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8  
9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
11

12  
13 THE MARY FERRELL FOUNDATION, )  
INC., et al., )

14 )  
15 Plaintiffs )

16 vs. )

17 NATIONAL ARCHIVES AND RECORDS )  
18 ADMINISTRATION, )

19 Defendants )

Case No. 3:22-cv-06176-RS

(

) **PLANTIFFS' COMBINED CROSS-MOTION**  
) **FOR PARTIAL SUMMARY JUDGMENT AND**  
) **OPPOSITION TO DEFENDANT'S MOTION**  
) **FOR PARTIAL SUMMARY JUDGMENT**

) Date: December 13, 2025

) Time: 1:30 pm

) Dept: Hon. Richard Seeborg

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**1. NARA has not maintained accurate reference aids to the assassination records and has a duty to repair these aids 22**

**2. Order NARA to seek additional documents such as the documents sought in the Memorandum of Understanding and the ARRB Final Report (ECF 77, paragraphs 119, 162-d-h, 163) 23**

**3. For the reasons stated above, Plaintiffs’ claim to request Attorney General intervention to seek destroyed and removed records should be granted in full 24**

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22 **INTRODUCTION**

23 Plaintiffs The Mary Ferrell Foundation, Inc. (referred to as MFF), Josiah  
24 Thompson and Gary Aguilar filed this action on October 19, 2022. ER-1. MFF  
25 maintains an archive of the largest non-governmental collection of documents  
26 related to the JFK assassination available to the public over the Internet. Mr.  
27  
28

1 Thompson and Mr. Aguilar are authors and researchers who rely on MFF’s archive  
2 of primary documents on a regular basis. ECF 77, paras. 17-18.

3  
4 The purpose of this suit is to invoke the protections of the JFK Records Act  
5 and the APA, which have received further protections since the issuance of  
6 President Donald Trump’s Executive Order 14176 on January 23, 2025.

7  
8 Enacted in 1992 after the furor created by Oliver Stone’s movie JFK, the  
9 JFK Records Act is described as describes it as a “unique solution to the problem  
10 of government secrecy” in the first sentence of the ARRB Final Report. This  
11 unique statute was designed for NARA to collect all the documents related to the  
12 history of the assassination and to review and release them as soon as possible.  
13  
14 ECF-77, paragraphs 21, 39. § 12 of the Act states that it will not expire until the  
15 Archivist certifies that all of the relevant documents have been collected and  
16 released.  
17  
18

19 Congress found and declared that the “*legislation is necessary to create an*  
20 *enforceable, independent and accountable process for the public disclosure of such*  
21 *(assassination) records.*” 44 USC § 2107 note at § 2(a)(3).

22  
23 From the inception of the Act until 1998, a five-person independent body  
24 known as the Assassination Archives Review Board collected, reviewed and  
25 released these documents. To accomplish these goals, Congress directed the heads  
26 of government offices to search for Assassination Records in their possession and  
27  
28

1 to transfer them to Defendant NARA. In turn, Defendant NARA was ordered to  
2 establish the Collection. Act, § 5(e). Congress also prohibited government offices  
3 from destroying or altering Assassination Records in their possession or custody.  
4 Act, § 5(a)(2). The Act states that only in the “rarest cases” would these  
5 documents not be released, as the records were almost 30 years old. § 2(a)(7).  
6

7  
8 As time was nearing for the ARRB’s dissolution in 1998, a number of  
9 agencies “waited out” the ARRB and failed to sign a declaration that all of the  
10 required documents had been submitted. ARRB Final Report, at pages 145, 149,  
11 and 155-156. In addition, the ARRB was also working with the JFK Library and  
12 the RFK Donor Committee at the time of the final report to release certain papers  
13 of Robert F. Kennedy known as the “Sheridan papers”, as Mr. Sheridan removed  
14 these documents from the JFK Library and transferred custody of these  
15 assassination records to NBC without the permission of the ARRB. ARRB Final  
16 Report, pp. 162 and 168, note 9.; ECF 77, paragraph 136.  
17  
18  
19

20  
21 In the days before the ARRB’s dissolution, the ARRB, NARA and the CIA  
22 signed a Memorandum of Understanding assuring that CIA would provide specific  
23 requested documents to NARA. ECF 51:4-9. This assurance included a pledge  
24 that CIA would conduct “the review of any new assassination records”. ECF 51:9.  
25

26 When the ARRB dissolved in September 1998, ARRB requests to search for  
27 additional designated assassination-related records to certain agencies remained  
28

1 outstanding. ECF 77, paragraphs 44-46; 133. Counsel has provided to the court a  
2 letter to opposing counsel that summarizes the requests made in the ARRB's Final  
3 Report. See Declaration of William Simpich in Support of Cross-Motion for  
4 Partial Summary Judgment, Exhibit 1.  
5

