

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

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,
950 Pennsylvania Avenue NW
Washington, DC 20530

Defendant.

Case No. 25-cv-383

COMPLAINT

1. American Oversight brings this action against the U.S. Department of Justice under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA and the release of Volume Two of former Special Counsel Jack Smith's report to DOJ, regarding his investigations into potential mishandling of classified documents.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining Defendant from

continuing to withhold department or agency records and ordering the production of department or agency records improperly withheld on an expedited basis.

PARTIES

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization. American Oversight is committed to promoting transparency in government, educating the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information it gathers, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant U.S. Department of Justice (“DOJ”) is a department of the executive branch of the U.S. government headquartered in Washington, D.C., and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). The Office of Information Policy (“OIP”) is a component of DOJ that receives and processes FOIA requests on behalf of itself and several other DOJ components.

7. DOJ has possession, custody, and control of records that American Oversight seeks.

STATEMENT OF FACTS

8. On January 7, 2025, then-Special Counsel Jack Smith delivered to DOJ the two-volume report on his investigations into President Trump’s potential interference with the lawful transfer of power following the 2020 election (Volume One) and allegations of mishandling of a trove of classified documents after Trump left office in 2021 (Volume Two).¹

¹ Letter from Jack Smith, Special Couns., Dep’t of Justice, to Merrick Garland, Att’y Gen., Dep’t of Justice (Jan. 7, 2025) (“Smith Letter to Garland”), <https://www.justice.gov/storage/Report-of-Special-Counsel-Smith-Volume-1-January-2025.pdf>.

9. Mr. Smith provided DOJ with a redacted version of Volume Two that identified information which, at that time, might have been restricted from public disclosure by Federal Rule of Criminal Procedure 6(e).²

10. On January 8, 2025, American Oversight submitted a FOIA request to OIP and the Executive Office of U.S. Attorneys (“EOUSA”), bearing internal tracking number DOJ-25-0036, seeking expedited production of both volumes of the Special Counsel’s report. *See* attached Exhibit 1.

11. Because the request sought specific, recent, and readily identifiable documents, American Oversight expected it to be placed on the “Simple” processing track and result in prompt agency response. *See id.*

12. Due to the urgent need to inform the public regarding actual or alleged government activity, including the investigation into President Trump ahead of his January 20, 2025 inauguration and renewed authority over DOJ, American Oversight requested expedited processing of its request, and included in the request the certifications required by 5 U.S.C. § 552(a)(6)(E)(i)(1) and 28 C.F.R. § 16.5(e)(3). *See id.*

13. Via a letter from OIP to American Oversight dated January 14, 2025, Defendant notified Plaintiff that EOUSA had forwarded the request to OIP for processing, that OIP had determined the request to EOUSA was duplicative of the request sent to OIP, and that OIP had closed the duplicate request American Oversight had submitted to EOUSA. *See* attached Exhibit 2. OIP assigned the remaining request DOJ tracking number FOIA-2025-01746. *See id.*

² *See* Smith Letter to Garland, *supra* n.1, at 4.

14. Defendant's January 14, 2025 letter does not address American Oversight's request for expedited processing, nor does it address the scope of the documents Defendant intends to produce and/or withhold, nor the reasons for such withholdings. *See id.*

15. To date, American Oversight has received no further communication from DOJ regarding its FOIA request nor its included request for expedited processing.

16. Last month, DOJ publicly released Volume One of the Special Counsel's report concerning President Trump's alleged election interference (hereinafter, "Volume Two").³

17. Defendant withheld Volume Two from public release pending resolution of the criminal charges against Walt Nauta, an aide to President Trump, and Carlos De Oliveira, property manager of President Trump's Mar-a-Lago estate, concerning their role in Trump's alleged mishandling of the classified documents.⁴

18. On January 29, 2025, Defendant moved to dismiss the criminal charges against Nauta and Oliveira in the classified documents case.⁵

19. There is no further legal justification to withhold Volume Two of the report, in full, from the public.

20. As American Oversight certified in its January 8, 2025 request to DOJ, the requested records are urgently needed to inform the public concerning actual or alleged government activity. *See Ex. 1.*

³ *Read the Special Counsel's Report on the Trump Election Case*, N.Y. TIMES (Jan. 14, 2025), <https://www.nytimes.com/interactive/2025/01/14/us/report-of-special-counsel-smith-volume-1-january-2025.html>

⁴ Greg Allen, *DOJ Asks to Dismiss Case of 2 Men Indicted for Allegedly Helping Trump Hide Documents*, NPR (Jan. 29, 2025, 12:59 PM), <https://www.npr.org/2025/01/29/nx-s1-5279387/doj-appeal-trump-walt-nauta-carlos-de-oliveira>.

⁵ *Id.*

21. In particular, Volume Two contains information of critical and urgent importance to the public, not only pertaining to President Trump, but to Kash Patel, Trump's nominee for Director of the Federal Bureau of Investigation ("FBI").⁶

22. Since American Oversight submitted its request, DOJ has received other requests for Volume Two's public release.⁷

23. Repeated efforts by members of Congress to get DOJ to release Volume Two since American Oversight submitted its expedited request have proven unsuccessful.⁸

24. On January 15, 2025, House Judiciary Committee members wrote to then-Attorney General Merrick Garland, that Volume Two "presumably not only outlines the evidence supporting the 40 felony counts against Mr. Trump related to willfully hiding and mishandling extremely sensitive national defense information, but also explains *why* President-elect Trump retained and concealed classified documents and *what* he intended to do with those materials, neither of which was included in the indictment. It is essential that the American people and Congress understand how Mr. Trump mishandled our nation's most sensitive classified information, especially because

