

No. 24-1606

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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THE MARY FERRELL FOUNDATION, INC; JOSIAH THOMPSON, and GARY AGUILAR, Plaintiffs-Appellants,

v.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, Defendant-Appellee.

On Appeal from the United States District Court

For the Northern District of California

No. 22-cv-06176-RS

Hon. Richard Seeborg

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**APPELLANTS' EXCERPTS OF RECORD**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARY FERRELL FOUNDATION, INC.,  
et al.,

Plaintiffs,

v.

NATIONAL ARCHIVES AND RECORDS  
ADMINISTRATION, et al.,

Defendants.

Case No. [22-cv-06176-RS](#)

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS AND DENYING MOTIONS  
FOR INJUNCTIVE RELIEF**

**I. INTRODUCTION**

Plaintiffs the Mary Ferrell Foundation, Inc. (“MFF”), Josiah Thompson, and Gary Aguilar bring this action for declaratory relief, injunctive relief, and a writ of mandamus against Defendants President Joseph R. Biden and the National Archives and Records Administration (“NARA”). Plaintiffs argue that Defendants failed to fulfill their ministerial duties as required by the President John F. Kennedy Assassination Records Collection Act of 1992 (“JFK Act”). In their Third Amended Complaint (“TAC”), Plaintiffs aver three claims against NARA: (1) NARA’s actions are arbitrary, capricious, and contrary to the JFK Act in violation of the Administrative Procedure Act (“APA”); (2) an APA/mandamus claim seeking to compel NARA to take certain actions; and (3) declaratory judgment that NARA’s actions violate the Federal Records Act (“FRA”). Plaintiffs have also filed several motions for preliminary injunctions or mandamus: the first, to set aside two of President Biden’s postponement memoranda and for NARA to conduct a re-review of the remaining redacted assassination records under Section 3(10) of the JFK Act and Plaintiffs’ other preferred standards; the second, to order NARA to collect all assassination records

under Section 12(b); and third, to order NARA publicly to disclose legislative records pursuant to the JFK Act. Defendants filed a motion to dismiss the TAC.<sup>1</sup> For the reasons discussed below, Defendants’ motion to dismiss is granted in part and denied in part, and Plaintiffs’ motions for preliminary injunction are denied.

## II. BACKGROUND

The factual history of this suit has been extensively reviewed previously. *See, e.g.*, Dkt. 68. In short, Congress enacted the JFK Act in 1992 to address public desire for information regarding President John F. Kennedy’s tragic assassination. The JFK Act sought to create a collection of records held by the federal government related to President Kennedy’s assassination (“assassination records”) and sought expeditious disclosure of those records. JFK Act § 2(b)(2). The Act set a 25-year deadline for disclosure of all assassination records unless the President deemed that “continued postponement [of the records] is made necessary by an identifiable harm to military defense, intelligence operations, or conduct of foreign relations” that was “of such gravity that it outweigh[ed] the public interest in disclosure.” JFK Act § 5(g)(2)(D). The Act established the Assassination Records Review Board (“ARRB”), an independent agency tasked with reviewing postponement requests. JFK Act § 7.

Since the 25-year deadline in October of 2017, then-President Trump and subsequently President Biden have collectively issued five postponement memoranda, invoking Section 5(g)(2)(D). In December 2022 and June 2023, President Biden continued the postponement of certain records and asserted that future release of these records would occur consistent with the Transparency Plans in two memoranda (the “Biden memoranda”). The Transparency Plans were created by federal agencies and detail what events or circumstances must occur or change to

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<sup>1</sup> In the future, Plaintiffs must submit all the relevant documents in one filing on ECF by the deadline, unless ordered otherwise. Relevant documents include any declarations, tables of contents, and tables of authorities, which must be submitted as attachments to Plaintiffs’ briefs, not as separate filings. Plaintiffs are also required to submit any proposed orders by the briefing deadline. The haphazard nature of Plaintiffs’ filings makes it challenging for other parties and the court to follow Plaintiffs’ briefing.

“trigger the public disclosure of currently postponed information by the National Declassification Center (NDC) at NARA.”<sup>2</sup> Memorandum on Certification Regarding Disclosure of Information in Certain Records Related to the Assassination of President John F. Kennedy, 2023 Daily Comp. Pres. Doc. No. 592, p.2 (June 30, 2023) (hereinafter, “June 2023 Memo”). The June 2023 Memo was President Biden’s “final certification” under the JFK Act. Pursuant to these memoranda, NARA has continued the postponement of certain records.

MFF is a 501(c)(3) nonprofit corporation that maintains a large, searchable database of records related to President John F. Kennedy’s assassination. Josiah Thompson and Gary Aguilar are both dues-paying members of MFF. Defendants are President Biden, who is sued in his official capacity, and NARA, an independent agency in possession or control of the records Plaintiffs seek and is tasked with preserving certain federal government records, including those related to President John F. Kennedy’s assassination. 44 U.S.C. § 2102. NARA acts through the Archivist of the United States (the “Archivist”).

Plaintiffs previously filed a Second Amended Complaint (“SAC”) asserting five claims for relief, two of which partly survived Defendants’ motion to dismiss. In connection with their SAC, Plaintiffs also filed a motion for preliminary injunction, which was denied. These motions were resolved in a previous order granting in part and denying in part Defendants’ motion to dismiss and denying Plaintiffs’ motion for preliminary injunction, Dkt. 68 (“the July 14, 2023 Order”). Following the disposition of the SAC and connected motion for preliminary injunction, Plaintiffs moved for leave to file the TAC, which Defendants did not oppose. Before the court is (a) Defendant’s motion to dismiss the TAC and (b) several motions for preliminary injunction filed by Plaintiffs.

### III. LEGAL STANDARD

#### A. Motion to Dismiss

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<sup>2</sup> For example, the CIA’s Transparency Plan allows for the names of living CIA agents to be released only after the individual is deceased or his or her connection to the CIA has already been officially acknowledged.



A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). While “detailed factual allegations” are not required, a complaint must have sufficient factual allegations to state a claim that is “plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)). A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). This standard asks for “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* The determination is a context-specific task requiring the court “to draw on its judicial experience and common sense.” *Id.* at 679.

A Rule 12(b)(6) motion to dismiss tests the sufficiency of the claims alleged in the complaint. Dismissal under Rule 12(b)(6) may be based on either the “lack of a cognizable legal theory” or on “the absence of sufficient facts alleged under a cognizable legal theory.” *See Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011) (internal quotation marks and citation omitted). When evaluating such a motion, the court must accept all material allegations in the complaint as true and construe them in the light most favorable to the non-moving party. *In re Quality Sys., Inc. Sec. Litig.*, 865 F.3d 1130, 1140 (9th Cir. 2017). It must also “draw all reasonable inferences in favor of the nonmoving party.” *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).

### **B. Motion for Preliminary Injunction**

To obtain a preliminary injunction, a plaintiff must show that (1) it is likely to succeed on the merits; (2) irreparable harm is likely, not merely possible; (3) the balance of hardships tips in its favor; and (4) an injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 129 S.Ct. 365, 367 (2008). “A preliminary injunction is an extraordinary remedy never awarded as of right.” *Id.* The Ninth Circuit employs a sliding scale approach “where the likelihood of success is such that serious questions going to the merits were raised and the balance of hardships tips sharply in [plaintiff’s] favor.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 960, 968 (9th Cir. 2010) (internal quotations omitted).

#### IV. DISCUSSION

##### A. Motion to Dismiss

In the TAC, Plaintiffs plead several factual allegations that are substantially similar to those previously dismissed from the SAC in the July 14, 2023 Order. *See* Dkt. 68. To the extent, Plaintiffs have now raised additional facts, they are discussed below.

##### i. Arbitrary-and-capricious claim

Plaintiffs aver that NARA has acted arbitrarily and capriciously in violation of the APA. 5 U.S.C. § 706(2)(A). A challenged action must be “final” and “discrete” to be reviewable under the APA. *See Bennett v. Spear*, 520 U.S. 154, 177-78 (1997); *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004). Plaintiffs specifically challenge NARA’s withholding of assassination records from disclosure based on the Biden memoranda, arguing that they violate the express terms of the JFK Act. Previously, this challenged action was determined to be a final, discrete agency action, but was not deemed to be arbitrary or capricious within the meaning of the statute because Section 5(g)(2)(D) offers the President substantial discretion to determine whether continued postponement of records disclosure is appropriate. NARA was accordingly found not to be acting arbitrarily or capriciously by implementing the Biden memoranda. *See* July 14, 2023 Order at 10.

Plaintiffs further argue that NARA’s recommendations to the President prior to his Section 5(g)(2)(D) certifications are based on “watered-down” and “non-statutory” standards, and the Transparency Plans “contain less-stringent and non-statutory criteria” untethered to the standards outlined in Sections 6 and 9(d) of the JFK Act. As was held previously, these provisions of the JFK Act apply only to postponement after an initial determination by the ARRB, whereas Section 5(g)(2)(D) is a separate statutory provision that provides the President with postponement authority after the 25-year deadline. In the TAC, Plaintiffs once again incorrectly seek to cabin the President’s authority to Sections 6 and 9(d), neglecting the distinct authority the JFK Act provides the President in Section 5(g)(2)(D). Even if this were not the case, however, NARA’s recommendations to the President were not “final” agency action and therefore not reviewable under the APA. Similarly, Plaintiffs’ argument that the Transparency Plans delegate the



President’s power to make postponement decisions to NARA and the agencies in violation of the JFK Act is unavailing. The July 14, 2023 Order explained that it was the President’s decision that ultimately created the legal consequences of postponing the records, not NARA’s mere recommendations. Since the Plaintiffs are unable to aver a plausible arbitrary and capricious claim after having had another opportunity to do so, this claim is dismissed without further leave to amend.

ii. APA/mandamus claim

Plaintiffs have, for the most part, replicated in the TAC the APA/mandamus claim that was originally raised in the SAC. The APA permits a court to “compel agency action unlawfully withheld or unreasonably delayed” so long as “there is ‘a specific, unequivocal command’ placed on the agency to take a ‘discrete agency action,’ and the agency has failed to take that action.” 5 U.S.C. § 706(1); *Plaskett v. Wormuth*, 18 F.4th 1072, 1082 (9th Cir. 2021) (citation omitted). The July 14, 2023 Order upheld Plaintiffs’ APA/mandamus claim brought in the SAC in part, but Plaintiffs have now sought to expand the factual allegations therein. Specifically, Plaintiffs seek to compel NARA to perform certain ministerial, non-discretionary duties including: (1) maintaining a central directory of identification aids for each assassination record; (2) releasing assassination records originated by the legislative branch (the “legislative branch records”); (3) ensuring that the release of the names of individuals in the assassination records it not postponed but for “clear and convincing evidence” of “substantial risk of harm” to the individual upon disclosure pursuant to Section 6(2); (4) completing outstanding assassination records searches until all assassination records have been obtained pursuant to Section 12; (5) conducting periodic reviews of the postponed releases per Section 9(d), on the grounds that the July 14, 2023 Order did not reach a final ruling on that issue.<sup>3</sup> The first two duties averred by Plaintiffs were found cognizable in the

<sup>3</sup> It is unclear, from a plain reading of the TAC, whether Plaintiffs did, in fact, plead in their second claim that NARA has a duty to complete outstanding assassination records searches until all such records have been obtained prior to terminating the Act pursuant to Section 12 or to conduct periodic reviews under Section 9(d). Neither of these allegations are explicitly listed in the second claim as NARA’s duties but are raised elsewhere in the TAC. Since all factual allegations in the TAC were incorporated in the second claim, however, the Court will consider

July 14, 2023 Order and Defendants do not challenge them. Instead, Defendant argues the remaining allegations fail to state a claim because they no more than recast Plaintiffs’ arbitrary-and-capricious claim.

Plaintiffs invoke Section 6(2) to argue that NARA is obligated to release the individual names of agents barring any clear and convincing evidence of substantial risk of harm. As stated previously, Section 6 and Section 5(g)(2)(D) are distinct statutory grounds for postponement. Plaintiffs repeated attempts to blur the lines between the two are unavailing. The president’s broad discretion under Section 5(g)(2)(D) allows him to use any criteria for postponement, as long as the 5(g)(2)(D) statutory criteria are identified in his certification, which they were. *See* the Biden Memoranda.

Next, Plaintiffs assert that Section 12 requires NARA to obtain all outstanding assassination records prior to terminating the JFK Act. Despite Plaintiffs’ contention otherwise, this allegation is essentially congruent to Plaintiffs’ SAC, where Plaintiffs sought to compel NARA to follow up on outstanding ARRB search requests as the alleged “successor in function” of the ARRB. Section 12(b) of the JFK Act states that, other than the provisions of the JFK Act pertaining to appointment and operation of the ARRB, “[t]he remaining provisions of this Act shall continue in effect until such time as the Archivist certifies to the President and the Congress that all assassination records have been made available to the public in accordance with this Act.” According to Plaintiffs, this imposes on NARA the duty to complete any outstanding search requests and to conduct new searches for assassination records. However, the JFK Act levies no command on NARA to conduct such a search. Plaintiff argues that NARA is a successor in function to the ARRB, which dissolved in September 1998 following the issuance of its Final Report. The July 14, 2023 Order already explained that NARA and the ARRB are two distinct entities and any legal duties formerly tasked to the ARRB cannot be legally assumed by NARA or

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these arguments, which are discussed more extensively by Plaintiffs in their Opposition to Defendants’ Motion to Dismiss. In the future, Plaintiffs must clearly organize their allegations or points in the relevant subsections.



any other executive agency.

Plaintiffs finally argue that Section 9(d) imposes on NARA a duty to conduct periodic reviews of the assassination records postponed by the President. Plaintiffs rely on the language in Section 9(d)(2), specifically, which states that any executive branch record postponed by the President shall be subject to periodic review. Section 9 applies to records reviewed by the ARRB, and Section 9(d)(1) grants the President the sole authority to postpone or disclose assassination records held by the executive branch following an initial determination by the ARRB and based on the standards set forth in Section 6. As discussed above, Section 5(g)(2)(D) is a *distinct* authority the President may invoke to postpone assassination records, which need not be based on the Section 6 standards and may utilize the Transparency Plans so long as the criteria in Section 5(g)(2)(D) are met, which they are. Plaintiffs’ argument that the Transparency Plans lack periodic reviews and that Defendants actions therefore violate the JFK Act is unavailing. The periodic review procedure outlined in Section 9(d)(2) does not apply to the President’s Section 5(g)(2)(D) authority.

Section 5(g) is also inapplicable as a means to compel NARA to conduct periodic reviews. Section 5(g)(1) imposes on the “originating agency” and the Archivist the duty to conduct periodic reviews of the postponed releases “consistent with the recommendations of the Review Board under section 9(c)(3).” JFK Act § 9(g)(1). Section 9(c)(3), in turn, applies to records postponed pursuant to the standards in Section 6, which is inapplicable here. Plaintiffs have consequently failed to expand their APA/mandamus claim, and the second claim is dismissed except as to Plaintiffs’ claims that NARA failed to maintain identification aids and to release legislative records.

### iii. FRA claim

Plaintiffs assert that NARA has violated the FRA by failing to request that the Attorney General initiate an action, or seek other legal redress, against agencies identified by the ARRB who are allegedly destroying, losing, or removing assassination records “The [FRA] is a collection of statutes governing the creation, management, and disposal of records by federal agencies.”

*Bioscience Advisors, Inc. v. U.S. S.E.C.*, No. 21-cv-00866-HSG, 2023 WL 163144 (N.D. Cal. Jan. 11, 2023) (citation omitted). Under the FRA, if the Archivist learns of “any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records” in an agency’s custody, the Archivist must notify the head of that agency and “assist [them] in initiating action through the Attorney General for the recovery of records unlawfully removed and for other redress provided by law.” 44 U.S.C. § 2905(a). If the agency head fails to initiate an action for recovery of records or other redress within a reasonable amount of time, the Archivist “shall request the Attorney General to initiate such an action.” *Id.* The July 14, 2023 Order upheld Plaintiffs’ FRA claim in the SAC except to the extent it referenced NARA’s failure to pursue outstanding record searches. In the TAC, Plaintiffs seek an injunctive order to compel NARA to request the Attorney General to initiate an action for recovery of the assassination records unlawfully removed, or to seek other legal remedies to recover the records. Defendants argue that this claim should be dismissed because Plaintiffs lack standing to obtain relief for destroyed records and because Plaintiffs seek to compel NARA to request the Attorney General to seek records that are not only removed or destroyed, but “missing,” a category of records Defendants argue are not in Section 2905(a).

As to the argument that Plaintiffs lack standing to pursue the portion of their claim that seeks redress by the Attorney General for destroyed records, Defendants contend a favorable ruling in this action would provide no redress. In order to have standing, a plaintiff must show that they have suffered an injury-in-fact that is concrete and actual, caused by the conduct complained about, and a favorable decision is likely to redress the injury at issue. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). In the FRA context, Plaintiffs must show that “there is a substantial likelihood the Attorney General could find some [federal records],” but the government bears the burden of showing “fatal loss” of the records at issue to establish mootness. *Cause of Action Inst. v. Pompeo*, 319 F. Supp. 3d 230, 234 (D.D.C. 2018) (“[T]he difference between [the ‘fatal loss’] standard—set forth in the mootness context—and the appropriate standard in the standing context is almost inconsequential.”) Defendants argue that Plaintiffs have failed to allege



any means to undo the supposed destruction of records, so referral to the Attorney General would serve no purpose. However, Defendants, not Plaintiffs, have the burden of showing that the records at issue are fatally lost or “permanently unrecoverable,” and they have not done so. *Citizens for Resp. & Ethics in Wash. v. U.S. S.E.C.*, 916 F. Supp. 2d 141,148 (D.D.C. 2013). Plaintiffs suggest that there are numerous ways a “destroyed” record may be recovered, including, for example, if the agency saved a computerized version of such a record, an option Defendants do not foreclose. Consequently, Plaintiffs have sufficiently plead that a favorable decision is likely to redress the complained-about injury caused by Defendants actions.

Defendants next argue that Plaintiffs fail to state a claim under the FRA as to “missing” records because this claim is a repackaged version of Plaintiffs’ failed claim, initially brought in the SAC, which sought to compel NARA to pursue outstanding record searches. The July 14, 2023 Order dismissed this portion of Plaintiffs’ claim because the FRA imposes no independent obligation on NARA to conduct those searches. Plaintiffs’ attempt to conflate “removed” documents and “missing” documents is unconvincing. Accordingly, the motion to dismiss the third claim is denied except to the extent it seeks to compel NARA to pursue outstanding record searches and pursue “missing” records.

### **B. Motions for Preliminary Injunction**

Plaintiffs have filed three motions for injunctive relief, seeking preliminary injunctions: (1) to set aside the Biden memoranda and for NARA to conduct a re-review of the remaining redacted assassination records under Section 3(10) of the JFK Act and Plaintiffs’ other preferred standards; (2) to instruct NARA to collect all remaining assassination records before the Archivist certifies that “all assassination records have been made available to the public in accordance with the Act,” JFK Act § 12(b); and (3) for NARA publicly to disclose legislative records pursuant to the JFK Act. All three of Plaintiffs motions are denied. The first motion, which seeks to set aside the Biden memoranda, fails because Plaintiffs are unable to show they are likely to succeed on the merits. Indeed, that motion consists almost entirely of a recitation of Plaintiffs’ arbitrary and capricious claim, which is dismissed from the TAC. Plaintiffs’ second motion, which seeks to compel NARA

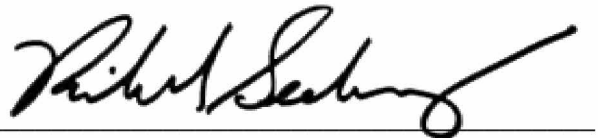
to pursue outstanding searches prior to termination of the JFK Act, is similarly deficient because Plaintiffs are again unable to show that they are likely to succeed on the merits as the substantive claim has previously been found wanting. Section 12(b) only maintains the provisions of the JFK Act inapplicable to the ARRB after its termination, and does not impose an independent duty on NARA to collect all assassination records. Plaintiffs' third motion fares no better because Plaintiffs are unable to show they will suffer irreparable injury should their motion be denied. Plaintiffs' general argument that "witnesses are dying" is not sufficient to move the needle, as the records Plaintiffs seek have been withheld for decades. Furthermore, the national security concerns raised by Defendants considerably tip the balance of hardships in Defendant's favor.

### V. CONCLUSION

For the reasons discussed above, Defendants' motion to dismiss is granted as to Claim 1. Defendants' motion is also granted as to Claim 2, except to the portions of Claim 2 concerning the legislative records and NARA's maintenance of the identification aids. Defendants' motion to dismiss is denied as to Claim 3, except as to the portions regarding the "missing" records and NARA's duty to complete outstanding record searches. Defendant President Biden, who is named as a defendant and in the caption of the TAC, is also dismissed as Plaintiffs have failed to aver any claims against him and the July 14, 2023 Order already dismissed him without leave to amend. Plaintiffs have been afforded multiple opportunities to amend and, except for the surviving claims, have failed to aver claims with cognizable legal theories, so further leave to amend their complaint is not warranted. Plaintiffs' various motions for injunctive relief are also denied.

**IT IS SO ORDERED.**

Dated: January 18, 2024



RICHARD SEEBORG  
Chief United States District Judge



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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THE MARY FERRELL FOUNDATION,  
 INC.; JOSIAH THOMPSON; and GARY  
 AGUILAR,

Plaintiffs,

v.

JOSEPH R. BIDEN, in his official capacity as  
 President of the United States; and the  
 NATIONAL ARCHIVES AND RECORDS  
 ADMINISTRATION,

Defendants.

No. 3:22-cv-06176-RS

SECOND SUPPLEMENTAL  
 DECLARATION OF COUNSEL FOR  
 PLAINTIFFS RE REPLY BRIEFS (ECF 99  
 & 100); EXHIBITS 1-3

Date: January 18, 2024

Time: 1:30 pm

Dept: Hon. Richard Seeborg

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1 I, William M. Simpich, declare:

2 1. I am one of the attorneys for the Plaintiffs.

3 2. I have reviewed the documents published in the Federal Register between 1994-  
4 1998. These documents show that the determinations for postponement were published in the  
5 Federal Register between 1994-1998, but without stating the reasons for the postponement of  
6 each of the documents. Attached as Exhibit 1 is a set of those determinations published in 1998.

7 3. From 2017-2023, documents show that NARA continued to rely on Section 6 of the  
8 JFK Records Act and engage in periodic review. Attached as Exhibit 2 is the opening page of a  
9 NARA memo and spreadsheet pursuant to a 3/28/18 memo by NARA CEO William Bosanko  
10 that shows exactly that. I received this document from my co-counsel Lawrence Schnapf, who  
11 told me that he received it in an FOIA suit in which he was the Plaintiff.

12 4. I discovered while doing research in this last round of briefing over the last month  
13 that "Section 6 Statements" were created by the ARRB and the agencies between 1994-1998 in a  
14 haphazard manner that stated the reasons for the continued postponements, but, again, there was  
15 never any occasion during this period any publication in the Federal Register of the reasons for  
16 the continued postponement of each of these documents.

17 5. Attached as Exhibit 3 is a page from a recently discovered 1997 ARRB memo stating  
18 that six FBI agents worked full-time to identify hundreds of law enforcement informants to see if  
19 they were still alive, with another four FBI agents working half-time at this task; the second  
20 page, ARRB Final Report, p. 69, shows this was a study of "hundreds of informants".

21 6. Neither counsel nor plaintiffs knew that a claim existed for making a claim for the  
22 legislative records until a short time before the filing of the complaint in October 2022.

23 I declare under penalty of perjury that the foregoing is true and correct and of my own  
24 knowledge. Executed on January 8, 2024, in Richmond, California.

25 /s/

26 William M. Simpich  
27  
28

## Exhibit 1



**DATES:** The teleconference will convene Tuesday, August 18, 1998, at 11:20 a.m. EDT and continue until 5:00 p.m. EDT. Written material and requests to make presentations should reach the Natural Resources Conservation Service on or before August 14, 1998.

**ADDRESSES:** Written material and requests to make presentations should be sent to George Bluhm, University of California, Land, Air, Water Resources, 151 Hoagland Hall, Davis, CA 95616-6827.

**FOR FURTHER INFORMATION CONTACT:** George Bluhm, Designated Federal Official, telephone (530) 752-1018, fax (530) 752-1552, email bluhm@crocker.ucdavis.edu.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the Task Force on Agricultural Air Quality, including any revised agendas for the August 18, 1998, meeting that may appear after this Federal Register Notice is published, may be found on the World Wide Web at <http://www.nhq.nrcs.usda.gov/faca/aaqtf.html>.

Participants are advised that the entire proceedings of the teleconference will be recorded. Minutes from the teleconference will be published and available to the public after October 1, 1998.

#### Teleconference Access Instructions

In order to determine the number of phone lines needed for this teleconference, members of the public wishing to participate are asked to contact the Natural Resources Conservation Service in Washington, D.C. at (202) 720-4716 for access numbers and dialing instructions.

#### Draft Agenda of the August 18, 1998, Meeting

##### A. Opening Remarks

1. Call the meeting to order and explain the meeting process—George Bluhm, Designated Federal Official
2. Opening remarks of the Chair—Pearlie Reed

##### B. Past Actions

1. Air quality research needs subcommittee report—Jim Trotter
  - a. National Research Council activities—Tim Strickland
2. Agricultural burning subcommittee report—Robert Quinn
3. Model MOU for voluntary compliance with bad actor clause—Dennis Tristao and Manuel Cunha
4. Recognition of committee for past efforts—Pearlie Reed

##### C. New Issues

1. Reconstitution of the AAQTF charter—Gary Margheim
2. Reconstitution of the AAQTF membership—Gary Margheim
3. Suggested date and location of a future meeting—committee

##### D. Public Input

##### E. Adjourn

#### Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may provide input during the August 18, 1998 teleconference. Persons wishing to make oral presentations should notify George Bluhm no later than August 14, 1998.

If a person submitting material would like a copy distributed to each member of the committee in advance of the teleconference, that person should submit material to Jeff Graham, curator of Task Force documents, by August 17, 1998. Material should be in electronic format suitable for posting to the Internet. Mr. Graham may be reached via phone at (202) 720-1858 or email at [jeff.graham@usda.gov](mailto:jeff.graham@usda.gov). Handouts for presentations to Task Force members will be posted to the Web address listed above before the meeting, as they become available.

#### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact George Bluhm as soon as possible.

Dated: July 21, 1998.

Thomas A. Weber,  
Deputy Chief for Science and Technology.  
[FR Doc. 98-19998 Filed 7-24-98; 8:45 am]  
BILLING CODE 3014-16-P

### ASSASSINATION RECORDS REVIEW BOARD

#### Sunshine Act Meeting; Formal Determinations and Additional Releases

**AGENCY:** Assassination Records Review Board.

**ACTION:** Notice.

**SUMMARY:** The Assassination Records Review Board (Review Board) met in closed meetings on July 8, 1998 and July 20, 1998, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of

its decisions in the Federal Register within 14 days of the date of the decision.

**FOR FURTHER INFORMATION CONTACT:** Peter Voth, Assassination Records Review Board, Second Floor, Washington, D.C. 20530, (202) 724-0088, fax (202) 724-0457. The public may obtain an electronic copy of the complete document-by-document determinations by contacting <Eileen—Sullivan@jfk-arb.gov>.

**SUPPLEMENTARY INFORMATION:** This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107.9(c)(4)(A) (1992). On July 8, 1998, the Review Board made formal determinations on records it reviewed under the JFK Act.