6 Virtually no responsive documents have been provided by the CIA since  
7  
8 1999. ECF 63:6; ECF 100, paragraph 120.

9 When the ARRB was dissolved in 1998, NARA issued a regulation stating  
10 "NARA continues to maintain and supplement the collection under the provisions  
11 of the Act." 65 FR 39550. NARA continued to collect, review, and release  
12 documents and supplemented the JFK Collection pursuant to this regulation,  
13 Section 12 of the JFK Records Act and other sections of the statute, albeit at a  
14 much slower rate. ECF 36-37, paragraphs 4-11; ECF 176-177. Several members  
15 of the Mary Ferrell Foundation wrote to NARA and asked about the status of the  
16 ARRB requests made pursuant to the MOU and the ARRB Final Report, but  
17 received no reply. ECF 77, paragraph 54. The torrent of collected documents was  
18 reduced to a trickle, while the backlog of un-released documents sat in limbo.  
19 ECF 77, paragraphs 111-112.  
20  
21  
22  
23  
24

25 When the unreleased documents were scheduled to be released in 2017,  
26 President Donald Trump issued executive orders stating that his administration was  
27 continuing to review the documents and barred their wholesale release. ECF 68, p.  
28

1 3:2-5. Defendant NARA determined the use of Transparency Plans was developed  
2 in consultation with those agencies that asserted equities in the withheld  
3 assassination records. President Joseph Biden then directed the National  
4 Declassification Center to use the “Transparency Plans” for determining when  
5 withheld records may be released in the future - which modified the statutory  
6 procedure for the release of the remaining documents and established standards  
7 weaker than the standards set forth in the JFK Records Act. ECF 68, p.3:5-10.  
8 The Transparency Plans created an avenue for many of these documents to be  
9 withheld from the public for many generations to come without the statutorily-  
10 required review and certification by the President.  
11  
12  
13  
14

15 Plaintiffs The Mary Ferrell Foundation, Inc. (referred to as MFF), Josiah  
16 Thompson and Gary Aguilar filed this action on October 19, 2022. ECF 1. MFF  
17 maintains an archive of the largest non-governmental collection of documents  
18 related to the JFK assassination available to the public over the Internet. Mr.  
19 Thompson and Mr. Aguilar are authors and researchers who rely on MFF’s archive  
20 of primary documents on a regular basis. ECF 77, paras. 17-18. This suit was filed  
21 to invoke the protections of the JFK Records Act and the APA. § 12 of the Act  
22 states that it will not expire until the Archivist certifies that all of the relevant  
23 documents have been collected and released.  
24  
25  
26  
27  
28

1 In response to Plaintiffs' suit, Defendants Joseph R. Biden and NARA filed  
2 a motion to dismiss the suit. ECF 107, p. 6:14-15. During July 2023 and January  
3 2024, the court issued orders granting Plaintiffs' claims to seek improved finding  
4 aids, the release of legislative records and for destroyed and removed records,  
5 while denying the claims cited in the Motion to Dismiss with prejudice and  
6 dismissing President Biden with prejudice. ECF 107, p. 6:16-18; ECF 68, p. 8:15-  
7 18 and p. 17:13-16.  
8  
9

10 President Trump's Executive Order 14176 of January 23, 2025 (published at  
11 90. Fed. Reg. 8641, January 30, 2025) states that "(i)t is in the national interest to  
12 finally release all records related to these assassinations without delay...I have now  
13 determined that the continued redaction and withholding of information from  
14 records pertaining to the assassination of President John F. Kennedy is not  
15 consistent with the public interest and the release of these records is long overdue."  
16  
17  
18

19 The Order then states: "Sec. 2. Declassification and  
20 Disclosure. (a) Within 15 days of the date of this order, the Director of National  
21 Intelligence and the Attorney General shall, in coordination with the Assistant to  
22 the President for National Security Affairs and the Counsel to the President,  
23 present a plan to the President for the full and complete release of records relating  
24 to the assassination of President John F. Kennedy."  
25  
26  
27  
28

1 On February 12, 2025, [the FBI announced that it had collected 2400](#)  
2 [additional assassination records](#) that it was working with NARA to be included in  
3 the declassification process. Newsweek reported that [these documents were](#)  
4 [discovered after the President signed the executive order](#) and “had not been  
5 previously linked to the case”. These documents have been downloaded and can  
6 be viewed at the Mary Ferrell website.  
7  
8

9 On March 18, 2025, the President announced that [all previously redacted](#)  
10 [documents relating to the JFK assassination will be released in full.](#)  
11

12 Throughout this year, the House Oversight Committee has released several  
13 of the documents sought by Plaintiffs in this litigation. Plaintiffs seek the  
14 remainder in this cross-motion.  
15

16 **DEFENDANT’S CURRENT MOTION AND PLAINTIFFS’ CROSS-**  
17 **MOTION**  
18

19 On October 14, 2024, Defendant NARA filed a Motion for Partial Summary  
20 Judgment. This motion seeks the dismissal of Plaintiffs’ causes of action for the  
21 release of legislative branch records and for NARA to conduct a search for  
22 destroyed and/or removed records.  
23  
24

25 Defendant’s motion regarding legislative branch records (Defendant’s  
26 Motion for Partial Summary Judgment (referred to as “DMPSJ”, pp. 6-12) is now  
27 moot, as the President has ordered their release in full and Plaintiffs believe that  
28

1 these records are in the process of being released but the task has not yet been  
2 completed. Plaintiffs know that redactions remain in several documents.