⁶ See Rebecca Beitsch, *Raskin Demands DOJ Release Smith Mar-a-Lago Report*, THE HILL (Feb. 3, 2025, 4:50 AM) <https://thehill.com/homenews/5122053-raskin-demands-doj-release-smith-mar-a-lago-report/>; see also Eric Tucker, *AP source: Trump ally appears before Mar-a-Lago grand jury*, ASSOCIATED PRESS (Nov. 4, 2022, 7:17 PM), <https://apnews.com/article/donald-trump-mar-a-lago-government-and-politics-8a51290da3e8f59c83edbf2898f547d>; Alex Leary et al., *Ex-White House Aide Kash Patel Presses View Trump Broadly Declassified Documents*, WALL STREET J., Aug. 21, 2022, 8:00 AM), <https://www.wsj.com/articles/ex-white-house-aide-kash-patel-presses-view-trump-broadly-declassified-documents-11661083201>; Tierney Sneed, *Trump claims he declassified Mar-a-Lago docs, but his lawyers avoid making that assertion*, CNN (Sept. 16, 2022, 8:20 AM), <https://www.cnn.com/2022/09/15/politics/trump-mar-a-lago-docs-declassified-claim/index.html>.

⁷ See e.g., Press Release, *CREW requests full special counsel report and communications* (Jan. 16, 2025) (request submitted Jan. 10, 2025), <https://www.citizensforethics.org/reports-investigations/foia-requests/crew-requests-full-special-counsel-report-and-communications/>; Press Release, *People for the American Way Foundation Files Urgent FOIA Request for Volume 2 of Smith Report* (Jan. 15, 2025) (request submitted Jan. 15, 2025), <https://www.peoplefor.org/people-american-way-foundation-files-urgent-foia-request-volume-2-smith-report>;

⁸ See, e.g., Beitsch, *supra* n.5; Senate Judiciary Committee, Questions for the Record, the Honorable Pamela Jo Bondi, Nominee to be Attorney General of the United States at 27 (Jan. 15, 2025), https://www.judiciary.senate.gov/imo/media/doc/2025-01-15_-_qfr_responses_-_bondi.pdf; Letter from Ranking Member and others House Judiciary Committee members to James McHenry, Acting Att'y Gen., Dep't of Justice (Feb. 2, 2025), https://democrats-judiciary.house.gov/uploadedfiles/2025-02-02_raskin_goldman_et_al_to_mchenry_doj_re_special_counsel_report.pdf.

he will be sworn in as Commander-in-Chief and take leadership of our national security apparatus in just five days.”⁹

25. Similarly, senators have urged DOJ to release Volume Two because it contains information about Mr. Patel that they need to fulfill their constitutional duty to provide “advice and consent on nominations by the President to positions of great responsibility in the U.S. federal government.”¹⁰ See attached Exhibit 3.

26. Now that the inauguration has passed, and Mr. Patel’s confirmation is actively being considered, expedited production of Volume Two is justified not only due to the “urgency to inform the public regarding an actual or alleged Federal Government activity,” but also as a “matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” 28 C.F.R. §§ 16.5(e)(1)(ii) and (iv).

27. Volume Two is of such urgent importance that the Senate Judiciary Committee delayed its vote on Mr. Patel’s confirmation until Thursday, February 13, 2025. *See* Ex. 3 at 2.

28. As the Senate Committee members’ February 6, 2025 letter to Senate Committee Chairman Charles Grassley notes, Mr. Patel’s refusal, during his January 30, 2025 confirmation hearing, to answer questions about the classified documents investigation raises “the grave prospect that [he] is misleading members of the Committee by falsely hiding behind a nonexistent or inapplicable seal order.”¹¹

⁹ Letter from House Judiciary Committee to Merrick Garland, Att’y Gen., Dep’t of Justice (Jan. 15, 2025), https://democrats-judiciary.house.gov/uploadedfiles/2025-01-15_hjc_dems_to_garland_doj.pdf (emphasis in original).

¹⁰ Letter to James McHenry, Acting Atty’ Gen., Dep’t of Justice (Jan. 29, 2025), <https://www.judiciary.senate.gov/imo/media/doc/2025-01-29%20SJC%20Dems%20Letter%20-%20Smith%20Report%20Vol%20II.pdf>, attached as Ex. 3.

¹¹ *See* Letter from Sen. Whitehouse, Sen. Booker, and Sen. Schiff to Sen. Grassley, Chairman, Sen. Jud. Comm. (Feb. 6, 2025), <https://www.schiff.senate.gov/wp-content/uploads/2025/02/2025-02-06-Patel-Follow-Up-Letter61.pdf>.

29. As also certified to in its request, and as further described above in Paragraph 5, American Oversight is primarily engaged in disseminating information to the public. *See Ex. 1.* Accordingly, upon receipt of Volume Two, American Oversight will promptly publicize it for consideration by the general public and members of Congress who must vote on Mr. Patel's confirmation to lead the FBI.

30. Plaintiff's expedited processing request explained how it met the statutory and regulatory standards and included a non-exhaustive list of multiple citations to media reports that support American Oversight's certifications. *See id.*

31. More than twenty working days have passed since American Oversight submitted its request, and DOJ has failed to comply with 5 U.S.C. § 552(a)(6)(A).

Exhaustion of Administrative Remedies

32. As of the date of this Complaint, Defendant has failed to: (a) notify American Oversight of a final determination regarding American Oversight's proper request for expedited processing of its FOIA request; (b) notify American Oversight of a final determination regarding American Oversight's FOIA request, including the scope of responsive records Defendant intends to produce or withhold and the reasons for any withholdings; and (c) produce the requested records or demonstrate that they are lawfully exempt from production.

