IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROBERT L. "ROBB" PITTS, CHAIRMAN, FULTON COUNTY BOARD OF COMMISSIONERS; FULTON COUNTY BOARD OF REGISTRATION AND ELECTIONS; FULTON COUNTY, GEORGIA and CHE ALEXANDER, CLERK OF COURT, Petitioners, v. UNITED STATES OF AMERICA, Respondent.	Civil Action No. 1:26-CV-00809-JPB

PETITIONERS' SUR-REPLY IN OPPOSITION TO RESPONDENT'S MOTION TO VACATE EVIDENTIARY HEARING AND QUASH SUBPOENA

Petitioners respond to certain issues raised by Respondent for the first time in its reply. Respondent suggests that it has "repeatedly offered, in writing, to discuss providing the Clerk an electronic copy in exchange for dismissing this case." Doc. 44, at 1. As Petitioner's counsel notified the Court and Respondent's counsel in writing on February 9, 2026, Respondent's counsel initially represented that it "was willing to expeditiously make copies of the seized election records, **return the originals** and a copy to Fulton County, and voluntarily stay its review of the copied records pending the Court's final decision in this matter." Respondent then

inexplicably withdrew that offer, which necessitated this Court having to set the matter down for an expedited hearing—a hearing that Respondent did not object to. Respondent has since represented to the Court that returning the originals to Petitioners—and even allowing testimony in the very hearing it originally agreed to—would somehow compromise "an ongoing criminal investigation," despite its prior representations. Given Respondent's prior stances, it is hard to make sense of its recent "offer" to "discuss" a "copy."

Notably, Respondent's so-called offer to discuss giving Petitioners a copy, which it insisted was "**not a formal offer to make that deal**," came in the context of its abrupt flip-flop regarding the testimony of Special Agent Evans. Despite Respondent's representation that it couldn't **"imagine that [SA Evans's testimony] will be an issue,**" it filed a Motion to Quash without conferring or notifying Petitioners, who had been asking about SA Evans's availability for days.[1] To the

[1] Specifically, on February 12, 2026, Petitioners notified Respondent that they expected SA Evans to testify at the evidentiary hearing and asked whether Respondent would make him available. Three days later, USA Albus replied, "I can't imagine that will be an issue and will give you a firm answer as soon as I can[.]" Email from T. Albus to K. Ghali (Feb. 13, 2026). Counsel for Petitioners followed up multiple times, and when Respondent said, "we will require a Touhy request," Petitioners provided one the same day. Email from K. Ghali to T. McCotter (Feb. 17, 2026); *see also* Doc. 33-1. Then, when Respondent claimed it needed a subpoena "to trigger a Touhy review here," Petitioner obliged. With no further discussion of the subpoena or SA Evans's testimony, Respondent moved to quash the subpoena, and sent a response to Petitioners' *Touhy* Request several hours after filing their motion.

extent that Respondent suggests it is now willing to "discuss" giving Petitioners a copy of their own records (on the condition that they dismiss this action), it appears to be doing so in an effort to avoid judicial review of an unconstitutional seizure wholly lacking in probable cause. If Respondent is willing to provide a copy to Petitioners (as it claims), it is evident that doing so will not compromise an ongoing investigation. Respondent's remaining arguments are meritless, and Petitioners stand ready to argue in support of their request for Rule 41(g) relief at the February 27, 2026 evidentiary hearing.

Respectfully submitted this 25th day of February.

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**Admitted pro hac vice*