2004. Correct?

7 A. Just a moment. I think that comes down to the
8 definition of voting. Because if you look on Page 5,
9 there was one entry from the person who cast a
10 provisional ballot in 2016, that that ballot was not
11 counted. So it really is going to depend upon what you
12 define what is voting, whether it's the act of casting a
13 ballot or the ballot being counted. So there are five
14 whose ballots were counted and the first one-- or since
15 2004, yes.

16 Q. And those five people cast fewer than ten votes.
17 Correct?

18 A. No, that's not correct. Let me go back and
19 double-check. So I have on 9-14-2004, this individual
20 voted three times. And then the next line, that
21 individual voted four times. Then you have the bottom
22 of Page 2, that individual voted one time. And then on
23 10-2008, the individual voted one time. One, two-- I've
24 lost count now, I'm sorry.

25 Q. So it's either 12 or 13. Correct?

1 A. Somewhere around there.

2 Q. And I'm-- am I right that over 1.3 million votes
3 were cast in Sedgwick County during that time just in
4 the general election and primaries. Correct?

5 A. I don't know that off the top of my head.

6 MS. LIU: Your Honor, may I take judicial
7 notice of the 1.3 million votes that are available on
8 Secretary Kobach's website?

9 THE COURT: And what does that 1.3 million
10 pertain to?

11 MS. LIU: The votes casts in Sedgwick County
12 just in the general and primary elections.

13 THE COURT: In what years?

14 MS. LIU: Since 2004.

15 MR. KOBACH: Your Honor, we have no idea.
16 We haven't done the math yet to see how many votes were
17 cast.

18 THE COURT: All right. I will-- I had
19 indicated before that I would judicially notice. This
20 was the subject of a motion *in limine*, and I indicated
21 that I would-- plaintiffs wanted me to judicially notice
22 statistics from the Secretary of State's website and the
23 election-- county election websites.

24 And I indicated that I would, because I did
25 not think those were adjudicative facts. They were

1 reliable and easily determined to be accurate or not.
2 So I will judicially notice that.

3 Mr. Kobach, if you think there's something
4 wrong with that figure, you can bring it to my
5 attention.

6 MR. KOBACH: And could the opposing counsel
7 please state the basis-- the numbers that go into the
8 1.3 million figure?

9 THE COURT: Is this-- as I understand it,
10 this is 1.3 million votes cast in Sedgwick County since
11 2004. And in plaintiffs' motion for the Court to take
12 judicial notice, which is Document 459, it looks like
13 you've given me a breakout of votes on certain offices
14 in certain federal election years for the entire state
15 of Kansas from the Secretary of State's site. But I
16 don't-- I don't know that you gave me notice of this in
17 particular from Sedgwick County.

18 MS. LIU: We did not in that filing.

19 MR. STEINER: Your Honor, this just came up
20 in response to some of Ms. Lehman's testimony during Mr.
21 Kobach's examination. But on Secretary Kobach's website
22 for most of the general and primary elections since
23 2004, there's a breakdown by county of the number of
24 votes sometimes by candidate, sometimes with the number
25 of votes, but it's all on Secretary Kobach's website.

1 I think the only one that doesn't split down
2 by county and, therefore, isn't included is the 2016
3 primary election, so that would presumably add to the
4 total. But each of those are there in our, you know,
5 post-trial submissions. I-- we can present it to you or
6 during trial or--

7 THE COURT: Okay, I'm not going to take--

8 MR. STEINER: -- we can present it to you in
9 that form, but it's all on his website.

10 THE COURT: All right. I'm not going to
11 take judicial notice of it at this time. You're going
12 to need to present it to me with a screenshot or
13 whatever you're relying on the website so I can see for
14 myself that it's on there.

15 So I'll take judicial notice of it once you
16 submit that to me. And then Mr. Kobach will have an
17 opportunity to look at it and assure himself that it's
18 accurate as well.

19 MR. STEINER: Thank you, Your Honor.

20 Q. (BY MS. LIU) Could you please turn to Page 3 of
21 your spreadsheet and find the entry dated
22 September 27th, 2010.

23 A. Yes.

24 Q. Which is Applicant 5407885. Do you see that?

25 A. Yes.

1 Q. And there's no indication there in the notes or
2 anywhere else on the spreadsheet about how this
3 applicant was discovered. Correct?

4 A. No. Let me double-check that. That is correct.

5 MS. LIU: Your Honor, may I approach?

6 THE COURT: Yes. You're referring to
7 Exhibit 143?

8 MS. LIU: Correct. What's been marked as
9 Plaintiffs' Exhibit 143, which is Tab 13 in the binder.

10 Q. (BY MS. LIU) And do you see the registrant ID
11 number in the top left of the first page of 5407885?

12 A. Yes, that's correct.

13 Q. And that matches with the spreadsheet entry that
14 we were just talking about. Correct?

15 A. Yes.

16 THE COURT: What are these because I don't
17 have them on my exhibit list. Is this the ELVIS file?

18 MS. LIU: This is the ELVIS file.

19 Q. (BY MS. LIU) And do you recognize this document,
20 Ms. Lehman?

21 A. Yes.

22 Q. And the last page, if you could please turn to
23 the last page. The last page is the applicant's voter
24 registration application. Correct?