#### Notice of Formal Determinations

- 4 Church Committee Documents: Postponed in Part until 10/2003
- 15 Church Committee Documents: Postponed in Part until 10/2017
- 2 CIA Documents: Postponed in Part until 05/2001
- 909 CIA Documents: Postponed in Part until 10/2017
- 37 DOJ Documents: Postponed in Part until 10/2017
- 1 FBI Document: Open in Full 6 Ford Library Documents: Postponed in Part until 10/2017
- 10 JCS Documents: Postponed in Part until 10/2017
- 8 NSC Documents: Postponed in Part until 10/2017
- 326 US ARMY Documents: Postponed in Part until 10/2017

#### Notice of Other Releases

After consultation with appropriate Federal agencies, the Review Board announces that documents from the following agencies are now being opened in full: 92 CIA documents; 3 Ford Library documents; 18 NSC documents; 182 U.S. Army (Califano) documents; 242 U.S. Army (IRR) documents.

On July 20, 1998, the Review Board made formal determinations on records it reviewed under the JFK Act.

#### Notice of Formal Determinations

- 3 CIA Documents: Postponed in Part until 05/2001
- 1 CIA Document: Postponed in Part until 10/2003
- 704 CIA Documents: Postponed in Part until 10/2017
- 7 FBI Documents: Open in Full
- 229 FBI Documents: Postponed in Part until 10/2017
- 1 Ford Library Document: Open in Full
- 11 Ford Library Documents: Postponed in Part until 10/2017
- 5 HSCA Documents: Postponed in Part until 10/2017



- 40 NSC Documents: Postponed in Part until 10/2017  
 392 US ARMY Documents: Postponed in Part until 10/2017

**Notice of Other Releases**

After consultation with appropriate Federal agencies, the Review Board

announces that documents from the following agencies are now being opened in full: 1087 FBI documents; 4 Ford Library documents; 48 NSC documents; 10 U.S. Army (Califano) documents; 302 U.S. Army (IRR) documents.

**Notice of Corrections**

On December 15, 1997 the Review Board made formal determinations that were published in the December 24, 1997 Federal Register (FR Doc. 97-33529, 60 FR 12345). For that Notice make the following corrections:

Record identification number	Previously published	Corrected data
119-10021-10357 .....	1; 10/2017 .....	0; n/a
119-10022-10395 .....	1; 10/2017 .....	0; n/a
119-10022-10074 .....	1; 10/2017 .....	0; n/a

Dated: July 22, 1998.  
 T. Jeremy Gunn,  
*Executive Director.*  
 [FR Doc. 98-20092 Filed 7-23-98; 11:27 am]  
 BILLING CODE 6118-01-P

**DEPARTMENT OF COMMERCE****Submission for OMB Review; Comment Request**

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).  
 Title: Applications and Reports for Registration as a Tanner or Agent.  
 Agency Form Number(s): None.  
 OMB Approval Number: 0648-0179.  
 Type of Request: Extension of a currently approved collection.  
 Burden: 154 hours.  
 Number of Respondents: 77.  
 Avg. Hours Per Response: 2 hours.  
 Needs and Uses: The Marine Mammal Protection Act exempts Alaskan natives from the prohibitions from taking, killing, or injuring marine mammals without a permit or exemption if the taking is done for subsistence or for creating and selling authentic native articles of handicraft or clothing. Non-natives who wish to act as a tanner or an agent for such products must register with NOAA and submit certain records. The information obtained is used for law enforcement purposes.

*Affected Public:* Businesses or other for-profit organizations.  
*Frequency:* On occasion, annually.  
*Respondent's Obligation:* Required to obtain or retain benefits.  
 OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: July 22, 1998.  
 Linda Engelmeier,  
*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*  
 [FR Doc. 98-19940 Filed 7-24-98; 8:45 am]  
 BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE****Submission for OMB Review; Comment Request**

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).  
 Title: Western Alaska Community Development Quota Program.  
 Agency Form Number(s): None.  
 OMB Approval Number: 0648-0269.  
 Type of Request: Revision of a currently approved collection.  
 Burden: 3,495 hours.  
 Number of Respondents: 59.  
 Avg. Hours Per Response: Ranges between 4 and 520 hours depending on the requirement.

*Needs and Uses:* The collection of information is needed to administer and manage harvests of groundfish and halibut under the Western Alaska Community Development Quota (CDQ) Program for the groundfish fisheries off Alaska. The information collected will be used to determine whether communities applying for allocations under the CDQ program meet

administrative requirements, whether vessels and processors harvesting CDQ species meet equipment and operational requirements, and to monitor whether quotas have been harvested or exceeded.

*Affected Public:* Not-for-profit institutions, businesses or other for-profit organizations, state, local or tribal government.

*Frequency:* On occasion, weekly, annually, recordkeeping.

*Respondent's Obligation:* Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: July 22, 1998.  
 Linda Engelmeier,  
*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*  
 [FR Doc. 98-19941 Filed 7-24-98; 8:45 am]  
 BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-351-820]

**Amended Order and Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil**

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amendment to Final Determination of Antidumping Duty

## Exhibit 2



**From:** William Bosanko <william.bosanko@nara.gov> <william.bosanko@nara.gov>  
**Sent time:** 03/28/2018 01:52:23 PM  
**To:** Fitzpatrick, John P. EOP/NSC [REDACTED]  
**Cc:** Murphy, Martha <martha.murphy@nara.gov>; Stern, GaryM <garym.stern@nara.gov>  
**Subject:** Revised Spreadsheet Pages  
**Attachments:** Revised Spreadsheet Pages.pdf

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John,

Please see attached (1 file). Please print these and replace the last three pages in each of the hardcopies I delivered with the two pages attached.

This removes 53 from the spreadsheet.

The number in the memo remains accurate. The difference between the two should now be 80. That is because the 80 are being postponed pending resolution and have not been released in part.

Please let me know of any questions or concerns

Thanks,

Jay

NARA NGC21-493004173

JFK Record Number	Agency	Agency Decision [Release, Redact, or Withheld]	Agency JFK Act Justification [61a, 61b, 61c, 63, or 64]	File Number	Document Date	Number of Pages
194-10001-10430	ARMY	Redact		63	00/00/00	1
194-10001-10433	ARMY	Redact		63	03/21/196	1
194-10001-10434	ARMY	Redact		63	05/00/196	6
194-10001-10435	ARMY	Redact		63	12/13/196	1
194-10001-10436	ARMY	Redact		63	12/08/196	1
194-10001-10437	ARMY	Redact		63	00/00/00	1
194-10001-10438	ARMY	Redact		63	00/00/00	1
194-10012-10001	ARMY	Redact		63	04/21/195	2
194-10012-10138	ARMY	Redact		63	01/14/195	18
194-10013-10321	ARMY	Redact		63	06/17/195	1
194-10013-10338	ARMY	Redact		63	09/10/196	2
194-10013-10339	ARMY	Redact		63	10/09/196	2
194-10013-10340	ARMY	Redact		63	06/29/195	2
194-10013-10341	ARMY	Redact		63	02/05/195	1
194-10013-10342	ARMY	Redact		63	04/25/195	4
194-10013-10344	ARMY	Redact		63	11/24/195	1
194-10013-10345	ARMY	Redact		63	11/30/195	1
194-10013-10346	ARMY	Redact		63	11/25/195	2
194-10013-10337	ARMY	Redact		63	06/26/195	1
144-10001-10230	NSA	Redact	63		4/2/1992	
124-90029-10001	USA	Redact		63 CR 100-40	11/06/195	9
124-90029-10002	USA	Redact		63 CR 100-40	11/06/195	7
124-90029-10003	USA	Redact		63 CR 100-40	00/00/000	1
124-90029-10006	USA	Redact		63 CR 100-40	12/24/195	3
124-90029-10007	USA	Redact		63 CR 100-40	06/28/195	2
124-90029-10008	USA	Redact		63 CR 100-40	11/09/195	5
124-90029-10010	USA	Redact		63 100-40529	09/25/195	1
124-90029-10011	USA	Redact		63 100-40529	01/11/195	1
124-90029-10012	USA	Redact		63 100-40529	06/28/196	3
124-90029-10014	USA	Redact		63 100-40529	01/04/195	1
124-90029-10015	USA	Redact		63 100-40529	01/20/195	1
124-90029-10016	USA	Redact		63 100-40529	01/11/195	1
124-90029-10017	USA	Redact		63 100-40529	03/03/195	3
124-90029-10019	USA	Redact		63 100-40529	08/10/195	8
124-90029-10023	USA	Redact		63 100-40529	11/03/195	2
124-90029-10024	USA	Redact		63 100-40529	09/29/195	1
124-90029-10026	USA	Redact		63 100-40529	09/29/195	4
124-90029-10033	USA	Redact		63 CR 100-40	11/10/195	7
124-90029-10034	USA	Redact		63 CR 100-40	05/20/195	2
124-90029-10035	USA	Redact		63 CR 100-40	06/01/195	2

NARA NGC21-493004186

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13  
14 **UNITED STATES DISTRICT COURT**  
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
16

17 THE MARY FERRELL FOUNDATION,  
18 INC.; JOSIAH THOMPSON; and GARY  
19 AGUILAR,

20 Plaintiffs,

21 v.

22 JOSEPH R. BIDEN, in his official capacity as  
23 President of the United States; and the  
24 NATIONAL ARCHIVES AND RECORDS  
25 ADMINISTRATION,

26 Defendants.  
27  
28

No. 3:22-cv-06176-RS

PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION FOR INJUNCTIVE  
RELIEF, DECLARATORY RELIEF OR  
MANDAMUS TO ORDER NARA TO  
COLLECT ALL ASSASSINATION  
RECORDS AND TO HALT ADVISING  
RESEARCHERS TO FILE FOIA ACTIONS  
RATHER THAN JFK ACT REQUESTS

Date: January 18, 2024

Time: 1:30 pm

Dept: Hon. Richard Seeborg

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1           **INTRODUCTION**

2           Plaintiffs bring this motion pursuant to JFK Act Section 12(b), seeking an order from the  
3 court instructing NARA to collect all remaining assassination records before the Archivist  
4 certifies that “all assassination records have been made available to the public in accordance with  
5 the Act.” Plaintiffs recognize that the court rejected its claim that NARA is the successor in  
6 function to the ARRB, and now ask the court to analyze this case through the lens of § 12(b).  
7

8           Plaintiffs also seek an order from the court to prevent NARA from directing JFK  
9 assassination researchers to seek these records pursuant to FOIA, rather than pursuant to the Act  
10 itself, particularly in view of the finding at § 2(a)(5) stating that “legislation is necessary because  
11 *the Freedom of Information Act, as implemented by the executive branch, has prevented the*  
12 *timely public disclosure of records related to the assassination of President John F. Kennedy.*”  
13

14           The JFK Act is a remedial statute that must be broadly construed to achieve its  
15 congressional objectives. ARRB Final Report, pages i and xxiii. Also see ECF 59, 5:10-7:9.  
16 When interpreting statutes, courts are to “examine not only the specific provision at issue, but  
17 also the structure of the statute as a whole, including its object and policy.” *Children’s Hosp. &*  
18 *Health Center v. Belshe*, 188 F.3d 1090, 1096 (9<sup>th</sup> Cir. 1999).  
19

20           The JFK Records Act is “a unique solution to the problem of secrecy.” Congress enacted  
21 the Act because “...30 years of government secrecy relating to the assassination of President  
22 John F. Kennedy led the American public to believe that the government had something to hide.  
23 The solution was legislation that required the government to disclose whatever information it had  
24 concerning the assassination.” ARRB Final Report, p. 1.  
25

26           The legislative intent of the Act can be paraphrased as “Enough! Find all assassination  
27 records and release them as soon as possible.”  
28

1 After sixty years, it is time to obtain all the records that can reasonably be obtained, while  
2 witnesses mentioned in those records are still alive to be interviewed and to review the records.  
3 Some of these records were specifically identified by the ARRB in the 1998 MOU co-signed by  
4 NARA and CIA, as well as in outstanding assassination requests and related documents. Others,  
5 such as the “Joannides documents”, were identified by ARRB members after termination of the  
6 ARRB as documents that were wrongfully withheld by CIA pursuant to FOIA and should be  
7 immediately released.  
8

9 Plaintiffs maintain that NARA has a duty to take immediate action to obtain “all  
10 assassination records”, based on § 12(b) and a host of related statutory provisions.  
11

12 If the court somehow agrees with the Defendant that it is the agencies – not NARA - that  
13 has the duty to obtain these records, the court should halt any acts by NARA officials to obstruct  
14 researchers seeking to use the JFK Records Act to obtain assassination records from the agencies  
15 that maintain them in their possession. The simple remedy is to order NARA to stop directing  
16 researchers to use FOIA in any search to unearth JFK assassination records and to instruct  
17 NARA to refer such requests to the relevant agencies if the researcher directs the request to  
18 NARA rather than to the agency itself.  
19

20 **1. As Section 11(a) requires “transmission of a record to the Archivist”, It Shall**  
21 **Take Precedence Over Any Other Law, Judicial Decision or Common Law that**  
22 **Would Otherwise Prohibit Such Transmission**

23 JFK Act § 11(a) is Plaintiffs’ first consideration, and ask the court to address it:

24 "When the Act requires transmission of a record to the Archivist or public disclosure, it  
25 shall take precedence over any other law, judicial decision construing such law, or common law  
26 doctrine that would otherwise prohibit such transmission or disclosure of an assassination  
27 record."  
28

1 Plaintiffs contend that § 11(a) supersedes any aspect of the APA statute - or the judicial  
2 decisions that interpret it - that would prohibit transmission of an assassination record “when the  
3 (JFK Records Act) requires transmission of a record to the Archivist.”

4  
5 The only body of law that can override the § 11(a) legislative override is the U.S.  
6 Constitution itself.

7 **2. Section 12(b) Mandates that the Remaining Provisions of the JFK Records Act**  
8 **Shall Continue in Effect, Other than Portions of Section 7 and All of Section 8**

9 When does the JFK Act require transmission of a record to the Archivist?

10 The court’s 7/14/23 ruling did not address the impact of Section 12(b) of the Act, which  
11 states: “The remaining provisions of this Act shall continue in effect to such time as the  
12 Archivist certifies to the President and the Congress that all assassination records have been  
13 made available to the public in accordance with this Act.”

14  
15 What provisions of the Act continue in effect since the termination of the Review Board,  
16 pursuant to 12(b)? The answer is revealed by studying the sections terminated pursuant to 12(a).

17 Section 12(a) states “the provisions of this Act that pertain to the **appointment and**  
18 **operation** of the Review Board” terminate with the ARRB’s dissolution.

19  
20 In reviewing the sections of the Act, Plaintiffs contend that the only sections that have  
21 terminated are §§ 7(a)-(h) which addresses the appointment of the Board, and §§ 7(k)-(m) and  
22 § 8 which address the operation of the Board. The Merriam-Webster definition of “operation” is  
23 “the quality or state of being able to work or function”. Thus, “ARRB operations” must be  
24 defined as the **administrative** functions of the Board.

25  
26 *All other sections of the JFK Records Act remain in full force and effect.* This is why the  
27 ARRB entered into the MOU with CIA and NARA. The ARRB expected NARA would assume  
28



these responsibilities.<sup>1</sup> For example, §§ 5(b), 5(c)(2)(E) and § 9(a) require government offices to transfer assassination records to the Review Board – these transfers have been made to NARA from 1998 to the present. These are powers and duties of the Board, not “operations” or administrative functions.

For an enumeration of the ARRB’s powers and duties, see ECF 36, Amended Simpich Dec., Ex. C, JFK Act analysis by ARRB counsel Jeremy Gunn, pp. 7-8. The facts in this brief show that NARA has assumed several of these duties between 1998 to the present, such as:

- “Direct Government offices to complete identification aids and organize assassination records. Sec. 7(j)(1)(A).”
- “Direct Government offices to transmit to the Archivist assassination records. Sec. 7(j)(1)(B); see also Sec. 9(1).”
- “Obtain access to assassination records that have been identified and organized by a Government office. Sec. 7(j)(1)(C)(i).”
- “Direct a Government office to...make available additional information, records or testimony from individuals. Sec. 7(j)(1)(C)(ii).”
- “Issue interpretive regulations. Sec. 7(n).”

Note that §§ 7(i)-(j), (n) and (o) and 7(j) address the powers and duties of the Board, not the **administrative** functions of the Board.

Thus, NARA accepts some ARRB duties, but rejects the notion that it has any duties.

### **3. NARA issued regulations assuming many ARRB duties and powers in 2000**

NARA issued regulations in 2000. These regulations expressly assume many duties and powers. See, e.g., 65 FR 39550 (NARA’s role is to maintain and supplement the Collection and

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<sup>1</sup> At a December 6, 2022, press conference organized by MFF at the National Press Club, Judge John Tunheim, former ARRB chair, said he believed that NARA had the inherent authority to continue to enforce the Act.

1 provide guidance to agencies; 36 CFR 1290.1 (scope of assassination records); 36 CFR 1290.3  
2 (sources of assassination records and additional records and information); 36 CFR 1290.5  
3 (requirement that assassination records be released in their entirety); and 36 CFR 1290.8  
4 (implementing the JFK Act – notice of Assassination Record designation).  
5

6 Section 5(c)(2)(F) mandates any government office in possession of assassination records  
7 to review, identify, and transmit possible Assassination Records to the JFK Collection when any  
8 office of the federal government such as NARA has *any uncertainty* as to whether a document is  
9 an assassination record”. NARA is a “government office” pursuant to § 3(c)(5), and it assumed  
10 the duty to provide guidance to the other agencies pursuant to 65 FR 39550.  
11

12 Two similar statutes are also applicable, as §§ 5(c)(2)(H) and 7(j)(1)(c) mandate such  
13 action when the “Review Board” has “*reason to believe*” that a document must be reviewed.

14 Note that procedures established by both the Trump Administration and the Biden  
15 Administration to review assassination records assign roles played by the ARRB to NARA.  
16

17 Defendant NARA has ignored the finding in § 2(a)(1) that “all Government records  
18 (related to the JFK assassination) should be preserved for historical and governmental purposes”;  
19 the mandate in 4(a)(1) that “the Collection shall consist of all Government records relating to the  
20 assassination of President John F. Kennedy”; that NARA has a duty to determine if it has  
21 “uncertainty” about whether a record is an assassination record governed by the JFK Records  
22 Act pursuant to §5(c)(2)(F); that NARA has “reason to believe” that additional documents from  
23 the agencies should be reviewed pursuant to §§ 5(c)(2)(H) and 7(j)(1)(C)(2); and the  
24 aforementioned mandate in § 12(b) to obtain “all” assassination records.  
25

26 36 CFR 1290.7(d) states that the terms “any” and “all” shall be understood in their  
27 broadest and most inclusive sense. 36 CFR 1290 states that although the ARRB terminated in  
28

1 1998, “NARA has determined that these regulations are still required to provide guidance to  
2 agencies.” Also see 65 FR 39550, *supra*, stating that this guidance is necessary because NARA  
3 continues to “supplement the collection” and that agencies “continue to identify records that may  
4 qualify as assassination records and need to have this guidance available.”

6 **4. The §706(2) “arbitrary and capricious” challenges to NARA actions involve several  
7 discrete agency actions that are incoherent and chaotic, not coherent or methodical**

8 The Plaintiffs contend that facts illustrate that the § 706(2) “arbitrary and capricious”  
9 challenges to NARA’s actions involve several discrete agency actions, as set forth below.

10 Plaintiffs recognize the court’s ruling that “an APA claim cannot seek the ‘wholesale  
11 improvement of (a) program by court decree’. *Lujan*, 497 U.S. at 891. For this reason, averring a  
12 pattern and practice is generally insufficient to state a claim under the APA.” ECF 68, 10:3-5.

13 Plaintiffs also recognize the court’s ruling that “while Plaintiffs outline examples of  
14 NARA failing to search for documents under the JFK Act, Plaintiffs make clear that they are  
15 challenging a pattern and practice of NARA, not NARA’s actions in any particular instance.  
16 Therefore, Plaintiffs are not challenging a discrete agency action.” ECF 68, 10:7-10.

17 Plaintiffs have alleged several discrete agency actions in the Third Amended Complaint.  
18 These actions illustrate that NARA had no coherent or methodical approach about how to  
19 address the requests of researchers seeking to obtain “additional assassination records”.  
20

21 1. In 2000, NARA issued regulations in the Federal Register stating that it was  
22 continuing to exercise authority over searches for additional assassination records. “NARA  
23 continues to maintain and *supplement* the collection under the Provisions of the Act...*Agencies*  
24 *continue to identify records* that may qualify as assassination records and *need to have this*  
25 *guidance available.*” 65 FR 39550.  
26  
27  
28



1 Between 2000-2023, JFK researchers and the American public relied on NARA's  
2 regulatory scheme and the representations it made to the American people in the Federal Register  
3 that agencies were continuing to identify possible additional assassination records and that  
4 NARA was providing guidance and *supplementing* the JFK Collection.  
5

6 The discrete events below chronicle researchers who relied on NARA's guidance.

7 2. Some NARA officers like Gene Morris provide guidance to researchers. Morris  
8 obtained additional assassination records when researcher Bill Kelly alerted him that Secret  
9 Service officer Gerald Blaine was keeping some of the records allegedly destroyed in 1995 under  
10 his bed. TAC, paragraph 103, see ECF 63-1, Kelly Declaration, paragraph 7.  
11

12 The destruction of these records caused a scandal when the Secret Service reported that it  
13 had intentionally destroyed them after the JFK Records Act was passed. Plaintiffs continue to  
14 seek these records to this day. TAC, paragraph 61f, fn. 79.  
15

16 Morris also told researcher Roger Odisio that NARA did accept recommendations for  
17 matters to be added to the Collection, and to provide the details of any possible assassination  
18 record to NARA general counsel Gary Stern. TAC, paragraph 107.

19 3. Despite Mr. Morris' guidance that researchers should contact NARA counsel Stern if  
20 they became aware of assassination records not in the JFK Collection, Mr. Stern failed to  
21 respond to such inquiries or failed to submit the researchers' requests directly to the agencies.  
22 Because Mr. Stern failed to take action, the searches would not go any further. Mr. Odisio  
23 followed up with Mr. Stern and received no response. TAC, paragraph 108. Relying on  
24 discussion resulting from Morris' statement to Odisio, researcher Dan Alcorn also contacted  
25 counsel Stern and asked him to conduct a search pursuant to the JFK Records Act for certain  
26 records. Mr. Stern provided no response to Mr. Alcorn's request. TAC, para. 86. Mr. Schnapf  
27  
28

1 also received no response from Mr. Stern when he submitted a search request pursuant to the  
2 JFK Records Act. TAC, para. 100-106. Mr. Stern's failure to respond to these requests are  
3 discrete actions in the form of inaction that illustrate NARA's incoherent and chaotic approach to  
4 obtaining new records.  
5

6 4. A third approach towards obtaining additional assassination records is provided by  
7 yet another NARA officer: Mr. Alcorn was informed by NARA officer Martha Murphy that  
8 items found in an index might be sought under the JFK Records Act, but that items not in the  
9 index "fall under FOIA, rather than the JFK Act" in direct contradiction to Section 2(a)(5) of the  
10 Act. TAC, paragraph 84, ECF 33-1, Alcorn Declaration, paragraph 10 & Exhibit B.  
11

12 5. William Simpich has spoken with other individuals who told him that they were  
13 advised by NARA to file FOIA requests rather than JFK Records Act requests. TAC 109.  
14

15 Each of these events illustrate "discrete agency actions", not "a wholesale improvement  
16 of the program by joint decree". These events show that if a researcher requests records under  
17 the JFK Records Act, the response will vary depending on "who you talk to". This inconsistent  
18 handling of record search requests is the very definition of arbitrary and capricious behavior, and  
19 contrary to law pursuant to § 706(2). These examples also illustrate "unreasonable delay"  
20 pursuant to § 706(1).  
21

22 The amended TAC summarizes that the Plaintiffs have properly alleged that NARA has  
23 an incoherent and chaotic approach to the use of the JFK Records Act to obtain additional  
24 assassination records. From 2000-2023, NARA has operated pursuant to a regulation stating that  
25 it is responsible for providing guidance to the agencies on the application of the JFK Records  
26 Act. According to an 8/21/19 email from Ms. Britney Crawford, acting director of NARA's  
27 Special Access and FOIA Staff (RDF), NARA "(has) not had one specific archivist dedicated to  
28

1 the JFK Collection in over 10 years.” NARA cannot abandon its duty to the countless  
2 researchers who have turned to NARA rather than the agencies to obtain these records. Nor  
3 should NARA undermine the efforts of researchers like Jefferson Morley who obtained some of  
4 the “Joannides documents” pursuant to FOIA, and then saw the rest of the Joannides documents  
5 buried in a *Vaughn* index from 2003 to the present. See the discussion re the Joannides  
6 documents below.

8 To summarize:

9 If a researcher such as Kelly or Odisio contacts NARA official Gene Morris, Morris is  
10 willing to use the JFK Records Act to obtain records. Morris also recommends that researchers  
11 contact NARA counsel Gary Stern and request its use.

13 On the other hand, when Alcorn or Schnapf directly contacted Gary Stern, the result was  
14 no response.

16 Yet another approach is illustrated by Alcorn’s contacts with official Martha Murphy.  
17 She indicated that she was willing to use the JFK Records Act to find records, but only if the  
18 name in question could be found in the JFK Collection index. Upon learning that a record was  
19 not in the index, she instructed the researcher to use FOIA instead of forwarding the request to  
20 the relevant agency so the agency could comply with its continuing duty to search for  
21 assassination records. Mr. Simpich reported similar events as those reported by Mr. Alcorn.

23 § 5(c)(2)(F) mandates action when any government office has “*any uncertainty as to*  
24 *whether the record is an assassination record governed by this Act*”. § 3(c)(5) defines a  
25 “government office” as “any office of the federal government that has possession or control of  
26 assassination records”, specifically including NARA. The above discrete events provide the  
27 Plaintiffs with a strong case based on “arbitrary and capricious” conduct that violates the law.  
28



1           **5. The above-described events show that Plaintiffs also meet the § 706(1)**  
2           **requirements for unreasonable delay**

3           An agency's delay in completing a pending action as to which there is no statutory  
4 deadline may not be withheld when such delay is unreasonable when weighing such  
5 considerations as the agency's need to set priorities among lawful objectives, the challenger's  
6 interest in prompt action, and any relevant indications of legislative intent. Administrative Law  
7 & Regulatory Practice, American Bar Ass'n, *A Blackletter Statement of Federal Administrative*  
8 *Law*, 54 Admin L. Rev. 1, 44 (2002).  
9

10           These factors weigh in favor of the Plaintiffs. It does not aid NARA's priorities to  
11 provide confusing and contradictory advice to researchers who seek the release of additional  
12 assassination records. The challenger's interest in prompt action and the legislative intent in  
13 favor of transmission and release is consistently stated throughout the JFK Records Act. As  
14 stated in § 2(a)(7) of the Act, only in the "rarest" cases should there be any delay in transmission  
15 and release of all of the records.  
16

17           *See Telecommunications Research & Action Center v. FCC*, 750 F.2d 70, 77–78 (D.C.  
18 Cir. 1984) ("TRAC") ("[S]ection 706(1) coupled with section 555(b) does indicate a  
19 congressional view that agencies should act within reasonable time frames and that courts  
20 designated by statute to review agency actions may play an important role in compelling agency  
21 action that has been improperly withheld or unreasonably delayed."). Section 555(b) states that  
22 agencies should conclude matters "within a reasonable time," and Section 706(1) states that  
23 courts "shall ... compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C.  
24 §§555(b), 706(1).  
25  
26

27           In this case, Plaintiffs and the public have been waiting since 1998 for NARA to obtain  
28 the last of the assassination records. However, NARA has stated that it has no duty to obtain any

1 more records in its previous filings. Thus, the Plaintiffs ask the Court to address that duty so that  
2 the duty issue can be addressed to the 9<sup>th</sup> Circuit.