3  
4 Defendant's motion regarding Plaintiffs' claim that NARA has violated the  
5 Federal Records Act (DMPSJ, pp. 12-233, re ECF 77, paragraphs 167-176), is  
6 addressed here.

7  
8 Plaintiffs' cross-motion for partial summary judgment asks the court to:

- 9  
10 1. Order the repair of the deficiencies in the Central Directory as identified  
11 in the operative Complaint (ECF 77, Paragraphs 57-58);  
12  
13 2. Order NARA to seek the documents sought in the MOU and the ARRB  
14 Final Report (ECF 77, paragraphs 119, 162-d-h, 163)  
15  
16 3. Ask the Attorney General for assistance in locating the destroyed and  
17 removed records.  
18  
19 4. Ensure that all legislative records have been released pursuant to the  
20 JFK Records Act and President Trump's executive order 14176.

21 **ARGUMENT**

22 **I. The standards for release in Trump's Executive Order 14176 are**  
23 **broader in scope than the JFK Records Act**

24  
25 The language in Trump's EO 14176 of 1/23/25 includes the phrase that the  
26 Director of National Intelligence and the Attorney General "shall...present a plan to  
27 the President for the *full and complete release of records relating to the*  
28

1 *assassination of President John F. Kennedy.*" That plan has been presented and  
2 the President has declared that all documents relating to the assassination shall be  
3 released without any further delay, including items that ordinarily are exempted  
4 from disclosure. (See pages 6-8, *supra*)

5  
6 The Trump EO is broader in scope than the Act. As shown in the previous  
7 paragraph, the EO calls for "full and complete release" of all documents related to  
8 the assassination. The Act protected the President's right to order withhold or  
9 redact documents pursuant to § 5(g)(2)(D).  
10  
11

12 Also note that the Government can no longer make the argument that the  
13 JFK Records Act relies on findings made by the ARRB. Nor should it, because the  
14 ARRB's findings were made during 1994-1998, many years ago.  
15

16 The ARRB did identify a wide swath of documents that needed to be  
17 located, and were listed in two separate locations – in its Memorandum of  
18 Understanding and in the ARRB Final Report.  
19

20 Therefore, the 1/23/25 Executive Order appears to accomplish two goals:  
21

22 1. To mandate a "full and complete release of records relating to the  
23 assassination" without any redactions or any argument that the records sought are  
24 not within the purview of the JFK Records Act.  
25

26 2. To mandate compliance with the JFK Records Act.  
27

28 **II. The JFK Records Act is a remedial statute**

1 The JFK Records Act is a “remedial statute” based on its intrinsic remedial  
2 nature, its text and contextual structure, and the legislative history. It is a “*unique*  
3 *solution to the problem of government secrecy.*” ARRB Final Report, page 1.  
4

5 Black’s Law Dictionary defines a “remedial statute” to mean (1) a law  
6 providing a means to enforce rights or redress injuries; or (2) (a) statute enacted to  
7 correct one or more defects, mistakes or omissions.”  
8

9 “*The problem Congress sought to address in 1992 was that thirty years of*  
10 *government secrecy relating to the assassination of President John F. Kennedy*  
11 *had led the American public to believe that the government had something to hide.*  
12 *The solution was the JFK Records Act which required the government to disclose*  
13 *whatever information it had concerning the assassination so that all Americans*  
14 *would have access to the facts surrounding the assassination.*” [ARRB Final](#)  
15 [Report, page 1.](#)  
16  
17  
18

19 To achieve the goals of the Act, Congress said that it was necessary to  
20 “create an enforceable, independent, and accountable process for the public  
21 disclosure of such records.” *Id.* at § 2(a)(3). To backstop this goal, Congress  
22 included a legislative override in § 11(a) to ensure the Act has precedence over any  
23 other law, judicial decision, or common law doctrine that would prohibit disclosure  
24 of assassination records, as well as a judicial review provision in § 11(c) and  
25 additional protections in § 11(d).  
26  
27  
28

1 The remedial findings of § 2(a) include a statement that “all Government  
2 records concerning the assassination of President John F. Kennedy should carry a  
3 **presumption of immediate disclosure.**”  
4

5 Other remedial aspects of the JFK Records Act include the statutory  
6 purposes set forth in in § 2(b), the initial broad definition of assassination record in  
7 § 3(1), the limited exceptions to the presumption of disclosure set forth in §§  
8 5(g)(2)(D) and 9(d)(1), the legislative override, judicial review and other  
9 protections in § 11, and the legislative history, all of which demonstrate that the  
10 JFK Records Act is a remedial statute that Congress intended to be liberally  
11 construed “*to enable the public to become fully informed about the history*  
12 *surrounding President Kennedy’s assassination.*” § 2(a)(2).  
13  
14  
15

