

July 18, 2022

VIA EMAIL

Lori Vassar, Chair
Monica Aquino-Thieman, Vice Chair
Interagency Suspension & Debarment Committee
c/o U.S. General Services Administration
Suspension & Debarment Office
1800 F Street NW
Washington, DC 20405

**Re: Cyber Ninjas Inc. – Referral for Debarment Consideration; Lead Agency
Coordination**

Dear Chair Vassar, Vice Chair Aquino-Thieman, and members of the Interagency Suspension and Debarment Committee (“ISDC”),

On behalf of All Voting Is Local Arizona, Arizona Democracy Resource Center, Living United for Change Arizona (LUCHA), and Mi Familia Vota, the Brennan Center writes to urge the ISDC to designate a “lead” agency to consider Cyber Ninjas Inc. (“Cyber Ninjas”) for debarment. As is discussed herein, Cyber Ninjas is not a presently responsible contractor. Cyber Ninjas was *held in civil contempt* on January 6, 2022 and *sanctioned with a \$50,000 per day fine* for continued “non-complia[nce]” with the court’s order. See Ex. A.¹ Cyber Ninjas remains embroiled in litigation, in large part due to their “*refusal to turn over public documents*” in their physical possession despite previous Court orders which have been affirmed on appeal.”²

Cyber Ninjas has also been subject to *ongoing federal scrutiny*. On May 5, 2021, the United States Department of Justice’s (“DOJ”) Civil Rights Division wrote to Arizona Senate President Karen Fann with concerns about Cyber Ninjas’ possible violation of federal statutes for *voter intimidation* and *failure to adequately safeguard federal election records*, putting them at risk of damage and loss. See Ex. B.³ On July 14, 2021, the House of Representatives Committee on Oversight and Reform sought information from Cyber Ninjas’ Chief Executive Officer

¹ Phx. Newspapers, Inc. v. Ariz. State Senate, No. LC2021-000180-001, slip op. at 2 (Ariz. Sup. Ct. Jan. 6, 2022).

² Ryan Randazzo, *Cyber Ninjas Public Records Case with the Arizona Republic Gets New Judges, but Rulings Are the Same*, ARIZ. REPUBLIC (Jan. 20, 2022), <https://www.azcentral.com/story/news/politics/arizona/2022/01/20/new-judge-cyber-ninjas-records-case-arizona-republic/6594689001> [https://perma.cc/39NX-7KDK] (emphasis added); see also Phx. Newspapers, slip op. at 2.

³ Letter from Pamela S. Karlan, Principal Deputy Assistant Att’y Gen., U.S. Dep’t of Just., to Karen Fann, Sen., Ariz. State Senate 1–2 (May 5, 2021).

(“CEO”) Doug Logan to determine whether the company’s work for the Arizona State Senate “protect[ed] the right to vote or [was] instead an effort to promote baseless conspiracy theories, undermine confidence in America’s elections, and reverse the result of a free and fair election for partisan gain.” See **Ex. C**.⁴

If Cyber Ninjas is permitted to continue engaging in publicly-funded operations, the company **will continue to undermine confidence in our federal elections**. Although Cyber Ninjas claims that it “closed its doors” effective January 1, 2022, the company actively maintained its entity registration after announcing its closure.⁵ Moreover, CEO Doug Logan has publicly announced his intention to continue operations with Cyber Ninjas’ employees under a new company⁶ (though he has recently indicated that these plans have stalled⁷).

The ISDC should identify an appropriate lead agency to propose Cyber Ninjas and Doug Logan for debarment.

I. About Cyber Ninjas

Cyber Ninjas is a Florida-based cybersecurity company led by CEO Doug Logan that has a history of contracting with the United States federal government. In March 2021, Cyber Ninjas was engaged by the Arizona State Senate to lead an audit of the 2020 election results in Maricopa County, Arizona.⁸ Cyber Ninjas pursued and performed the work despite the fact that Cyber Ninjas was an “unaccredited firm with **no experience auditing elections**.”⁹

⁴ Letter from Carolyn B. Maloney, Chairwoman, Comm. on Oversight & Reform, and Jamie Raskin, Chairman, Subcomm. on Civ. Rts. & Civ. Liberties, to Douglas Logan, Chief Exec. Officer & Principal Consultant, Cyber Ninjas Inc. 1 (July 14, 2021) [hereinafter House Letter].