25 A. Correct.

1 Q. This is a redacted copy. Correct?

2 A. Correct.

3 Q. And under the naturalization number, there's an A
4 number there. Correct?

5 A. Yes.

6 Q. And you understand that is an alien number.
7 Correct?

8 A. I suppose so. I was not aware what the A stood
9 for, but...

10 Q. So as Sedgwick County commissioner, you don't
11 know what the A stands for?

12 A. I-- I've never heard that, I apologize, I did not
13 know that it stood for alien.

14 Q. But you included this applicant when you sent the
15 information to Mr. Kobach. Correct?

16 A. Correct.

17 Q. Turning back to Defendant's Exhibit 1133, which
18 is the spreadsheet.

19 A. Yes.

20 Q. If you turn to Page 4 and find the entry dated
21 April 14th, 2015 with the registration ID 5733764. And
22 this applicant attempted to register prior to becoming a
23 citizen. Correct?

24 A. Correct.

25 Q. And there's no indication that this person signed

1 an oath attesting to citizenship. Correct?

2 A. Correct.

3 Q. And you checked the supporting documents on this
4 person's Kansas voter registration application to verify
5 the notes in this spreadsheet. Correct?

6 A. Correct.

7 Q. Ms. Lehman, I'd like you to please turn to Tab 5
8 of the binder, which was previously admitted as
9 Plaintiffs' Exhibit 98. And you see the cover page.
10 Well, it's for Applicant 5733764?

11 A. Yes.

12 Q. And the supporting document indicates that on her
13 Kansas voter registration application she did not check
14 the box that she was a United States citizen. Correct?

15 A. That application shows that, yes.

16 Q. So this applicant did not then fill out an entire
17 registration application. Correct?

18 A. Correct.

19 Q. And this applicant's voting registration was
20 deemed incomplete. Correct?

21 A. Correct.

22 Q. So please turn back to the spreadsheet, which is
23 Defendant's Exhibit 1133.

24 THE COURT: By the way, were you offering
25 Exhibit 143 or not?

1 MS. LIU: I am. I was offering it,
2 Exhibit 143, into evidence.

3 THE COURT: Any objection?

4 MR. KOBACH: No objection.

5 THE COURT: 143 admitted.

6 Q. (BY MS. LIU) Could you please turn to Page 5 of
7 the spreadsheet. And do you see the entry dated
8 January 20th, 2016 with Registration ID No. 5772434?

9 A. Yes.

10 Q. And this applicant non-citizen applied to
11 register on January 20th, 2016. Correct?

12 A. Yes.

13 Q. And this applicant claimed that her voter
14 registration application was a mistake on the part of
15 the DMV?

16 A. Yes.

17 Q. So this applicant was another individual that did
18 not check the box, did not check whether she was a
19 United States citizen. Correct?

20 A. I was not personally at the DMV so I do not know
21 what happened there.

22 Q. So there's no indication, though, here on this
23 spreadsheet whether or not this person signed the oath
24 attesting that this person was a citizen. Correct?

25 A. Correct. We received that file electronically

1 from the DMV.

2 Q. So you checked the applicant's supporting
3 documents then. Correct?

4 A. Correct.

5 Q. So please turn to Tab 6, which is Exhibit 101.
6 And do you recognize this document?

7 A. Yes.

8 Q. And this is the DMV record that is associated
9 with ID 5772434. Correct?

10 A. Correct.

11 Q. And there's nothing that shows that-- whether
12 this person attested to his or her citizenship.
13 Correct?

14 A. The-- the file that you just had up is actually
15 just the document that comes through if we receive proof
16 of citizenship from the DMV. If they do not send it,
17 then it comes up saying that there was no document
18 attached. But that's not-- that's not the voter
19 registration form.

20 Q. But there's nothing in this-- in this underlying
21 record that shows that-- whether or not she's attested
22 to his or her citizenship. Correct?

23 A. Correct. Again, I was not standing at the DMV
24 counter.

25 MS. LIU: Your Honor, I'd like to offer into

1 evidence Plaintiffs' Exhibit 101.

2 THE COURT: Any objection?

3 MS. BECKER: Your Honor, could we have a
4 moment, just a second, please?

5 MS. WALDMAN: Your Honor, I believe
6 Exhibit 101 was actually admitted by stipulation.

7 THE COURT: You're right. 101 is already
8 admitted.

9 Q. (BY MS. LIU) Could you please turn back to Joint
10 Exhibit 838. You don't actually have any personal
11 knowledge that you received the proof-of-citizenship
12 document from the DMV and not from KDHE. Right?