33. Through Defendant's failure to respond to American Oversight's FOIA request within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

34. Further, Defendant failed to respond to American Oversight's request to expedite processing of its FOIA request within 10 calendar days, and American Oversight is not required to exhaust its administrative remedies with respect to its request to expedite processing.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Grant Expedited Processing

35. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

36. American Oversight properly requested records within Defendant's possession, custody, and control on an expedited basis.

37. Defendant failed to issue a determination on the request for expedited processing within the timeframe set by statute.

38. Defendant is an agency subject to FOIA and must process FOIA requests on an expedited basis pursuant to the requirements of FOIA and agency regulations.

39. American Oversight's request justifies expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(3).

40. American Oversight is entitled to declaratory and injunctive relief requiring Defendant to grant expedited processing of American Oversight's FOIA request.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Searches for Responsive Records

41. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

42. American Oversight properly requested records within Defendant's possession, custody, and control.

43. Defendant has failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA request.

44. Defendant's failure to conduct an adequate search for responsive records violates FOIA and applicable regulations.

45. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly search for and produce records responsive to American Oversight's FOIA request, specifically, Volume Two of the Special Counsel Report.

COUNT III
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

46. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

47. American Oversight properly requested records within Defendant's possession, custody, and control.

48. Defendant is an agency subject to FOIA and must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials within no more than twenty (20) working days.

49. Defendant is wrongfully withholding non-exempt agency records requested by American Oversight.

50. Defendant is wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA request.

51. Defendant's failure to provide all non-exempt responsive records violates FOIA and applicable regulations.

52. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA

request and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court:

- (1) Order Defendant to process American Oversight's request on an expedited basis;
- (2) Order Defendant to conduct a search reasonably calculated to uncover all records responsive to American Oversight's January 8, 2025 FOIA request;
- (3) Order Defendant to produce, by 10:00am Eastern on February 21, 2025, or by such a date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA request, specifically, Volume Two of the Special Counsel Report and *Vaughn* indexes of any responsive records withheld under claim of exemption;
- (4) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA request;
- (5) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (6) Grant American Oversight such other relief as the Court deems just and proper.

Dated: February 10, 2025

Respectfully submitted,

/s/ Elizabeth Haddix
Elizabeth Haddix
D.C. Bar No. 90019750
Daniel Martinez
D.C. Bar No. 90025922
AMERICAN OVERSIGHT

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Counsel for Plaintiff

EXHIBIT 1



January 8, 2025

VIA ONLINE PORTAL

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
441 G St NW
6th Floor
Washington, DC 20530
Via Online Portal

Arla Witte-Simpson
FOIA Public Liaison
Executive Office for United States Attorneys
175 N Street, N.E.
Suite 5.400
Via Online Portal

Re: Expedited Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Justice, 28 C.F.R. Part 16, American Oversight makes the following request for records.

On January 7, 2025, United States District Court Judge Aileen Cannon blocked the release of Special Counsel Jack Smith's report on his investigations into President Trump's potential election interference¹ and mishandling of a trove of classified documents after he left office in 2021.² American Oversight seeks the release of this two-volume report.

¹ Rebecca Beitsch, *Trump Asks Garland to Block Jack Smith from Releasing Final Report*, THE HILL (Jan. 7, 2023, 8:23 AM), <https://thehill.com/homenews/administration/5070960-donald-trump-merrick-garland-jack-smith-report/>.

² Alan Feuer, *Judge Cannon Blocks Release of Special Counsel's Final Report on Trump Documents Investigation*, N.Y. TIMES (Jan. 7, 2025, updated 3:07 PM), <https://www.nytimes.com/2025/01/07/us/politics/trump-documents-case-jack-smith-report.html>.



Requested Records

American Oversight seeks expedited processing of this request for the reasons identified below and requests that the DOJ Office of the Special Counsel (OSC) produce the following records as soon as practicable, and at least within twenty business days:

A copy of Jack Smith's two-volume report of his investigations into President Trump's handling of classified documents and potential election interference.³

Because this request is limited to a specific, recent, and readily identifiable document or documents, American Oversight expects this request can be processed on the Simple processing track and result in a prompt agency response.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, this request is for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government."⁴ The public has a significant interest in a report concerning President Trump's handling of classified documents and potential election interference. Records with the potential to shed light on these matters would contribute significantly to public understanding of operations of the federal government, including what the Special Counsel's investigation revealed about how President Trump handled classified documents and may have interfered in the 2020 elections. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

This request "is not primarily in the commercial interest of the requester."⁵ In fact, as a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose, and the release of the information requested is not in American Oversight's commercial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight

³ For further identifying information, please *see id.*

⁴ 5 U.S.C. § 552(a)(4)(A)(iii).

⁵ *Id.*

also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and X (formerly Twitter).⁶

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website.⁷ Examples reflecting this commitment include the posting of records related to the first Trump Administration's contacts with Ukraine and analyses of those contacts;⁸ posting records and editorial content about the federal government's response to the Coronavirus pandemic;⁹ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the first Trump administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;¹⁰ the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;¹¹ and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹²

⁶ American Oversight currently has approximately 16,000 followers on Facebook and 97,900 followers on X (formerly Twitter). American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Jan. 7, 2025); American Oversight (@weareoversight), X (formerly Twitter), <https://x.com/weareoversight> (last visited Jan. 7, 2025).