### 16 **III. Inadequacies with Defendant’s FRA Motion**

#### 17 **A. The factual basis of Defendant’s motion contains two declarations** 18 **and an unauthenticated group of documents entitled “Exhibit A”** 19

20 The court is asked to note:

21 The main body of facts raised by NARA in the FRA aspect of this motion  
22 are those contained in two declarations by Rebecca Calagano and Judith Barnes  
23 that should be stricken based on their overbroad contents that are filled with  
24 outdated issues, and an unauthenticated group of documents referred to as “Exhibit  
25 A”, a letter to David Maxwell from Steve Tilley, both NARA employees, with  
26 attachments.  
27  
28

1 The Calagano declaration raises the following issues:

2 Legislative records at paragraphs 7, 9, and 10-12. - President Trump has  
3 ordered that “all records related to the assassination” shall be added to the  
4 Collection. Thus, there is no longer any issue about the propriety of the release of  
5 legislative records, only whether or not all of them have been released. See the  
6 Defendant’s Motion, pp. 6-12. The JFK Act is similar in scope to the Trump EO.  
7  
8

9 The Transparency Plans at paragraph 8 – President Trump has ordered that  
10 all records related to the assassination shall be added to the Collection. Thus,  
11 there is no longer any issue about the applicability of Transparency Plans.  
12

13 The 1995 destruction of Secret Service records at paragraph 15– The claim  
14 is made that the Secret Service’s destruction of assassination-related documents in  
15 1995 is the only instance of the destruction of such records identified by the Board  
16 “whose destruction definitively occurred after passage of the Act.”  
17  
18

19 See the Simpich Declaration, paragraph 7 and Exhibit 2, which relies on the  
20 ARRB Final Report to make it clear that many more were destroyed or removed  
21 both before and after 1995.  
22

23 Calcagno is not qualified to make many of her assertions.

24 The pleadings mis-quote Calcagno's assertions - she doesn't say that "the  
25 only information that has been withheld from these records is information that  
26 originated in the executive branch". Motion, 10:11-13. Much of the information  
27  
28

1 withheld comes from HSCA depositions, etc., that clearly originated in the  
2 legislative side of the fence.

3 The Barnes Declaration is as overbroad as the Calcagno Declaration.  
4

5 Exhibit A is a jumble of many different documents with no authentication.  
6

7 **B. Plaintiffs' summary regarding the destroyed/removed documents**

8 Plaintiffs summarize in bold their responses to NARA's argument at pages  
9 12-22.

10 (i) Defendant claims Plaintiffs have no standing - Plaintiffs respond:  
11

12 **See the Armstrong I and II cases, cited below.**

13 (ii) Defendant claims Plaintiffs lack a cause of action. **Plaintiffs**  
14 **respond: Specific, unequivocal commands exist to take discrete**  
15 **agency actions, as stated below.**  
16

17 (iii) Defendants claim Section 2905 does not extend to destroyed  
18 documents, only removed documents. **Plaintiffs disagree, citing the**  
19 **Armstrong cases and the American Friends case.**  
20

21 (iv) Defendants are entitled to summary judgment because the FRA  
22 should not be interpreted to require the Archivist to make a referral to  
23 the Attorney General in these circumstances. As noted above, the  
24 records at issue were "pulped" nearly 30 years ago and are now  
25 permanently unrecoverable. See Barnes Decl. ¶¶ 7-8. **Plaintiffs**  
26  
27  
28

1           **respond that the court has held Plaintiffs cited logical methods to**  
2           **recover documents. See the Simpich Declaration, paras. 1-6.**

3  
4           **C. RIGHT TO ACCESS CASES IGNORED IN NARA’S MOTION**

5           Plaintiffs have a right to access of the courts to ask the government to  
6 take effective action to seek destroyed and removed records, as they are within the  
7 zone of interests of the records creation and management provisions of the FRA.  
8

9 See the *Armstrong* case, pages 287-88:

10  
11           “**We find that the statutory language and legislative history of (the Federal**  
12 **Records Act)** indicate that one of the reasons that Congress mandated the creation  
13 and preservation of federal and presidential records was to ensure that private  
14 researchers and historians would have access to the documentary history of the  
15 federal government.”

16           “Congress enacted the (Presidential Records Act) "to insure the preservation  
17 of and public access to the official records of the President [cites omitted]. The  
18 FRA, enacted to ensure the "accurate and complete documentation of the policies  
19 and transactions of the Federal Government," 44 U.S.C. § 2902(1), evinces a  
20 similar congressional intent. As we concluded in *American Friends Service*  
21 *Committee v. Webster*, 231 U.S. App. D.C. 265, 720 F.2d 29, 57 (D.C. Cir. 1983),  
22 "the legislative history of the [FRA] supports a finding that Congress intended,  
23 expected, and positively desired private researchers and private parties whose  
24 rights may have been affected by government actions to have access to the  
25 documentary history of the federal government."  
26

27           “...On the basis of the expressed statutory goal of preserving records for historical  
28 purposes and our previous decision in *American Friends*, we now hold that  
because plaintiffs are researchers and historians who make extensive use of  
government documents, they are within the zone of interests of the records creation  
and management provisions of the...FRA.”