13 A. Sometime ago I had looked it up, I have not in
14 the last couple of days, but I had looked up to see
15 where his document had come from and it had come from
16 the DMV on I believe a spreadsheet.

17 Q. But that's-- there's no indication of that on
18 this document. Correct?

19 A. That's correct. And that's what I was explaining
20 with Secretary Kobach was that we had not updated our--
21 our notice.

22 Q. So if the last time Mr. Stricker was at the DMV
23 was in 2014 and you received his proof-of-citizenship
24 document from the DMV, his registration should've been
25 complete earlier. Correct?

1 A. If I had received that document at the time, yes.

2 MS. LIU: No further questions.

3 CROSS EXAMINATION

4 BY MR. JOHNSON:

5 Q. Ms. Lehman, on direct examination by your counsel
6 you indicated an understanding of Rule 7-23-15. Do you
7 remember that?

8 A. Yes.

9 Q. And I believe you said that Rule 7-23-15
10 stipulates that at least three notices be sent to
11 registrants who have not provided all information
12 necessary; is that correct?

13 A. Correct.

14 Q. Let me assume-- let me ask you to assume some
15 facts with me. Let's say I live in Wichita, I live on
16 Market Street in Wichita and I come into your office
17 today to register to vote. I fill out the necessary
18 application, I hand it in. It has all the necessary
19 information except one thing, I don't submit any
20 documentary proof of citizenship. Okay. Are you with
21 me?

22 A. Yes. I--

23 Q. All right. Now--

24 A. I do have-- which form did you use when you
25 filled out that application in my office?

1 Q. The state form.

2 A. Okay.

3 Q. I'm not going to confuse it by saying I'm using
4 the federal form--

5 A. Okay. I just wanted to make sure.

6 Q. -- or that I'm applying at the Department of
7 Motor Vehicles.

8 A. Okay. So the state form.

9 Q. Make it as simple as possible.

10 A. Okay.

11 Q. Right. Hand in the form fully filled out without
12 a birth certificate or a passport or the like. Now,
13 under the rules as you understand them, I would not be
14 registered as a voter; is that correct?

15 A. Correct.

16 Q. There would be an entry made in the ELVIS system
17 under my name; is that correct?

18 A. That is correct.

19 Q. And that entry would be made by somebody in your
20 office?

21 A. Correct.

22 Q. Right. And in that entry, it-- let's see, the
23 letter S would be put in a row in my ELVIS entry for
24 suspended or in suspense; is that correct?

25 A. Yes.

1 Q. And that's because my application would be
2 incomplete?

3 A. Correct.

4 Q. So let's say, you know, I applied today, March
5 the 8th. On July the 15th of this year, I read in the
6 newspaper there's going to be a primary election, and
7 there will be on the first Tuesday in August of this
8 year; is that correct?

9 A. Correct.

10 Q. All right. Under your understanding of the
11 application of Rule 7-23-15, if I in the interim period
12 have not supplied documentary proof of citizenship, my
13 registration-- my application will have been cancelled;
14 is that correct?

15 A. Correct.

16 Q. Okay. And that cancellation takes place pursuant
17 to guidance that you have received over the years from
18 the Secretary of State's Office?

19 A. Correct.

20 Q. All right. So let me ask you if you agree with
21 this, I'll read a sentence to you: If a citizenship
22 document is not provided at the time the person submits
23 his or her voter registration application, it may be
24 submitted at a later time. Do you agree with that?

25 A. Yes.

1 Q. Okay. Let me ask you if you agree with this:
2 Such person may, one, mail or deliver the document to
3 the county election office by the close of business on
4 the day before the election or, two, submit it
5 electronically by midnight the day before the election.

6 A. Correct.

7 Q. You heard what I said?

8 A. Yes.

9 Q. Okay.

10 MR. KOBACH: Your Honor, I'm going to object
11 that I think he's reading regulatory language and asking
12 if she agrees with--

13 MR. JOHNSON: I'm not reading her regulatory
14 language, I'm reading language from your website.

15 MR. KOBACH: Okay. It sounds a lot like the
16 regulation to me.

17 Q. (BY MR. JOHNSON) Okay. So if I do that on July
18 the 15th, will I be a registered voter for the August
19 primary election?

20 A. If your registration had been cancelled, you
21 would have to submit a new registration application.

22 Q. Exactly. So if I only send in the documentary
23 proof of citizenship and, as it says here, on the day
24 before the election or if it's submitted electronically
25 midnight the day before the election, I wouldn't be a

1 registered voter. Correct?

2 A. Correct.

3 Q. Would you agree with me that if this language
4 appears on the Secretary of State's website, someone
5 with less than a law degree might interpret it to mean
6 that if he showed up at the primary election he would be
7 allowed to vote?