⁵ Cyber Ninjas’ recent entity registration in Florida directly contradicts their assertion that they went out of business. Compare **Ex. D-1**, *Close of Cyber Ninjas*, CYBER NINJAS, <https://cyberninjas.com> [https://perma.cc/P9UJ-5Y65] (last visited July 6, 2022), with **Ex. D-2**, CYBER NINJAS INC., P15000074944, 2022 FLORIDA PROFIT CORPORATION ANNUAL REPORT (2022) (actively maintaining corporate registration by filing annual report in **March 2022**), and *File Annual Report*, FLA. DEP’T OF STATE, <https://dos.myflorida.com/sunbiz/manage-business/efile/annual-report> [https://perma.cc/2LTP-ZD69] (directing companies not to file an annual report if the business has closed).

⁶ See Jonathan J. Cooper, *Cyber Ninjas Chief Wants to Start New Firm with Same Works*, AP NEWS (Jan. 7, 2022), <https://apnews.com/article/business-elections-arizona-donald-trump-phoenix-d8b3cacba3871121dbaff0f14824fcb4> (on file with the Brennan Center).

⁷ See @RonFilipkowski, TWITTER (June 15, 2022, 5:41 PM), <https://twitter.com/ronfilipkowski/status/1537188676014604288> (“He says he tried to start a new company but nobody would give him insurance or work for him.”).

⁸ Jeremy Duda & Jim Small, *Arizona Senate Hires “Stop the Steal” Advocate to Lead 2020 Election Audit*, ARIZ. MIRROR (Mar. 31, 2021), <https://www.azmirror.com/2021/03/31/arizona-senate-hires-a-stop-the-steal-advocate-to-lead-2020-election-audit> [https://perma.cc/ZAE7-Y3YC].

⁹ *Assessing the Election “Audit” in Arizona and Threats to American Democracy: Hearing before the H. Comm. on Oversight & Reform*, 117th Cong. 2 (2021) (opening statement of Rep. Carolyn B. Maloney, Chairwoman, H. Comm. on Oversight & Reform), <https://www.congress.gov/117/chrg/CHRG-117hhrg46022/CHRG-117hhrg46022.pdf> [hereinafter House Hearing]; see also Nicholas Riccardi, *Experts or “Grifters”? Little-Known Firm Runs Arizona Audit*, AP NEWS (May 23, 2021), <https://apnews.com/article/donald-trump-arizona-business-technology-election-recounts-c5948f1d2ecdff9e93d4aa27ba0c1315> (on file with the Brennan Center) (“[T]he state Senate hired a small Florida-based cybersecurity firm known as Cyber Ninjas that had not placed a formal bid for the contract and had no experience with election audits.”).

A. Cyber Ninjas' Federal Contracting History and Agency Affiliation

According to publicly available data, Cyber Ninjas held at least three prime awards and one sub-award from the Federal Communications Commission (“FCC”) between March 2016 and December 2018. *See* **Ex. E**.¹⁰

Further, despite “winding down,” Cyber Ninjas appeared affiliated online with at least one United States federal agency as recently as a few months ago. As of early 2022, Cyber Ninjas’ logo was included among a group of prominent “Previous Sponsors” on the U.S. Cyber Challenge (“USCC”) website,¹¹ including the Department of Homeland Security’s Science and Technology Directorate. *See* **Ex. F**.¹²

II. Recommendation and Rationale for Debarment

Under the Federal Acquisition Regulation (“FAR”), a federal debarment official may debar a contractor for a conviction of or civil judgment for commission of any offense “indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.”¹³ “Civil judgment” includes any “judgment or finding of a civil offense by any court of competent jurisdiction.”¹⁴ Even absent a conviction or civil judgment, a contractor may be debarred based on any cause “of so serious or compelling a nature that it affects the present responsibility of the contractor.”¹⁵

As discussed in the opening paragraph of this letter, Cyber Ninjas is subject to a civil judgment—a contempt holding—that evidences “a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or

¹⁰ *Cyber Ninjas Inc.*, FED. PROCUREMENT DATA SYS., https://www.fpds.gov/ezsearch/search.do?q=cyber+ninjas+VENDOR_FULL_NAME%3A%22CYBER+NINJAS+INC.%22&s=FPDS.GOV&templateName=1.5.2&indexName=awardfull [https://perma.cc/63Q8-7EM8] (last visited July 6, 2022).