          NARA further argues (at pp. 17-18 of their brief):

1 *"And while Counts One and Two assert APA claims, those counts do not reference*  
2 *any alleged violation of the FRA. See id. ¶¶ 150–66 (asserting claims under the*  
3 *APA, but without referencing any violation of the FRA). If Plaintiffs were pursuing*  
4 *an FRA-related claim under the APA, they would need to identify the specific*  
5 *provision of the APA on which they were relying and explain how they can satisfy*  
6 *the APA's various threshold requirements"*

7 *Plaintiffs have not done so here. Because Plaintiffs lack a cause of action to assert*  
8 *a claim under the FRA and have not asserted an FRA-related claim under the*  
9 *APA, Count Three fails as a matter of law.'*

10 In response, Plaintiffs cite to the complaint.

11 This Court has the authority to enter a declaratory judgment and grant injunctive  
12 relief pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201; the  
13 APA<sup>[1]</sup>, and may issue writs of mandamus pursuant to the Mandamus and Venue  
14 Act, 28 U.S.C. § 1361; and the All Writs Act, 28 U.S.C. § 1651. (TAC, para 13).  
15 Defendant NARA is an "agency" under the APA.<sup>[1]</sup>(TAC, para. 151) The APA  
16 requires that a court "*hold unlawful and set aside agency action, findings, and*  
17 *conclusions found to be . . . arbitrary, capricious... or otherwise not in accordance*  
18 *with law.*"<sup>[3]</sup> (TAC, para. 153)

19 These paragraphs 13, 151, and 153, along with the savings clause of paragraph  
20 167 introducing the Third Cause of Action, illustrate that Plaintiffs adequately cited  
21 the APA as a basis of the FRA violations in the Third Amended Complaint, and  
22 asked the court to "hold unlawful agency action, findings and conclusions that were  
23 not in accordance with law" pursuant to the APA.

24 Furthermore, the Plaintiffs did cite a "*specific, unequivocal command placed*  
25 *on the agency to take a discrete agency action*") as stated in *Plaskett v. Wormuth*,  
26 18 F.4th 1072, 1082 (9th Cir. 2021). As stated in Paragraphs 168-174, each of the  
27 four statements below constitute a specific, unequivocal command:  
28

- 1 1. “The ARRB Final Report identified...destroyed and/or removed  
2 Assassination Records, and specifically disclosed the destruction of  
3 Assassination Records by certain agencies: Under the FRA, *Defendant*  
4 *NARA acting through the Archivist has a ministerial non-discretionary*  
5 *duty to instruct the relevant agencies to conduct a reasonable search and*  
6 *review for...destroyed or removed federal records.* (44 U.S.C at 2115(b)).  
7  
8  
9 2. When Defendant NARA becomes aware of...threatened destruction or  
10 removed records in the custody of an agency, *Defendant NARA must notify*  
11 *the agency head in an attempt to recover such records. If the agency head*  
12 *refuses to pursue legal remedies, Defendant NARA must request that the*  
13 *Attorney General take action and must inform Congress that he has made*  
14 *this request.* (Id. at Section 2905(a)).  
15  
16  
17 3. The FRA also mandates that each agency head shall establish and maintain  
18 an active, continuing program for management federal records (Id. at  
19 Section 3102) and shall establish safeguards against the removal or loss of  
20 records. (Id. at Section 3105). *Upon information and belief, Defendant*  
21 *NARA has not requested the assistance of the Attorney General to complete*  
22 *these Assassination Record Searches as required by the FRA. Upon*  
23 *information and belief, Defendant NARA has not referred to the Attorney*  
24 *General for enforcement of the destruction...or removal of Assassination*  
25  
26  
27  
28

1           *Records by certain agencies identified by the ARRB as required by the*  
2           *FRA...*

3  
4           4. *By failing to preserve the destroyed...or removed documents, Defendant*  
5           *NARA is violating its ministerial, non-discretionary duties to request that*  
6           *the Attorney General initiate action, or otherwise seek legal redress. The*  
7           failure of Defendant NARA to perform these ministerial non-discretionary  
8           duties has harmed and continue to harm Plaintiffs by denying Plaintiffs  
9           access to these important historical documents and impairing the ability of  
10           Plaintiff MFF from carrying out its core mission.”

11  
12  
13           Each one of these statements constitutes “a specific, unequivocal command  
14           upon the agency to take discrete agency action” as stated in *Plaskett*.