8 MR. KOBACH: Objection, calls for
9 speculation.

10 THE COURT: Overruled. You can answer if
11 you can.

12 A. Without seeing what else is on the Secretary of
13 State's website, if that's all that's there, I would
14 agree that could be confusing.

15 MR. JOHNSON: That's all I have. Thank you.
16 Thank you, Your Honor.

17 THE COURT: All right. I think Fish-- oh,
18 I'm sorry. It's you, Mr. Kobach.

19 CONSOLIDATED EXAMINATION

20 BY MR. KOBACH:

21 Q. Ms. Lehman, I'm going to go over some of the
22 issues you discussed with opposing counsel, all of them
23 today, although one was yesterday. I think both
24 yesterday and today opposing counsel asked you about
25 naturalization ceremonies in Sedgwick County. I think

1 this was yesterday. I think you agreed that it is
2 possible that someone from outside of Sedgwick County
3 could attend a Sedgwick County naturalization ceremony?

4 MR. JOHNSON: Your Honor, I object. That's
5 beyond the scope of my-- I guess it would be recross.

6 MR. KOBACH: Your Honor, I'm assuming that
7 this is where-- I was supposed to do a direct of-- an
8 hour ago and then now I'm supposed to do all of my
9 responsive questioning now.

10 THE COURT: Okay. I think you're supposed
11 to do them together, but that's fine, go ahead. This
12 did come up before, the fact that there are multiple
13 counties I think that funnel into Wichita.

14 MR. KOBACH: Yeah. Okay.

15 Q. (BY MR. KOBACH) Is it correct that all 38 on the
16 table that you presented, Table 1133, that all 38 of
17 those cases are individuals residing in Sedgwick County?

18 A. I believe so. I know that we came across one
19 that was in another county, I just do not honestly
20 remember if it was on this spreadsheet or not, but I
21 believe they are all Sedgwick County.

22 Q. Opposing counsel has also asked you about a
23 series of non-citizens that may or-- well, let's just go
24 to them. Let's go to Tab 9 in the black binder here.
25 It's-- yes, that one. It's-- looking for the exhibit

1 number. It's Exhibit 5 Lehman-- no, sorry, Plaintiff
2 Fish Exhibit 080. Do you see that one?

3 A. Yes.

4 Q. Okay. And this is one that the plaintiffs'
5 counsel described to you as a non-citizen with the
6 initials E.E.?

7 A. Correct.

8 Q. Do you see that where it's--

9 A. Yes.

10 Q. Okay. Is-- is this person--

11 MS. LIU: Objection, it's beyond the scope.
12 This was yesterday's examination.

13 MR. KOBACH: Again, Your Honor, I thought I
14 was supposed to do my responsive questioning on-- I
15 thought this was a direct-related--

16 THE COURT: So what you just did was direct,
17 you don't consider yourself as having already
18 cross-examined on the testimony from yesterday or
19 whenever?

20 MR. KOBACH: Yeah, I didn't ask-- I didn't
21 ask cross examination questions earlier. I thought I
22 was doing direct in the first round and then now we're
23 doing cross.

24 THE COURT: All right. Proceed.

25 Q. (BY MR. KOBACH) If you look at this one, this

1 individual-- why don't you just go ahead and look at it.
2 If you'll recall, this is an individual-- how did the
3 person respond to the question at the top of the
4 application form, "Are you a citizen of the United
5 States?"

6 A. And they check-marked no.

7 Q. And then did the person sign under the sworn
8 statement, "I swear or affirm that I am a citizen of the
9 United States"?

10 A. Yes.

11 Q. Was this individual included in the 38-person
12 chart?

13 A. On the 38-person chart, there are registrant
14 numbers and no names. And on this document there's a
15 name but no-- or initials and no registrant number, so I
16 cannot compare that at the moment and verify--

17 Q. Well, let's--

18 A. -- to make sure.

19 Q. Let's look. I think this person-- you were also
20 asked about Tab 8. And Tab 8 is a preliminary-- you
21 described yesterday as a preliminary chart. Do you see
22 that there, that your office--

23 A. I'm sorry, which book am I looking?

24 MS. LIU: Actually I didn't ask about this
25 chart. It is now crossing.

1 THE COURT: I-- what are you-- first what's
2 the exhibit number?

3 MR. KOBACH: It is Exhibit No. 81. And,
4 yes, plaintiffs did ask about Exhibit 81 yesterday.

5 MS. LIU: I did not ask about Exhibit 81
6 yesterday.

7 THE COURT: Let me take a look. Exhibit 81
8 has not been admitted into evidence, so I know that
9 there wasn't any questioning about the content of-- of
10 81.