⁷ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁸ *Trump Administration's Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

⁹ See generally *The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; see, e.g., *We've All Given Up Getting a Straight Answer From You Guys: Frustrated Emails Between Illinois Governor's Office and White House*, <https://www.americanoversight.org/weve-all-given-up-getting-a-straight-answer-from-you-guys-frustrated-emails-between-illinois-governors-office-and-white-house>.

¹⁰ See generally *Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹¹ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹² See generally *Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; see, e.g., *New Information on Pompeo's 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 28 C.F.R. § 16.5(e)(1)(ii), American Oversight requests that your agency expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that the information requested is urgently needed to inform the public concerning actual or alleged government activity. There is an urgent need to inform the public regarding the results of investigations into President Trump ahead of his inauguration and renewed authority over the Department of Justice – the very entity that investigated him and produced the report at issue.

I also certify to be true and correct to the best of my knowledge and belief that there is widespread and exceptional media interest and there exist possible questions concerning the government's integrity, which affect public confidence.¹³ The release of this report is currently being blocked by a judge appointed by President Trump just days ahead of his inauguration and assumption of authority over the Department of Justice.

Moreover, I certify to be true and correct to the best of my knowledge and belief that there exist possible questions concerning the government's integrity regarding Special Counsel Jack Smith's report and whether it would be released after President Trump is reinaugurated.

I further certify that American Oversight is primarily engaged in disseminating information to the public. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the

¹³ See *id.*; Beitsch *supra* note 1; Katherine Faulders et al, *Judge in Trump's Classified Docs Case Temporarily Blocks Release of Special Counsel's Final Report*, ABC NEWS (Jan. 7, 2025, 12:18 PM), <https://abcnews.go.com/US/special-counsel-responds-after-trump-defendants-judge-block/story?id=117413916>; Eric Tucker, *Judge Temporarily Blocks Release of Special Counsel Report on Trump Cases as Court Fight Simmers*, AP NEWS (Jan. 7, 2025, 1:21 PM), <https://apnews.com/article/trump-jack-smith-maralago-jan-6-justice-department-e73a42b03cc6dc807de32c42dc824f3d>; Josh Gerstein & Kyle Cheney, *Cannon temporarily blocks release of Jack Smith report*, POLITICO (Jan. 7, 2025, 12:20 PM), <https://www.politico.com/news/2025/01/07/aileen-cannon-blocks-jack-smith-report-release-00196863>; Perry Stein & Jeremy Roebuck, *Cannon temporarily blocks report on Trump classified-documents probe*, WASH. POST (Jan. 7, 2025, updated 2:08 PM), <https://www.washingtonpost.com/national-security/2025/01/07/jack-smith-trump-special-counsel-report-garland/>; C. Ryan Barber & Corinne Ramey, *Judge Temporarily Blocks Release of Special Counsel Report on Trump*, WALL STREET. J. (Jan. 7, 2025, 2:29 PM), https://www.wsj.com/us-news/law/trump-lawyers-seek-to-block-release-of-special-counsel-report-5c855e8b?mod=hp_lead_pos8.

accountability of government officials.¹⁴ Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,¹⁵ American Oversight “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.”¹⁶ American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and X (formerly Twitter).¹⁷ As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.¹⁸

Accordingly, American Oversight’s request satisfies the criteria for expedition.

¹⁴ Oct. 21, 2024 Mot. Hr’g Tr., *Am. Oversight v. U.S. Dep’t of Just.*, U.S. D.D.C. Case No. 1:24-cv-02789-PLF. Attached as Exhibit A are true and correct copies of the cover page and pages 36–47 excerpted from the transcript of a motion hearing before United States District Court for the District of Columbia Judge Paul L. Friedman, wherein the court expressly found that American Oversight is an organization that is primarily engaged in disseminating information.

¹⁵ See *ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep’t of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

¹⁶ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

¹⁷ American Oversight currently has approximately 16,000 followers on Facebook and 97,900 followers on Twitter.com. American Oversight, Facebook,

<https://www.facebook.com/weareoversight>

(last visited Jan. 7, 2025), American Oversight (@weareoversight), Twitter.com,

<https://twitter.com/weareoversight> (last visited Jan. 7, 2025).

¹⁸ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>; see, e.g., *Emails and Resume of Trump’s Pick to Head Government Personnel Office*, American Oversight, <https://www.americanoversight.org/emails-and-resume-of-trumps-pick-to-head-government-personnel-office>; *CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>; *State Department Releases Ukraine Documents to American Oversight*, American Oversight, <https://www.americanoversight.org/state-department-releases-ukraine-documents-to-american-oversight>; *Documents Reveal Ben Carson Jr.’s Attempts to Use His Influence at HUD to Help His Business*, American Oversight, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>; *Investigating the Trump Administration’s Efforts to Sell Nuclear Technology to Saudi Arabia*, American Oversight, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>; *Sessions’ Letter Shows DOJ Acted On Trump’s Authoritarian Demand to Investigate Clinton*, American Oversight, <https://www.americanoversight.org/sessions-letter>.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Elizabeth Haddix at foia@americanoversight.org or (252) 359-7424 ext. 1031. Also, if American Oversight's

request for expedition is not granted or its request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Elizabeth Haddix

Elizabeth Haddix
on behalf of
American Oversight

EXHIBIT A

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN OVERSIGHT,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO. 1:24-cv-02789-PLF
)	
U.S. DEPARTMENT OF DEFENSE,)	
et al.,)	
)	
Defendants.)	
)	

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE PAUL L. FRIEDMAN, DISTRICT JUDGE
Monday - October 21, 2024
2:36 p.m. - 4:18 p.m.
Washington, DC

FOR THE PLAINTIFF:
American Oversight
BY: DANIEL H. MARTINEZ and ELIZABETH HADDIX
1030 15th Street, NW, Suite B255
Washington, DC 20005
(202) 897-2465

FOR THE DEFENDANTS:
United States Attorney's Office, Civil Division
BY: DEDRA S. CURTEMAN
601 D Street, NW
Washington, DC 20530
(202) 252-2550

SONJA L. REEVES
Registered Diplomat Reporter
Certified Realtime Reporter
Federal Official Court Reporter
333 Constitution Avenue, NW
Washington, DC 20001
Transcript Produced from the Stenographic Record

1 And finally, the discussion about the failure to
2 allocate resources, again, this is a narrow request long past
3 since the 20 days, and for those reasons we believe that the
4 preliminary injunction is justified.