15  
16           If, for some reason, the court does not believe that Plaintiffs adequately stated  
17           the relationship between the APA and the FRA, Plaintiffs will be submitted a  
18           proposed fourth amended complaint.

19  
20           The court is asked to note that in the CMC Statement filed with the court last  
21           year, Plaintiffs stated their intention to amend the complaint in conformity with the  
22           court's request to do so in its latest order of January 2024. The other side read that  
23           statement and decided to take advantage of it.  
24  
25  
26  
27  
28

1 Plaintiffs also communicated with prior counsel and asked them why it was  
2 contending in the CMC that all of the causes of action were dependent on the APA.  
3 Defendant failed to provide a response to this request by counsel.  
4

5 It was especially puzzling to Plaintiffs because such an argument was not put  
6 forward by Defendant in its previous Motions to Dismiss.  
7

8 **D. THE CASE LAW IS CLEAR THAT COURTS HAVE THE POWER**  
9 **TO CONDUCT JUDICIAL REVIEW OF A RECORDS STATUTE**

10 The *Armstrong* court "affirmed the decision that the APA authorized judicial  
11 review of the claim that the NSC's recordkeeping guidelines and directives were  
12 arbitrary and capricious under the FRA".  
13

14 In its Motion (at 17:5-10) DOJ cites the highlighted language below in  
15 *Armstrong II* at 924 F. 2d 282, 292 to cite their theory of the case, without revealing  
16 to Judge Seeborg that the *Armstrong* court stated that "the Kissinger loophole" was  
17 removed by a 1984 amendment to the FRA.  
18

19  
20 "Plaintiffs additionally argue that Congress, by amending the FRA in 1984 to  
21 enhance the enforcement authority and responsibilities of the Archivist, reinforced  
22 its intent to supplant all judicial review. We view the 1984 amendments, however,  
23 as not intended to bar judicial review, but instead as a direct response to the  
24 Supreme Court's decision in [Kissinger v. Reporters Committee for Freedom of the](#)  
25 [Press, 445 U.S. 136, 63 L. Ed. 2d 267, 100 S. Ct. 960 \(1980\)](#). **In *Kissinger*, the**  
26 **Supreme Court held that the FRA does not contain an implied cause of action**  
27 **allowing private parties to bring suit** to recover records that have been  
28 unlawfully removed from an agency. Recognizing that this created "the anomalous  
situation . . . whereby an agency head has a duty to initiate action to recover  
records which he himself has removed," Congress amended the FRA to require the  
Archivist to ask the Attorney General to sue and to notify Congress if the agency  
head failed to make a similar request of the Attorney General. H.R. Conf. Rep. No.

1 98-1124, 98th Cong. 2d Sess. 28 (1984), *reprinted in* 1984 U.S. Code Cong. &  
2 Admin. News 3865, 3894, 3903; *see also* [44 U.S.C. § 2905\(a\)](#) (Archivist's  
3 enforcement authority), [§ 3106](#) (agency head's [\[\\*\\*29\]](#) enforcement authority).  
4 Nothing in the Conference Report or the 1984 amendments indicates a  
5 congressional intent to preclude ordinary judicial review of the adequacy of an  
6 agency's recordkeeping guidelines and directives. **The more natural reading is**  
7 **that Congress intended only to eliminate the *Kissinger* loophole and establish a**  
8 **more effective administrative enforcement process to prevent the unlawful**  
9 **destruction or removal of records by agency officials."**

10 The court should note that the opposing party never informed the court that  
11 "the Kissinger loophole" was eliminated by Congressional action in 1984 and  
12 affirmed by the very case and page number that it cited – *Armstrong, supra*, 924  
13 F.2d at 292.

14 It should also be noted that there were two *Armstrong* DC Circuit opinions,  
15 *Armstrong v. Bush (Armstrong I)*, 721 F.Supp. 343 (D.C.1989) and the *Armstrong*  
16 *II* case cited above.

17 *Armstrong II* modified *Armstrong I* and contained key language stating that  
18 even though there was no private right of action, the court would review  
19 implementation of a records statute.  
20

21  
22 **E. NARA's motion is an effort to obtain a judicial ruling that would**  
23 **vastly increase the scope of the powers of the Executive Branch of the**  
24 **government and to diminish Congressional power.**

25 A favorable finding for NARA in this case would erase forty years of  
26 precedent as established by *Armstrong II* and *American Friends*, 720 F.2d at 57,  
27  
28

1 *supra*. This is an attempt to expand the notion of the “unitary executive” that  
2 envelops the powers of the Legislative Branch as well as the Executive Branch.

3  
4 When such case law is ignored by the Justice Department in its briefing, it is  
5 a sign that there is an underlying policy agenda that is being pressed upon the  
6 judicial branch.

7  
8 **F. NARA’s arguments ignore previous evidence provided in this case.**

9  
10 Destroyed and removed documents have turned up in the past – in one  
11 instance, DOJ simply ignored evidence previously supplied to this court, as in  
12 example 1) below.