3 Similarly, Plaintiffs maintain that NARA's use of the JFK Records Act has been  
4 intermittent since 1998, and the public is entitled to have NARA enjoined from directing the  
5 public towards FOIA when seeking JFK assassination records – the very procedure Congress  
6 concluded was ineffective and sought to replace when it passed the JFK Act (“the Freedom of  
7 Information Act... has prevented the timely public disclosure of records related to President John  
8 F. Kennedy.”) § 2(a)(5).  
9

10 Also see, e.g. *Gordon v. Norton*, 322 F.3d 1213, 1220 (10th Cir. 2003) (“An agency's  
11 failure to act ... can become a final agency action if the agency delays unreasonably in  
12 responding to a request for action (or if) if the agency delays in responding until the requested  
13 action would be ineffective.”). The absence of an absolute deadline does not give an agency the  
14 right to postpone a decision indefinitely. *Cobell v. Norton*, 240 F.3d 1081, 1096 (D.C. Cir.  
15 2001). Under both the Mandamus Act and the APA, courts measure delay in circumstances  
16 where there is no absolute deadline under a reasonableness standard. *Kim v. USCIS*, 551 F.  
17 Supp. 2d 1258, 1264-1265 (D. Colo. 2008)  
18

19 Two of the TRAC factors always tend to receive ample discussion from the courts. First,  
20 statutory deadlines are a significant factor in determining a case of unreasonable delay. *When*  
21 *Congress signifies that it wants an agency to prioritize an action, the courts are more willing to*  
22 *enforce that priority. We have that time-based urgency stated by Congress in the JFK Records*  
23 *Act.* Second, courts appear to be more willing to compel an agency to act when the action  
24 involves the public interest such as the JFK documents, compared to mere economic interests.  
25  
26  
27  
28

1 It should be added that courts more readily compel agencies to act in cases where there is  
2 a statutory deadline imposed on an agency. The Supreme Court declared, in *Norton v.*  
3 *SUWA*, 542 U.S. at 65, that “when an agency is compelled by law to act within a certain time  
4 period ... a court can compel the agency to act.” The entire impetus of the JFK Records Act was  
5 to release all available records by 1993 except for the “rarest cases” pursuant to Section 2(a)(7),  
6 and to obtain and release the rest of the records by 2017 absent a finding by the President of  
7 “identifiable harm...of such gravity that it outweighs the public interest in disclosure” for “each  
8 assassination record” pursuant to 5(g)(2)(D) that harmonizes with the applicable portions of §§ 6  
9 (grounds for postponement of public disclosure) and 9 (review of records).

12 **6. It violates the letter and the spirit of § 2(a)(5) for NARA to advise researchers to**  
13 **file FOIA requests for assassination records. This method prevents records from seeing**  
14 **the light of day, like the Joannides records that have now been buried for 20 years.**

15 If the Court is going to interpret the JFK Act so that NARA has no duty to seek more  
16 records "in accordance with the Act", Plaintiffs request the Court to expressly make such a  
17 holding so that Plaintiffs can seek relief in the Ninth Circuit.

18 Public transmission of “additional records” cannot be delayed without compliance with  
19 §2(a)(5)’s finding on FOIA’s negative impact on records releases; the postponement standards of  
20 § 6, the mandate to transmit all assassination records “to the Archivist” in 9(c)(1), the approval  
21 of postponements in § 9(c)(2), the requirements of periodic review in § 9(d)(2), and to apply the  
22 “remaining provisions of the Act” as stated in § 12(b) – not mere compliance with § 5(g)(2)(D).  
23

24 The “Joannides documents” were requested by researcher Jefferson Morley pursuant to  
25 FOIA. Even though the relationship between Joannides and Lee Harvey Oswald was hidden  
26 from the public until 2003 by the actions of Joannides and his superiors (see *infra*, as well as  
27 *Morley v. CIA*, 508 F.3d 1108, 1118 (D.C. Cir. 2007)), the Joannides documents have been  
28



1 hidden from the public in a *Vaughn* index for twenty years despite the protestations of three of  
2 the five former ARRB members, including former ARRB chair Judge John Tunheim, who stated  
3 on this subject that:

4  
5 ***“By its actions, the CIA has thus destroyed the integrity of the probe made by Congress***  
6 ***and cast additional doubt upon itself. It is imperative that all additional information which***  
7 ***bears upon the CIA’s conduct regarding both the congressional investigation and the Kennedy***  
8 ***assassination itself be made public as soon as possible.”*** TAC 25:22-28.

9 This is a case where NARA should have collected the rest of the documents by October  
10 2017. NARA is now more than six years late. Although is not a statutory deadline, it is clearly  
11 the intent of the Congress to get all documents to the public as quickly as possible and not after  
12 October 2017 except in the face of an “*identifiable harm that is of such gravity that it outweighs*  
13 *the public interest in disclosure.*” § 5(g)(2)(D)(ii). “Public interest” is defined at § 3(10) as:

14 ***“(T)he compelling interest in the prompt public disclosure of assassination records for***  
15 ***historical and governmental purposes and for the purpose of fully informing the American***  
16 ***people about the history surrounding the assassination of President John F. Kennedy.”***

17 The JFK Records Act expressly stated at the time of passage in 1992 that: “most of the  
18 records related to the assassination...are almost 30 years old, and only in the rarest cases is there  
19 any legitimate need for continued protection of such records.” § 2(a)(7). The Act’s mechanisms  
20 are designed to collect “all assassination records” to provide the full history for the American  
21 people. §§ 2(a)(1), 2(a)(2), 12(b). But NARA has unreasonably delayed and unlawfully withheld  
22 responses to requests, for example, by MFF member Larry Schnapf, as well as researchers Dan  
23 Alcorn and Roger Odisio. The “Joannides documents” remain unavailable due to the use by  
24 NARA and the CIA of FOIA, rather than consistent use of the JFK Records Act. NARA has  
25 refused to comply with the Memorandum of Understanding (MOU), a key tool recommended by  
26 ARRB to obtain additional assassination records. NARA’s approval of the Transparency Plans  
27 is the latest method that results in the delay disclosure of any additional records.  
28

1  
2 **7. As the ARRB identified “additional assassination records”, NARA has a mandatory**  
3 **duty under Section 12(b) and related sections of the Act to obtain these records for the**  
4 **American people**

5 This court has ruled that “the JFK Act imposes ‘no specific, unequivocal command’ to  
6 undertake the *remaining averred duties* (‘seeking ‘Final Declarations of Compliance’, following  
7 up on outstanding search requests...)”, stating that it was a “*voluntary program*” designed to aid  
8 the ARRB to “(carry) out its obligation to ‘direct that all assassination records be transmitted to  
9 the Archivist’. JFK Act Section 9(c)(1). The ARRB accordingly could not have been  
10 ‘specifically commanded’ to implement this voluntary program.” ECF 68, 13:13-21.

11 Plaintiffs agree that ARRB was not commanded to implement this voluntary program.  
12 Plaintiffs respectfully respond that if the court agrees that 12(b) and its related sections of the Act  
13 regarding the search for “additional assassination records” remain in full force and effect, then  
14 12(b) mandates that NARA is “specifically commanded” to undertake the “remaining averred  
15 duties” and obtain the additional assassination records that have been identified by the ARRB.

16 These records include:

- 17
- 18 • ARRB requests to search for additional designated assassination-related records  
19 made to certain agencies including the CIA, Department of Defense and FBI remain  
20 outstanding. TAC, para. 46.
  - 21 • In addition, the ARRB was also working with the JFK Library and the RFK Donor  
22 Committee at the time of the final report to release certain papers of Robert F.  
23 Kennedy. These records remain outstanding. TAC, para. 46; ARRB Final Report,  
24 pp. 145, 149, 155-56, 162 and 168 note 9.
  - 25 • Upon information and belief, additional Assassination Records exist that have not  
26 been transmitted to Defendant NARA and that are not currently part of the Collection.  
27 Also, on information and belief, Defendant NARA has not followed up on the  
28

outstanding ARRB records search requests nor have several agencies submitted sworn Final Declarations of Compliance. TAC, para. 61.

- Mr. George Joannides served as chief of covert action at the CIA station in Miami and served as case officer for a New Orleans-based CIA-funded exile group that had a series of encounters with Lee Oswald in 1963. Joannides was then appointed the CIA’s documents gatekeeper and prevented HSCA investigators from obtaining important documents, including any discovery of Joannides’ own role with the CIA-funded exile group that repeatedly interacted with Oswald in 1963. According to former ARRB board members, 44 Joannides documents from 1962-64 and 1978-81 constitute Assassination Records entitled to “the presumption of immediate disclosure” and should have been transferred to the ARRB to determine if they should be disclosed. Instead, the CIA withheld the Joannides files from the ARRB and continues to withhold these files. The CIA should be ordered to transfer these materials to NARA. (TAC, para. 61a)

Regarding the Joannides documents: In 2004, three former members of the ARRB submitted sworn affidavits in *Morley v. CIA*, a Freedom of Information Act lawsuit, stating that the Joannides files met the board’s criteria of “assassination-related” and should be released. Former ARRB member Anna Nelson stated that “the Freedom of Information Act, as implemented by the executive branch, has prevented the timely public disclosure of records relating to the assassination of President John F .

Kennedy.” TAC, p. 25, fn. 73. Former ARRB counsel Jeremy Gunn stated that the CIA “undermined the investigation which the House Select Committee on Assassinations made of the JFK assassination in 1976-1978.” TAC, p. 25, fn. 73.

Also see Judge Tunheim’s protests at CIA’s conduct at p. 14 of this brief, *supra*.

- NARA has failed to request the assistance of the Department of Justice to unseal all tape recordings of Louisiana Mafia boss Carlos Marcello in violation of its ministerial non-discretionary duty. See §§ 10(b)(1); 10(b)(3). (TAC, para. 61b)



- NARA did virtually nothing since 1999 to continue the ARRB's work to recover assassination records that are believed to be held by government agencies. TAC, para. 112. This includes the records enumerated in the Memorandum of Understanding signed by ARRB, NARA and CIA. TAC, paras. 111-112; 119-121.
- Plaintiffs allege that if any of the acts alleged in this complaint are determined by the court to be discretionary rather than mandatory, that such action constitutes an abuse of discretion. TAC, para. 116.

**8. Plaintiffs meet all four factors for injunctive relief and similar remedies**

*Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012) (quoting *Nken*, 556 U.S. at 434) sets forth a four-element test for injunctive relief.

**a. Plaintiffs are likely to succeed on the merits**

On element (1), “whether the applicant has made a strong showing that it is likely to succeed on the merits”, the Plaintiffs’ statutory interpretation regarding §§ 2(a)(5) and 12(b) are invulnerable to attack in any hearing.

Plaintiffs have made a strong case that The CIA has failed to provide certain documents pursuant to the MOU. NARA has failed to take action to seek these documents. 2(a)(5) mandates that NARA halt advising researchers to use FOIA in conducting JFK research. Similarly, 12(b) mandates that all remaining provisions of the Act “continue in effect until such time that the Archivist certifies to the President and the Congress that all assassination records have been made available to the public in accordance with the Act.”

As the court is aware, thousands of records remain withheld in part. Many records remain to be transmitted to the JFK Collection, as identified by the ARRB, the Plaintiffs, and other researchers. The CIA has failed to provide certain documents pursuant to the MOU. NARA has failed to take action to seek these documents. Plaintiffs have provided the Court in this brief with an analysis of the specific provisions that remain in force pursuant to 12(b). Defendant has provided no such analysis to date.

1 Plaintiffs have explained to the court that NARA must comply with the postponement  
2 standards of § 6, the mandate to transmit all assassination records “to the Archivist” in 9(c)(1),  
3 the approval of postponements in § 9(c)(2), and the requirements of periodic review in § 9(d)(2).  
4 NARA cannot focus on § 5(g)(2)(D) in isolation and ignore these other statutory provisions.

5 Plaintiffs have provided the court with an analysis of the “unreasonable delay” and  
6 “discrete actions” that expose NARA to liability under the APA pursuant to 706(1) and 706(2).

7 Section 11(a) requires “transmission of records to the Archivist” by the agencies and  
8 exercises a legislative override over any other law or judicial decision that would otherwise  
9 prohibit such transmission. The impact of this statutory provision is wide-reaching, and should  
10 make it unnecessary for the Court to consider the aspects of the APA that ordinarily would bar  
11 the relief sought by Plaintiffs.

12 As stated by this court, “an injunction on NARA alone would suffice in redressing the  
13 averred injuries caused by the implementation of the Biden Memoranda.” Dkt. 68, 6:13-15.  
14 *Juliana v. United States*, 339 F. Supp. 3d 1062, 1079 (D. Or. 2018), rev’d and remanded on other  
15 grounds, 947 F.3d 1159 (9th Cir. 2020).

16 **b. Plaintiffs face irreparable injury if relief is denied**

17 On element (2), “whether the applicant will be irreparably injured absent a stay”.

18 Plaintiffs contend that they were misled by NARA. NARA stated that it was  
19 supplementing the JFK Collection with additional assassination records and that agencies were  
20 seeking its guidance on this subject. In fact, review of the documents reveals that very few  
21 additional assassination records were included into the JFK Collection between 2000-2023, and  
22 that NARA now states that it has no duty to obtain additional assassination records. NARA  
23 cannot have it both ways.

24 What makes it worse is that NARA has been violating the letter and the spirit of the JFK  
25 Records Act by advising researchers to frame their requests pursuant to FOIA rather than the Act  
26 itself. Records have not been obtained for decades because of the chaotic approach adopted by  
27 NARA in providing different advice to different researchers depending on what NARA  
28 employee provides the advice.

1 Nor does NARA encourage researchers to contact the agencies directly. Instead, NARA  
2 acts as a bottleneck to effective efforts at research. Plaintiffs seek an order to stop NARA from  
3 advising researchers to seek JFK documents through the use of FOIA.

4 Plaintiffs also seek an order for NARA to collect all remaining assassination records as  
5 quickly as possible. Witnesses are dying, and their stories will be lost forever. Potential  
6 leads to other witnesses and documents will be lost. Such a loss represents a fundamental dis-  
7 service to history – and there is no good reason for the names and identities of this individuals  
8 and these documents to not be obtained at this time, 30 years after this remedial statute was  
9 enacted to prevent this kind of loss.

10  
11 **c. Relief will not substantially injure any other interested parties**

12 On element (3), “whether issuance of the relief will substantially injure the other parties  
13 interested in the proceeding”, it is hard to conceive of any reason that would injure either NARA,  
14 other agencies, or the President. There is no fear of physical injury or institutional damage. Nor  
15 is there any fear of monetary loss.

16  
17 **d. The public interest is best served by fully informing the American people**  
18 **about the history surrounding the Kennedy assassination**

19 On element (4), “where the public interest lies.”: See *Lair v. Bullock*, 697 F.3d 1200,  
20 1203 (9th Cir. 2012) (quoting *Nken*, 556 U.S. at 434). This element is in the Act’s definition of  
21 “public interest” at § 3(10): “the compelling interest in the prompt public disclosure of  
22 assassination records for historical and governmental purposes and for the purpose of fully  
23 informing the American people about the history surrounding the assassination of President John  
24 F. Kennedy.”

25 Plaintiffs made the case on “public interest”. Plaintiffs have no interest in challenging  
26 the Defendant’s rationale for withholding documents - what the Plaintiffs are calling for is  
27 compliance with the statute by utilizing the proper standard of review of the documents still not  
28 transmitted at this very late date.



**9. Plaintiffs seek declaratory relief**

Plaintiffs seek immediate relief, as the opportunity to interview these elderly individuals decreases every day. Plaintiffs anticipate that their request for relief pursuant to §§ 2(a)(5) and 12(b) can be attained with injunctive relief.

Plaintiffs submit that the relief sought in the Motion can be characterized as either injunctive relief or declaratory relief. *Merrill Lynch, Pierce, Fenner & Smith v. Doe*, 868 F. Supp. 532, 535-536 (N.Y.S.D. 1994) states that a request for preliminary declaratory relief can be based on either the Federal Declaratory Judgment Act, 28 U.S.C. 2201, or the All Writs Act, 28 U.S.C. 1651. The case pointed out that it is the “least intrusive way of vindicating its right to proceed in federal court.” Both statutes were alleged by Plaintiffs in the Second Amended Complaint, ECF 44, 5:6-9. Plaintiffs acknowledge that the cases on the issue of preliminary declaratory relief are split. If the court is not inclined to grant relief in this fashion, Plaintiffs repeat their request for the earliest possible date for a speedy hearing for declaratory judgment pursuant to FRCP 57 for any of the remaining issues addressed in this brief. Plaintiffs respectfully submit that there is no need for discovery on these issues, and that this is a matter of statutory interpretation that should be resolved by the court at the first possible date.

In *Miller v. Warner Literary Group LLC*, 2013 WL 360012, at \*2 (D. Colo. 2013), a novelist sought a declaration allowing him to terminate a contract with his agent in advance of an upcoming publication date. As in *Miller*, “the raw facts” are “not in dispute” and the parties’ disagreement “center[ed] on the applicable legal standard.” Also see *National Basketball Association v. Williams*, 857 F. Supp. 1069, 1071 n.1 (S.D.N.Y. 1994), *aff’d*, 45 F.3d 684 (2d Cir. 1995).

Given the “imminent deadline,” the *Miller* court found “good cause” to resolve a motion for declaratory judgment “on an expedited basis.” *Id.* Defendant had notice as of October 2022’s complaint of Plaintiffs’ intent to seek expedited relief. Also see Dkt. No. 39, p. 35.

**10. Plaintiffs seek mandamus, if necessary**

If the court believes that injunctive or declaratory relief is unavailable to Plaintiffs, then a

1 writ of mandamus would be the only adequate remedy available. See *In re Cal. Power Exch.*  
2 *Corp.*, 245 F.3d 1110, 1120 (9th Cir. 2001) (holding mandamus is appropriate where plaintiffs  
3 have no other adequate remedy).

4 § 706(1) relief and mandamus relief are considered to “mirror” each other. *Plaskett v.*  
5 *Wormuth*, 18 F. 4th 1072, 1081 (9th Cir. 2021).

6 **CONCLUSION**

7 Pursuant to JFK Act Section 12(b) – and the above-stated portions of the JFK Records  
8 Act – Plaintiffs seek that 1) NARA be ordered to collect all remaining assassination records, and  
9 2) all assassination records be made available to the public in accordance with the Act before 3)  
10 the Archivist issues any certification pursuant to the statute. This collection should include all  
11 the documents identified in the MOU, the Final Declarations of Compliance, and similar requests  
12 from both NARA and researchers.  
13

14 Plaintiffs also seek an order from the court to prevent NARA from directing JFK  
15 assassination researchers to seek these records pursuant to FOIA, pursuant to § 2(a)(5) of the Act  
16 which states that “legislation is necessary because the Freedom of Information Act, as  
17 implemented by the executive branch, has prevented the timely public disclosure of records  
18 related to the assassination of President John F. Kennedy.”  
19

20 Respectfully submitted,  
21

22  
23 \_\_\_\_\_/s/  
24 WILLIAM M. SIMPICH  
25 LAWRENCE P. SCHNAPF  
26 Attorneys for Plaintiffs

27 Dated: December 14, 2023  
28

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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THE MARY FERRELL FOUNDATION,  
INC.; JOSIAH THOMPSON; and GARY  
AGUILAR,

Plaintiffs,

v.

JOSEPH R. BIDEN, in his official capacity as  
President of the United States; and  
NATIONAL ARCHIVES AND RECORDS  
ADMINISTRATION,

Defendants.

No. 3:22-cv-06176-RS

DECLARATION OF LAWRENCE  
SCHNAPF

Date: Nov. 30, 2023  
Dept: Hon. Richard Seeborg  
Time: 1:30 pm

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1. I am Lawrence P. Schnapf. My residence is 55 E.87<sup>th</sup> Street, #8B/8C, New York, New York 10128. I am an attorney admitted to practice in New York and New Jersey, and was admitted pro hac vice to the United States District Court for the Northern District of California to serve as co-counsel for the plaintiffs in this case.
2. I am the plaintiff in SCHNAPF v National Archives and Records Administration, 1:21-cv-02816-TJK (D.D.C.) where i sought all correspondence including memos and emails in connection with the executive orders of President Trump issued on October 26, 2017 and April 26, 2018 postponing the release of assassination records that were to be released on October 26, 2017 pursuant to the President John F. Kennedy Assassination Records Collection Act ("JFK Act")
3. After the Defendant NARA filed its answer, the parties filed a joint report indicating that NARA had identified approximately 1300 response documents and that the parties had agreed to a processing schedule.
4. The Defendant NARA completed its production in ten batches of records. The August 21, 2017 memorandum from William J. Bosanko to John P. Fitzpatrick, Senior Director for Records, Access and Information Security Management, National Security Council, "Subject: FBI Proposed Postponements of JFK Assassination Records" was one of the documents produced by Defendant NARA ("Bosanko Memo").
5. I certify that the Bosanko Memo included in the Plaintiffs' Motion for Injunctive Relief, Declaratory Relief or Mandamus is a true and correct copy produced by Defendant NARA.

I declare under penalty of perjury that the foregoing is true and correct and of my own knowledge or based on information and belief and I believe that all such matters are true and correct. Executed on October 26, 2023, in New York City, New York.

\_\_\_\_\_/s/ Lawrence P. Schnapf\_\_\_\_\_  
Lawrence P. Schnapf



Date: August 21, 2017  
To: John P. Fitzpatrick, Senior Director, Records Access and Information Security Management, National Security Council  
From: William J. Bosanko, Chief Operating Officer   
Subject: FBI's Proposed Postponements of JFK Assassination Records

NARA has conducted an analysis of the first batch of 7,469 documents proposed by FBI for further postponement. Overall, our analysis found no problems in the quality of the FBI's review; the redactions appeared to be consistent within documents and between documents. We also found no instances in our sample of information being released in one place and held in another, nor did we find instances of previously released information being redacted. However, while the review appears consistent, NARA is concerned that the FBI did not apply the standards of review necessary under the JFK Act.

### Background

We sampled 525 documents from the FBI's LCN/Violent Organization's appeal bucket (a 9% sample) and all of the remaining 1,377 documents from all other appeal buckets (a 100% sample). Of the documents sampled, 233 of the documents proposed for continued postponement would release information that was withheld previously. None of these documents are from the La Cosa Nostra (LCN) appeal bucket, from which our sample found that no additional information was being proposed for release.

The type of information proposed for continued postponement breaks down as follows:

Type of Information	Number of Documents
Foreign Information (from foreign law enforcement agencies and named foreign law enforcement sources)	555
Digits (the numerical part of an FBI confidential informant code)	523
Named sources	444

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ER\_046

NGC21-493

Other (includes file numbers, code names, information about sources, information about investigations)	313
3 <sup>rd</sup> agency information	282
Source codes (other than foreign)	103
Nexus	83

In addition, there were 34 instances of Grand Jury information being proposed for continued postponement; this information is exempt under the JFK Act and is not subject to release in 2017. There were also 14 instances of PII and other privacy information proposed for postponement, along with scattered instances of tax information.

The FBI presented their appeal justifications according to “buckets,” grouping their appealed documents in one of the buckets. The grouping was not consistent. For example, a document in the LCN bucket might have proposed postponements for foreign law enforcement information that would otherwise be covered in the Foreign Relations bucket.

While imperfect, we provide the following evaluation of each of the FBI’s appeal buckets based on the survey data presented above:

#### **Nexus**

NARA does not object to the continued postponement of documents containing this type of information.

#### **3<sup>rd</sup> agency information**

Decisions on this type of information will be handled by the equity holder; NARA will wait until those decisions are made before weighing in on these documents.

#### **Other**

The FBI is asking for the continued postponement of a variety of information, including but not limited to:

- case file numbers;
- case codenames;



- information provided by sources or about sources;
- details of investigations;
- location of wiretap monitoring facilities;
- information from overhears; and
- information labeled NBR.

Because this type of information is unique to specific documents and an opinion cannot be offered in a categorical manner, NARA recommends that requests for postponements of this type of information be accompanied by document-level justifications.

### Named Sources and Source Codes

In their justification for the further postponement of information concerning confidential sources, the FBI stated that they seek “continued postponement for only those named individuals who are either still alive or for whom the status could not be determined.” They applied the same standard to sources identified only by a source number and identifying information. However, in their appeal justification, the FBI is seeking continued postponement of 3 other types of information:

- The names and identifying information of living third parties who were merely mentioned in these documents.
- The names and identifying information of living third parties who were merely of investigative interest to the FBI.
- The names and identifying information of living individuals who provided information during the course of its investigations.

As justification for each of these, the FBI relies on broad statements concerning possible stigmatization, harassment, or even violent retribution. As the information is concerning events more than 50 years ago, while there may be a residual privacy interest by the individuals named, it is difficult to imagine circumstances under which an individual could be harmed by the release of their name in a file in the JFK Collection. The standard set by the JFK Act and the Assassination Records Review Board during their deliberations is a high one: there has to be “clear and convincing evidence” of a “substantial risk of harm,” and any invasion of privacy is “so substantial that it outweighs the public interest.” Baring specific document-level justifications for continued postponement, NARA recommends that appeals of this type of information be denied.

With regards to individuals who meet the definition of confidential sources (those who had an ongoing relationship with the FBI providing information), the FBI appears to have done their due diligence in attempting to determine if named or symbolled sources were still alive in

documents, outside of the LCN files. Some of the sources being protected, however, are in the main investigative case files for Jack Ruby, Oswald, and the JFK investigation. Because the intent of the Act was to release information concerning the assassination, and these events are 50 or more years old, and these files clearly relate directly to the assassination, NARA opposes the continued postponement of any confidential source information in these files, barring clear and convincing evidence of a substantial risk of harm. NARA otherwise has no objection to the continued postponement of source information in other files, with the exception of documents in the LCN bucket (see the discussion for the LCN bucket, below).

### Digits

According to the ARRB's Final Report, "the Review Board routinely agreed to postpone for ten years the 'numeric' portion of informant symbol numbers and the 'case number' portion of informant file numbers." (see page 70). In its justification, the FBI states categorically that "the FBI is no longer seeking protection of the previously postponed number if the only information redacted was the source number," which NARA takes as referring to the number portion referred to above. However, our analysis found scores of instances where the number portions (referred to here as "digits") are proposed for continued postponement. It is clear that the ARRB did not consider that the numeric portion of the symbol number should be postponed at all past 2017, and in fact should be released prior to 2017. Unless there is specific justification for the continued holding of the digits, NARA recommends that these postponements be rejected.

### Foreign Information

The FBI is asking for the continued protection of information received from foreign law enforcement agencies, the identities of foreign law enforcement agencies that appear in the records, and specific named foreign law enforcement and other foreign government sources. They are grounding their withholdings on their Foreign Government Information Classification Guide. As such, they are categorically withholding such information, stating

[D]isclosure of this material would reveal the existence of such confidential relationships with current and long-term foreign government partners in contravention of law enforcement/national security information sharing agreements. As a result, disclosure could reasonably be expected to strain relations between the United States and those foreign governments, triggering negative diplomatic, political, or economic repercussions. Furthermore, a breach of these relationships would have a chilling effect on the free flow of vital law enforcement/national security information to the FBI, thereby impeding the FBI's effectiveness in solving crimes and protecting our national security.



The application of this standard runs counter to the “clear and convincing evidence” standard and ignores the balancing test written into JFK Act Section 6(4), which concerns the relationship between government agents and cooperating foreign governments. The FBI’s assertion that the information would do little to further the public’s understanding of the assassination, because, “in nearly all instances, the foreign government information at issue concerns a specific investigation of an individual and does not speak directly or indirectly about the assassination,” ignores the Review Board’s broad view of what constitutes an assassination record. In many instances, the foreign government information at issue concerns a now-deceased critic of the Warren Commission, a subject clearly related to the assassination. In any event, the weight is on showing harm that outweighs the public interest, not the other way around.