5 THE COURT: Thank you. Why don't we take about ten
6 minutes and then we'll come back. Maybe 15.

7 (Recessed from 3:30 p.m. to 3:44 p.m.)

8 THE COURT: Anybody else have anything else they want
9 to say?

10 MS. CURTEMAN: No, Your Honor.

11 MR. MARTINEZ: No, Your Honor.

12 THE COURT: Give me a minute, please. I have
13 something I want to say.

14 (Pause)

15 THE COURT: Okay. So I'm going to give you an opinion
16 now. Hopefully, it will be reasonably articulate. It's always
17 more articulate if you write an opinion, but it takes longer.

18 So the plaintiff is asking for a preliminary
19 injunction, and they are asking for expedited processing and
20 asking me to direct the defendants, the Department of Defense
21 and the Department of the Army, to expedite their FOIA request.

22 And secondly, they are asking for a decision on their
23 FOIA request, which, as I understand it is a request for a
24 mandatory injunction to require the defendants to produce any
25 nonexempt records by the date certain that they have asked for,

1 which is later this week, October 26th [sic].

2 And their assumption is that it's a narrow request,
3 that there may only be one document or a few documents, because
4 what is requested is any report, including, but not limited to,
5 an incident report filed with U.S. Army Military Police Corps
6 officials and/or any other military officials that are at
7 Arlington National Cemetery regarding the alleged incident
8 reported to have taken place during the August 26, 2024 visit
9 by former President Trump to Arlington National Cemetery.

10 And originally they said, "Given that this request is
11 limited to a specific, recent, and readily identifiable
12 document or documents, American Oversight expressed that this
13 request can be processed very quickly and promptly." That was
14 what they asked for on August 29th.

15 When they basically heard nothing, perhaps in part
16 because of the Arlington National Cemetery website or some
17 other kerfuffles that are outlined in the plaintiff's
18 September 25th document, letter, asking for expedited
19 processing of their request, they didn't hear anything in the
20 month between August 29th and September 29th, and so they then
21 made a request for expedition.

22 Of course, the government says that they waited a
23 month to ask for expedition. The plaintiff's response is we
24 only waited a month because we thought they would respond and
25 instead we got all these things that now indicate that the

1 Arlington National Cemetery website was all messed up or
2 whatever else.

3 So the argument is being made by the government that
4 the plaintiffs cannot and have not met the requisites for
5 expedition. As we know, the legal standard for preliminary
6 injunction is that the moving party, the plaintiffs, must
7 establish the likelihood of success on the merits first, then
8 likely irreparable harm in the absence of preliminary relief,
9 and the balance of the equities in its favor in accord with the
10 public interest. That's the *Winter* case from the Supreme Court
11 and numerous cases from this circuit applying the *Winter* case.

12 So have the plaintiffs met their burden for expedition
13 and for the immediate release of any nonexempt records, which
14 they assume and I assume are limited in number? So I'm going
15 to grant the motion for preliminary injunction for these
16 reasons:

17 The Freedom of Information Act itself in Title 5
18 United States Code Section 552 in subpart, I think it's
19 (a) (1) (D) (i) and (a) (1) (E) (i), but I may be wrong. I know it's
20 a subpart (D) (i) and subpart (E) (i). And (D) (i) says that each
21 agency may promulgate regulations concerning FOIA requests.

22 More importantly, as relevant here, the statute says,
23 "Each agency shall promulgate regulations pursuant to notice
24 and receipt of public comment, providing for expedited
25 processing of requests for records in cases in which the person

1 requesting the records demonstrates compelling need."

2 The Department of Defense has promulgated such
3 regulations, and they are found at Title 32 C.F.R. Section
4 286.8. And they say that, "FOIA requests shall be processed
5 with expedition where there is compelling need and where the
6 persons or requester requests expedition and demonstrates a
7 compelling need." So everybody agrees the burden is on the
8 requester to show compelling need.

9 The regulation says, "A compelling need exists for a
10 variety of reasons," but the most relevant one here is "if the
11 information is urgently needed by an individual primarily
12 engaged in disseminating information in order to inform the
13 public concerning actual or alleged governmental activity."

14 It goes on to say -- that DOD regulation goes on to
15 say, "For requester seeking expedited processing under
16 paragraph (e) (i) (B), a requester who is not a full-time member
17 of the news media must establish that the requester is a person
18 whose primary professional activity or occupation is
19 information dissemination and not an incidental or secondary
20 activity."

21 So American Oversight is not a full-time member of the
22 news media. They say that they are showing compelling need
23 because their primary activity is disseminating of
24 information -- the dissemination of information.

25 The government says that there is no compelling need,

1 there is no urgency, there is no current exigency or interest
2 in these documents because in part one of the arguments is that
3 the plaintiff waited a month to make the expedition request,
4 but I don't find that troubling, because they couldn't get an
5 answer from the Veterans Administration by asking for prompt
6 processing, so that's when they filed the expedition request.