13  
14 1) The most striking failure is NARA’s decision to emphasize that the  
15 destroyed Secret Service documents have been “pulped”, when the Plaintiffs  
16 provided evidence that some of these destroyed Secret Service documents were  
17 subsequently found by a NARA official and taken into custody. These documents  
18 were under a Secret Service officer’s bed. See the Simpich Declaration, paras. 1-6  
19 and Exhibit 1.

20  
21 There are other examples of documents that were believed destroyed that  
22 turned up later. See the Simpich Declaration., para. 7 and Exhibit 2, which  
23 displays a list sent to DOJ and NARA in 2023, highlighting a fistful of these cases.

24  
25 **IV. The release of the legislative records has been resolved by the President,**  
26 **and the Plaintiffs seek full and prompt compliance**

1 Section 5(g)(2)(D) of the Act states:

2 "Each assassination record shall be publicly disclosed in full, and available  
3 in the Collection no later than the date that is 25 years after the date of enactment  
4 of this Act, unless the President certifies, **as required by this Act**, that— (i)  
5 continued postponement is made necessary by an identifiable harm to the military  
6 defense, intelligence operations, law enforcement, or conduct of foreign relations;  
7 and (ii) the identifiable harm is of such gravity that it outweighs the public interest  
8 in disclosure."

9 9(d)(1) cites that the President has a "sole and nondelegable duty" to  
10 postpone information that is "contained in an assassination record" if that  
11 information is "obtained or developed solely within the executive branch."

12 The Trump Executive Order of 2017, formally entitled "Temporary  
13 Certification for Certain Records Related to the Assassination of President John F.  
14 Kennedy", stated that certain information had to be redacted for the next 180  
15 days. However, the Defendant has made no showing that any of the particular  
16 documents included in the "legislative documents" were included in that order:  
17 Plaintiffs have been informed that not all of the legislative records have been  
18 submitted.  
19  
20  
21

22 Plaintiffs seek full and prompt compliance. It has been almost eight months  
23 since the President's executive order.  
24

## 25 **V. Plaintiffs' cross-motion should prevail on all aspects**

26 Plaintiffs' cross-motion for summary judgment is based on these claims:

### 27 **1. NARA has not maintained accurate reference aids to the** 28 **assassination records and has a duty to repair these aids**

1 Plaintiffs have identified numerous inaccuracies in the central directory and  
2 the identification aids. The JFK Records Act requires NARA to create a “uniform  
3 system” of identification aids, JFK Act, 5(d)(1)(B). See the operative complaint,  
4 ECF 77, paragraphs 57-58.  
5  
6

7 NARA has not performed ministerial non-discretionary duties pursuant to  
8 the JFK Records Act. NARA is mandated to create a “central directory comprised  
9 of identification aids created for each record transmitted to the Archivist under  
10 Section 5”. Section 4(a)(2)(B). Section 5(d) describes these identification aids.  
11 The Archivist has the duty to “prepare and make available to all Government  
12 offices a standard form of identification or finding aid *for use with each*  
13 *assassination record.*” Section 5(d)(1)(A). (emphasis added)  
14  
15  
16

17 NARA has not properly identified its central directory of identification aids.  
18 Sections 3(6); 4(a)(2)(B); and 4(d)(1). All of these sections of the Act are  
19 prefaced by the word “shall”.  
20

21 Rex Bradford’s 2023 declaration details serious inadequacies with the  
22 directory and identification aids. ECF 34-1. The Central Directory creates no  
23 identification aids for some agencies (paragraph 7); many records do not have  
24 entries in the Central Directory (paragraphs 8-9); and many identification aids in  
25 the Central Directory contain redactions (paragraphs 10-11).  
26  
27  
28

1 NARA's website for the JFK Assassination Collection Reference System  
2 can be found at <https://www.archives.gov/research/jfk/search>. The website for this  
3 central directory states that it is current as of May 17, 2021, more than four years  
4 ago.  
5

6 As with all aspects of this cross-motion, all of these aforementioned duties  
7 are "specific, unequivocal demands" placed upon the agency to take a 'discrete  
8 agency action,' and the agency has failed to take that action." 5 U.S.C. Section  
9 706(1); *Plaskett v. Wormuth*, 18 F.4<sup>th</sup> 1072, 1082 (9<sup>th</sup> Cir. 2021)  
10  
11

12 **2. Order NARA to seek additional documents such as the documents**  
13 **sought in the Memorandum of Understanding and the ARRB Final**  
14 **Report (ECF 77, paragraphs 119, 162-d-h, 163)**

15 The Executive Order and the JFK Records Act are implicated in prior court  
16 decisions where the court has examined the MOU at issue in this case in previous  
17 rulings in the D.C. Circuit.