Granting the FBI’s position that it cannot unilaterally release other government’s information, however, NARA could support the FBI’s appeal if the FBI seeks the views of the foreign governments at issue to release information in the JFK Collection, with the understanding that such a release will not change the status of their government’s information in other FBI records.

### **The La Cosa Nostra files (LCN)**

Of the 7,469 documents in the FBI’s first appeal set, 6,097 come from various files of members of organized crime or La Cosa Nostra (LCN). As mentioned above, the FBI has released no additional information from the LCN files. Indeed, they do not seem to have applied the same review standards to these files as they have to postponed documents from other files. To all appearances, no attempt was made to determine if sources were living or dead, or what other information could now be released. In seven instances, in a sample mostly drawn from one LCN member’s case file, we were able to identify named sources as deceased. In justifying the continued postponement of postponed LCN documents, the FBI’s appeal justification relies on broad statements of potential harms, instead of the “clear and convincing evidence” standard of the JFK Act. Because we can find no indication that the FBI made any attempt to determine if additional information could be released, NARA cannot support the continued postponement of these records absent additional work by FBI.

### **Recommendation**

Given the large volume of records recommended for postponement and the limited time available for further review, NARA recommends that the President authorize a temporary postponement of one year for the FBI’s proposed postponements. We also recommend that the President establish an interagency working group to review, during the temporary postponement, all of the records proposed for postponement by FBI and the other departments and agencies to ensure that only information that meets the strict standards of the JFK Act are considered for further postponement beyond 25 years.



**From:** William Bosanko <william.bosanko@nara.gov> <william.bosanko@nara.gov>  
**Sent time:** 08/21/2017 11:26:13 AM  
**To:** Mark Bradley <mark.bradley@nara.gov>  
**Subject:** Just FYI - re JFK Act (CIA & FBI)  
**Attachments:** WJB to JPF re CIA.pdf WJB to JPF re FBI (1).pdf

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See attached (2 files).

Jay

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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THE MARY FERRELL FOUNDATION,  
INC.; JOSIAH THOMPSON; and GARY  
AGUILAR,

Plaintiffs,

v.

JOSEPH R. BIDEN, in his official capacity as  
President of the United States; and  
NATIONAL ARCHIVES AND RECORDS  
ADMINISTRATION,

Defendants.

No. 3:22-cv-06176-RS

**THIRD AMENDED COMPLAINT  
FOR INJUNCTIVE RELIEF,  
DECLARATORY RELIEF, AND  
MANDAMUS**

- 1. APA**
- 2. 5 USC 701 et seq./JFK Act**
- 3. Federal Records Act**

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## INTRODUCTION

1. Plaintiffs The Mary Ferrell Foundation Inc. (MFF), and Josiah Thompson and Gary Aguilar (“Plaintiffs”) bring this civil action seeking declaratory relief, injunctive relief, and a writ of mandamus to compel Defendants President Joseph R. Biden (“President Biden”) and the National Archives and Records Administration (“NARA”), to fulfill their ministerial non-discretionary duties under the John F. Kennedy Assassination Records Collection Act of 1992<sup>1</sup> (the “JFK Records Act” or “Act”).

2. Plaintiffs request a judicial order mandating the Defendants to either release all of Assassination Records<sup>2</sup> currently withheld from the public or, in the alternative, to review each individual Assassination Record that has not been publicly disclosed in full using the criteria set forth in sections 5, 6 and 9 of the JFK Records Act and the Federal Records Act of 1950 (the “Federal Records Act”).<sup>3</sup>

3. On October 22, 2021, Defendant President Biden issued an executive memorandum (2021 Biden memorandum) certifying a postponement of an unspecified number of unidentified Assassination Records without conducting the record-by-record review nor identifying the specific grounds for withholding Assassination Records from public disclosure

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<sup>1</sup> P. L. 102-526, 106 Stat. 3443 (Oct. 26, 1992); as amended, P. L. 103-345, §§ 2–5, 108 Stat. 3128-3130 (Oct. 6, 1994); as amended, P. L. 105-25, § 1, 111 Stat. 240 (July 3, 1997); codified at 44 U.S.C. 2107 Note.

<sup>2</sup> 36 CFR 1290.1.

<sup>3</sup> Public Law 81-754, 64 Stat. 583 (1950), as amended by Presidential and Federal Records Act Amendments of 2014, Public Law 113–187, as amended by P.L. 115–85; codified at 44 U.S.C. 2201 et seq., § 3101 et seq. and § 3301 et seq.



1 mandated by sections 5, 6 and 9 of the JFK Records Act. The same errors are repeated in the  
2 Biden memorandum issued on December 15, 2022 (2022 Biden memorandum).

3 4. Defendant NARA has acted arbitrarily and capriciously in violation of the  
4 Administrative Procedures Act (the “APA”)<sup>4</sup> by implementing the Biden Memoranda that were  
5 issued in violation of the JFK Act.

6 5. Defendant NARA has failed to perform certain continuing ministerial non-  
7 discretionary duties under the JFK Records Act, including but not limited to: identifying and  
8 maintaining an accurate subject guidebook and index to the President John F. Kennedy  
9 Assassination Records Collection (the “JFK Collection”);<sup>5</sup> conducting periodic review of  
10 postponed or redacted Assassination Records,<sup>6</sup> and failing to properly maintain its central  
11 directory of Identification Aids.<sup>7</sup>

12 6. Defendant NARA, as the successor in function to the Assassinations Records  
13 Review Board (“ARRB”)<sup>8</sup> has also failed to follow up with certain government offices on  
14 outstanding record searches requested by the ARRB in 1998 and to request new searches for  
15 Assassination Records since 1998.

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22 <sup>4</sup> 5 U.S.C. § 706.

23 <sup>5</sup> 44 U.S.C. 2107 note at § 4(a)(1).

24 <sup>6</sup> Id. at § 5(g)(1).

25 <sup>7</sup> 44 U.S.C. 2107 note at § 3(6); § 4(a)(2)(B); § 4(d)(1).and § 5(c)(2)(D)(ii). Each Assassination  
26 Record contains a unique identification number that appears on the Identification Aid for that  
27 Assassination Record. This unique number consists of 13 digits divided into three parts. The  
28 first 3 digits identify the agency, the middle five digits identify the floppy disk number on which  
the agency created the identification aid, and the last five digits identify the particular record on  
the agency’s floppy disk. See “Final Report of the Assassination Records Review Board” (September 30, 1998) at page 30. The identification aids NARA created are known as Record  
Identification Forms (RIFs).

<sup>8</sup> 65 FR 39550 ( June 27, 2000).

1           7.       The failure to carry out these ministerial non-discretionary duties has made it  
2 virtually impossible for the Plaintiffs to determine the exact number and identity of partially  
3 withheld ("redacted") and withheld-in-full Assassination Records in the JFK Collection as well  
4 as Assassination Records that may be located at other government offices that have not been  
5 transferred to the Collection.

6  
7           8.       The failure of Defendant NARA to complete these outstanding ARRB searches  
8 for Assassination Records contravenes the express goals established by Congress when it enacted  
9 the JFK Records Act. The findings of the Act state that "all government records related to the  
10 assassination of President John F. Kennedy should be preserved for historical and governmental  
11 purposes" and that "all government records concerning the assassination of President John F.  
12 Kennedy should carry a presumption of immediate disclosure, and all records should be  
13 eventually disclosed to enable the public to become fully informed about *the history surrounding*  
14 *the assassination.*" (Italics added) In the aftermath of the assassination, several formal  
15 government investigations were commenced, including those conducted by the Warren  
16 Commission, the Rockefeller Commission, the Church Commission, and the House Select  
17 Committee on Assassinations (HSCA). The Warren Commission merely found that the evidence  
18 "indicates that (Oswald) acted alone in that event." None of these organizations came to an  
19 explicit conclusion that Lee Harvey Oswald was the "sole culprit" responsible for the  
20 assassination. The final investigation, conducted by the HSCA, made a finding that "President  
21 John F. Kennedy was probably assassinated as the result of a conspiracy" and the HSCA made a  
22 second finding that "scientific acoustical evidence establishes a high probability that two gunmen  
23 fired at President John F. Kennedy." Historians and members of the public continue to seek  
24 more information about how such a tragedy could have occurred.  
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11. Accordingly, Plaintiffs seek (1) a determination that Defendants have failed to comply with their mandatory non-discretionary duties under the JFK Records Act and (2) an order compelling Defendants to perform their mandatory non-discretionary duties under the Act pursuant to an expeditious deadline set by this Court.

12. This Court has personal and subject matter jurisdiction under 28 U.S.C. § 1331 (action arising under the laws of the United States) and the Administrative Procedure Act, 5 U.S.C. §§ 701, et seq. (“APA”).

<sup>9</sup>44 U.S.C. 2107 note at §§ 2(a)(4) and (5); §3 (10).  
<sup>10</sup> 5 U.S.C. § 706.



1 may issue writs of mandamus pursuant to the Mandamus and Venue Act, 28 U.S.C. § 1361; and  
2 the All Writs Act, 28 U.S.C. § 1651.

3 14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(1) because  
4 members of the Plaintiff MFF along with Plaintiffs Thompson and Aguilar are lawful permanent  
5 residents in the district and the Defendants are an agency of the United States or an officer of the  
6 United States sued in their official capacity.  
7

8 **PLAINTIFFS**

9 15. Plaintiff The Mary Ferrell Foundation, Inc., ("MFF") is a Massachusetts  
10 registered 501(c)(3) corporation, with directors, officers and general members who reside in the  
11 Northern District of California. MFF's members include researchers and authors who rely on  
12 original source materials for their projects. MFF maintains the largest searchable electronic  
13 collection of materials related to the JFK assassination including Assassination Records,  
14 documents, government reports and online books totaling nearly two million pages. MFF has  
15 developed specialized and sophisticated search tools to facilitate research. As a result, MFF's  
16 website is often the first place that researchers, authors and historians visit to search for these  
17 materials. MFF's holdings on the JFK assassination include these primary sources:  
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20 a. **Warren Commission:** 1964 Warren Report, 26 volumes of Hearings and  
21 Exhibits, executive session transcripts and Warren Commission Documents;  
22

23 b. **New Orleans District Attorney Jim Garrison Investigation:** Clay Shaw  
24 trial transcript, Orleans Parish Grand Jury transcripts and other trial records;

25 c. **President's Commission on CIA Activities Within the United States:**  
26 **("Rockefeller Commission"):** 1975 Report and publicly available documents;  
27  
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1           d.       **Senate Select Committee to Study Governmental Operations with**  
2 **Respect to Intelligence Activities (“Church Committee”)**: 14 reports published in 1975 and  
3 1976, and over 100 interview and testimony transcripts;

4           e.       **House Select Committee on Assassinations (“HSCA”)**: Final Report, 12  
5 appendix volumes, and transcripts of executive sessions, interviews and testimony;

6           f.       **Assassination Records Review Board (“ARRB”)**: Final Report, medical  
7 testimony and exhibits, 1995 and 1996 CIA and FBI releases, internal correspondence and  
8 memos, and other electronic records;

9           g.       **Federal Bureau of Investigation (“FBI”)**: Headquarters files on Lee  
10 Harvey Oswald and Jack Ruby, Mexico City Field Office File on Oswald, Headquarters files  
11 (HSCA Administrative Folders series);

12           h.       **Central Intelligence Agency (“CIA”)**: Russ Holmes Work File, HSCA  
13 Segregated Collection, and LA Div. Work File;

14           i.       **Department of Defense**: Joint Chiefs of Staff (“JCS”) Central Files; the  
15 papers of JCS Chiefs Maxwell Taylor, General Earl Wheeler Papers, General Lyman Lemnitzer;  
16 the papers of Army General Counsel Joseph A. Califano (Vietnam, Cuba), and Office of Naval  
17 Intelligence files;

18           j.       **State Department**: Select volumes of the Foreign Relations of the United  
19 States;

20           k.       **NARA**: Finding aids and declassified documents, including all  
21 Assassination Records released in 2017/2018/2021 pursuant to the JFK Records Act;

22           l.       **Lyndon Baines Johnson Library and Museum (“LBJ Library”)**:  
23 phone call tapes and transcripts;

1 m. **Miscellaneous:** These include documents from the President's Foreign  
2 Intelligence Advisory Board (“PFIAB”), the House Select Committee on Intelligence (“Pike  
3 Committee”), the White House Communications Agency (“WHCA”), the John F. Kennedy  
4 Presidential Library and Museum (“JFK Library”) and papers of former Dallas Police  
5 Department Captain Will Fritz, and the KGB documents provided by former Russian President  
6 Boris Yeltsin.

8 16. MFF has many paid members that reside and/or work in the judicial district  
9 of Northern California where this suit is filed. MFF’s members have long advocated for the  
10 preservation, declassification, and public availability of Assassination Records, and have  
11 specifically demanded that Defendants comply with the express terms of the JFK Records Act.  
12 MFF has been adversely affected or aggrieved by the Defendants’ failure to comply with the JFK  
13 Records Act.

15 17. Plaintiff Josiah Thompson (“Thompson”) is a dues-paying member of MFF  
16 who resides and does business in the Northern District of California. Mr. Thompson is a private  
17 investigator and author of books and articles concerning the JFK assassination. Plaintiff  
18 Thompson relies on the MFF website and its specialized search engine for his research.

20 18. Plaintiff Gary Aguilar (“Aguilar”) is a dues-paying member of MFF who resides and  
21 does business in the Northern District of California. Dr. Aguilar is a surgeon and author of  
22 articles concerning the JFK assassination. Dr. Aguilar relies on the MFF website and its  
23 specialized search engine for his research.

25 **DEFENDANTS**



1 19. Defendant President Joseph Biden is the President of the United States. He is sued in  
2 his official capacity as President of the United States. In that capacity, he issued the Biden  
3 Memoranda of 2021 and 2022 challenged in this suit.

4 20. Defendant NARA is an independent agency that is an agency within the meaning of  
5 5 U.S.C. § 552(f), and is in possession and/or control of the records requested by Plaintiffs that  
6 are the subject of this action. NARA is also charged with the preservation and documentation of  
7 government and historical records including the JFK Collection as well as tasked with increasing  
8 public access to those documents. NARA was directed in the Biden Memoranda to implement  
9 the continued postponements of certain Assassination Records and has done so. NARA acts  
10 through the Activist of the United States (“Archivist”). NARA was directed by Defendant  
11 President Biden through the Archivist to implement the Biden Memoranda and has done so.

#### 14 **STATUTORY FRAMEWORK OF THE JFK RECORDS ACT**

15 21. As a result of strong public pressure to end three decades of government secrecy  
16 about the assassination of President John F. Kennedy, Congress unanimously enacted the JFK  
17 Records Act in 1992. The Act was signed into law by President George H.W. Bush on October  
18 26, 1992. The JFK Records Act “*was a unique solution to the problem of secrecy.*”<sup>11</sup> Congress  
19 enacted the Act because “... *30 years of government secrecy relating to the assassination of*  
20 *President John F. Kennedy led the American public to believe that the government had*  
21 *something to hide. The solution was legislation that required the government to disclose*  
22 *whatever information it had concerning the assassination.*”<sup>12</sup>

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27 <sup>11</sup> Final Report of the Assassination Records Review Board September 30, 1998 at page 1  
28 (hereinafter “ARRB Final Report”).

<sup>12</sup> Id.

22. Congress said “*Continued, **unjustified secrecy** increases those doubts and speculation, and fuels a growing distrust in the institutions of government . . . . **prompt disclosure** of all records relating to the assassination is the best way to fulfill the American people’s right to know what happened to their President.*”<sup>13</sup> [emphasis added]

23. In passing the JFK Records Act, Congress found and declared that the “*legislation is necessary to create an enforceable, independent, and accountable process for the public disclosure of such [assassination] records.*”<sup>14</sup> [emphasis added].

24. Congress concluded that the Act was necessary because the Freedom of Information Act (“FOIA”)<sup>15</sup> and Executive Order 12356<sup>16</sup> as administered by the Executive Branch had “prevented the **timely public disclosure** of records relating to the assassination of President John F. Kennedy.”<sup>17</sup> [Emphasis Added].

25. Congress also found that the Act was necessary because FOIA did not provide public access to unpublished congressional records.<sup>18</sup> Moreover, unlike FOIA, the Act does not allow agencies to rely on the deliberative process and attorney-client privileges exemptions of FOIA as grounds for postponing disclosure.<sup>19</sup>

26. Congress directed government offices that records relating to the assassination would “*carry a **presumption of immediate disclosure***”.<sup>20</sup> Because most Assassination Records

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<sup>13</sup> Id. at page 8.

<sup>14</sup> 44 U.S.C. 2107 note at § 2(a)(3).

<sup>15</sup> 5 U.S.C. § 552.

<sup>16</sup> 50 U.S.C. § 401 note.

<sup>17</sup> 44 U.S.C. 2107 note at §2(a)(5) & (6).

<sup>18</sup> CRS Report for Congress “President John F. Kennedy Assassination Records Disclosure: An overview” ( March 3, 1993).

<sup>19</sup> Id.

<sup>20</sup> 44 U.S.C. 2107 note at § 2(a)(2).

1 were 30 years old at the time of the Act, Congress told government offices that it expected that  
2 “only in the **rarest of cases** is there any legitimate need for continued protection.”<sup>21</sup> [emphasis  
3 added]

4 27. To accomplish these goals, Congress directed the heads of government offices  
5 and executive agencies to search for Assassination Records in their possession and to transfer  
6 them to Defendant NARA. In turn, Defendant NARA was directed to establish the Collection.<sup>22</sup>  
7 Congress also prohibited government offices from destroying or altering Assassination Records  
8 in their possession or custody.<sup>23</sup>

10 28. The JFK Act defines “Executive agency” to include any executive agency defined  
11 in the APA and “*any Executive department, military department, Government corporation,*  
12 *Government controlled corporation, or other establishment in the executive branch of the*  
13 *Government, including the Executive Office of the President.*”<sup>24</sup>

15 29. To ensure the maximum release of Assassination Records, the JFK Records Act  
16 established postponement standards in section 6. This section of the Act provides that  
17 information in Assassination Records **must be** declassified unless the agency that created the  
18 Assassination Record or information contained therein made a showing as described below.<sup>25</sup>

20 30. If the government office or agency believed that an Assassination Record should  
21 be postponed, the Act provides that the agency could rebut the “**presumption of immediate**  
22 **disclosure**” only by providing “*clear and convincing evidence*” that one of the seven  
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26 <sup>21</sup> Id. at § 2(a)(7).

27 <sup>22</sup> Id. at § 5(e).

28 <sup>23</sup> Id. at § 5(a)(2).

<sup>24</sup> Id. at § 3(4).

<sup>25</sup> Id. at § 6(1)(c).



1 enumerated harms of section 6 of the Act would occur if the particular Assassination Record was  
2 released AND that the identified harm outweighed the strong public interest in disclosure.<sup>26</sup>

3 [emphasis added]

4 31. The declassification standards of section 6 of the Act requires agencies to balance  
5 the national security concerns against the strong public interest in disclosure. Agencies must  
6 apply this balancing test BEFORE maintaining the classification of any information.<sup>27</sup>

8 32. The “**clear and convincing evidence**” standard is a stringent evidentiary standard  
9 akin to that used in criminal law. Congress selected the “**clear and convincing evidence**”  
10 standard because “*less exacting standards, such as substantial evidence or a preponderance of*  
11 *the evidence, were not consistent with the legislation’s stated goal of prompt and full release.*”<sup>28</sup>

13 33. In explaining the JFK Act’s stringent declassification standard, Congress said  
14 when an agency presented evidence of identifiable harm that would result from disclosure, the  
15 identifiable harm “*had to consist of more than speculation.*”<sup>29</sup> Records could not be postponed  
16 because of “*some conceivable or speculative harm to national security. Rather in a democracy*  
17 *the demonstrable harm from disclosure must be weighed against the benefits of release of the*  
18 *information to the public.*”<sup>30</sup> [emphasis added]  
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22 <sup>26</sup> 44 U.S.C. 2107 note at § 6(1)-(5).

23 <sup>27</sup> Memorandum “*Declassification Guidelines Established by the President John F. Kennedy*  
24 *Assassination Records Collection Act of 1992*” from Robert J. Eatinger, Assistant General  
25 Counsel to Chief, Historical Review Group, December 14, 1992 (attachment to CIA Memo for  
the Record “JFK Records Review - Lessons Learned”) ( November 24, 1998) (RIF# 104-  
10337-10014 ).

26 <sup>28</sup> House Committee on Government Operations, Assassination Materials Disclosure Act of 1992,  
27 102d Cong., 2d sess., H. Rept. 625, pt. 1, at 25.

28 <sup>29</sup> House Committee on Government Operations, Assassination Materials Disclosure Act of 1992,  
102d Cong., 2d sess., H. Rept. 625, at 26.

<sup>30</sup> Id.

34. Congress intended the new declassification standards of the JFK Act to be more stringent standard than the general harm test used under FOIA. Because of this congressional intent, the ARRB denied requests for postponements based on generalized harm on the grounds that the arguments did not constitute the “*clear and convincing evidence*” required under section 6.<sup>31</sup> The ARRB, which was the agency that Congress created to administer and interpret the Act, interpreted the “*clear and convincing*” evidence standard to require the agencies to provide very **specific evidence** tailored to the Assassination Records requested to be postponed.<sup>32</sup> When the FBI appealed such a rejection by ARRB, President Clinton upheld this stringent interpretation.<sup>33</sup>

35. The “*clear and convincing*” standard was not only a new declassification criterion but it also placed the burden on the agency seeking postponement to explain why information should remain shrouded in secrecy.<sup>34</sup>

36. When the ARRB approved a request to postpone disclosure of an Assassination Record, the Act requires that an unclassified written description of the reason for such continued postponement be provided to NARA and published in the Federal Register upon determination.”<sup>35</sup>

37. In addition, the Act requires that all postponed Assassination Records shall be reviewed **periodically** by the originating agency and the Archivist consistent with the recommendations of the ARRB.<sup>36</sup>

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<sup>31</sup> ARRB Final Report at page 46.

<sup>32</sup> Id. at page 66.

<sup>33</sup> Id at page 46.

<sup>34</sup> Id. at page 172.

<sup>35</sup> 44 U.S.C. 2107 note at § 5(g)(2)(B).

<sup>36</sup> Id. at § 5(g)(1).

38. Congress also emphasized the supremacy of the JFK Records Act over other laws that might preclude disclosure of Assassination Records. In other words, where the Act requires public disclosure of an Assassination Record, it would “*take precedence over any other law... judicial decision construing such law, or common law doctrine that would otherwise prohibit such transmission or disclosure.*”<sup>37</sup>

39. For all postponed Assassination Records, the JFK Act mandated that each Assassination Record **shall** be publicly disclosed in full and be available no later than October 26, 2017.<sup>38</sup> The mandated October 26, 2017 statutory deadline was supposed to represent the end of the decades-long effort to release all of the records related to the assassination of President Kennedy.<sup>39</sup> Absent any action by the Executive Branch, NARA was to release the remaining Assassination Records.

40. If an executive agency sought to postpone further disclosure beyond the October 26, 2017 statutory deadline, the Act authorizes the President to further postpone release of an Assassination Record **only if** the President certifies for **each** record that:

a. continued postponement is made necessary by an **identifiable harm** to the military defense, intelligence operations, law enforcement, or conduct of foreign relations; and

b. the **identifiable harm** is of such gravity that it outweighs the public interest in disclosure.<sup>40</sup> [emphasis added]

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<sup>37</sup> Id. at § 11(a).

<sup>38</sup> Id. at § 5(g)(2)(D).

<sup>39</sup> R. Eric Petersen, “*President John F. Kennedy Assassination Records Collection: Toward Final Disclosure of Withheld Records in October 2017*” CRS Insight ( May 2017).

<sup>40</sup> 44 U.S.C. 2107 note at. § 5(g)(2)(D)(i)-(ii). The postponement criteria are set forth in section 6 of the Act.



41. In deciding if an Assassination Record may be postponed beyond the statutory October 26, 2017 deadline, the Act imposes a ministerial non-discretionary duty on the President to apply the postponement standards of section 6.<sup>41</sup>

42. Thus, **each** individual Assassination Record that the President seeks to certify for further postponement beyond the statutory October 26, 2017 deadline, the President must (a) identify one or more of the seven grounds of identifiable harm set forth in section 6 applicable to the **individual** Assassination Record; and (b) provide an explanation under the stringent “*clear and convincing*” evidence standard on how public disclosure would be so harmful that it outweighs the strong public interest in disclosure.<sup>42</sup>

#### ARRB IMPLEMENTATION OF THE JFK ACT

43. The ARRB initiated a compliance program to ensure that all agencies in possession or control of Assassination Records complied with their obligation under JFK Act.<sup>43</sup> This program included obtaining "Final Declarations of Compliance" from all agencies with Assassination Records.

44. At the time the ARRB ceased operating, several agencies such as the FBI<sup>44</sup>, the Immigration and Naturalization Service (“INS”)<sup>45</sup> and the JFK Library<sup>46</sup> were still searching for

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<sup>41</sup> Id. at § 6(1)-(5).

<sup>42</sup> Id.

<sup>43</sup> ARRB Final Report at page 145. These obligations included conducting a thorough search for Assassination Records, organizing and reviewing Assassination Records, responding to ARRB requests for information and Assassination Records and transmitting its Assassination Records to NARA. Id.

<sup>44</sup> Id. at page 149.

<sup>45</sup> Id. at pages 155-56.

<sup>46</sup> ARRB was still working with the JFK Library and the RFK Donor Committee at the time of the final report to release certain papers of Robert F. Kennedy. ARRB Final Report at pages 162 and 168 note 9.

documents that might qualify as Assassination Records while others such as the Secret Service<sup>47</sup> and the Drug Enforcement Administration (“DEA”) did not execute the required sworn Final Declarations of Compliance.<sup>48</sup>

45. In its final report the ARRB disclosed that the Office of Naval Intelligence (“ONI”) acknowledged there were additional records that had not been reviewed by September 1998 but that ONI would review them not under the JFK Act but insisted on reviewing these records under the requirements of Executive Order 12958!<sup>49</sup>

46. When the ARRB dissolved in September 1998, ARRB requests to search for additional designated assassination-related records were made to certain agencies including the CIA, Department of Defense and FBI remained outstanding.<sup>50</sup> In addition, the ARRB was also working with the JFK Library and the RFK Donor Committee at the time of the final report to release certain papers of Robert F. Kennedy.<sup>51</sup>

47. On the eve of the October 26, 2017 statutory deadline to release the remaining postponed Assassination Records, then President Donald J. Trump issued a Memorandum instructing NARA to temporarily postpone the public disclosure of an unspecified number of unidentified Assassination Records for six months.<sup>52</sup> He then issued a second Memorandum on April 26, 2018 instructing NARA to further postpone the public disclosure of a continuing

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<sup>47</sup> Final ARRB Report at page 149.

<sup>48</sup> The PFIAB challenged ARRB’s authority to identify PFIAB documents as assassination records. Final ARRB Report at page 155.

<sup>49</sup> ARRB Final Report at page 158.

<sup>50</sup> Id. at pages 145, 149, and 155-56.

<sup>51</sup> Id. at pages 162 and 168 note 9.

<sup>52</sup> “Temporary Certification for Certain Records Related to the Assassination of President John F. Kennedy” Memorandum for the Heads of Executive Departments and Agencies ( October 26, 2017), 82 FR 50307( October 31, 2017).

1 unspecified number of unidentified Assassination Records for another three and a half years  
2 beyond the statutory deadline.<sup>53</sup>(collectively, the “Trump Memoranda”). NARA complied with  
3 the Trump Memoranda.