7 In fact, one could argue that to the extent there is a
8 public interest in this material, that it's even more important
9 and more exigent now as we get closer to the election. The
10 government says the media has not been reporting on this, the
11 public is not clamoring for this, there are only three NPR
12 articles.

13 Well, a quick Google search says that's not true.
14 There were reports on this incident on CNN, on Al Jazeera, on
15 MSNBC, all the major outlets. And so out of the likelihood of
16 success argument, we have to show -- or the plaintiffs have to
17 show a compelling need, urgency, which is part of compelling
18 need, urgent public interest, and that there is a substantial
19 public interest still, and in order to show those things, they
20 have to show that their primary activity is disseminating
21 information.

22 So we discussed a lot of cases here today, and among
23 the cases the government relies on is Judge Kotelly's opinion,
24 *Allied Progress*. The plaintiffs rely on a number of cases that
25 I think are more relevant. And I mean, I would start, despite

1 the government's correct observation with Judge Cooper's
2 opinion on *American Oversight versus U.S. Department of State*,
3 in which he granted expedition, granted a preliminary
4 injunction on expedition, and that's 414 F.Supp. 3d, page 182.

5 The government is correct that Judge Cooper did not
6 explicitly make the findings that are required, but it's
7 implicit in that opinion that he did when he found the
8 substantial likelihood of success. What was sought there is
9 information about the government's -- Mr. Trump's former legal
10 advisor, the now disbarred Rudy Giuliani, in connection with
11 the January 6th Committee. And Judge Cooper found that there
12 was a likelihood of success on the merits.

13 And as for irreparable harm, he said that -- and this
14 had to do with Mr. Giuliani's alleged efforts to enlist
15 Ukraine's assistance in furthering the president's reelection
16 prospect. On the irreparable harm front, Judge Cooper said,
17 "Time is clearly of the essence. The impeachment inquiry is in
18 full swing, and, as noted above, congressional leaders expect
19 it to conclude by Christmas, so it's time."

20 Implicit in this is that American Oversight is
21 primarily engaged in disseminating information, or else Judge
22 Cooper wouldn't have reached these other questions, but he
23 didn't specifically say that, I get that.

24 So let's look at some other cases. In *Protect*
25 *Democracy versus U.S. Department of Defense*, 263 F.Supp. 3d

1 293, Judge Cooper granted preliminary injunction for processing
2 because it related to cruise missile strikes on a Syrian air
3 base, and he found that, "Protect Democracy has shown it's
4 entitled to expedited processing," for reasons he discussed in
5 that opinion, and the timing of all of this. He did not find
6 all the other requisites; he only found some of them.

7 However, in *Brennan Center for Justice versus*
8 *Department of Commerce*, Judge Kelly was dealing with the 2020
9 U.S. Census, and he found there was a lot of dispute and debate
10 about whether the Commerce Department had done some
11 inappropriate things in counting or not counting certain people
12 with respect to the 2020 census that would affect people's
13 right to vote or not.

14 And Judge Kelly found that there was an urgency to
15 inform the public before the election because people want to
16 know if the Commerce Department under Secretary Ross and the
17 Trump administration had messed around with the census before
18 they went to the polls in 2020. And he found there was a
19 likelihood of success on the merits of expedition, that there
20 was widespread and exceptional interest in the matter, there
21 were numerous articles about the matter which raised questions
22 about the government's integrity, and that there was an urgency
23 to inform the public by the Brennan Center, which it said is a
24 person or entity primarily engaged in disseminating
25 information.

1 While the Brennan Center had lots of other things as
2 well, it regularly writes and publishes and disseminates
3 information and maintains an online library of numerous
4 articles. That's a quote from their website, I believe. That
5 there was an urgency to inform the public of these matters. He
6 decided this on October 30, 2020, as we were approaching the
7 2020 election.

8 *Center for Public Integrity versus U.S. Department of*
9 *Defense*, Judge Kotelly, "We need an informed electorate," she
10 said. Expedited processing was approved by Judge Kotelly on a
11 motion for preliminary injunction. "Only an informed
12 electorate can develop its opinions of its elected officials,"
13 she said.

14 And this related to the administration's policy of
15 conducting surveillance or alleged policy of domestic
16 communications about prior judicial -- or maybe that's not this
17 case. She was quoting electronic privacy and phone, and that's
18 what she was talking about. In this case, this had to do with
19 the Defense Department's handling of the Ukraine security
20 assistance program. She said, "This is a matter of immediate
21 concern to the American public, given extensive media interest
22 in the fate of the program and pressure placed upon the
23 Department regarding this program."

24 As to irreparable harm, this was during the time of
25 the impeachment proceedings relating to Ukraine, and she

1 thought and said that, "The public should be informed about
2 matters relating to the impeachment proceeding. The
3 dissemination of information relating to the ongoing
4 impeachment proceedings contributes to an informed electorate
5 capable of developing knowledge of opinions and sharing those
6 knowledge of opinions with their elected leaders. Absent
7 expedited responses, it's not clear that the public would
8 otherwise have access to this relevant information."

9 All of these courts were applying the *Al-Fayed*
10 factors. And then there is Judge Sullivan's opinion in *Protect*
11 *Democracy versus United States Department of Justice*, 498
12 F.Supp. 3d 132, relating to voter fraud in the 2020 election,
13 and specifically the investigation of mail-in voter fraud,
14 getting close to the election.

15 So those are all the cases -- those are not all of the
16 cases. Those are some of the cases that support the
17 plaintiff's position.