18 *The MOU "provide(s) that the CIA will transmit to the JFK Collection at*  
19 *NARA a number of specifically identified documents, along with "[a]ny other non-*  
20 *duplicate assassination-related records created or discovered by the CIA after*  
21 *September 30, 1998."* Memorandum of Understanding Regarding Continuing  
22 Obligations of the CIA Under the JFK Act, at 3 (Sept. 30, 1998). *Morley v.*  
23 *CIA* (D.C. Cir. 2007) 508 F. 3d 1108, 1115.  
24

25 *"(Plaintiff is) on somewhat stronger ground in saying that the CIA should*  
26 *have realized that his FOIA request – even though it expressly referenced the*  
27 *Kennedy assassination – asked the CIA for some categories of CIA documents that*  
28 *may not have been transferred to the Archives. We agree with (Plaintiff) that the*

1 *CIA's initial response to him was not entirely sufficient, as was revealed when the*  
2 *CIA ultimately produced some responsive documents that had not been transferred*  
3 *to the Archives." Morley v. CIA (D.C. Cir. 2018) 894 F. 3d 389, 395.*

4  
5 **3. For the reasons stated above, Plaintiffs' claim to request Attorney**  
6 **General intervention to seek destroyed and removed records should**  
7 **be granted in full**

8 In reviewing the files, counsel noticed that the MFF files MFF only  
9 contained a few of the ARRB Final Determinations that were supposed to be  
10 published in the Federal Register within 14 days after the date of the determination  
11 of whether and when an assassination record would be publicly released or  
12 postponed for disclosure. It is estimated that there should be 27,000 of these Final  
13 Determinations created between 1994-1998. Andrew Iler has written two articles  
14 detailing how he went to NARA's archives and was told he was being supplied  
15 with all of the ARRB Final Determinations. He only found about 450 documents  
16 of the 27,000 documents that were issued during the life of the ARRB that should  
17 be released in the files and have apparently been removed or destroyed. Simpich  
18 Declaration, paragraph 9.

19  
20  
21  
22  
23 This situation violates Section 9(c)(4) of the Act, which mandates the  
24 publication of each determination of an assassination record for or against public  
25 disclosure within 14 days of the decision being made. 9(c)(3) sets forth the  
26 procedure that mandates these determinations, culminating with a mandate to send  
27  
28

1 these documents to NARA.

2 9(d)(1) mandates that the President had 30 days to change these  
3 determinations, there is no record that any President did so. 5(g)(1) creates a non-  
4 discretionary duty for NARA to publish these Final Determinations.  
5

6 But where are these 27,000 ARRB final determinations, testified to by  
7 former ARRB chairman, the Honorable John Tunheim, in Congress on May 20,  
8 2025? Plaintiffs believe that these documents illustrate that many of these  
9 assassination-related documents were mandated to be released to the public  
10 decades ago. This is a matter of public interest.  
11  
12

13 These documents have been removed or destroyed, just like records listed in  
14 Exhibit 2 of the Simpich Declaration, the “Sheridan papers” removed from the JFK  
15 Library (see p. 3, supra) and the ARRB Final Report. The case law cited above  
16 states the duties imposed on the Attorney General and/or NARA.  
17  
18

19 Mr. Iler’s articles can be found at [https://www.kennedysandking.com/john-f-  
20 kennedy-articles/why-are-we-still-declassifying-jfk-records-critical-arrb-final-  
21 determinations-buried-and-ignored-part-1](https://www.kennedysandking.com/john-f-kennedy-articles/why-are-we-still-declassifying-jfk-records-critical-arrb-final-determinations-buried-and-ignored-part-1) and  
22 [https://www.kennedysandking.com/john-f-kennedy-articles/critical-arrb-final-  
23 determinations-buried-and-ignored-part-2](https://www.kennedysandking.com/john-f-kennedy-articles/critical-arrb-final-determinations-buried-and-ignored-part-2)  
24  
25  
26

27 **4. Similarly, an order should be issued ensuring that the legislative**  
28 **records are promptly released to the public.**

1 The legislative records must be promptly released to the public in full. The  
2 Defendant has the burden to prove that all of them have been released.

3 The Executive Order makes it clear that all documents related to the  
4 assassination must be released. Whether the ARRB has mandated their release is  
5 no longer the standard. The 2400 FBI documents added to the Collection since  
6 the Executive Order constitutes the new standard. Simpich Declaration, paragraph  
7 8, Exhibit 3.  
8  
9

10  
11 Dated: September 16, 2025  
12

13  
14 \_\_\_\_\_/s/\_\_\_\_\_  
15 William M. Simpich, Attorney at Law  
16 Lawrence P. Schnapf, SCHNAPF LLP  
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**Proof of Service by Electronic Mail**

On September 16, 2025, I served the attached Plaintiff’s Combined Cross-Motion for Partial Summary Judgment and Opposition to Defendant’s Motion for Partial Summary Judgment and the Declaration of William Simpich by filing this motion pursuant to ECF and directed to:

James Bickford  
Trial Attorneys, Civil Division  
Federal Programs Branch  
U.S. Department of Justice

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Richmond, CA on 9/16/25.

\_\_\_\_\_/s/\_\_\_\_\_  
WILLIAM M. SIMPICH