4 **DEFENDANT PRESIDENT BIDEN ISSUES MEMORANDUM POSTPONING**  
5 **ASSASSINATION RECORDS**  
6

7 48. Despite the fact that the agencies had 25 years under the original statutory  
8 deadline of the Act and then another 4 years under the Trump memoranda to comply with their  
9 mandated non-discretionary duties, Defendant President Joseph Biden issued an executive  
10 memorandum on October 22, 2021 (“2021 Biden Memorandum”) instructing NARA to further  
11 postpone release of an unspecified number of unidentified Assassination Records.<sup>54</sup> A similar  
12 executive memorandum was issued on December 15, 2022. (“2022 Biden Memorandum”)  
13 Defendant NARA has complied with the Biden Memoranda.  
14

15 49. Defendant Biden’s certification to postpone disclosure of Assassination Records  
16 violated sections 5, 6 and 9 of the JFK Act because Defendant Biden postponed disclosure:  
17

18 a. Without conducting a record-by-record review of and certification for  
19 each assassination Record;  
20  
21  
22

23 <sup>53</sup> “*Certification for Certain Records Related to the Assassination of President John F. Kennedy*,”  
24 Memorandum of for the Heads of Executive Departments and Agencies ( April 26, 2018), 83  
25 F.R. 19157 ( May 2, 2018). Plaintiffs assert that the two Trump certifications of postponement  
26 did not comply with his ministerial non-discretionary duties under sections 5, 6 and 9 of the  
27 Act. However, since President Trump is no longer in office, the Trump postponement memos  
28 are not subject of this complaint.

<sup>54</sup> “*Memorandum for the Heads of Executive Departments and Agencies on the Temporary  
Certification Regarding Disclosure of Information in Certain Records Related to the  
Assassination of President John F. Kennedy*” ( October 22, 2021), 86 FR 59599 ( October 27,  
2021).



b. Without identifying the specific alleged Identifiable Harms that would result if a particular Assassination Record or information contained therein would be disclosed;

c. Without providing the mandated explanation of how the Identifiable Harm was of such gravity that it outweighed the public's interest in disclosure of each Assassination Record; and

d. Using non-statutory criteria as a basis for certifying postponement of Assassination Records.

50. Instead of making these required mandatory findings for **each** Assassination Record to be postponed, Defendant President Biden simply:

a. Certified that "all the information" within Assassination Records that agencies proposed for continued postponement were to be withheld from full public disclosure until December 15, 2022 – and then continued this date again to June 30, 2023 - in violation of the requirements of section 5(g)(2)(D) of the Act;<sup>55</sup>

b. Instructed that an agency should not propose postponement of information beyond December 15, 2022 – and then continued this date again to June 30, 2023 - except when the "***strongest possible reasons***" counsel otherwise. The phrase "***strongest possible reasons***" is not one of the statutory criteria for certifying postponement set forth in section 6 of the Act;<sup>56</sup> [emphasis added]

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<sup>55</sup> 2021 Biden Memo at § 3; 2022 Biden Memo at § 2-3. The JFK Act requires that the President's certification to be done on a document-by-document basis and not a sweeping certification for "all information". The president also failed to disclose the "clear and convincing" evidence for each Assassination Record that justified the certification of postponement. See 44 U.S.C. 2017 note at § 5 (g)(D) and § 6.

<sup>56</sup> 2021 Biden Memo at § 1 and 5; 2022 Biden Memo at § 1, 2, and 6.

c. Did not require the agencies seeking postponement beyond December 15, 2022 to comply with the requirements of section 5(g)(2)(D) nor make the mandatory findings of section 6 the Act. Instead, Defendant President Biden simply instructed the agencies that if they proposed to further postpone records beyond December 15, 2022, they were to provide a proposed date when the agency “*reasonably anticipated that continued postponement would no longer be necessary*” or, “*if that is not possible, a specific proposed date for each record, identifying when the agency would propose to next review again after December 15, 2022;*”<sup>57</sup> [emphasis added].

d. Allowed agencies seeking to further postpone Assassination Records past December 15, 2022 to only demonstrate “**anticipated harm**”- a phrase that not does not appear in the Act and is more lenient than the statutory criteria.<sup>58</sup> [emphasis added]

51. In addition, Defendants President Biden and NARA did not assure compliance with the mandatory non-discretionary duty to publish in the federal register a summary of the postponement decision for **each** record including identifying the originating agency and grounds for each postponement Assassination Record.

52. Each of the aforementioned statutory obligations are ministerial non-discretionary duties of the President and NARA pursuant to the JFK Records Act.<sup>59</sup>

**DEFENDANT NARA HAS FAILED TO COMPLY WITH ITS MANDATORY MINISTERIAL NON-DISCRETIONARY DUTIES UNDER THE JFK ACT**

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<sup>57</sup> 2021 Biden Memo at §5(c)(iii);

<sup>58</sup> 2021 Biden Memo at § 5(d)(i)-(iv). The phrase “**anticipated harm**” is not a criterion appearing in Section 6 of the Act or for that matter anywhere in the statute. Instead, the Act requires the agencies seeking further postponement to demonstrate “**identifiable harm**” which connotes present harm, not a future harm. Nor is it used in the 2022 Biden Memo.

<sup>59</sup> 44 U.S.C. 2107 note at § 5(g)(2)(D)(i) and (ii).

53. Defendant NARA is the successor agency to the ARRB, and has assumed responsibility for ensuring compliance with the Act.<sup>60</sup> The ministerial non-discretionary duties include following up with agencies to complete outstanding ARRB search requests, to search for additional information and Assassination Records as well as to direct agencies to locate lost and missing records as their existence becomes known.

54. Upon information and belief, Defendant NARA has failed to follow-up on the outstanding 1998 ARRB record search requests. Earlier this year, several of Plaintiff MFF's members requested Defendant NARA to provide an update on the status of these outstanding ARRB record search requests. To date, Defendant NARA has not responded to this inquiry.

55. Defendant NARA has also failed to comply with a number of ministerial non-discretionary duties mandated by the JFK Records Act involving maintaining the JFK Collection.

56. The JFK Records Act requires Defendant NARA to create a central directory comprised of identification aids created for each Assassination Record transmitted to Defendant NARA so that Assassination Records may be available to historians, researchers and the American people.<sup>61</sup>

57. The only known central directory is currently a six-part spreadsheet comprising identification aids for 319,106 Assassination Records. This central directory is available on Defendant NARA's public website at

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<sup>60</sup> 65 FR 39550 ( June 27, 2000).

<sup>61</sup> 44 U.S.C. 2107 note at § 4(a)(2)(B).



1 <https://www.archives.gov/research/jfk/search>. This central directory is deficient in the  
2 following ways:

3  
4 a. **The Central Directory contains no identification aids for some**  
5 **agencies:** The complete set of records supplied to Defendant NARA by some government  
6 offices are entirely missing from the central directory as if they were never received. These  
7 include Secret Service records (record number prefix 154), National Security Archive records  
8 (prefix 144), National Security Council records (prefix 145), and the US Army Investigative  
9 Records Repository records (prefix 194). For example, 360 records from these offices were  
10 placed online after 2017 by NARA but are currently missing from the central directory.  
11

12  
13 b. **Central Directory is missing other identification aids:** There are other  
14 identification aids missing from the central directory. Of the Assassination Records released  
15 online by NARA since 2017, 472 FBI records (prefix 124), 250 John F. Kennedy library records  
16 (prefix 176) and one Defense Intelligence Agency record (prefix 111) do not currently appear in  
17 the central directory. Identification aids for additional extant records may be missing from the  
18 central directory. Because of the inadequate condition of the central directory, Plaintiffs have no  
19 practical way to determine how many identification aids are missing.  
20

21  
22 c. **Redactions in the central directory:** More than 5,000 identification aids  
23 feature one or more redactions. Defendant NARA should review these redactions to determine if  
24 they comply with Act's declassification standards.  
25

26 d. **Reclassifications in the central directory:** The six-part spreadsheet that was  
27 posted by Defendant NARA on June 28, 2021 contains several identification aids with redactions  
28

1 in fields that had not been previously redacted. The JFK Act prohibits reclassification of  
2 Assassination Records that have already been publicly disclosed.<sup>62</sup>

3  
4 e. Further details on the above deficiencies, including spreadsheets  
5 containing lists of record numbers and record descriptions, may be located on Plaintiff MFF's  
6 website at: [https://www.maryferrell.org/pages/State\\_of\\_JFK\\_Releases\\_2022.html](https://www.maryferrell.org/pages/State_of_JFK_Releases_2022.html)

7  
8 58. NARA states on its website that 520 documents remain withheld- in-full. Upon  
9 information and belief, Plaintiffs allege that the true number of withheld- in- full Assassination  
10 Records is higher but the precise number is unclear. For example:

11  
12 a. **Department of Justice (DOJ) records dropped from the release list:** In  
13 response to a 2016 FOIA Request, Defendant NARA released a list of 3,603 withheld-in-full  
14 Assassination Records to be released, which was then reduced to 3,598 Assassination Records  
15 and then finally diminished to 3,571 Assassination Records. In response to an inquiry by Plaintiff  
16 MFF about the latter reduction, Defendant NARA replied the discrepancy was because the last  
17 page of 27 DOJ Assassination Records had been inadvertently removed. These 27 records have  
18 never been posted online and their release status is unclear.

19  
20  
21 b. **Records declared "open in full" which are not publicly available:** The  
22 declassification status of many entries in the central directory appears to be inaccurate. In  
23 response to inquiries by Plaintiff MFF regarding missing records in the 2017 releases, Defendant  
24 NARA supplied a list that included 337 records marked "Released in Full prior to 2017 project."  
25  
26  
27  
28

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<sup>62</sup> Id. at §5(a)(3).

Defendant NARA provided assurances that these records were "determined to be open in full in the open Collection." Plaintiff MFF spot-checked a subset of these 337 records at the NARA College Park facility where the records are located. The majority of those Assassination Records checked were, in fact, not publicly available.

**c. Unaccounted for records from the 2017 review:** Plaintiff MFF conducted an analysis of the 2016 NARA listing of records withheld-in-full that were scheduled to be released, comparing it against those Assassination Records that were subsequently released by Defendant Records Act, and other records identified by NARA as missing or declared released but not put online, twelve records remain missing without explanation.

**d.** Lists of records described in the foregoing paragraphs may be located on Plaintiff MFF's website at [https://www.maryferrell.org/pages/State\\_of\\_JFK\\_Releases\\_2022.html](https://www.maryferrell.org/pages/State_of_JFK_Releases_2022.html)

59. Based on a representative sampling of the Collection, there are Assassination Records with significant redactions that are not justified under the section 6 declassification criteria of the Act, including:

**a.** A June 30, 1961 Memorandum from Arthur Schlesinger Jr. to President Kennedy about reorganizing the CIA after the Bay of Pigs;<sup>63</sup>

**b.** Personnel file of senior CIA counterintelligence officer Birch D. O'Neal who controlled the CIA's Lee Oswald file from November 1959 to November 1963;<sup>64</sup>

**c.** Personnel file of senior CIA operations officer David Atlee Phillips who

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<sup>63</sup> NARA Record Number 176-10030-10422.

<sup>64</sup> NARA Record Number 104-10291-10014.



1 told conflicting stories about Lee Oswald's Sept. 1963 visit to Mexico City;<sup>65</sup>

2           d.       Personnel file of senior Dallas-based CIA operations officer James  
3 Walton Moore who was informed about Oswald's return to Texas in 1962 and allegedly told a  
4 CIA asset that Oswald was "harmless;"<sup>66</sup>

5           e.       February 1962 Defense Department Northwoods plan for a "false-flag"  
6 operation to stage a violent incident in U.S. and blame it on Cuba;<sup>67</sup>

7           f.       Files on CIA-funded group DRE AMSPELL which publicized  
8 Oswald's pro-Castro activities in August 1963 and sought to blame JFK's assassination on  
9 Cuba in November 1963;<sup>68</sup>

10           g.       June 25, 1975 testimony of William K. Harvey (CIA chief in charge of the  
11 ZR-Rifle Castro assassination program) to the Senate Select Committee on Intelligence  
12 Activities;<sup>69</sup>

13           h.       A JFK document removed from the security file of Watergate burglar E.  
14 Howard Hunt.<sup>70</sup>

15           i.       Identity of "the infiltration team with mission of assassinating" Cuban  
16 Premier Fidel Castro, listed in attachment to September 10, 1964 report on "activities of  
17 AMWORLD."<sup>71</sup>

18  
19  
20  
21  
22  
23  
24 <sup>65</sup> NARA Record Number 104-10194-10026.

25 <sup>66</sup> NARA Record Number 1993.07.22.17:13:03:960590.

26 <sup>67</sup> NARA Record Number 202-10002-10104.

27 <sup>68</sup> NARA Record Number 104-10170-10121.

28 <sup>69</sup> NARA Record Number 157-10002-10106.

<sup>70</sup> NARA Record Number 1993.07.24.08:37:38:680310.

<sup>71</sup> NARA Record Number: 104-10308-10086.(These redacted identities are listed in a separate attachment to this report as "Iden A; Iden B; Iden C; Iden D; Iden E; Iden F; Iden G; Iden H; Iden I; Iden J;Iden K; Iden L; Iden M and Iden,N").

60. **Failure To Complete ARRB Compliance Program:** The ARRB Final Report disclosed that the Secret Service had failed to provide a Final Declaration of Compliance under penalty of perjury. Likewise, the Drug Enforcement Administration failed to formally designate Assassination Records and did not submit a sworn Declaration of Compliance report. As the successors to the ARRB, Defendant NARA has a ministerial non-discretionary duty to pursue Final Declarations Statements of Compliance from the recalcitrant agencies that had not completed the ARRB compliance program or that had outstanding ARRB search requests. Upon information and belief, Defendant NARA has failed to perform its ministerial non-discretionary duty to conduct a new round of responses from all agencies for Assassination Records in the post-ARRB period.

61. **New search of Assassination Records:** The JFK Act remains in effect until Defendant NARA acting through the Archivist issues a certification to Congress that all Assassination Records have been obtained and transferred to the Collection.<sup>72</sup> Upon information and belief, additional Assassination Records exist that have not been transmitted to Defendant NARA and that are not currently part of the Collection. Also, on information and belief, Defendant NARA has not followed-up on the outstanding ARRB records search requests nor have several agencies submitted sworn Final Declarations of Compliance. Until these outstanding items are completed and the ARRB compliance program completed, Defendant NARA acting through the Archivist is prohibited under section 12 of the Act from certifying that all Assassination Records have been obtained and transferred to the Collection. As the successor to the ARRB, Defendant NARA has a ministerial non-discretionary duty to complete the

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<sup>72</sup> 44 U.S.C. 2107 note at § 12(b).

outstanding search requests and to conduct a new search for Assassination Records known to exist but that are not part of the JFK Collection. Such a new search should include the following documents:

**a. CIA files of George Joannides:** Mr. Joannides served as chief of covert action at the CIA station in Miami and served as case officer for a New Orleans-based CIA-funded exile group that had a series of encounters with Lee Oswald in 1963. According to former ARRB board members, 44 Joannides documents from 1962-64 and 1978-81 constitute Assassination Records entitled to “the presumption of immediate disclosure” and should have been transferred to the ARRB to determine if they should be disclosed. Instead, the CIA withheld the Joannides files from the ARRB and continues to withhold these files. The CIA should be ordered to transfer these materials to the NARA.<sup>73</sup>

**b. Attorney General Referral to Unseal FBI Surveillance Tapes of Carlos Marcello:** In the late 1970s, the FBI recorded approximately eight months of electronic surveillance on Carlos Marcello pursuant to 18 U.S.C. § 2501 *et seq.* With the assistance of the United States Attorney’s Office in the Eastern District of New Orleans, the ARRB obtained a court order to review transcripts of the FBI’s surveillance on Marcello in New Orleans. The

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<sup>73</sup> In 2004, three former members of the ARRB submitted sworn affidavits in *Morley v. CIA*, a Freedom of Information Act lawsuit, stating that the Joannides files met the board’s criteria of “assassination-related” and should be released. In her affidavit, former ARRB member Anna Nelson stated that “*the Freedom of Information Act, as implemented by the executive branch, has prevented the timely public disclosure of records relating to the assassination of President John F. Kennedy.*” ARRB counsel Gunn in his declaration stated that the CIA “*undermined the investigation which the House Select Committee on Assassinations made of the JFK assassination in 1976-1978.*” ARRB Chair Judge John Tunheim wrote “*By its actions, the CIA has thus destroyed the integrity of the probe made by Congress and cast additional doubt upon itself. It is imperative that all additional information which bears upon the CIA’s conduct regarding both the congressional investigation and the Kennedy assassination itself be made public as soon as possible.*”



ARRB determined that 13 of the conversations were Assassination Records.<sup>74</sup> Though the transcripts were part of the JFK Collection, researchers have been unable to hear the actual tape recordings because they remain sealed.<sup>75</sup> Likewise, the FBI recorded conversations between Carlos Marcello and his cellmate, Jack Van Laningham, between 1985 and 1986. According to the FBI unit director, Thomas Kimmel, Mr. Marcello told Van Laningham that he was involved in JFK's assassination. While the relevant files were turned over to NARA in 2006, the tape recordings of the Marcello-Van Laningham conversations remain unavailable to researchers. Plaintiffs cannot fully evaluate the veracity and significance of these conversations without being able to listen to the actual recordings. Upon information and belief, Defendant NARA, as successor to ARRB, has failed to request the assistance of the Department of Justice to unseal all tape recordings of Marcello conversations mentioning JFK's assassination<sup>76</sup> in violation of its ministerial non-discretionary duty.

**c. New Search for all government files of certain “key persons” and persons and organizations of interest:** The ARRB did not review government agencies files about “key persons” and persons and organizations of interest that had been identified by the Warren Commission. Upon information and belief, Defendant NARA has failed to perform its ministerial non-discretionary duty as the successor to the ARRB to complete these searches of “[key persons](#)” and persons and organizations of interest.

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<sup>74</sup> ARRB Final Report at page 104.

<sup>75</sup> Author John H. Davis was able to obtain release of 158 of approximately 1,400 reels of tapes pursuant to the Freedom of Information Act. See *Davis v DOJ*, 2007 U.S. Dist. LEXIS 88374 (D.D.C. 12/07/2007).

<sup>76</sup> See 44 U.S.C. 2107 note at §10(a) &(b).

1           **d. Missing Church Committee Records, among others:** The ARRB Final  
2 Report states that many files that ARRB identified as Assassination Records are missing,  
3 including, but not limited to, Church Committee records.<sup>77</sup> Upon information and belief,  
4 Defendant NARA has failed to perform its ministerial non-discretionary duty as the successor to  
5 the ARRB to complete these searches for the missing Church Committee files.

6  
7           **e. Missing Attachments to Assassination Records:** There are also missing  
8 attachments to Assassination Records with no indication if the originating agency retains  
9 possession, custody and control of these attachments. Upon information and belief, Defendant  
10 NARA has failed to perform its ministerial non-discretionary duty, as successor to the ARRB, to  
11 direct the originating agency to search for these missing Assassination Records.

12  
13           **f. Destruction of Assassination Records:** The JFK Act explicitly prohibits  
14 the destruction, alteration, or mutilation of Assassination Records.<sup>78</sup> The ARRB Final report  
15 reported CIA, FBI, Secret Service and other organizations intentionally destroyed documents<sup>79</sup>  
16 yet no action has been taken to address these violations of the Act. In addition, 44 USC 2905  
17 mandates that NARA “*shall notify the head of a Federal agency of any actual, impending, or*  
18 *threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the*  
19 *agency that shall come to the Archivist’s attention, and assist the head of the agency in initiating*  
20 *action through the Attorney General for the recovery of records unlawfully removed and for*  
21 *other redress provided by law.*” Moreover, where the head of a Federal agency does not initiate  
22 an action for such recovery of such records or other redress within a reasonable period of time  
23  
24

25  
26  
27 <sup>77</sup> ARRB Final Report at page 164.

28 <sup>78</sup> 44 U.S.C. 2107 note at § 5(a)(3).

<sup>79</sup> For example, the ARRB disclosed that the Secret Service destroyed certain files AFTER the ARRB had requested the records. ARRB Final Report at page 149.

after being notified of any such unlawful action or is participating in, or believed to be participating in any such unlawful action, NARA “*shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.*” Upon information and belief, Defendant NARA acting through the Archivist, has not taken any action against the agencies that have destroyed Assassination Records, notified the head of the relevant agency nor sought the assistance of the attorney general in violation of its ministerial non-discretionary duties under both the JFK Act and the Federal Records Act.<sup>80</sup>

### STATUTORY FRAMEWORK OF THE FEDERAL RECORDS ACT

62. The Federal Records Act (“FRA”) is a collection of statutes that govern the creation, management, and disposal of federal or “agency” records.<sup>81</sup> The FRA requires that federal agencies establish: (1) a program to make and preserve agency records; (2) effective controls over the creation, maintenance, and use of records; and (3) safeguards against the removal or loss of records.<sup>82</sup>

63. The disposal of any federal record is governed by the FRA.<sup>83</sup> These provisions provide the exclusive procedure by which all federal records may be disposed or destroyed.<sup>84</sup>

64. Under the FRA, federal records may not be disposed or destroyed without authorization of Defendant NARA. Specifically, prior to destroying any federal record, the head of each agency must submit to NARA a list of any federal records that do not appear to have sufficient value to warrant their continued preservation.<sup>85</sup>

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<sup>80</sup> 44 USC § 3104.

<sup>81</sup> Id. at § 2101-18, 2901-09, § 3101-07 and § 3301-24.

<sup>82</sup> Id. at § 3101, § 3102 and § 3105

<sup>83</sup> Id. at § 3301 et seq.

<sup>84</sup> Id. at § 3314.

<sup>85</sup> Id. at § 3303.



65. The FRA also provides several mechanisms for the restoration of missing or destroyed agency records. First, the FRA places an independent duty on Defendant NARA to initiate action to recover agency records. Namely, if Defendant NARA becomes aware of any "actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of [an] agency," Defendant NARA must notify the agency head and assist the agency head in initiating action through the Attorney General for the recovery of the wrongfully missing, defaced, altered or destroyed records and for other legal redress.<sup>86</sup> If the agency head refuses to pursue legal remedies, Defendant NARA must request that the Attorney General take action and must inform Congress that the agency has made this request.<sup>87</sup>

66. The FRA places a similar and independent duty on the head of each federal agency to "initiate action through the Attorney General for the recovery of records he knows or has reason to believe have been transferred to his legal custody."<sup>88</sup> If the agency head refuses to pursue legal remedies himself, NARA must then request that the Attorney General take action and must inform Congress that NARA has made this request.<sup>89</sup>

## PLAINTIFFS' ADDITIONAL CONTENTIONS AS TO NARA

### 2017 Postponements of Assassination Records

67. On or about February 2017, NARA sent letters to all agencies and departments with equities in the withheld assassination records to inform them that NARA would be releasing the remaining records by October 2017 unless further postponements were requested and certified by the president. To assist with this process, NARA helped develop a guidance document titled

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<sup>86</sup> Id. at § 2905(a).

<sup>87</sup> Id. at § 2905(a).

<sup>88</sup> Id. at § 3106.

<sup>89</sup> Id. at § 3106.

1 “Procedures for Processing Remaining Postponed Records in the President John F. Kennedy  
2 Assassination Records Collection Act of 1992” that established the procedures to be followed by  
3 all affected Federal agencies/departments on how and when withheld assassination records were  
4 to be processed.

5 68. For previously postponed records for which agencies/departments intend to request  
6 continued postponement from the President, paragraph 2(a)(ii) of this guidance document  
7 provides that each agency/department had to submit  
8

9 “(ii) supporting documentation indicating (I) the rationale for such postponement,  
10 consistent with the criteria for postponement specified in section 5(g)(2)(D) of the  
11 Act; (2) the impact of disclosure on current agency/department operations; and (3)  
12 when possible, a specific proposed date or an independently verifiable event when  
the record(s) can be released”

13 69. It should be noted that (2)(a)(ii)(2) requiring disclosure on “impact of disclosure on  
14 current agency/department operations” is a non-statutory criterion. NARA acted arbitrarily and  
15 capriciously by approving and implementing the guidance document JFK records using non-  
16 statutory criteria in violation of 5 U.S.C. § 706(2)(A).  
17

18 70. On or about October 12, 2017, the Archivist issued a memo titled “*Memorandum for*  
19 *the President, from David S. Ferriero, Archivist of the United States, Re: Concerns Regarding*  
20 *Agency Proposals to Postpone Records Pursuant to Section 5 of the President John F. Kennedy*  
21 *Assassination Records Collection Act of 1992 (JFK Act)* (Oct. 12, 2017) (“2017 Archivist  
22 Memorandum”), recommending a temporary postponement of assassination records based on the  
23 flawed guidance containing a non-statutory factor and despite the fact that the relevant  
24 agencies/departments did not explain how the identifiable harm was of such gravity that it  
25 outweighed the public interest.  
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1           71. In recommending continued postponement to the president, NARA acting in its role  
2 as the successor in function to the Review Board, only required the agencies to invoke the first  
3 part of the two-part test for postponement (identifiable harm) and assumed that the existence of  
4 such harm automatically outweighed the public interest in disclosure. But this is not what the  
5 statute requires. Simply identifying a harm is insufficient. Instead, the agencies/departments in  
6 requesting postponement were required to explain “how” such identifiable harm was of such  
7 gravity that it outweighed the strong public interest in disclosure. Congress demanded that the  
8 American be informed how identified harm outweighed the strong public interest in disclosure so  
9 that the American people could be confident that the government was not hiding information  
10 about the assassination records.  
11

12           72. Ignoring one of the statutory criteria is the very definition of arbitrary and capricious  
13 action under 5 U.S.C. § 706(2)(A). By failing to require agencies to explain how the identifiable  
14 harm outweighed the strong public interest in disclosure and then recommending continued  
15 postponement to the president without providing this explanation, NARA failed to provide any  
16 rational connection between the underlying facts involving the proposed postponements and its  
17 recommendations.  
18

19           73. Moreover, even though the agencies/departments had 19 years to complete their  
20 reviews of the withheld records, the Archivist recommended further postponement of  
21 assassination records because there was “insufficient time” for NARA in its role as successor in  
22 function to the Review Board to determine if continued postponement was appropriate.  
23 “Insufficient time” is not one of the postponement criteria of the JFK Records Act. By relying on  
24 a non-statutory criteria to support its postponement recommendation, NARA’s actions were  
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arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law as set forth in 5 U.S.C. § 706(2)(A).

74. Relying on the recommendation of the Archivist, President Trump issued his October 26, 2017 memo (the “Trump 2017 Memo”) directing agencies to re-review all redactions over the next 180 days. As part of the review process, agency heads were directed to be “extremely circumspect” in recommending any further postponement of information in the records. Agency heads were required to report to the Archivist by March 12, 2018 of specific information within the redacted records that they sought continued postponement under the JFK Act.

#### **2018 Assassination Records Postponements**

75. On or about January 25, 2018, NARA issued an additional letter to agencies/departments with equities in redacted assassination records, requesting if the government offices were going to request further postponement of redacted records. NARA advised the agencies/departments that any proposed redactions would have to comply with the guidelines provided in the Trump 2017 memo that *“only in the rarest cases is there any legitimate need or continued protection of such records”* and that *“each agency head should be extremely circumspect in recommending any further postponement of full disclosure of records.”*

76. Once again, the Archivist advised President Trump in a March 26, 2018 memo (the “2018 Archivist Memo”) that it concurred with the requests continued for postponement. NARA advised President Trump that the postponement records were *“consistent with the requirements outlined in section 5(g)(2)(D) of the JFK Act”*, concluded that the information identified by agencies in the assassination records warranted continued postponement and recommended the President certify postponement of the relevant assassination records to October 26, 2021. NARA

made these recommendations even though neither NARA nor the agencies explained how the identifiable harm was of such gravity that it outweighed the strong public interest in disclosure.