¹¹ The USCC was formerly funded by the Department of Homeland Security’s Science and Technology Directorate, and the USCC website highlights this previous federal support:

WHAT IS THE US CYBER CHALLENGE? US Cyber Challenge (USCC) is a program previously supported by the Department of Homeland Security’s Science and Technology Directorate through a contract with the Center for Internet Security, a 501c(3) organization. USCC serves as the premiere program to identify, attract, train, recruit, and place the next generation of cybersecurity professionals into the workforce.

U.S. CYBER CHALLENGE, <https://www.uscyberchallenge.org> [https://perma.cc/Y2E4-N4CQ] (last visited July 13, 2022).

¹² *Thank You to Our Previous Sponsors!*, U.S. CYBER CHALLENGE (Feb. 8, 2022, 2:47 PM), <https://www.uscyberchallenge.org/sponsors> [https://web.archive.org/web/20220208144727/https://www.uscyberchallenge.org/sponsors].

¹³ 48 C.F.R. § 9.406-2(a)(5) (2022).

¹⁴ *Id.* § 9.403.

¹⁵ *Id.* § 9.406-2(c).

subcontractor.”¹⁶ The court made the seriousness of Cyber Ninjas’ non-compliance clear when it imposed a \$50,000 per day fine. As of March 2022, the fine stood at over \$3 million as Cyber Ninjas continued to refuse to comply with the court’s orders; the Arizona Supreme Court declined to consider Cyber Ninjas’ petition for review, citing procedural reasons.¹⁷ After the Arizona Court of Appeals denied Cyber Ninjas’ May 2022 request to reverse the order, the company again asked the state supreme court for relief.¹⁸ The matter is currently pending.¹⁹

Further, serious and compelling cause exists here. The damage Cyber Ninjas has already wreaked under its Arizona State Senate contract, along with the potential for future harm should Cyber Ninjas continue to operate as a federal government contractor, necessitate debarring Cyber Ninjas. As the House Committee on Oversight and Reform emphasized during the investigation into Cyber Ninjas’ role in Arizona’s audit of votes cast in Maricopa County during the 2020 presidential election:

The Committee is deeply troubled by Cyber Ninjas’ lack of election audit experience; its reported mismanagement of the audit in Maricopa County, which may have compromised ballots and election equipment; your own bias and history of embracing conspiracy theories related to the election; and the private sources of funding that may have further undermined the credibility and impartiality of this effort. *The Committee is particularly concerned that your company’s actions could undermine the integrity of federal elections and interfere with Americans’ constitutional right to cast their ballot freely and to have their votes counted without partisan interference.*²⁰

A. Cyber Ninjas Is Not Presently Responsible

The U.S. Government only purchases from and makes awards to “responsible” prospective contractors.²¹ To be determined responsible, a prospective contractor must:

¹⁶ *Id.* § 9.406-2(a)(5).

¹⁷ See *Arizona Supreme Court Won’t Consider Cyber Ninjas Appeal of Daily \$50K Fine*, FOX 10 PHX. (Mar. 11, 2022), <https://www.fox10phoenix.com/news/arizona-supreme-court-wont-consider-cyber-ninjas-appeal-of-daily-50k-fine> [https://perma.cc/M9NM-DJY9].

¹⁸ See Special Action at 1, *Cyber Ninjas v. Hon. Kemp*, 1 CA-SA 22-0073 (Ariz. Ct. App. May 10, 2022), <https://apps.supremecourt.az.gov/aacc/appella/1CA/SA/SA220073.pdf> (denying the attempt to reverse the contempt order); Civil Petition for Review—Special Action at 1, *Cyber Ninjas v. Hon. Kemp*, CV-22-0131-PR (Ariz. filed May 19, 2022), <https://apps.supremecourt.az.gov/aacc/appella/ASC/CV/CV220131.PDF>.