18 The government relies on *Allied Progress*, Judge
19 Kotelly's opinion, 2017 Westlaw 1750263 in 2017 where she
20 denied preliminary injunction because she found that they were
21 not primarily engaged in the dissemination of information and
22 urgency, both.

23 Again, those were the facts of that case as she found
24 them, but as I just cited in another Judge Kotelly opinion,
25 clearly each of these cases is very fact specific in whether

1 someone has met their burden.

2 So I find that the defense has shown -- plaintiffs
3 have shown compelling need and an urgency. The question that
4 is a part of this is whether American Oversight is primarily
5 engaged in disseminating information, and the government says
6 -- they make the statement that it's very conclusory.

7 The plaintiffs in a number of places, but particularly
8 I think in their September 25, 2024 request for expedition,
9 say, "I further certify that we are primarily engaged in
10 disseminating information to the public. Our mission is to
11 promote transparency in government, to educate the public about
12 government activities and ensure the accountability of
13 government officials."

14 "American Oversight gathers information of potential
15 interest to a segment of the public, uses its editorial skills
16 to turn the raw material into distinct work and distributes
17 that work to an audience. It educates the public through
18 reports, press releases and other media. American Oversight
19 also makes the materials it gathers available on its public
20 website and promotes their availability on social media
21 platforms."

22 Putting it on a public website is disseminating it to
23 the public. Writing and issuing reports and press releases is
24 disseminating it to the public. It's not conclusory. They
25 have made that representation. And as they point out in their

1 reply memorandum at page 11, there are other organizations that
2 have similar missions and similar ways to disseminate
3 information and expedition has been granted to them.

4 And they cite in particular the *Protect Democracy* case
5 that I discussed a little while ago, 263 F.Supp. 3d at 293, but
6 the particular discussion and conclusion about dissemination is
7 at page 298 of that opinion. I think the *Brennan Center*
8 opinion is another one.

9 So we are now two weeks before the election, and I
10 think that there are segments of the public that would like to
11 know and there is even more urgency to the request now than
12 there may have been in August or September. The request is
13 narrow. It may only be one report or a number of documents.

14 Presumably, even though the Department of Defense and
15 the Department of the Army will have to do a search in order to
16 look, "Arlington National Cemetery," can do a search term. You
17 can do "Arlington National Cemetery, August 26, 2024."

18 So I think I have discussed likelihood of success on
19 the merits and irreparable harm. And the other two prongs for
20 preliminary injunction, the public interest and equitable
21 concerns, I think that the balance of the equities and whether
22 it's in accordance with the public interest, as was said during
23 the oral argument, I think once I find irreparable harm, seems
24 to me that, and the urgency in the public interest also
25 effectively answers the public interest in balance of the

1 equity prongs.

2 So I think I have covered what I want to say. And to
3 me, that is sufficient, but I'll ask either side if they want
4 to say anything further to deal with the question of the right
5 to a preliminary injunction directing expedition under the
6 statute and regulations, but given what I have said about that,
7 and the fact that the election is two weeks away, it seems to
8 me -- and the fact that it's a narrow request for nonexempt
9 records and it may only be one report or a few documents, that
10 what I have said also is sufficient to grant the request for
11 release of nonexempt documents.

12 Let me first ask the plaintiffs if there is anything
13 you think I have missed or need to address, and then I'll ask
14 the government a similar question.

15 MR. MARTINEZ: Thank you, Your Honor. I just want to
16 be clear. What is the date that you are --

17 THE COURT: What is it you're requesting?

18 MR. MARTINEZ: We requested Friday, October 25th.

19 THE COURT: For release.

20 MR. MARTINEZ: For release.

21 THE COURT: So I order expedition, which means start
22 tomorrow looking for the stuff, and so I'll order release by
23 Friday, October 25th.

24 MR. MARTINEZ: Thank you, Your Honor.

25 MS. CURTEMAN: Your Honor, the government would just

EXHIBIT 2



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

January 14, 2025

Elizabeth Haddix
American Oversight
Suite B255
1030 15th Street, NW
Washington, DC 20005
foia@americanoversight.org

Re: FOIA-2025-01848
DRH

Dear Elizabeth Haddix:

This responds to your Freedom of Information Act (FOIA) request dated January 8, 2025, and received in this Office on January 10, 2025, seeking a copy of the Report of Special Counsel Jack Smith. Your request was originally received by the Executive Office for United States Attorneys (EOUSA) who forwarded it to this Office for further processing. The EOUSA tracking number associated with this request is EOUSA-2025-001613.

Upon review of your request, I have determined that it is seeking the same material as your request of January 8, 2025, to this Office. That request is currently being processed in FOIA-2025-01746. As such, I am closing the tracking number associated with this referral from EOUSA (FOIA-2025-01848) as a duplicate. Please reference FOIA-2025-01746 in any future correspondence on this matter.

You may contact our FOIA Public Liaison, Valeree Villanueva, for any further assistance and to discuss any aspect of your request at: Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001; telephone at 202-514-3642.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448.

If you are not satisfied with this Office's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit->

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[and-track-request-or-appeal](#). Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.” If possible, please provide a copy of your initial request and this response with any appeal.