77. As it did in 2017, NARA allowed the agencies/departments to invoke the first part of the two-part test for postponement (identifiable harm) and assumed that the existence of such harm automatically outweighed the public interest in disclosure. Yet the Archivist advised the President that the requested continued postponements were “*consistent with the requirements outlined in section 5(g)(2)(D) of the JFK Act.*”

78. Ignoring the statutory criteria is the very definition of arbitrary and capricious action under 5 U.S.C. § 706(2)(A). By failing to require agencies to explain how the identifiable harm outweighed the strong public interest in disclosure and then recommending continued postponement to the President without providing this mandated explanation, NARA failed to provide any rational connection between the underlying facts involving the proposed postponements and its recommendations.

79. Based on the recommendation of the Archivist, President Trump issued a memo on April 26, 2018 (the “Trump 2018 Memo”) approving the continued postponement of the withheld assassination records until October 26, 2021.

### **2021 Postponement of Assassination Records**

79a. After having been granted another 3½ years to complete the processing of the remaining withheld assassination records, the Archivist requested President Biden in 2021 to continue to withhold the assassination records that has been subject to the Trump 2018 memo. In recommending continued postponement, the Archivist said “the pandemic has had a significant impact on the agencies” and that NARA needed additional time to engage with the agencies. The Archivist had the audacity to say that it needed the additional time so it could make decisions to

1 release or postpone in “ a professional, scholarly, and orderly process; not decisions or releases  
2 made in haste.” Having had 4 years since the initial Trump postponement certification and 21 years  
3 after NARA had assumed the obligations of the Review Board, this concern of not making  
4 decisions in haste fails the red face test.

5 80. NARA’s postponement recommendation was not based on the statutory criteria.  
6 Ignoring the statutory criteria is the very definition of arbitrary and capricious action under 5  
7 U.S.C. § 706(2)(A). By failing to require agencies to explain how the identifiable harm  
8 outweighed the strong public interest in disclosure and then recommending continued  
9 postponement to the President without providing this mandated explanation, NARA failed to  
10 provide any rational connection between the underlying facts involving the proposed  
11 postponements and its recommendations.  
12

#### 13 **2022 Transparency Plans**

14 81. Section 7 of the Biden December 2022 Memo directs agencies to prepare Transparency  
15 Plans that detail the “event-based or circumstance-based conditions that will trigger the public  
16 disclosure of currently postponed information” and for submission of these Transparency Plans to  
17 the National Declassification Center (NDC) at NARA.  
18

19 82. Section 7 also states that the Transparency Plans were reviewed and approved by  
20 NARA. However, the Transparency Plans use less-stringent, non-statutory criteria for continued  
21 postponement of assassination records that in some cases allow records to remain withheld for as  
22 long as 2042 or indefinitely, decades beyond the 2017 sunset clause built into the Act. See §  
23 2(a)(4). For example, the Act requires government offices to make the final determination of  
24 assassination records based on “clear and convincing evidence” required by § 6 of the JFK Records  
25 Act. However, a number of the event-based conditions in the CIA Transparency Plan do not require  
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the agencies to comply with all of the requirements of § § 6(2) and 6(3). NARA’s approval of the Transparency Plans to President Biden was arbitrary and capricious as set forth in 5 U.S.C. § 706(2)(A) because NARA relied on non-statutory factors which Congress has not intended to be considered when postponing assassination records. The criteria set forth by Congress serve as the floor for postponing records. The President is free to use more stringent criteria that do not violate the Congressional grant of authority but he cannot exceed that grant of legislative authority by approving the use statutory criteria that would violate the strict standards of the Act.

82a. For example, the CIA Transparency Plan provides that for Keys 1-3, CIA would evaluate if the information could be released in consultation with NARA and the CIA may conduct a risk assessment in determining if the information may be released. Thus, the fact the event occurs does not mean that the postponed information will be released. More importantly, except for Key 8, there is no role for the President in determining if the postponed information may be released in direct violation of section 5(g)(2)(D).CIA plans there

82b. For example, for Keys 1 and 2 of the CIA Transparency Plan for identifying names of intelligence agents or employees, the Transparency Event is the death of the individual or the person’s connection with the CIA has been official acknowledged. If the death of a person cannot be confirmed, the CIA and NARA would use the 100-year rule meaning the information would not be released until 100 years from the person’s date of birth. Similarly, the Department of Defense “Path to Transparency” also provides for the records that CIA, FBI and NSA have equities (as well as records of the Select Senate Intelligence Committee), the release of information about individuals upon their death. Likewise, the FBI Transparency Plan For FBI Postponements within the JFK Records Collection” provides for use of the 100 year rule or “periodic life status reviews of redacted names every two years until all confidential source names are released or until

December 16, 2042, whichever occurs first” for informants and sources. However, the Act does not allow individuals names to be withheld until death. Instead, the law provides that their names may be withheld unless “would pose a substantial risk of harm to that person.”(Act § 6(2)). Indeed, when the FBI tried to adopt this approach in 2017, NARA stated in an August 21st , 2017 letter that was recently released by the government in an unrelated lawsuit that :

*“ As justification for each of these [postponement requests], the FBI relies on broad statements concerning possible stigmatization, harassment, or even violent retribution. As the information is concerning events more than 50 years ago, while there may be a residual privacy interest by the individuals named, it is difficult to imagine circumstances under which an individual could be harmed by the release of their name in a file in the JFK Collection. The standard set by the JFK Act and the Assassination Records Review Board during their deliberations is a high one: there has to be "clear and convincing evidence" of a "substantial risk of harm" and any invasion of privacy is "so substantial that it outweighs the public interest." Baring specific document-level justifications for continued postponement, NARA recommends that appeals of this type of information be denied.*

82c. Except for Key 8 of the CIA Transparency Event, none of the Transparency Plans have any role for the President in determining if the information in those records may be postponed. The Act confers upon the President and only the President that role. Congress said the President had the sole and non-delegable duty for making the postponement decisions. Thus, while Congress granted the President the power to postpone releases of information, this grant of authority was limited to the President. Congress structured the Act this way because leaving the disclosure decisions to government agencies had resulted in unwarranted secrecy. As currently

1 designed, the Transparency Plans return the power to make postponement decisions to the agencies  
2 and NARA (through the National Declassification Center) in violation of the goals and express  
3 terms of the Act.

4 82d. NARA not only approved the Transparency Plans for the President but did so when  
5 they contained Transparency Events that NARA concluded back in 2017 as being in violation of  
6 the Act. According, NARA acted arbitrarily and capriciously when it informed the President that  
7 the Transparency Plans were consistent with the Act. Because the Transparency Plans contain less  
8 stringent events and conditions allowed by the Act, they should be enjoined and remanded back to  
9 the agencies for appropriate revisions so that they conform to the Act.  
10

11 83. During 2012, the Assassination Archives and Research Center (AARC) and its  
12 President James H. Lesar wrote a letter to NARA general counsel asking for the CIA  
13 assassination records in the JFK Collection to be released in 2013; Mr. Stern informed the  
14 AARC that due to logistical reasons, the CIA and NARA could not release the records before  
15 2017.  
16

17 84. Dan S. Alcorn, an attorney, has worked with the Assassination Archives and  
18 Research Center since 1985 and is a member of MFF. In June 2016, Mr. Alcorn asked Martha  
19 Murphy from the Archives for records on Harold Byrd (the owner of the Texas School Book  
20 Depository, where Lee Oswald was employed) and Werner von Alvensleben under the JFK  
21 Act.<sup>90</sup> She responded that since the JFK Act index does not show records for these individuals,  
22  
23

24  
25  
26 <sup>90</sup> Werner von Alvensleben was a German aristocrat who had been a valued double agent for  
27 OSS in World War II. OSS record revealed that while serving under Heinrich Himmler with the  
28 Bavarian Military Police, von Alvensleben undertook an assignment to assassinate an Austrian  
official, and was arrested and convicted by the Austrians for attempted assassination. Von  
Alvensleben was known in big game hunting circles for using the Mannlicher-Schoenauer rifle, a  
different but similar rifle to the Mannlicher-Carcano that was allegedly the rifle used in the



1 she did not consider these records to be “assassination records” under the JFK Act. She  
2 suggested that Mr. Alcorn file a FOIA request.

3 85. On July 4, 2020, the Assassination Archives and Research Center and its  
4 President James H. Lesar filed a FOIA request to CIA for information on Byrd and von  
5 Alvensleben. In May 2021, having not heard a response from CIA, the requesters filed suit in  
6 the US District Court for the District of Columbia, Civil No. 21-1237.

8 86. On November 23, 2022, having seen discussion that the Archives might be willing to  
9 expand its search for JFK Act records, Mr. Alcorn contacted Gary Stern, General Counsel of  
10 NARA to request a search under the JFK Act for records requested in the lawsuit related to Byrd  
11 and von Alvensleben. Mr. Stern has not responded to his request.

13 87. In the AARC case for the records, the CIA has refused to search its  
14 operational files despite the requirement that such files be searched for material that has been the  
15 subject of investigation by executive agencies or the Congressional intelligence committees.  
16 CIA Information Act of 1984 (50 USC §3141(c)(3)). The John F. Kennedy assassination has  
17 been investigated by executive agencies and the Congressional intelligence committees. The  
18 D.C. Circuit has held that the exemption from an FOIA search does not apply to matters  
19 investigated by the Senate Select Committee on Government Operations With Respect to  
20 Intelligence Activities (“Church Committee”) and that the scope of the Church Committee  
21 investigation specifically encompassed operations of the CIA and other federal agencies in  
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27 \_\_\_\_\_  
28 assassination. During the Warren Commission investigation, Commission member John McCloy  
questioned the FBI ballistics expert as to whether the spent hulls found on the sixth floor of the  
book depository building could have been fired from a Mannlicher-Schoenauer rifle

1 investigating the assassination of President Kennedy. *Morley v. CIA*, 508 F. 3d 1108, 1117  
2 (D.C. Cir. 2007).

3 88. The JFK Records Collection Act of 1992, section 4(2)(B) calls for the defendant  
4 NARA to create a “central directory of identification aids created for each record transmitted to  
5 the Archivist under section 5. Section 5(d) describes these identification aids. Records  
6 declassified under the Act indeed feature these attached identification aids, typically labeled  
7 Record Identification Forms (“RIFs”)  
8

9 89. For more than 15 years, NARA has maintained a web page at  
10 <https://www.archives.gov/research/jfk/search>, where the only publicly accessible Central  
11 Directory is located. Until on or about October 2, 2020, this page featured a search interface. It  
12 has since been replaced by a Excel spreadsheet. The first version of this spreadsheet contained  
13 only about half of the 319,106 records available through the original search system. After MFF  
14 president Rex Bradford brought this deficiency to the attention of NARA, the spreadsheet was  
15 replaced by a new 6-part spreadsheet which featured 319,106 records.  
16  
17

18 90. This Central Directory, whether in search or spreadsheet form, is a critical  
19 “finding aid” to records in the JFK Collection for researchers such as Rex Bradford and members  
20 of the Mary Ferrell Foundation. Without visiting the NARA facility where the records are  
21 housed, it is the primary means used by MFF members and other researchers for locating  
22 assassination records on individuals, organizations, and JFK assassination research topics.  
23

24 91. Rex Bradford writes and maintains a page on the Mary Ferrell Foundation website  
25 which contains a sophisticated search and filter interface to the information contained in these  
26 spreadsheets. Foundation members including Mr. Bradford regularly use this tool, which is  
27  
28

1 based solely on the identification aids in NARA's online Central Directory, to locate records  
2 when conducting research.

3 92. From 2020 through 2022, Rex Bradford personally conducted several analyses of the  
4 identification aids present in NARA's Central Directory, and discovered several serious  
5 deficiencies which hinder the ability to locate assassination records, as discussed below.  
6

7 93. The Central Directory contains no identification aids for some agencies. For  
8 example, it contains no records for the Secret Service or the National Security Agency, as well as  
9 at least two other agencies, all of which released JFK records. For more information, see  
10 paragraph 57a, above.  
11

12 94. The Central Directory is missing other identification aids. In the 2017 through 2021  
13 JFK records releases, more than 500 records of the records made available online by NARA do  
14 not have corresponding entries in the Central Directory (beyond the agencies which are entirely  
15 absent noted in paragraph 79, above). For more information, see paragraph 57b, above.  
16

17 95. Rex Bradford posted a spreadsheet of record numbers and associated information for  
18 documents referenced above at:

19 [https://www.maryferrell.org/wiki/files/jfkreleases/MFF\\_JfkRecordsReleasedOnlineButNotInCen](https://www.maryferrell.org/wiki/files/jfkreleases/MFF_JfkRecordsReleasedOnlineButNotInCentralDirectory.csv)  
20 [tralDirectory.csv](https://www.maryferrell.org/wiki/files/jfkreleases/MFF_JfkRecordsReleasedOnlineButNotInCentralDirectory.csv). Note that these particular "missing identification aids" are only known to exist  
21 because NARA posted these documents online. The public has no way of determining how  
22 many additional records do not have entries in the Central Directory.  
23

24 96. More than 5,000 identification aids in the Central Directory feature one or more  
25 redactions. This is more than the number of documents NARA claims currently feature  
26 redactions. Rex Bradford compiled a list of these here:  
27  
28



1 [https://www.maryferrell.org/wiki/files/jfkreleases/MFF\\_JfkRedactedEntriesInCentralDirectory.c](https://www.maryferrell.org/wiki/files/jfkreleases/MFF_JfkRedactedEntriesInCentralDirectory.c)  
2 [sv](#).

3 97. In examining an updated version of the 6-part spreadsheet which occurred on or about  
4 June 28, 2021, Rex Bradford noticed that several identification aids in the new spreadsheet had  
5 new redactions that were not in previous version of those records, actions that violate § 5(a)(3) of  
6 the JFK Act. Rex Bradford also discovered several instances where records released in 2018  
7 contained redactions not present in the identical document when released earlier in 2017, actions  
8 that violate the § 5(a)(3) reclassification prohibition and which by implication include  
9 identification aids.  
10

11 98. In response to a FOIA request by governmentattic.org in 2016 (see  
12 [https://www.maryferrell.org/wiki/files/jfkreleases/foiaNGC16-095\\_2016\\_3603.pdf](https://www.maryferrell.org/wiki/files/jfkreleases/foiaNGC16-095_2016_3603.pdf)), NARA  
13 produced a list of 3,603 records then said to be “withheld in full,” amended later to 3,598  
14 records, and then again to 3,571. When Mr. Bradford asked NARA about the change in the  
15 number of withheld records from 3,598 to 3,571 records, NARA staffer James Mathis wrote in  
16 an email dated August 30, 2016 that after an investigation “we believe a page was missed in the  
17 scanning of the original document that was posted on NARA's website” and attached a list of 27  
18 records. These 27 “withheld in full” documents, however, were never subsequently placed online  
19 by NARA. Mr. Bradford has made a list of these records available here:  
20

21 [https://www.maryferrell.org/wiki/files/jfkreleases/MFF\\_JfkRecordsMissing27Doj.csv](https://www.maryferrell.org/wiki/files/jfkreleases/MFF_JfkRecordsMissing27Doj.csv).  
22

23 99. Some records said to be “open in full” are not publicly available. The declassification  
24 status of many entries in the Central Directory appears to be inaccurate. Mr. Bradford conducted  
25 an analysis of the records released by NARA in 2017 and 2018, as compared to the “withheld in  
26 full” list of records produced by NARA in 2016 in response to the governmentattic.org FOIA  
27  
28

request. After inquiring of NARA why hundreds of the FOIA-referenced documents were not then subsequently released, NARA staffer Martha Murphy replied in an April 6, 2018 email. She provided a list of 337 records which in the lead-up to the 2017 releases “were determined to be open in full in the open Collection.” Mr. Bradford provided a list of a subset of 27 of these records to MFF vice president Jefferson Morley, who subsequently visited the NARA facility in College Park, MD and searched for these records, with staff assistance. The majority of the 27 records could not be located, or their folders contained withholding notices. It should be added that the three boxes entitled “HSCA Mail and Document Registers” at the NARA website contain numerous notations for researchers - used as finding aids - that are redacted. These contentions contained in this complaint summarize how NARA has failed to identify and maintain an accurate subject guidebook and index, and that each of these failures by NARA constitute discrete agency failures to comply with its duties under the JFK Act and violate section 706 of the APA.

100. On February 25, 2022, counsel Lawrence P. Schnapf sent a letter to Mr. David S. Ferriero, Archivist of the United States under his letterhead signed by Mr. Schnapf and three other attorneys (“Ferriero Letter”). Mr. Schnapf also emailed a copy of this letter to Mr. Gary Stern, general counsel of the National Archives and Records Administration (NARA) on the same day.

101. The Ferriero letter requested Mr. Ferriero to have NARA as the “successor in function” to the ARRB to take certain discrete actions so that the JFK Records Collection could be completed.

102. The Ferriero Letter reminded both Mr. Ferriero and Mr. Stern that a number of government offices had not completed assassination records searches that had been requested by the ARRB shortly before it ceased operating in 1998, that these government offices had a

continuing duty under the Act to search for and transmit assassination records to NARA and that NARA as the successor in function to the Board had a duty to obtain additional information and records from agencies as well as direct them to locate lost and missing records.

103. The Ferriero Letter requested NARA to (1) Complete ARRB Compliance Program for the recalcitrant agencies; (2) Demand that NARA tender additional Assassination Records requests to certain government offices based on information collected by Mr. Schnapf from communications with JFK researchers, authors and historians; (3) submit an enforcement referral to the Attorney General in connection with lost, missing and destroyed Assassination Records; (4); submit a referral to the Attorney General to unseal certain FBI BRILAB and CAMTEX surveillance tapes of Carlos Marcello and (5) request an update on the completion of the Identification Aid Program and when they would become available to the American public.

104. To assist NARA with this request, an appendix was included with the Ferriero Letter that identified suggested specific supplemental assassination record search requests for NARA to perform. This list was prepared in consultation with and assistance from numerous researchers, authors, historians, including members of the Mary Ferrell Foundation (MFF). Mr. Schnapf is a member of the MFF.

105. Mr. Schnapf never received a response to the Ferriero Letter from Mr. Ferriero, the acting Archivist or Mr. Stern.

106. On December 9, 2022, Mr. Schnapf received an email from Mr. Roger Odisio forwarding email exchanges he had with NARA in connection with a question he sent to the SpecialAccessFOIA@nara.gov portal about the JFK Collection. Mr. Odisio asked: “What has the National Archives been doing to keep the Collection up to date? Does NARA accept recommendations for records to be added to the Collection?”



1           107. Mr. Odisio received the following response from Mr. Gene Morris from the  
2 Archives II Textual Reference Branch on November 17<sup>th</sup>, 2022:

3           “This is in response to your request for information about the JFK assassination  
4 Record Collection. I have an official answer for the question about the addition of  
5 new records to the Collection. The short answer is: **yes, we do accept**  
6 **recommendations.** [emphasis added]

7  
8           If an agency locates assassination records that should have been transferred to the  
9 ARRB, it must transfer them to NARA. **If you believe that there may be records**  
10 **outside the custody of NARA that belong in our holdings, we ask that you**  
11 **provide the details to NARA's General Counsel.**” [emphasis added]  
12

13           108. On November 18, Mr. Odisio followed up on Mr. Morris’ suggestion and  
14 emailed Gary Stern, NARA general counsel, asking him to add the Darnell and Wiegman films to  
15 the JFK Collection and explained why they were important to the JFK assassination story. Mr.  
16 Odsio advised Mr. Schnapf that he has yet to hear from Mr. Stern or anyone else at NARA.  
17

18           109. NARA’s custom and practice is to urge researchers to file FOIA cases to seek  
19 assassination records – exactly the reason that the JFK Act was passed. Mr. Simpich has spoken  
20 with Mr. Alcorn and with other individuals who have told him that they were also advised by  
21 NARA to file FOIA requests rather than JFK Record Act requests.  
22

23           110. RIF #104-10423-10190 is a document of public record - CIA counterintelligence  
24 chief James Angleton’s instructed his subordinate Ray Rocca to "wait out" the Warren  
25 Commission when the CIA was asked to pass on certain records to the Warren Commission.  
26 This instruction was given after the Warren Commission asked the CIA to provide documents  
27 that it sent to the Secret Service in the immediate aftermath of the events of 11/22/63. Plaintiffs  
28

1 contend that this event, when examined in the light of the other events chronicled in this  
2 complaint, illustrates a pattern and practice of NARA and other government agencies of waiting  
3 out requests for the review of documents in order to delay and/or prevent the transmission of  
4 possible assassination records to a reviewing agency such as NARA, as well as the public  
5 disclosure of assassination records.

6  
7 111. NARA failed to conduct periodic reviews between NARA and the releasing  
8 agencies pursuant to Section 5(g)(1) for many years. Less than 6000 records were released  
9 between 2000-2016, and more than 4000 of them were released during 2004. Similarly, virtually  
10 no periodic reviews occurred between 2000-2016 until the 2017 deadline was front and center.  
11 Documents state that the outstanding searches pursuant to the NARA agreement with the Board  
12 and the CIA of 1998 were continued into 1999, but Plaintiffs have been unable to find any  
13 documents stating that these searches were completed nor that any new searches were conducted  
14 after 1999. Based on information and belief, plaintiffs contend that the Executive Office of the  
15 President are now impermissibly five years late in releasing in full the remainder of the files in  
16 the JFK Collection.  
17  
18

19 112. Plaintiffs are informed and believe and allege that NARA did virtually nothing  
20 regarding evaluating the files for disclosure between 1999 and 2013, but for a tiny bump in  
21 activity in the 2003-2004 period; that NARA created a "four-person team" only in 2013 to  
22 prepare for the 2017 release; and NARA did not take any actions to pursue the outstanding  
23 ARRB record search requests since 1999, notwithstanding the representations to the American  
24 public in the Federal Register that NARA was the successor in function to the ARRB. NARA  
25 did virtually nothing since 1999 to continue the ARRB's work to recover assassination records  
26 that researchers have advised NARA are believed to be held by government agencies.  
27  
28

1 **Moreover**, NARA did virtually nothing to search for missing and destroyed files between 1998  
2 and the present, even though such files can also be found in computer databases. NARA did  
3 nothing to seek assistance from the Attorney General to enforce the search for missing and  
4 destroyed files between 1998 and the present pursuant to section 10 of the Act. Documentation  
5 supporting these contentions was previously provided to the court in the Simpich Declaration,  
6 Exhibit B, and this documentation is incorporated by reference.

8 113. Jeremy Gunn, former general counsel of the ARRB, had the ARRB take on the  
9 roles of the agencies in writing the analyses of whether a document was an assassination record  
10 or not. The letter supporting this contention was previously provided to the court in  
11 the Simpich Declaration, Exhibit C, and is incorporated by reference. In 2000, NARA stated  
12 that it was the successor in function to the ARRB to maintain and supplement the collection  
13 under the provisions of the JFK Act. 65 FR 39550 (June 27, 2000). These functions that NARA  
14 said it had assumed necessarily include the tasks authorized by Mr. Gunn.

16 114. Public document RIF #104-10331-10062 states that CIA officers urged that  
17 certain documents not be released to the Board in the 1990s, stating they didn't want "the  
18 camel's nose under the tent." The public document supporting this contention was previously  
19 provided to the court in the Simpich Declaration, Exhibit D, and is incorporated by reference.

21 115. Plaintiffs are informed and believe and allege that Defendants failed to supply  
22 evidence that the President obtained Department of Justice concurrence for the Biden  
23 memoranda as required by 1 CFR Part 19. While a DOJ memo authorizing the six month  
24 postponement by former President Trump was produced in connection with a FOIA request for  
25 records pertaining to the 2017 postponement, no such memos have been produced in connection  
26 with a FOIA requests for such records in connection with the Biden postponements that were  
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1 filed by Mr. Schnapf. By failing to obtain such mandated DOJ concurrence, Defendant Biden  
2 acted ultra vires when he issued the Biden Memoranda .

3 116. As the “successor in function” to the ARRB, NARA is required by sections 5 and  
4 7 of the JFK Act to undertake mandatory duties and obligations to review possible additional  
5 assassination records brought to its attention, follow up with the outstanding search requests  
6 tendered by the ARRB to certain government office, determine if such documents constitute  
7 assassination record pursuant to 36 CFR 1290 if there is any uncertainty, and then determine if the  
8 records must be disclosed. NARA general counsel Gary Stern advised researchers to inform  
9 NARA of any assassination records that are not in the collection. From 1998 to the present,  
10 NARA violated these mandatory duties and obligations, unlawfully withheld and/or unreasonably  
11 delayed compliance with the Act, and constitutes an ongoing failure to abide by the terms of the  
12 JFK Act that continues to impair the ability of MFF members from obtaining information about  
13 the circumstances surrounding the assassination of President Kennedy in contravention of the  
14 express goals of Congress. These actions of NARA are unwarranted by the facts to the extent that  
15 the facts are subject to a trial de novo by the reviewing court, and acted in a manner that was  
16 arbitrary, capricious and contrary to law as described in this complaint. Plaintiffs also allege that  
17 if any of the acts alleged in this complaint are determined by the court to be discretionary rather  
18 than mandatory, that such action constitutes an abuse of discretion.

19 117. NARA has selectively implemented some of the Review Board functions but  
20 failed to perform others. In doing so, NARA has acted arbitrarily and capriciously and violated  
21 the APA.

22 118. Neither the President nor NARA have the power to withhold the legislative  
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1 branch records described in Section 9(c)(4)(B) of the JFK Records Act. The Defendants have a  
2 mandatory, non-discretionary duty to release them immediately, as the time limit expired on  
3 10/26/17. NARA's failure to release these documents is a failure to act that constitutes agency  
4 action as defined in 5 U.S.C. 551(13) and is subject to judicial review.

5 119. In 2000, NARA moved the former Review Board definition of assassination  
6 records to a new subpart H (36 CFR 1290) to provide guidance for processing assassination  
7 records . 65 Fed. Reg. 39550 (June 27, 2000). Defendants have a custom, practice and policy of  
8 failing to apply the proper definition of "assassination records" in response to requests for  
9 records alleged to be assassination records. Plaintiffs' alleged that instead of applying the  
10 assassination records definition to such requests, NARA improperly advises citizens to use  
11 FOIA to find "assassination records" that are not in the JFK Collection; of failing to advise  
12 citizens seeking to make additional assassination records public to invoke the JFK Records Act  
13 rather to file an action based on FOIA or MDR (mandatory declassification of records), and that  
14 NARA has also failed to respond to their requests to take action to include and/or review  
15 additional assassination records to the JFK Collection. The result has been a 25-year delay in  
16 obtaining additional assassination records from 1998 to the present, and an equivalent delay in  
17 properly advising citizens of the best way to obtain the release of additional assassination  
18 records, despite NARA's assurance to the public in 65 FR 39550 that NARA would maintain and  
19 supplement the assassination records. This failure to apply its own Subpart H regulations to  
20 requests involving assassination constitutes arbitrary and capricious action pursuant to 5 U.S.C.  
21 706(2)(A) and is subject to judicial review.

22 120. A memorandum of understanding (MOU) signed by the CIA, the ARRB and NARA  
23 in 1998 constituted an agreement by all three parties that additional documents would be sought  
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1 by the CIA, and a mandatory, non-discretionary duty of NARA to enforce this MOU. Plaintiffs  
2 contend that all of these records have not yet been obtained, and that similar MOUs were signed  
3 by additional agencies whose identities are still unknown.

4 121. As NARA is the successor in function to the ARRB, NARA has the duty to assure  
5 compliance from all agencies that signed the aforementioned declarations of compliance and all  
6 agencies that failed to sign the declaration or who signed it in a faulty manner.