¹⁹ Civil Petition for Review—Special Action, *supra* note 18, at 1 (marking the case status as “pending” as of July 16, 2022). Phoenix Newspaper, the respondent, filed in June 2022 a brief in opposition to Cyber Ninjas’ Arizona Supreme Court petition. See *id.* at 2.

²⁰ House Letter, *supra* note 4, at 6 (emphasis added).

²¹ 48 C.F.R. § 9.103(a).

- (a) Have adequate financial resources to perform the contract, or the ability to obtain them . . . ;
- (b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- (c) Have a satisfactory performance record A prospective contractor shall not be determined responsible or nonresponsible solely on the basis of a lack of relevant performance history, except as provided in 9.104-2;
- (d) Have a satisfactory record of integrity and business ethics . . . ;
- (e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors)
- (f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them . . . ; and
- (g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.²²

1. Mismanagement and “Sloppy, Insecure Practices”

During the audit, Cyber Ninjas’ *“sloppy, insecure practices jeopardized the integrity of ballots and voting machines*, forcing Arizona taxpayers to spend millions to replace the compromised machines,” as explained by House Committee on Oversight and Reform Chairwoman Carolyn Maloney.²³ For instance, the Committee identified the following allegations of Cyber Ninjas’ mismanagement of the audit in its July 2021 information request to CEO Doug Logan (to which Logan failed to meaningfully respond²⁴):

²² *Id.* § 9.104-1.

²³ House Hearing, *supra* note 9, at 2 (emphasis added).

²⁴ See Ronald J. Hansen, *Cyber Ninjas Misses Deadline to Send Information About Its Procedures to Congress*, ARIZ. REPUBLIC (Aug. 9, 2021), <https://www.azcentral.com/story/news/politics/arizona/2021/08/09/cyber-ninjas-misses-deadline-to-send-information-congress/5547093001> [https://perma.cc/3ZDH-QVQ6]; Press Release, Rep. Jamie Raskin, Chairs Maloney, Raskin Request Cyber Ninjas CEO’s Testimony at Oversight Committee Hearing (Sept. 24, 2021), <https://raskin.house.gov/2021/9/chairs-maloney-raskin-request-cyber-ninjas-ceo-s-testimony-at-oversight-committee-hearing> [https://perma.cc/9344-ZA8L] (“Instead of producing the documents as requested,

- According to reports, auditors used equipment that used ultraviolet light, which experts say can cause damage to ballots.
- Ballots and tabulation machinery were apparently left unsecured, and reporters were able to enter the site of the audit without permission, getting close to the ballots and the county’s equipment in a clear lapse of security.
- One reporter noticed that auditors were using blue pens during the audit in violation of Arizona’s own election process manual, which prohibits the use of anything but red pens to prevent a risk of altering the vote on a ballot.
- A former local election official who was asked by the Arizona Secretary of State to serve as an observer of the audit noted that auditors flagged ballots as “suspicious” for reasons such as paper weight and texture, apparently searching for bamboo fibers due to unfounded speculation that fake ballots had been flown in from South Korea. According to this official, “In more than a decade working on elections, audits and recounts across the country, I’ve never seen one this mismanaged.” The official further observed that Cyber Ninjas’ practices “allowed for a shocking amount of error.”
- Maricopa County announced that because of security concerns caused by the audit, it would replace all voting equipment turned over to Cyber Ninjas—potentially costing taxpayers millions of dollars. (As of June 2022, Maricopa County had purchased “new tabulation machines at a cost of \$3.2 million.”²⁵)
- Cyber Ninjas repeatedly failed to meet its own timeline for the audit and repeatedly moved election materials, raising questions about the integrity of the process and whether Cyber Ninjas was merely searching for evidence to support a predetermined result rather than conducting an impartial audit.²⁶

Cyber Ninjas continuously obstructed the Committee’s investigation. On August 9, 2021, Cyber Ninjas sent a letter to the Committee raising spurious objections to all nine of the Committee’s requests, and produced 336 pages of publicly available material. On August 27, 2021, Cyber Ninjas sent a second letter to the Committee reiterating its objections to producing documents and claiming inaccurately that the Committee was ‘far outside its proper legislative jurisdiction.’”