11 MR. KOBACH: Okay. And I-- we can just-- I
12 can do it without having admitted it into evidence.

13 Q. (BY MR. KOBACH) Let me just ask it this way;
14 was--

15 MS. LIU: Objection.

16 THE COURT: Let me hear the question and
17 then I'll hear your objection. Go ahead.

18 Q. (BY MR. KOBACH) Was the non-citizen E.E. one of
19 the individuals you included on what you described as a
20 preliminary chart when your office first started
21 collecting this data?

22 MS. LIU: Objection, it's beyond the scope.
23 It's now leading.

24 THE COURT: Overruled.

25 A. I believe so.

1 Q. (BY MR. KOBACH) And were there individuals on
2 that preliminary chart that didn't make it onto the
3 chart, Exhibit 1133?

4 A. Yes.

5 Q. And why did they not make it onto the chart,
6 1133?

7 A. In discussing, it was decided that they did not
8 meet the criteria that was looked for to be on the
9 second chart.

10 Q. And those criteria would be what?

11 A. If they had completed the voter registration
12 application, in this case the person had check-marked
13 no, so I think that was the reasoning why it wasn't.

14 Q. Okay. You were also asked I think today about
15 the data in spreadsheet 1133, this one.

16 A. Yes.

17 Q. Did you provide the information found in all of
18 the fields in this spreadsheet?

19 A. Yes.

20 Q. Did you initially start collecting this-- this
21 data and assembling it into a spreadsheet at the
22 Sedgwick County Election Office?

23 A. Yes.

24 Q. As the litigation proceeded, did the Secretary of
25 State's Office start receiving the data from--

1 MS. LIU: Objection, this is leading.

2 THE COURT: Well, now we're on cross
3 examination where leading questions are appropriate.
4 I'm looking at the initial direct that the plaintiffs
5 did of Ms. Lehman's testimony. It looks like you're--
6 that's what you're cross examining on. I mean, it would
7 go a lot faster, though, if you would ask leading
8 questions and make your points and be succinct.

9 MR. KOBACH: Okay.

10 Q. (BY MR. KOBACH) I believe you testified-- did at
11 some point your office start sending the information to
12 the Secretary of State's Office to update the
13 spreadsheet as time went on?

14 A. Yes.

15 Q. Did your office send to the Secretary of State's
16 Office all of the information in each person's case?

17 A. Meaning the ELVIS files?

18 Q. No, I'm sorry. All of the information that is
19 noted in the fields here.

20 A. Yes.

21 Q. Were you collecting data for this chart back in
22 1999?

23 A. No.

24 Q. When did you-- when did your office, the Sedgwick
25 County Election Office start-- systemically start

1 recording this information regarding non-citizens
2 discovered registered or attempting to register?

3 A. After we discovered the first one. We didn't
4 really know what to do because it had not-- obviously is
5 not something that had come across our desk before and
6 so we just kind of started writing it down because we
7 didn't--

8 Q. And approximately when did you discover the first
9 one?

10 A. It would've been in 2013. I'm-- I believe that
11 would be the one that the e-mail with Brad Bryant was
12 about. So it would've been the March time frame I
13 believe if I'm not mistaken. I'd have to go back and
14 look. I apologize.

15 Q. Well, go ahead.

16 A. It would've been in 2013. I'm just not exactly
17 confident of the-- I'm trying to remember which one of
18 these marked exhibits is the e-mails that I wanted to
19 look at.

20 Q. Is it the individual who naturalized in 2013, is
21 that the one you're looking for?

22 A. I believe so.

23 Q. That's on the third page, third up from the
24 bottom. Is that the one you're referring to? I could
25 be wrong, just tell me.

1 A. I am not sure, that's why I'm having trouble. I
2 think it's in the-- it would be the first one we
3 e-mailed Brad Bryant about, I just don't-- apparently
4 don't have that e-mail in front of me.

5 Q. Okay. So let's just not worry about getting--

6 A. Here it is.

7 Q. Okay.

8 A. It would be March of-- well, that was March of
9 2014. So, no, that-- I'm misremembering. So this
10 would've been in '13.

11 Q. Okay. So is it correct to say that you started
12 collecting this data in September of 2013?

13 A. Yes.

14 Q. So it is now March of 2018. Is it correct to say
15 that you've been collecting this data for approximately
16 four-and-a-half years?

17 A. Yes.

18 Q. The fact that the date of original registration
19 might be prior to 2013 doesn't affect when your office
20 discovers the case, does it?

21 A. No, it does not.

22 Q. Did the prior election commissioner before you
23 took office start recording this-- at any time record
24 information discovered about non-citizens attempting to
25 register or registering?

1 A. Not to my knowledge, other than the case that was
2 tried and convicted in 2009.

3 Q. The-- say again.

4 A. There was a case in 2009 where an individual had
5 voted and they had been convicted of voting while they
6 were not a citizen, and I know that was documented. But
7 other than that, I've not found any records of that.