Sincerely,



Douglas R. Hibbard
Chief, Initial Request Staff

EXHIBIT 3

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

January 29, 2025

James R. McHenry III
Acting Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Acting Attorney General McHenry:

As the Senate Judiciary Committee exercises its constitutional responsibility to provide advice and consent on the nomination by President Trump of Kashyap “Kash” Patel to serve as Director of the Federal Bureau of Investigation (FBI), it is necessary for the Committee to evaluate Mr. Patel’s full record, including the veracity of his public and private statements and activities that pertain to the handling and protection of classified information. In this respect, the Committee requests urgent access to materials that have not yet been shared with the Committee and bear directly on Mr. Patel’s suitability to lead the nation’s premier law enforcement agency. Specifically, the Committee requests any and all sections of Volume Two of the “Final Report of the Special Counsel’s Investigations and Prosecutions,” submitted on January 7, 2025, by Special Counsel Jack Smith to the Attorney General, that refer or pertain to Mr. Patel’s testimony or actions.

According to public reports, federal prosecutors subpoenaed Mr. Patel to testify before a grand jury investigating President Trump’s retention of classified materials after leaving office and granted Mr. Patel immunity to facilitate his testimony in November 2022 after Mr. Patel invoked his Fifth Amendment right against self-incrimination and refused to answer questions. The Department reportedly sought Mr. Patel’s testimony in response to, among potentially other matters, Mr. Patel’s unsubstantiated public assertion that President Trump declassified documents prior to departing office at the end of his first term.¹ The Special Counsel’s findings with regard to Mr. Patel’s related activities and statements remain unknown to the Committee and the public.

The Committee cannot adequately fulfill its constitutional duty without reviewing details in the report of Mr. Patel’s testimony under oath, which is necessary to evaluate Mr. Patel’s truthfulness, trustworthiness, and regard for the protection of classified information. This is of utmost importance, as Mr. Patel has been nominated to hold one of the nation’s most important law enforcement positions, in which his core responsibilities, if confirmed, include seeking and

¹ Carol D. Leonnig, Devlin Barrett, and Josh Dawsey, *Trump loyalist Kash Patel questioned before Mar-a-Lago grand jury*, THE WASHINGTON POST, (Nov. 4, 2022), <https://www.washingtonpost.com/national-security/2022/11/03/kash-patel-grand-jury-trump/>.

telling the truth, maintaining the trust of Congress and the American people, and protecting our nation's most sensitive information.

The Committee is engaged in pertinent and urgent constitutionally mandated legislative activity that removes prior barriers to access to these materials. On January 23, 2025, the Committee issued a "Notice of Committee Nomination Hearing" for Mr. Patel, which is now scheduled for January 30, 2025. The Ranking Member of the Committee submitted on January 16, 2025, Questions for the Record (QFR) to Attorney General nominee Pamela Jo Bondi following her confirmation hearing, requesting that she commit to making Volume Two of the Special Counsel's report available immediately for review to the Senate Judiciary Committee Chair, Ranking Member, or their designees.²

This formal request preceded an order issued several days later by a judge in the United States District Court for the Southern District of Florida that enjoined the Department from releasing or otherwise making available a redacted version of Volume Two of the Special Counsel's report to the House and Senate Judiciary Committees. In the order, the judge erroneously stated that "[t]here is no record of an official request by members of Congress for *in camera* review of Volume II as proposed by the Department in this case," despite the prior request which her order omits. The judge also concludes wrongly that the Department "identified no pending legislation on the subject or any legislative activity that could be aided, even indirectly, by dissemination of Volume II to the four specified members whom the Department believes should review Volume II now," notwithstanding the Committee's ongoing consideration of Mr. Patel and others' nominations.³

The Committee is presently charged with undertaking one of its core constitutional and legislative functions: providing advice and consent on nominations by the President to positions of great responsibility in the U.S. federal government. The position of FBI Director bestows on its officeholder a solemn duty to be impartial, truthful, and trustworthy. In order to discharge their constitutional duty, the Members of the Senate Judiciary Committee must therefore be fully and accurately informed about Mr. Patel's record.

We request that you comply promptly with these requests by **February 10, 2025**, in order for the Senate Judiciary Committee to review any relevant information prior to Mr. Patel's confirmation vote. The Committee is prepared, as an accommodation, to accept *in camera* review of the materials and urges the Department to seek immediately a court order, if the Department deems necessary, to comply with this request.

² Senate Judiciary Committee, *Questions for the Record the Honorable Pamela Jo Bondi Nominee to be Attorney General of the United States*, (Jan. 16, 2025), https://www.judiciary.senate.gov/imo/media/doc/2025-01-15_-_qfr_responses_-_bondi.pdf

³ *United States v. Trump*, No. 9:23-cr-80101, (S.D. Fla. Jan. 21, 2025) ECF No. 714 at 7; In addition, on January 13, 2025, Senator Dick Durbin, Ranking Member of the Senate Judiciary Committee and the other Democratic members of the Committee submitted a letter to then-Attorney General Merrick Garland "recogniz[ing] the current injunction against the release of Special Counsel Smith's report and related materials and reserv[ing] its right to request production of the report and relevant records at an appropriate future date." Senate Judiciary Committee Letter Requesting Preservation of DOJ documents (Jan. 13, 2025), <https://www.judiciary.senate.gov/imo/media/doc/Letter%20to%20DOJ%20on%20Records%20Preservation.pdf>

We look forward to your full and immediate compliance with these requests. Thank you for your prompt attention to this important matter.

Sincerely,




Richard J. Durbin
United States Senator



Adam B. Schiff
United States Senator



Alex Padilla
United States Senator



Peter Welch
United States Senator



Sheldon Whitehouse
United States Senator



Christopher A. Coons
United States Senator



Cory A. Booker
United States Senator



Amy Klobuchar
United States Senator



Mazie K. Hirono
United States Senator



Richard Blumenthal
United States Senator

cc: The Honorable Charles E. Grassley
Chairman, Senate Committee on the Judiciary