8 Additional Considerations- President Biden

9 122. The President authorized the government offices to issue Transparency Plans that  
10 provide for final postponement decisions to be made by the NDC. in contravention of § 9(d)(1)  
11 that the President has the sole and non-delegable authority to make disclosure or postponement  
12 decisions. President Biden acted ultra vires when he approved the use of Transparency Plans that  
13 do not comply with the postponement criteria of section 6 of the Act and unlawfully delegating  
14 postponement authority to the NDC.

16 123. When the agencies requested President Biden to certify further postponements of  
17 records, these requests simply identified the harms but did not explain how the gravity of such  
18 identifiable harms outweighed the public interest on a record-by-record basis. By accepting such  
19 requests for postponement based only first part of the two-part test for postponement (identifiable  
20 harm), President Biden essentially assumed that the existence of such harm automatically  
21 outweighed the public interest in disclosure. But this is not what the statute requires. Simply  
22 identifying a harm is not sufficient. Instead, the President is required to explain “how” such  
23 identifiable harm was of such gravity that it outweighed the strong public interest in disclosure.  
24 Congress required this two-part postponement test so that the American people could be confident  
25 that the government was not hiding information about the assassination records which was the  
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principal reason the JFK Act was enacted. In certifying further postponements without requiring agencies to satisfy the two-part postponement test of section 5(g)(2)(D), President Biden acted ultra vires and his actions are subject to non-statutory review.

124. Plaintiffs have suffered additional injury as a result of President Biden issuing the Biden Memoranda requiring further postponement of Assassination Records in violation of the JFK Act. As a result of the unlawful withholding of Assassination Records, Plaintiff MFF has been and continues to be unable to include approximately 15,000 postponed Assassination Records in its collection, thereby depriving Plaintiffs Thompson and Aguilar along with other MFF members, researchers and historians with the ability to learn about the assassination. Plaintiff MFF has also forced to divert its resources from its core mission and instead devote time analyzing which Assassination Records were redacted or withheld-in-full by the unlawful Biden Memoranda and to communicate with members which Assassination Records were partially redacted or withheld in full to its member and website visitors.

125. The failure of the Defendant NARA to adequately maintain the Collection has forced Plaintiff MFF to divert resources from its core mission and instead devote time analyzing which Assassination Records were partially redacted or withheld in full by the unlawful Biden Memoranda. Likewise, Plaintiffs Thompson and Aguilar have been prevented from reviewing Assassination Records unlawfully redacted or withheld-in-full by the Biden Memoranda.

126. Accordingly, Plaintiffs satisfy the “zone of interest” because they have and will continue to suffer irreparable injury if the Biden Memoranda is not declared void and unlawful, as well as for each of the wrongful actions set forth herein.

127. Plaintiffs have requested Defendant President Biden to comply with the JFK Records Act to no avail and has no further right of review or appeal except to file this lawsuit.

1           128. Plaintiffs have no adequate remedy at law and will suffer irreparable injury if the  
2 Biden Memoranda are not declared void and unlawful, or if the Defendants are not enjoined from  
3 continuing to withhold Assassination Records that do not qualify for postponement under the  
4 section 6 criteria, as well as for each of the wrongful actions set forth herein.

5           129. As stated in Paragraph 61 of this complaint – identified documents still not in the  
6 JFK Collection in violation of 44 USC 2905 et seq. (hereinafter referred to as “2905 violations”)  
7 include but are not limited to the Joannides documents in section a, the Marcello in section b,  
8 and the missing attachments to assassination records described in section e.

9           130. Other 2905 violations include the assassination records identified by Lt. Terri  
10 Pike and never included in the JFK Collection due to, among other things, unlawful actions by  
11 ONI that resulted in its failure to consistently use the JFK Records Act in reviewing its records.  
12 During the time of the ARRB, the initial point of contact at ONI, LCDR Pike, identified about  
13 125 cubic feet of documents that directly relate and about 950 cubic feet which were potentially  
14 relevant to the ARRB inquiry. Subsequently, she was relieved, disciplined for unauthorized  
15 travel to other document storage facilities, and the ONI concluded no documents were relevant.  
16 This decision was communicated by ADM Taylor. The request for Taylor files yielded a single  
17 document, an unsigned affidavit from Taylor to SEC DEF McNamara saying ONI never used  
18 LHO as an ONI agent. This incident reveals aggressive and abusive disregard of the JFK  
19 Records Act and could be used as support for agency obstruction.

20           131. Other 2905 violations include the missing ONI 119 Reports and the USMC CI  
21 report, mentioned in the correspondence files of the ONI and ARRB. A NARA representative  
22 stated in 2014 that “we have not been able to confirm that those materials were transferred to our  
23 custody. Our research indicates that the 119 Reports may be located among  
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1 the ONI Defector files. however we cannot confirm that they are among the files transferred to  
2 our custody.”

3 132. Other 2905 violations include the documents labeled as “NBR” and not yet  
4 included in the JFK Collection.

5 133. Other 2905 violations include missing, destroyed and removed documents  
6 identified in the ARRB Final Report.

7 134. Other 2905 violations include lists of missing, destroyed and removed documents  
8 cited in a recent letter from Plaintiffs to DOJ.

9 135. Other 2905 violations include a list prepared by Steve Tilley of NARA in 1995.

10 136. Other 2905 violations include a tranche of documents that the ARRB identified as  
11 assassination records which were removed from the custody of the JFK Library after the  
12 requested by the ARRB and given to former RFK aide Walter Sheridan who then transferred  
13 custody of these assassination records to NBC. NBC denied ARRB’s request to review these  
14 records and has continued to withhold these assassination records from defendant NARA.

15 137. Other 2905 violations include a photograph and related visual images obtained by  
16 NBC cameramen James Darnell and David Weigman that provide an “alleged alibi” depicting  
17 Lee Harvey Oswald on the steps of the Texas School Book Depository at the time of the  
18 President’s shooting – these visual images are presently in the custody of NBC and the Sixth  
19 Floor Museum, and possibly the FBI as well – both NBC and the Sixth Floor Museum deny  
20 access to researchers seeking to scientifically determine if these images actually depict the  
21 alleged assassin and provide a viable alibi.

22 138. Other 2905 violations include the AMOT/AMFAST/AMCHEER files and/or an  
23 inventory of said files. These files are the records of the anti-Castro intelligence services that  
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1 was initially created to take over the Cuban government after the Bay of Pigs and continued in  
2 existence until it was disbanded in the 1970s. About one million records are estimated to be  
3 missing – only scattered excerpts remain.

4 139. Other 2905 violations include the destruction of 1965-1970 Secret Service records  
5 by Special Agent James Mastrovito.

6 140. Other 2905 violations include the executive sessions and transcripts missing from  
7 the records of the Church Committee and the HSCA.

8 141. Other 2905 violations include the missing photographs from the LILYRIC file  
9 documenting the entry of persons into the Soviet embassy compound in Mexico City.

10 142. Other 2905 violations include CIA Staff D documents created in 1963 during the  
11 period of the time of the Oswald visit to the Soviet and Cuban embassies in Mexico City,  
12 documented as missing but could possibly be located by a review of CIA and NSA holdings.

13 143. Other 2905 violations include the CIA LIFEAT files – audio files in 1963 created in  
14 Mexico City and now missing.

15 144. Other 2905 violations include the Win Scott file – the chief of the CIA in Mexico  
16 City – some portions are released, other portions are postponed, and others are still missing –  
17 most famously, the tape of a voice that is allegedly Oswald calling the Mexico City Soviet  
18 embassy in the September 27-October 1, 1963 period – that tape was documented as existing  
19 after the assassination and is now missing.

20 145. Other 2905 violations include the FBI documents seized during the WC  
21 investigation of Lee Harvey Oswald. These documents are identifiable (LHO's school and  
22 employment records for specific schools and specific companies), relevant and have not  
23 surfaced. There is ample independent corroboration that the records were seized and the agents  
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1 identified themselves as FBI. If the records have been withheld, they should be released. In this  
2 case, the originals were taken and belonged to the schools, not to the FBI. As such, they should  
3 have been returned, not destroyed according to routine records retention policies.

4 146. Other 2905 violations include the Social Security Records for Lee Harvey  
5 Oswald's employment prior to Marine Corps service: On July 28, 1978 the SSA responded to  
6 the HSCA request for access to all files and documents concerning or referring to LHO and  
7 Marina Oswald. The response included 36 numbered paragraphs of specifically identified  
8 materials. Paragraph 23 was "copies of three pages of the Warren Commission Report re  
9 employment of Lee Harvey Oswald prior to service in the Marine Corps."

10 147. Instead of sending or at least identifying the underlying IRS or SSA documents  
11 for this period, as was done for every other paragraph, they sent a copy of three pages from the  
12 Warren Commission Report. While both IRS and SSA records had special exemptions from the  
13 JFK Records Collection Act, this response to the HSCA confirms that specific documents existed  
14 regarding LHO employment prior to service in the Marine Corps. These documents should be  
15 identified and summarized to the extent permitted by the Act, just as SSA did with the other  
16 periods of LHO's life.

17 148. Office of Naval Intelligence files (some collected by Lt Commander Pike and any  
18 files on Director of Naval Intelligence Rear Admiral Rufus Taylor from 1959-1964).

19 149. Other 2905 violations include the Situation Reports (SITREPS) from November  
20 1963 through March 1964 containing information about efforts of the CIA Miami Station to  
21 investigate Cuban links to the murder of President Kennedy. In a March 22, 1977 memo by the  
22 man who was in charge of this investigation- Donald R Heath to the HSCA, Mr. Heath said "The  
23 SITREPS had a Headquarters file category classification number on them; for I saw them in  
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1973 in folders in the office of David McLean, a Latin American Division historian. I believe these SITREPS can be retrieved with the help of document. and file retrieval specialists at IP/CFS, Room GC 52.” These SITREPS are now missing.

**FIRST CAUSE OF ACTION**  
**(Violation of APA)**  
**(As to Defendant NARA)**

150. The foregoing allegations are repeated and incorporated as though fully set forth herein.

151. Defendant NARA is an “agency” under the APA.<sup>91</sup>

152. The implementation of the Biden Memoranda by redacting or withholding in full Assassination Records constitutes “[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court.”<sup>92</sup>

153. The APA requires that a court “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious... or otherwise not in accordance with law.”<sup>93</sup>

154. Neither the JFK Act from which Defendant NARA derives its authority to administer the Act nor the APA authorizes Defendant to take action based on less stringent criteria not appearing in the Act or procedures that contravene the Act. For example, for Keys 1 and 2 of the CIA Transparency Plan for identifying names of intelligence agents or employees, the Transparency Event is the death of the individual of the person’s connection with the CIA

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<sup>91</sup> 5 U.S.C. § 551(1).

<sup>92</sup> Id. at § 704.

<sup>93</sup> Id. at § 706(2)(A).



has been officially acknowledged. However, the Act does not allow individuals' names to be withheld until death. Instead, the law provides that their names may be postponed if there is clear and convincing evidence that disclosure "would impose a substantial risk of harm to that person." JFK Act, Section 6(2). When the FBI tried to withhold the names of individuals in 2017, NARA stated in a 8/21/17 letter that "while there may be a residual privacy interest by the individuals named, it is difficult to imagine circumstances under which an individual could be harmed by the release of their name in a file in the JFK Collection. The standard set by the JFK Act and the Assassination Records Review Board during their deliberations is a high one: there has to be 'clear and convincing evidence' of a 'substantial risk of harm' and any invasion of privacy is 'so substantial that it outweighs the public interest.' Barring specific document-level justifications for continued postponement, NARA recommends that appeals of this type of information be denied."

154a. Furthermore, except for Key 8 in the CIA Transparency Plan, there is no role for the President in determining if the information may in those records may be postponed, in direct violation of 5(g)(2)(D) of the Act. The Act confers that "sole and non-delegable authority" upon the President and only the President. As currently designed, the Transparency Plans return the power to make postponement decisions to the agencies and NARA (through the National Declassification Center) in violation of the goals and express terms of the Act. The Transparency Plans do not "merely set forth when (a) postponement will end"; rather, the Transparency Plans identify Transparency Events or conditions that will trigger an evaluation or risk assessment to determine if a particular record can be released. For example, the CIA Transparency Plan provides that for Keys 1-3, CIA would evaluate if the information could be released in consultation with NARA and the CIA may conduct a risk assessment in determining

1 if the information may be released. Thus, the fact that the event occurs does not mean that the  
2 postponed information will be released.

3 155. Defendant NARA's implementation of the Biden Memoranda by withholding  
4 Assassination Records from disclosure is arbitrary, capricious and contrary to law because the  
5 Biden Memoranda violated the express terms of the Act and the redaction or withholding of  
6 Assassination Records in full is based on less stringent criteria not appearing in the Act.

8 156. The Biden Memoranda direct Defendant NARA to exercise its authority in ways  
9 that are arbitrary and capricious, and contrary to the JFK Act in violation of the APA.<sup>94</sup>

10 157. Defendant NARA cannot implement the Biden Memoranda without violating the  
11 JFK Act from which it derives its authority over Assassination Records and the APA.

13 158. Plaintiffs and their members have no adequate remedy at law and have and will  
14 suffer irreparable injury if Defendant NARA continues to comply with the Biden Memoranda.

15 159. The public interest favors entry of an injunction barring Defendant NARA from  
16 implementing the Biden Memoranda that violated the express terms of JFK Act. Implementation  
17 will result in unlawful delayed release of Assassination Records in contravention of Congress'  
18 express command for prompt disclosure.

20 160. Because the Biden Memoranda direct agencies to violate the law and is contrary  
21 to congressional intent, this Court should declare that Defendant NARA's implementation of the  
22 Biden Memoranda withholding assassination records is unlawful and enjoin Defendant NARA  
23 from continuing to implement the Biden Memoranda.

25 **SECOND CAUSE OF ACTION**  
26 **(5 USC §701, et seq./mandamus re JFK Records Act)**  
27 **(As to Defendant NARA)**

28 <sup>94</sup> Id. at § 706.

1           161. The foregoing allegations are repeated and incorporated as though fully set forth  
2 herein.

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4           162. Defendant NARA has ministerial non-discretionary duties pursuant to the JFK  
5 Act as follows:

6           a. The JFK Records Act mandates that the JFK Collection **shall** include a  
7 central directory comprised of identification aids created for each record transmitted to  
8 Defendant NARA through the Archivist.<sup>95</sup>

9  
10           b. The JFK Records Act mandates that the JFK Collection **shall** be made  
11 available to the public.<sup>96</sup>

12           c. The JFK Records Act mandates that all postponed or redacted  
13 Assassination Records **shall** be reviewed periodically by the originating agency and Defendant  
14 NARA acting through the Archivist consistent with the recommendations of the Review Board.<sup>97</sup>

15  
16           d. The JFK provides for periodic review for “additional assassination  
17 records.”<sup>98</sup>

18           e. The JFK Records Act mandates that all certifications to postpone  
19 Assassination Records **shall** be accompanied with an unclassified written description of the  
20 reason for such continued postponement. Such description **shall** be published in the Federal  
21 Register.<sup>99</sup>

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26 <sup>95</sup> 44 U.S.C. 2107 § 4(a)(2)(B).

27 <sup>96</sup> Id. at § 4(d)(1).

28 <sup>97</sup> Id. at § 5(g)(1).

<sup>98</sup> Id. at § 5(g)(2)(A).

<sup>99</sup> Id. at § 5(g)(2)(B).



1 f. Section 9(d)(1) of the JFK Records Act mandates that in the aftermath of  
2 any disclosure or postponement findings of the ARRB, the President has the “sole and non-  
3 delegable authority to require the disclosure or postponement of such record or information  
4 under the standards set forth in Section 6”.

5 g. Section 6(2) of the JFK Records Act mandates that the release of the  
6 names of individuals in assassination records may be postponed if there is clear and convincing  
7 evidence that disclosure “would impose a substantial risk of harm to that person.” JFK Act,  
8 Section 6(2).  
9

10 h. NARA cannot permit the use of less stringent standards for the  
11 postponement of the release of assassination records than the standards promulgated by the JFK  
12 Records Act.  
13

14 163. Defendant NARA must be enjoined from issuing any certification to Congress  
15 that all Assassination Records have been obtained and that all obligations under the JFK Act  
16 completed until Defendant NARA completes the outstanding Assassination Records searches  
17 requests to ensure that all Assassination Records have been provided by all the agencies. Any  
18 certification made without such a search and review would be arbitrary and capricious, void and  
19 *ultra vires*.  
20

21 164. Defendant NARA has failed to perform its ministerial non-discretionary duties  
22 pursuant to the JFK Records Act as follows:  
23

24 a. Defendant NARA has failed to properly maintain the "central directory" of  
25 identification aids.

26 b. Defendant NARA has a duty to release the legislative branch records, as  
27 the deadline for the legislative branch to seek an extension expired on 10/26/17.  
28

- 1 c. Defendant NARA has a duty that in the aftermath of any disclosure or postponement  
2 findings of the ARRB, the President has the “sole and non-delegable authority to require  
3 the disclosure or postponement of such record or information under the standards set  
4 forth in Section 6”.
- 5 d. Defendant has a duty to ensure that the release of the names of individuals in  
6 assassination records is not postponed unless there is clear and convincing evidence that  
7 disclosure “would impose a substantial risk of harm to that person.” JFK Act, Section  
8 6(2).
- 9 e. NARA cannot permit the use of less stringent standards for the postponement of the  
10 release of assassination records than the standards promulgated by the JFK Records Act.

11 165. Defendant NARA has the present ability to perform the above-described duties.

12 166. Plaintiffs previously requested Defendant NARA to correct the deficiencies in the  
13 Collection and to complete the outstanding Assassination Records searches with no response.

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17 **THIRD CAUSE OF ACTION**  
18 **(Violations of Federal Records Act)**  
19 **(As to Defendant NARA)**  
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21  
22 167. The foregoing allegations are repeated and incorporated as though fully set forth  
23 herein.

24 168. The ARRB Final Report identified, *inter alia*, missing, destroyed, and/or removed  
25 Assassination Records, and specifically disclosed the destruction of Assassination Records by  
26 certain agencies.  
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1           169. Under the FRA, Defendant NARA acting through the Archivist has a ministerial  
2 non-discretionary duty to instruct the relevant agencies to conduct a reasonable search and  
3 review for missing, destroyed, or removed federal records.<sup>100</sup> When Defendant NARA becomes  
4 aware of missing or threatened unlawful destruction or removed records in the custody of an  
5 agency, Defendant NARA must notify the agency head in an attempt to recover such records. If  
6 the agency head refuses to pursue legal remedies, Defendant NARA **must** request that the  
7 Attorney General take action and must inform Congress that he has made this request.<sup>101</sup>

9           170. The FRA also mandates that each agency head shall establish and maintain an  
10 active, continuing program for management of federal records<sup>102</sup> and shall establish safeguards  
11 against the removal or loss of records.<sup>103</sup>

13           171. Upon information and belief, Defendant NARA has not requested the assistance  
14 of the Attorney General to complete these Assassination Record Searches as required by the  
15 FRA.

17           172. Upon information and belief, Defendant NARA has not referred to the Attorney  
18 General for enforcement of the destruction, loss, or removal of Assassination Records by certain  
19 agencies identified by the ARRB as required by the FRA.

21           173. The Plaintiffs have a direct interest in ensuring that these records are maintained,  
22 preserved, and made accessible to the public in accordance with federal law.

23           174. By failing to pursue the destroyed, missing, or removed documents, Defendant  
24 NARA is violating its ministerial non-discretionary duties to request that the Attorney General

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26 <sup>100</sup> 44 U.S.C. at §2115(b).

27 <sup>101</sup> Id. at § 2905(a).

28 <sup>102</sup> Id. at § 3102.

<sup>103</sup> Id. at § 3105.



1 initiate action, or otherwise seek legal redress. The failure of Defendant NARA to perform these  
2 ministerial non-discretionary duties has harmed and continue to harm Plaintiffs by denying  
3 Plaintiffs access to these important historical documents and impairing the ability of Plaintiff  
4 MFF from carrying out its core mission.

5 175. Plaintiffs are therefore entitled to relief in the form of a declaratory order that  
6 Defendant NARA is in violation of its statutory responsibilities, and the issuance of an injunctive  
7 order compelling Defendant NARA to request that the Attorney General initiate action, or seek  
8 other legal redress, to recover these Assassination Records.

9 176. Defendant NARA must be enjoined from certifying that all Assassination Records  
10 have been obtained until Defendant NARA through the Archivist makes the requisite showing  
11 that it has complied with its duties to ensure that all Assassination Records have been provided  
12 by all the relevant agencies.

#### 13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiffs pray that this Court:

- 15 1. Declare that the Biden Memoranda violates the JFK Records Act.
- 16 2. Declare that the Biden Memoranda were issued *ultra vires* by unlawfully  
17 certifying the postponement of public disclosure of an undetermined number of unidentified  
18 Assassination Records.
- 19 3. Declare that the Defendant President Biden acted arbitrarily and capriciously  
20 when he certified postponement of the Assassination Records in his Biden Memoranda and  
21 directed Defendant NARA comply with the Biden Memoranda.
- 22 4. Declare that Defendant NARA acted arbitrary and capriciously when it complied  
23 with the unlawful Biden Memoranda by withholding Assassination Records from disclosure.

1           5.       Immediately, or as soon as the matter can be heard, issue an order compelling  
2 Defendants to comply with the JFK Records Act by doing the following:

3               a.       For each withheld Assassination Record, Defendant President Biden shall  
4 issue an unclassified explanation certification that specifies the reasons for continued  
5 postponement pursuant to Sections 5, 6 and 9 of the JFK Records Act;

6               b.       For each withheld Assassination Record, require Defendant President  
7 Biden to demonstrate using clear and convincing evidence the identifiable harm posed by the  
8 potential disclosure of such Assassination Record accompanied by an explanation of how the  
9 section 6 identifiable harm outweighs the public interest in disclosure. If the Court finds that the  
10 proposed grounds for postponement do not meet the statutory criteria, the Court should order the  
11 release of such Assassination Records to the American people;  
12

13               c.       Defendant NARA shall initiate and complete a search for other  
14 Assassination Records whose identification aids do not appear in the central directory and then  
15 certify that such a search was complete;  
16

17               d.       Defendant NARA shall remove all unjustified redactions from the  
18 Identification Aids in the central directory based on the declassification criteria of section 6 of  
19 the JFK Act;  
20

21               e.       Defendant NARA shall conduct a new search based on the standards  
22 created by the JFK Records Act and the Federal Records Act for the missing Assassination  
23 Records identified in this complaint and to complete the outstanding search requests of the ARRB  
24 (set forth in paragraphs 53-54 and 60-66);  
25

26               f.       Defendant NARA shall correct the deficiencies in the central directory (set  
27 forth in paragraphs 56-57) so that it includes all identification aids and ensure that all  
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1 identification aids contain accurate notation of current release status (i.e., released in full, partially  
2 redacted, or withheld-in full);

3 g. Defendant NARA shall complete the ARRB Compliance Program (set  
4 forth in paragraph 60);

5 h. Defendant NARA shall verify that there are no additional Assassination  
6 Records withheld in full beyond the 520 Assassination Records withheld under Sections 10 and  
7 11 of the Act by reviewing the records identified in paragraphs 58(a)-(c), and verify status to  
8 Plaintiffs;

9 i. Defendant NARA shall establish a procedure pursuant to the JFK Records  
10 Act and the Federal Records Act to ensure the public release of all Assassination Records at the  
11 earliest possible date.

12 j. Defendant NARA shall make the requisite showing that it has complied  
13 with its duties under the FRA to obtain missing, altered or destroyed documents to ensure that all  
14 Assassination Records have been provided by all the relevant agencies.

15 k. Defendant NARA shall be enjoined from any certification that “all  
16 Assassination Records” have been obtained until proper periodic reviews are conducted and all of  
17 the above-described duties have been fully completed.

18 l. Defendant NARA shall release the legislative branch records forthwith.

19 6. Enter an order declaring pursuant to 28 USC 2201 that Defendants have failed to  
20 comply with their obligations under the JFK Act by continuing to withhold Assassination  
21 Records.

22 7. Issue a peremptory writ of mandamus commanding Defendants to comply with  
23 the JFK Records Act.



1           8.       Award Plaintiffs' attorney's fees and the costs of this proceeding, pursuant to 28  
2 U.S.C. § 2412(d).

3           9.       Expedite this action in every way pursuant to 28 U.S.C. § 1657(a).

4           10.      Award such other and further relief as the Court may deem just and proper.

5 Dated: August 14, 2023

6  
7           \_\_\_\_\_/s/\_\_\_\_\_  
8 William M. Simpich  
9 Attorney for Plaintiffs

10          \_\_\_\_\_/s/\_\_\_\_\_  
11 Lawrence Schnapf  
12 Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARY FERRELL FOUNDATION, INC.,  
et al.,

Plaintiff,

v.

JOSEPH R. BIDEN, et al.,

Defendant.

Case No. 22-cv-06176-RS

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS AND DENYING  
PRELIMINARY INJUNCTION**

**I. INTRODUCTION**

In this action, Plaintiffs, the Mary Ferrell Foundation, Josiah Thompson, and Gary Aguilar, aver that Defendants, President Biden and the National Archives and Records Administration (“NARA”), have failed to comply with the President John F. Kennedy Assassination Records Collection Act of 1992 (“JFK Act”). Enacted to encourage transparency, the JFK Act requires, subject to certain limitations, the disclosure of records related to the assassination of President Kennedy. Because Defendants have continued to withhold some assassination records, Plaintiffs’ Second Amended Complaint (“SAC”) asserts five claims: (1) an *ultra vires* claim for injunctive and declaratory relief against President Biden; (2) a mandamus claim against President Biden; (3) an Administrative Procedure Act (“APA”) claim alleging arbitrary and capricious action by NARA; (4) an APA/mandamus claim to compel NARA to take certain actions; and (5) a claim for a declaratory judgment that NARA has violated the Federal Records Act. Plaintiffs have also moved for a preliminary injunction, seeking (1) a declaration that NARA is the successor in function to the Assassination Records Review Board (“ARRB”); (2) an order for NARA to

1 enforce a 1998 memorandum of understanding; (3) an order that NARA search for additional  
2 assassination records; and (4) an order pausing implementation of Transparency Plans that were  
3 detailed in Presidential memoranda. Defendants oppose, and have moved to dismiss all claims  
4 under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

5 For the reasons set forth below, Defendants' motion to dismiss is granted except as to  
6 portions of the APA/mandamus claim (Count Four) and the Federal Records Act claim (Count  
7 Five), and Plaintiffs' motion for a preliminary injunction is denied.

## 8 **II. BACKGROUND<sup>1</sup>**

9 The tragic assassination of President Kennedy on November 22, 1963, as he rode in a  
10 motorcade through downtown Dallas, Texas, has understandably attracted widespread and  
11 enduring public attention. In the immediate aftermath, several formal government investigations  
12 were commenced, including those conducted by the Warren Commission, the Rockefeller  
13 Commission, the Church Commission, and the House Select Committee on Assassinations.  
14 Though those investigations concluded that Lee Harvey Oswald was the sole culprit responsible  
15 for the assassination, historians and members of the public have continued to seek more  
16 information about how such a tragedy could have occurred.

17 Acknowledging this public desire for information, Congress enacted the JFK Act in 1992,  
18 which contemplated the creation of a collection of all records held by the federal government  
19 related to President Kennedy's assassination ("assassination records") and sought to require the  
20 "expeditious" disclosure of those records. JFK Act § 2(b)(2). The Act set a 25-year deadline for  
21 disclosure of all assassination records, unless "continued postponement [of the record was] made  
22 necessary by an identifiable harm to military defense, intelligence operations, or conduct of  
23 foreign relations" that was "of such gravity that it outweigh[ed] the public interest in disclosure."  
24 JFK Act § 5(g)(2)(D). To assist in this endeavor, the act established the Assassination Records  
25 Review Board ("ARRB"), an independent agency tasked with reviewing requests to postpone the

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27 <sup>1</sup> This section is based on the averments in the SAC, which must be taken as true for purposes of  
the motion to dismiss. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).



release of assassination records. JFK Act § 7.