8 Q. Did the prior election commissioner send people
9 to every naturalization-- send staff to every
10 naturalization ceremony?

11 A. No, because they were not getting copies of
12 documents then.

13 Q. So could they have possibly tracked the
14 non-citizens already on the voter rolls like you have
15 done before you became election commissioner?

16 A. I-- I would--

17 Q. Let me rephrase.

18 A. -- assume not, but you're asking me to assume
19 something that I'm not really-- don't know.

20 Q. Let me rephrase the question, I'm sorry. Did
21 they systemically collect information about individuals
22 discovered at naturalization ceremonies who were
23 non-citizens registered for a period of time prior to
24 your being election commissioner?

25 A. Not that I found any record of.

1 Q. And what was the date that the Sedgwick County
2 Election Office started attending every naturalization
3 ceremony?

4 A. It was in 2013. I believe it was about mid-year.

5 Q. Mid-year?

6 A. Yes, I don't remember exactly.

7 Q. Are you aware of any other of Kansas' 105
8 counties that collects the information on this-- like
9 yours on this chart?

10 A. Not that I'm aware of, no.

11 Q. Are you aware of any of the-- any other of the
12 105 Kansas counties where the election officer or
13 election office or clerk's office attends every
14 naturalization ceremony?

15 A. No. I would just clarify that doesn't mean it
16 doesn't happen, it just means I am not aware of it.

17 Q. Understood. That's all I'm asking. Let's look
18 at Exhibit 143 that is Tab 13 in the binder given to
19 you, Plaintiffs' Exhibit 143 which is--

20 A. You said Tab 13?

21 Q. Tab 13 in the plaintiffs' binder.

22 A. Okay.

23 THE COURT: It does seem that you're outside
24 the scope of the direct. The scope of the initial
25 direct was pretty limited.

1 MR. KOBACH: Your Honor, this one was just
2 asked-- the plaintiff just asked her about this about 20
3 minutes ago.

4 THE COURT: Right, in response to your
5 direct. We're going to-- this-- we're going to
6 encounter this again with Mr. Caskey so I think we
7 better set the rule. I mean, typically what you do is
8 if you're going to do your direct consolidated, you
9 consolidate it with the cross and so that we don't have
10 the confusion. But you have done a direct and-- and
11 then she responded I think with questions about 143.

12 MR. KOBACH: Right.

13 THE COURT: And you have the opportunity to
14 come back and redirect about that, but now you've moved
15 on to cross examination on her direct and 143 was not
16 discussed. So I mean, you've had your opportunity.

17 MR. KOBACH: Actually, yeah, this was
18 discussed in-- I'm sorry, you're right. It was not
19 discussed in her original direct.

20 THE COURT: Right.

21 MR. KOBACH: But it was just discussed.

22 THE COURT: And that's what you're crossing.
23 That's what you're crossing against is her original
24 direct.

25 MR. KOBACH: Okay. So I shouldn't-- at this

1 point you're saying I should not be referring to things
2 that plaintiffs' counsel just discussed?

3 THE COURT: Well, you had your opportunity
4 to do that when you redirected.

5 MR. KOBACH: This is only my second time
6 examining this witness, so-- Your Honor. So I just want
7 to make sure, so I'm not entitled to--

8 THE COURT: Well, you-- okay. So you-- she
9 directed, you crossed, she redirected, and now you're
10 telling me-- well, actually now you're telling me you
11 never did do a cross examination in response to her
12 direct.

13 MR. KOBACH: Yeah, I thought it was a direct
14 the first time.

15 THE COURT: Yeah, you told me that that was
16 your direct. She then cross-examined on the basis of
17 143 in response to your direct.

18 MR. KOBACH: Right.

19 THE COURT: You had the ability to come back
20 and redirect on that.

21 MR. KOBACH: And that's what I think I'm
22 doing.

23 THE COURT: But you told me that you're not
24 in direct mode anymore, you're in cross examination on
25 her. So I'm just saying you're outside of the scope.

1 We need-- this should be consolidated. I'm going to
2 allow you to do this.

3 But just to be clear; from now on when we do
4 a witness like that, when-- and whoever it is, when you
5 get up to do your direct, it's also your cross
6 examination and so we don't have the confusion about
7 where are we and what are we doing. All right? So go
8 ahead.

9 Q. (BY MR. KOBACH) So looking at Exhibit 143, if
10 you can look at the registration card which opposing
11 counsel had you look at. And I believe it's the last--
12 oh, I'm sorry, almost the last-- second to last-- third
13 to last page.

14 A. You said third to the last?

15 Q. Yeah.

16 A. Okay. I'm not sure that's--

17 Q. No, no, I'm sorry. No, that is third to last--
18 yeah. Well, can you find the voter registration
19 application?

20 A. There's more than one in here. There's one from
21 2010 and then one from 2017.

22 Q. You are right. Okay. So let's look at the one
23 from 2010. Did this person check a box stating that the
24 person is a citizen of the United States?