²⁵ See Mary Jo Pitzl, *Here’s How Much the Senate’s Review of the 2020 Election Has Cost Arizona Taxpayers*, ARIZ. REPUBLIC (June 3, 2022), <https://www.azcentral.com/story/news/politics/arizona/2022/06/03/arizona-senate-review-2020-election-audit-cost-taxpayers/7473325001> (on file with the Brennan Center).

²⁶ House Letter, *supra* note 4, at 3–5.

These alleged examples of Cyber Ninjas’ incompetence in performing a state-funded contract—substantiated by numerous reports made available to the Committee—demonstrate Cyber Ninjas’ lack of (i) a satisfactory performance record, (ii) a satisfactory record of integrity and business ethics, and (iii) necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them.²⁷ For these reasons, Cyber Ninjas cannot be considered presently “responsible” under 48 C.F.R. § 9.103(a).

2. Inadequate Financial Resources

Additionally, it is unlikely that Cyber Ninjas has adequate financial resources to perform under any contract. The company claims to be shuttered and insolvent. *See* Ex. **D-1** (“I ask that you consider helping pay the debts Cyber Ninjas was not able to cover With Cyber Ninjas closing these funds are going directly to the vendors, and not passing through us.”). In that case and for that reason alone, Cyber Ninjas cannot be considered presently responsible.²⁸

3. CEO Doug Logan’s “Embrace of Election Conspiracy Theories”

The House Committee on Oversight and Reform also pointed to “serious questions” about Doug Logan’s “ability to lead impartial work related to the election.” According to the House Letter:

- Press reports indicate that Logan repeatedly alleged on social media that the 2020 presidential election was rigged against former President Donald Trump, using the “Stop the Steal” hashtag.
- Logan reportedly retweeted a claim that an audit of the election might show that “Trump got 200k more votes than previously reported in Arizona.”
- Logan confirmed that he was the author of a document posted on the website of Trump attorney and conspiracy theorist Sidney Powell entitled “Election Fraud Facts & Details,” which Logan stated was written to assist U.S. Senators planning to object to the certification of the Electoral College on January 6. That document repeated debunked claims regarding Dominion Voting Systems, including that the company has origins in Venezuela, was used to rig elections for deceased President Hugo Chavez, and is owned in part by a Chinese company.²⁹

²⁷ *See* 48 C.F.R. § 9.104-1(c)–(e).

²⁸ *See id.* § 9.104-1(a).

²⁹ House Letter, *supra* note 4, at 5–6.

Doug Logan’s involvement in the Arizona Senate’s audit in spite of his inability to lead an impartial audit exemplifies his own lack of the integrity and business ethics necessary to be deemed presently responsible.

II. Parties to Be Considered for Debarment

<u>Person/Entity:</u>	<u>Last Known Address:</u>
Cyber Ninjas Inc.	5077 FRUITVILLE RD STE 109-421 SARASOTA, FL 34232 US <i>Current Principal Place of Business (Current Registered Agent):</i> 7901 4TH ST N C/O NORTHWEST REGISTERED AGENT LLC STE 300 33702, FL 33702
Logan, Douglas Jay CEO & Principal Consultant of Cyber Ninjas Inc.	5077 FRUITVILLE RD STE 109-421 SARASOTA, FL 34232 US

We urge the ISDC to consider this individual’s and this entity’s histories and statuses as federal contractors against their involvement in Cyber Ninjas’ disastrous audit of the 2020 election results in Maricopa County, which have demonstrated their own lack of adequate business integrity.

III. Conclusion

For the reasons stated herein, we request that the appropriate official (i) debar Cyber Ninjas and Doug Logan, (ii) further investigate Cyber Ninjas and Doug Logan as necessary, and (iii) ensure in the meantime that any proposals are denied if Cyber Ninjas or Doug Logan are listed as the offeror, subcontractor, or otherwise.

Sincerely,

Elizabeth L. Howard
Senior Counsel, Democracy
John J. Martin
Legal Fellow, Democracy
Brennan Center for Justice at NYU School of Law