25 A. Yes.

1 Q. Does it appear, although it is blocked out, is
2 redacted, does it appear that there is something in the
3 signature line indicating a signature behind-- below,
4 "I swear or affirm that I am a citizen of the United
5 States"?

6 A. Yes.

7 Q. So does it appear that this person attested to
8 being a U.S. citizen?

9 A. Correct.

10 Q. And then if you look one, two, three, four pages
11 earlier, do you see a certificate of naturalization?

12 A. Yes.

13 Q. And what is the date on that certificate of
14 naturalization?

15 A. February 24th, 2017.

16 Q. So does it appear that this person was not a U.S.
17 citizen prior to February 24th, 2017?

18 A. Yes.

19 Q. Before the proof of citizenship law went into
20 effect, would your office have registered this person
21 based on the application of 2010?

22 A. Yes.

23 Q. Does your office get a record from the Department
24 of Motor Vehicles if a-- an applicant for voter
25 registration-- if an individual getting a driver's

1 license when asked "would you like to register to vote"
2 says no?

3 A. No, I do not receive anything.

4 Q. Does the-- when an individual at the DMV--
5 Department of Motor Vehicles says yes, that the
6 individual would like to register to vote, does the
7 Department of Vehicles present an oath or affirmation of
8 U.S. citizenship to the person at the Department of
9 Vehicles?

10 MS. LIU: Objection, lack of foundation and
11 beyond the scope.

12 Q. (BY MR. KOBACH) Does your office--

13 THE COURT: Well, first establish-- well,
14 I-- I'm going to overrule the lack of foundation because
15 there's been evidence that she does get records from
16 DMV. So she-- I would assume she knows what she gets
17 and what she doesn't get.

18 Q. (BY MR. KOBACH) Is it your understanding when
19 you get a record from the DMV that the individual has
20 been presented with a-- a statement "I am a U.S.
21 citizen"?

22 A. I do not know the process at the DMV because I do
23 not work at the DMV, I just receive the records and
24 process them. So I do not feel qualified to testify to
25 that.

1 Q. And then finally look at Tab 6 of opposing
2 counsel's chart. And that is Exhibit 101, Fish
3 Plaintiffs' Exhibit 101. You were asked about this case
4 just a moment ago by opposing counsel. I'm going to ask
5 you to tell me what the registration ID number is on
6 this one.

7 A. I believe it's on the front page. I believe that
8 would be 5772434.

9 Q. And would that be the same 5772434 that we see on
10 Page 5 of the Exhibit 1133 chart?

11 A. Yes.

12 Q. Okay. So what happened in this case? How did
13 you receive the-- based on what you can see from the
14 ELVIS chart here, how did you receive the information to
15 start this file in ELVIS?

16 A. We received the application from the Department
17 of Motor Vehicles and then we processed this. I'm
18 looking at the notes here. The applicant subsequently--
19 subsequently came to the election office to report that
20 she was not a citizen after receiving a second notice
21 from our office requesting proof of citizenship. She
22 also claimed that her voter registration application was
23 a mistake on the part of the DMV. And then she
24 completed a cancellation form.

25 Q. Does your office when you receive a file from the

1 Department of Vehicles, does your office administer an
2 oath of citizenship to that person? In other words,
3 when you receive the file, do you contact the person and
4 say, hey, we have to swear-- you have to swear you're a
5 citizen?

6 A. No.

7 Q. Why not?

8 A. That's not the process. Because they complete
9 that at the DMV is my understanding.

10 Q. They complete what at the DMV?

11 A. The oath is my understanding. But again, I'm not
12 there doing it. But we are not-- if someone mails in a
13 voter registration application, we don't contact them to
14 do the oath in front of us.

15 Q. On the mailed-in application, is there a signed
16 affirmation that the person is a U.S. citizen?

17 A. Yes.

18 Q. So in the DMV application that you receive, does
19 your office assume that the DMV had the person attest to
20 U.S. citizenship?

21 A. Yes.

22 MR. KOBACH: No further questions.

23 THE COURT: All right. To be clear, you--

24 MS. LIU: Your Honor, I just have one
25 question.

1 THE COURT: The scope is whatever he just
2 asked.

3 RE CROSS EXAMINATION

4 BY MS. LIU:

5 Q. So I'm going to go back to Ms. E.E.

6 A. Okay.

7 Q. In discussing-- you remember when Mr. Kobach
8 asked you why Ms. E.E. didn't make it onto the chart,
9 Defendant's Exhibit 1133. Right?

10 A. Yes.

11 Q. And you testified that in discussing, it was-- it
12 was decided that they didn't meet the criteria.
13 Correct?

14 A. Correct.

15 Q. In discussing with whom, Ms. Lehman?

16 A. With the Secretary of State's Office.

17 Q. With Secretary Kobach?

18 A. I-- yes.

19 MS. LIU: No further questions.

20 MS. WALDMAN: Your Honor, the plaintiffs are
21 prepared to start--

22 THE COURT: Oh, did you have anything?

23 MR. JOHNSON: No, I don't have anything.

24 Thank you.

25 MR. STEINER: Your Honor, one housekeeping

1 matter with respect to Ms. Lehman. I think that
2 Secretary Kobach this morning put in without objection I
3 think it was Defendant's Exhibit 1202, which is a
4 composite of all of the ELVIS files. I may have the
5 number wrong.

6 That should come in we believe under seal
7 because I think it hasn't been redacted and so we would
8 ask that that come in under seal and that Secretary
9 Kobach's office over the next couple of days prepare a
10 properly redacted form that can be a part of the public
11 file.

12 MR. KOBACH: We are in agreement with that,
13 Your Honor. That's fine.

14 THE COURT: All right. Let me make a note
15 of that. Exhibit 1202, all right, comes in under seal
16 at this point. All right. May Ms. Lehman be excused?

17 MS. LIU: Yes, Your Honor.

18 THE COURT: All right. You're excused.
19 Thank you. All right. It's time for a lunch break.
20 How are we time-wise, how are we tracking? Mr. Ho?

21 MR. HO: A little bit more slowly than we
22 had anticipated before we got here, Your Honor. I think
23 the plaintiffs-- we felt that we-- we predicted that we
24 would be finished with our case yesterday afternoon. We
25 still have two witnesses to call and I expect they'll be

1 pretty lengthy, and also about 45 minutes of an excerpt
2 of Secretary Kobach's deposition. My hope is that we
3 can still get through all of that today. It's going to
4 depend I think a little bit on the length of the cross
5 examinations.

6 THE COURT: I understand. How about you,
7 Mr. Johnson, remind me what your estimate was of your
8 evidence. We've already heard from your client, of
9 course.

10 MR. JOHNSON: Well, as I told the parties
11 last night, we decided not to call Doctor Smith so I
12 don't have anything more.

13 THE COURT: Okay. So it sounds like we may
14 complete plaintiffs' case today hopefully or early
15 tomorrow. And defendant's case will be ready to go. So
16 we'll have all day tomorrow.

17 Mr. Kobach, at this point what's your best
18 estimate for how long it will take you to put your
19 evidence in? Of course, you've put in some of it
20 already.

21 MR. KOBACH: Well, Your Honor, we're hopeful
22 that-- let's see, depending-- I guess if we had all--
23 let's just assume we had all day tomorrow, we should be
24 able to get through most of-- well, I don't want to
25 promise we can get through it all in one day. I think

1 it's highly likely that it will go over into Monday.

2 THE COURT: That's fine. We had budgeted
3 for that. In fact, we have--

4 MR. KOBACH: So I think-- you know, I think
5 two days, but--

6 THE COURT: Okay.

7 MR. KOBACH: I-- I sure hope we don't go
8 into Tuesday, but we're going to do everything we can to
9 try to finish up by the end of Monday.

10 THE COURT: Okay. And then I know that
11 plaintiff may have a rebuttal expert witness. What's
12 your estimate on that? Is it just one witness that
13 you're contemplating?

14 MR. HO: I think it depends upon the
15 witnesses that Secretary Kobach calls. Based on what we
16 know, it's two. There's one witness I'm not sure if
17 they're calling or not. If they do call that witness,
18 then it would be three. Two of the three are very
19 short, Your Honor, and one is a little bit longer. I
20 would expect our rebuttal case to be-- to last half a
21 day.

22 THE COURT: Okay. So it looks like it's
23 very likely that we'll finish with everything by the
24 close of business on the 13th, which is great, because
25 we're going to be in recess the 14th through 16th if

1 we're not done. But we did allow for an additional
2 trial date if we needed it on March 19th, that following
3 Monday. But it looks like we're going to finish on
4 schedule even though things have slowed down somewhat.
5 All right. So let's be in recess until 1:15.

6 MR. STEINER: Thank you, Your Honor.

7 MR. HO: Thank you, Your Honor.

8 (11:55 a.m., proceedings recessed).
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C E R T I F I C A T E

I, Kelli Stewart, a Certified Shorthand Reporter and the regularly appointed, qualified and acting official reporter of the United States District Court for the District of Kansas, do hereby certify that as such official reporter, I was present at and reported in machine shorthand the above and foregoing proceedings.

I further certify that the foregoing transcript, consisting of 104 pages, is a full, true, and correct reproduction of my shorthand notes as reflected by this transcript.

SIGNED March 14, 2018.

/s/ Kelli Stewart

Kelli Stewart, CSR, RPR, CCR, RMR