On October 26, 2017, the day of the 25-year deadline contemplated in the JFK Act, President Trump issued a memorandum exercising his authority to postpone the release of certain records pursuant to Section 5(g)(2)(D). President Trump issued an additional memorandum in April 2018 continuing postponement of certain records. After assuming office, President Biden issued three memoranda in October 2021, December 2022, and June 2023 (the “Biden Memoranda”<sup>2</sup>), again continuing postponement of certain records. The December 2022 and June 2023 memoranda authorized the use of Transparency Plans, which were plans created by each agency “to ensure that information would continue to be disclosed over time as the identified harm associated with release of the information dissipates.” December 2022 Biden Memo<sup>3</sup> at 77,969.

Plaintiff Mary Ferrell Foundation is a non-profit organization that “maintains the largest searchable electronic collection of materials related to the JFK assassination.” Dkt. 44 (“SAC”) ¶ 15. Its website is “often the first place that researchers, authors and historians visit to search for” materials related to the assassination. *Id.* Members of the Mary Ferrell Foundation, including Plaintiffs Josiah Thompson and Gary Aguilar, “have long advocated for the preservation, declassification, and public availability of Assassination Records.” *Id.* ¶¶ 16–18.

Defendant NARA is an independent agency, supervised by the Archivist of the United States, that preserves and makes publicly accessible certain federal government records. 44 U.S.C. § 2102.

### III.LEGAL STANDARD

#### A. Rule 12(b)(1)

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) challenges the court’s

<sup>2</sup> The June 2023 memorandum, issued after briefing was concluded, raises the same issues and largely adopts the same position as the December 2022 memorandum. The June 2023 memorandum therefore need not be separately addressed.

<sup>3</sup> Certifications Regarding Disclosure of Information in Certain Records Related to the Assassination of President John F. Kennedy, 87 Fed. Reg. 77967 (Dec. 15, 2022) (“December 2022 Biden Memo”).

subject-matter jurisdiction over the asserted claims. The plaintiff bears the burden of proving jurisdiction at the time the action is commenced. *See Tosco Corp. v. Cmtys. for Better Env't*, 236 F.3d 495, 499 (9th Cir. 2001), *overruled on other grounds by Hertz Corp. v. Friend*, 559 U.S. 77 (2010). A facial attack under Rule 12(b)(1) “asserts that the allegations contained in the complaint are insufficient on their face to invoke federal jurisdiction.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). When considering this type of challenge, the court is required to “accept as true the allegations of the complaint.” *United States ex rel. Lujan v. Hughes Aircraft Co.*, 243 F.3d 1181, 1189 (9th Cir. 2001).

#### **B. Rule 12(b)(6)**

Federal Rule of Civil Procedure 12(b)(6) governs motions to dismiss for failure to state a claim. A complaint must include “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). While “detailed factual allegations” are not required, a complaint must have sufficient factual allegations to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 570 (2007)). Dismissal under Rule 12(b)(6) may be based on either the “lack of a cognizable legal theory” or on “the absence of sufficient facts alleged” under a cognizable legal theory. *UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 718 F.3d 1006, 1014 (9th Cir. 2013) (internal quotation marks and citation omitted). When evaluating such a motion, courts generally “accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party.” *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). However, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

### **IV. ANALYSIS**

#### **A. Injunctive, Declaratory, and Mandamus Relief Against the President**

In their first two counts, Plaintiffs seek injunctive, declaratory, and mandamus relief against the President. Defendants oppose, arguing that courts generally do not have jurisdiction to issue such relief against the President—or, alternatively, that even if jurisdiction is theoretically

available as a general matter, it cannot be exercised here.

Defendants are correct that federal courts generally recognize that they lack jurisdiction to issue injunctive relief against the President. *See Hawaii v. Trump*, 859 F.3d 741, 788 (9th Cir.), *vacated on mootness grounds*, 138 S. Ct. 377 (2017) (“Generally, we lack ‘jurisdiction of a bill to enjoin the President in the performance of his official duties.’” (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 802–03 (1992) (plurality opinion))). A plurality of the Supreme Court has determined that such relief is “extraordinary” and should “raise[] judicial eyebrows.” *Franklin*, 505 U.S. at 802. Courts apply this same standard to requests for mandamus relief against the President. *See, e.g., Guerrero v. Clinton*, 157 F.3d 1190, 1191 n.2 (9th Cir. 1998) (applying *Franklin*’s standard for injunctive relief against the President to mandamus relief against the President). As a result, most courts have dismissed or otherwise rejected claims that seek injunctive relief against the President. *See, e.g., Hawaii*, 859 F.3d at 788 (vacating injunction to the extent it ran against the President); *Newdow v. Roberts*, 603 F.3d 1002, 1013 (D.C. Cir. 2010) (affirming dismissal of claims for injunctive relief against the President because “courts do not have jurisdiction to enjoin him”); *Missouri v. Biden*, No. 3:22-CV-01213, 2023 WL 2578260, at \*38 (W.D. La. Mar. 20, 2023) (dismissing claims for injunctive relief against the President because “relief against other federal officials would redress the Plaintiffs’ alleged injuries”); *Juliana v. United States*, 339 F. Supp. 3d 1062, 1079 (D. Or. 2018), *rev’d and remanded on other grounds*, 947 F.3d 1159 (9th Cir. 2020) (dismissing claims for injunctive relief against the President because such relief was not “essential to redressability”).

There are a few limited scenarios, however, where courts have declined to dismiss claims for injunctive relief against the President. A court may be able to require a president to perform a “purely ‘ministerial’ duty,” *See Franklin*, 505 U.S. at 802 (quoting *Mississippi v. Johnson*, 4 Wall. 475, 498–499 (1867)), defined as “one in respect to which nothing is left to discretion.” *Johnson*, 4 Wall. at 498. In other words, ministerial duties admit “no room for the exercise of judgment.” *Id.* at 499. Accordingly, courts have sometimes declined to dismiss claims for injunctive relief where the President is claimed to violate only a ministerial duty. *See, e.g., Saget v. Trump*, 375 F. Supp.



3d 280, 335 (E.D.N.Y. 2019) (refusing to dismiss injunctive relief claim because “enjoining the President and other executive officials from violating the TPS statute is akin to performing a ministerial duty”). Presidential actions may also be reviewed for constitutionality, where there are “specific allegations regarding separation of powers,” *Murphy Co. v. Biden*, 65 F.4th 1122, 1130 (9th Cir. 2023), such as when “‘the presidential action . . . independently violates’ another statute.” *Id.* at 1131 (quoting *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1136 (D.C. Cir. 2002)).

Even if “none of the authority cited by Defendants requires that the President be dismissed,” *CASA de Maryland, Inc. v. Trump*, 355 F. Supp. 3d 307, 329 (D. Md. 2018), several factors counsel in favor of dismissing Plaintiffs’ claims for injunctive and mandamus relief. First, if such relief is even available, enjoining the President would be “extraordinary.” *See Franklin*, 505 U.S. at 802–03. Plaintiffs do not make any constitutional arguments to avoid this concern. *See Murphy*, 65 F.4th at 1130. Second, Plaintiffs have sued both the President and NARA, but an injunction on NARA alone would suffice in redressing the averred injuries caused by the implementation of the Biden Memoranda. *See Juliana*, 339 F. Supp. 3d at 1079.

Third, none of the averred duties are ministerial. Section 5(g)(2)(D) of the JFK Act provides the President with significant discretion to determine that postponement is “made necessary” by national security concerns. JFK Act § 5(g)(2)(D). It states, in relevant part:

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

JFK Act § 5(g)(2)(D).

There is significant “room for the exercise of judgment” by the President here; accordingly, this is not a ministerial duty. *See Mississippi*, 4 Wall. at 499.

Finally, Plaintiffs’ remaining arguments for injunctive relief are unavailing, as many of them assert obligations that are simply not imposed upon the President in the JFK Act. For

instance, contrary to Plaintiffs’ objections, Section 5(g)(2)(D)<sup>4</sup> does not require the President to certify, on a record-by-record basis, that the harm outweighs the public interest in disclosure; apply a clear and convincing evidence standard; or publish an unclassified description of those determinations. Similarly, the President’s approval of the Transparency Plans is not, as Plaintiffs claim, a delegation of the President’s authority to postpone the release of records—it is the Biden Memoranda themselves that postponed the release of each record; the Transparency Plans merely set forth when that postponement will end. Finally, although the JFK Act imposes a duty on the “originating agency” and the Archivist to perform periodic reviews of the postponed releases, JFK Act § 5(g)(1), it imposes no such duty on the President.<sup>5</sup>

As to declaratory relief, a federal court’s jurisdiction is more unsettled. Prior to *Franklin*, which raised jurisdictional concerns with relief against the President, the D.C. Circuit issued a declaratory judgment against the President after determining mandamus relief was warranted to compel a “ministerial” duty. *Nat’l Treasury Emps. Union v. Nixon*, 492 F.2d 587, 616 (D.C. Cir. 1974). The subsequent *Franklin* plurality opinion did not address the availability of declaratory relief, but Justice Scalia opined in a concurrence that “we cannot issue a declaratory judgment against the President.” *Franklin*, 505 U.S. at 827 (Scalia, J., concurring). Some courts have read *Franklin* to find that declaratory relief against the President is generally unavailable. *See, e.g., Swan v. Clinton*, 100 F.3d 973, 977 n.1 (D.C. Cir. 1996) (“Although the following discussion is couched in terms of our ability to grant injunctive relief against the President, similar considerations regarding a court’s power to issue relief against the President himself apply to

<sup>4</sup> Plaintiffs argue that standards for the President’s postponement authority are outlined in Sections 6 and 9(d), but those sections apply to postponement after an initial determination by the ARRB. Section 5(g)(2)(D) is a separate authority that applies after the end of the 25-year deadline and is the authority invoked by the President here.

<sup>5</sup> Plaintiffs also generally aver that the President violated 1 C.F.R. Part 19 by failing to seek concurrence by the Department of Justice for the Biden Memoranda. By its text, however, 1 C.F.R. § 19.2 imposes duties on subordinate executive officials and not the President. If the Attorney General or their designate disapproves of a proposed proclamation, the regulation provides that the proclamation “shall not thereafter be presented to the President unless it is accompanied by a statement of the reasons for such disapproval.” 1 C.F.R. § 19.2(e).



Swan’s request for a declaratory judgment.”). Others, however, have either found to the contrary or decided to let such claims for declaratory judgment survive motions to dismiss. *See, e.g., Stone v. Trump*, 400 F. Supp. 3d 317, 360 (D. Md. 2019). Nonetheless, no court has issued a declaratory judgment against the President following *Franklin* after considering whether it presents a jurisdictional issue, nor has any Circuit definitively considered the issue outside of *Swan*.

Yet the availability of declaratory relief against the President need not be resolved. Plaintiffs’ claims, which are predicated on requirements simply not imposed by the JFK Act, must be dismissed. Section 5(g)(2)(D) only requires the President to certify that continued postponement is “made necessary” by an “identifiable” national security harm “of such gravity that it outweighs the public interest in disclosure.” JFK Act § 5(g)(2)(D), which he did. Whether President Biden considered additional factors in deciding to postpone release of records does not render null his fulfillment of this obligation. Plaintiffs’ remaining arguments for declaratory relief, such as the President unlawfully delegating authority through approval of the Transparency Plans, have been previously addressed and are without merit.

Since none of the actions challenged are ministerial, there is no jurisdiction to grant injunctive or mandamus relief against the President here. Nor do Plaintiffs state a claim for declaratory relief. Because these are failures of law and any amendment would be futile, Counts 1 and 2 are dismissed without leave to amend.

### **B. Arbitrary and Capricious Action**

Plaintiffs aver that NARA has acted arbitrarily and capriciously in violation of the APA. 5 U.S.C. § 706(2)(A). Specifically, Plaintiffs challenge NARA’s (1) issuance of a guidance document in October 2017 to federal agencies titled in part “Procedures for Processing Remaining Postponed Records”; (2) recommendation in 2017 and again in 2021 that the President temporarily postpone release of certain records; (3) advising the President in March 2018 that it concurred with agency requests for continued postponement; (4) review and approval of the use of Transparency Plans; (5) pattern and practice of refusing to look for documents and suggesting that researchers file Freedom of Information Act requests; and (6) implementation of the Biden



Memoranda by withholding or redacting records.

To be reviewable under the APA, a challenged act or decision must constitute “final agency action.” 5 U.S.C. § 704. Finality requires the satisfaction of two conditions: “[f]irst, the action must mark the ‘consummation’ of the agency’s decision-making process”; and “second, the action must be one by which ‘rights or obligations have been determined,’ or from which ‘legal consequences will flow.’” *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). A challenged action must also be “discrete”; a plaintiff cannot bring a “broad programmatic attack” on agency practices. *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004). A plaintiff must therefore “direct its attack against some *particular* ‘agency action’ that causes it harm.” *Whitewater Draw Nat. Res. Conservation Dist. v. Mayorkas*, 5 F.4th 997, 1010 (9th Cir. 2021) (quoting *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 891 (1990)).

None of the first four challenged actions—NARA’s guidance document, presidential recommendations, concurrence with continued postponement requests, and Transparency Plan review—constitute final agency action. *Franklin* is instructive: in evaluating a challenge to the apportionment of seats in the House of Representatives, the Supreme Court held that the report by the Secretary of Commerce to the President, which tabulated state populations from the decennial census, was not final agency action because it carried “no direct consequences for the reapportionment.” 505 U.S. at 798. Instead, the report served “more like a tentative recommendation than a final and binding determination,” and like “the ruling of a subordinate official,” was therefore “not final” and not subject to review under the APA. *Id.* (quoting *Abbott Lab’ys v. Gardner*, 387 U.S. 136, 151 (1967)). Just as the President retained authority to determine population figures in *Franklin* despite the Secretary’s report, so too did the President retain authority to authorize postponement despite NARA’s guidance and advice. *See id.*, JFK Act § 5(g)(2)(D). Even if NARA’s “tentative recommendation[s]” informed the President’s decision, *see id.*, it was ultimately the President who possessed the authority to postpone disclosure—and the President’s decision, not NARA’s recommendations, created the legal consequences of postponing the release of the records at issue. Accordingly, NARA’s actions here do not constitute final

agency action.

The fifth challenged action, NARA’s pattern and practice of refusing to look for documents under the JFK Act, is not a discrete agency action. An APA claim cannot seek the “*wholesale* improvement of [a] program by court decree.” *Lujan*, 497 U.S. at 891. For this reason, averring a pattern and practice is generally insufficient to state a claim under the APA. *See, e.g., Californians for Renewable Energy v. United States Env’t Prot. Agency*, No. C 15-3292 SBA, 2018 WL 1586211, at \*19–\*20 (N.D. Cal. Mar. 30, 2018). While Plaintiffs outline examples of NARA failing to search for documents under the JFK Act, Plaintiffs make clear that they are challenging a pattern and practice of NARA, not NARA’s actions in any individual instance. Therefore, Plaintiffs are not challenging a discrete agency action.<sup>6</sup>

By contrast, the sixth challenged action—NARA’s withholding of the postponed records—is a discrete final agency action, but Plaintiffs fail to plead adequately it is arbitrary and capricious. As discussed regarding Count 1, Section 5(g)(2)(D) gives the President substantial discretion in determining whether continued postponement of records disclosure is appropriate. The President exercised that discretion in accordance with the JFK Act. The December 2022 memorandum, for instance, certified “that continued postponement of public disclosure of these records is necessary to protect against an identifiable harm to the military defense, intelligence operations, law enforcement, or the conduct of foreign relations that is of such gravity that it outweighs the public interest in disclosure,” pursuant to the statutory criteria in Section 5(g)(2)(D). December 2022 Biden Memo at 77,968. The President was well within his discretion to consider other factors so long as he certified the Section 5(g)(2)(D) factors were present, which he did. Accordingly, NARA is not acting arbitrarily and capriciously by implementing the Biden Memoranda.

Since Plaintiffs’ challenged actions are neither reviewable under the APA nor arbitrary and capricious, Count 3 is dismissed.

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<sup>6</sup> Plaintiffs’ allegations might alternatively sustain a claim under 5 U.S.C. § 706(1), seeking to “compel agency action unlawfully withheld or unreasonably delayed.” Even if so styled, however, this challenge would also fail. A discrete agency action is required “whether couched as a challenge to an agency’s action or ‘failure to act.’” *Whitewater*, 5 F.4th at 1010–11.

**C. Compel Agency Action/Mandamus**

Plaintiffs bring a claim under the APA and mandamus statute to compel NARA to perform its ministerial and non-discretionary duties to: (1) seek “Final Declarations of Compliance” from agencies that failed to submit such declarations to the ARRB; (2) follow up on outstanding ARRB search requests; (3) maintain an accurate index to the assassination records collection and central directory of identification aids; (4) ensure all postponed assassination records have an unclassified written description of the reasons for postponement; and (5) release, at the 25-year deadline in 2017, all records originated by the legislative branch.

Under the APA, a court can “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). A § 706(1) claim can proceed only where a plaintiff “asserts that an agency failed to take a *discrete* agency action that it is *required to take*.” *Norton*, 542 U.S. at 64; *see also Hells Canyon Pres. Council v. U.S. Forest Serv.*, 593 F.3d 923, 932 (9th Cir. 2010) (describing the obligation as “legally *required*—in the sense that the agency’s legal obligation is . . . clearly set forth” (citing *Norton*, 542 U.S. at 63)). Therefore, a court can only compel action under § 706(1) if “there is ‘a specific, unequivocal command’ placed on the agency to take a ‘discrete agency action,’ and the agency has failed to take that action.” *Plaskett v. Wormuth*, 18 F.4th 1072, 1082 (9th Cir. 2021) (citation omitted). Courts consider § 706(1) and mandamus claims together since they have “mirror[ed]” requirements and “the relief sought is essentially the same.” *Id.* at 1081 (citation omitted).

Plaintiffs challenge NARA’s failure to maintain accurate reference aids to the assassination record collection, averring numerous inaccuracies in the central directory and identification aids. The JFK Act required NARA to create a “uniform system” of identification aids, JFK Act § 5(d)(1), publish a central directory of identification aids “for each record transmitted to the Archivist,” JFK Act § 4(a)(2)(B), and publish a subject guidebook and index to the records collection, JFK Act § 4(a)(1). Among other inaccuracies, Plaintiffs aver that the central



directory is missing “more than 500 of the records made available online by NARA,” SAC ¶ 94,<sup>7</sup> despite the fact that the JFK Act specifically commanded NARA to include identification aids “for each” record in the collection. Accordingly, Plaintiffs have stated a plausible claim for relief under § 706(1) with respect to NARA’s maintenance of the reference aids.

Likewise, Plaintiffs’ challenge to NARA’s failure to release all legislative branch records in 2017 also has merit, since the Presidential authority claimed for the postponements seems limited to records originated by the executive branch. The language and structure of Section 9 support this conclusion. Section 9(c)(4)(B) provides that after the ARRB makes its determination as to whether an assassination record should be publicly disclosed, it should notice the President for “determinations regarding executive branch assassination records,” and “the [Congressional] oversight committees . . . in the case of legislative branch records.” Section 9(d)(1) imbues the President with the “sole and nondelegable authority to require the disclosure or postponement” of records that are either: (1) “an executive branch assassination record” or (2) “information contained in an assassination record, obtained or developed solely within the executive branch,” but no others. This siloed structure—requiring notification to the executive and legislative bodies, respectively, and cabining the President’s ability to override the ARRB’s determinations regarding postponement to executive branch records—comports with basic separation of powers principles. Moreover, the interpretation that the President’s postponement authority in Section 5(g)(2)(D) is limited to executive branch records is also bolstered by the JFK Act’s legislative history. The Senate committee report on the Act clearly stated that the President’s ability to postpone release of records after 25 years only applied “in the case of executive branch records.” S. Rep. 102-328, at 19, 1992 U.S.C.C.A.N. 2965, 2967; *see id.* (requiring Congressional resolutions in the event Congress disagrees with ARRB determinations “for congressional records”).<sup>8</sup>

<sup>7</sup> As of June 6, 2023, the central directory appears to be “currently down for maintenance” and instead displays “a recent export of the information in the system,” described as current as of May 17, 2021, or over two years ago. *JFK Assassination Collection Reference System*, The U.S. National Archives and Records Administration, <https://www.archives.gov/research/jfk/search>.

<sup>8</sup> Though the Act’s language was changed by a technical amendment after being reported out of committee, the technical amendment only changed Section 5(g) by adding another identifiable

Many of Plaintiffs’ remaining arguments rest on the notion that NARA, having published in the Federal Register that it is the “successor in function” to the ARRB, assumes all legal duties erstwhile tasked to the ARRB. This proposition is without merit.<sup>9</sup> NARA and the ARRB are two distinct entities, separately referenced in the JFK Act and tasked with separate statutory functions. Importantly, Congress specifically and explicitly expressed that ARRB obligations would cease when the ARRB itself terminated. JFK Act § 12(a) (“The provisions of this Act that pertain to the appointment and operation of the Review Board shall cease to be effective when the Review Board and the terms of its members have terminated pursuant to section 7(o).”). Neither NARA nor any other executive agency can, by its own ipse dixit, legally assume obligations so terminated by Congress. The memorandum of understanding signed by the CIA, ARRB, and NARA in 1998 does not change this, as it did not impose any specific responsibilities upon NARA.

Yet even assuming, as Plaintiffs wish, that NARA were the “successor in function” to the ARRB, Plaintiffs’ remaining arguments still fail. The JFK Act imposes no “specific, unequivocal command” to undertake the remaining averred duties (seeking “Final Declarations of Compliance,” following up on outstanding search requests, and ensuring postponement decisions are explained in an unclassified statement). First, the JFK Act never mentions declarations of compliance. Therefore, though Plaintiffs aver the ARRB “initiated” a program to collect declarations of compliance, SAC ¶ 43, the compliance program was one of many ways the ARRB could have carried out its obligation to “direct that all assassination records be transmitted to the Archivist.” JFK Act § 9(c)(1). The ARRB accordingly could not have been “specific[ally]” commanded to implement this voluntary program. *See Plaskett*, 18 F.4th at 1082. Second, while the JFK Act required an unclassified written description of the reasons for continued postponement to be “provided to the Archivist” and “published in the Federal Register,” JFK Act

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harm that the President could certify was present for continued postponement. 138 Cong. Rec. S10360-01, S10361.

<sup>9</sup> As Defendant explains, NARA’s “successor in function” statement helped explain “why it was appropriate for NARA to issue the final rule ... transferr[ing] regulations from one chapter of the Code of Federal Regulations to another.” Dkt. 58 at 20.



§ 5(g)(2)(B), it did so in the context of “periodic review[s],” JFK Act § 5(g)(2)(A). The President’s power further to postpone record releases is described in a subsequent provision, JFK Act § 5(g)(2)(D), which was a power seemingly meant to conclude the periodic review process described in Sections 5(g)(2)(A)–(C). It would therefore make little sense for Sections 5(g)(2)(A)–(C) to modify the President’s power under Section 5(g)(2)(D). Since NARA has no “specific, unequivocal command” to take the described actions, Plaintiffs fail to state a § 706(1) or mandamus claim with respect to these actions. *See Plaskett*, 18 F.4th at 1082. Accordingly, Count 4 is dismissed except to the extent it challenges NARA’s failure to maintain accurate reference aids and to release the legislative records.

#### **D. Federal Records Act**

Plaintiffs plead that NARA has violated the Federal Records Act by failing to request that the Attorney General take action after the ARRB identified destruction of assassination records by certain agencies. Under the Federal Records Act, if the Archivist becomes aware of “any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of” an agency, they are required to notify that agency’s head and assist them “in initiating action through the Attorney General for the recovery of records unlawfully removed and for other redress provided by law.” 44 U.S.C. § 2905(a). If the agency head “does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action,” the Archivist must “request the Attorney General to initiate such an action.” *Id.* Plaintiffs aver that the ARRB Final Report identified intentional destruction of records by the CIA, FBI, and Secret Service, SAC ¶ 61(f), thus triggering the Archivist’s duty to ask the Attorney General to initiate an action for their recovery.

Defendants argue this count should be dismissed because a referral to the Attorney General is only required under § 2905(a) for the recovery of records unlawfully *removed*, rather than *destroyed*. Defendants cite several cases interpreting an analogous provision to § 2905(a)—44 U.S.C. § 3106(a), which governs federal agencies—holding that agencies only have a duty to involve the Attorney General when records have been unlawfully removed. *See, e.g., Bioscience*



*Advisors, Inc. v. United States Sec. & Exch. Comm'n*, No. 21-CV-00866-HSG, 2023 WL 163144, at \*6 (N.D. Cal. Jan. 11, 2023); *Citizens for Resp. & Ethics in Washington v. U.S. S.E.C.*, 916 F. Supp. 2d 141, 146–148 (D.D.C. 2013).

However, Defendants fail to contend with the differences in language between § 2905(a) and § 3106(a). While § 3106(a) only requires an agency head to “initiate action through the Attorney General for the recovery of records the head of the Federal agency knows or has reason to believe have been unlawfully removed,” § 2905(a) requires the Archivist to assist an agency head in “initiating action through the Attorney General for the recovery of records unlawfully removed *and for other redress provided by law.*” 44 U.S.C. §§ 2905(a), 3106(a) (emphasis added). Likewise, if the agency head fails to “initiate an action for such recovery or other redress” after being notified of “*any such unlawful action,*” the Archivist must request the Attorney General to initiate such action. 44 U.S.C. § 2905(a) (emphasis added). In other words, as compared with § 3106(a), § 2905(a) includes an additional clause enabling the Archivist to initiate action through the Attorney General. § 2905(a) thereby seems to impose a broader referral duty on the Archivist than § 3106(a) imposes on agency heads because of its inclusion of “other redress provided by law.” Such a distinction also seems to be made within § 3106. *Compare* 44 U.S.C. § 3106(a) (requiring agency heads to take action for “the recovery of records . . . unlawfully removed”) *with* § 3106(b) (requiring the Archivist to make a referral when an agency head fails to “initiate an action for such recovery or other redress” after notification of “any such unlawful action described in subsection (a)”).

The legislative history of § 2905 and § 3106 supports this interpretation. In 1984, Congress amended § 2905 and § 3106 to require an Attorney General referral by the Archivist if an agency head failed to take action. The House committee report only discusses the provision in the context of initiating action for the “recovery of records unlawfully removed.” H.R. Rep. 98-707, at 21. By contrast, the final conference report explained the provision as requiring the Archivist to make a referral to the Attorney General if they are aware of “any such unlawful action,” where “destruction” was listed several sentences before as one action prohibited by law. H.R. Conf. Rep.

98-1124, at 27, *as reprinted in* 1984 U.S.C.C.A.N. 3894, 3902. The conference report then explained that Congress would be notified in such instances “because of the frequency of incidents of removal *or destruction*.” *Id.* at 28 (emphasis added).<sup>10</sup>

Because the language of § 2905(a) and § 3106(a) are markedly different, Defendants’ references to cases interpreting § 3106(a) are not persuasive. § 3106(a) seems to require the Archivist to make an Attorney General referral in more circumstances than unlawful removal of records. It instead seems to require that the Archivist make a referral to the Attorney General if the agency head has failed to act and the Archivist is aware of, among other unlawful conduct, destruction of agency records. Plaintiffs aver that certain agencies intentionally destroyed records, these agencies’ destruction of records was reported in the ARRB final report, and both the Archivist and the agencies failed to refer the matter to the Attorney General, thereby stating a plausible claim. Accordingly, the motion to dismiss Count 5 is denied, except to the extent it references NARA’s failure to pursue outstanding record searches.<sup>11</sup>

### **E. Preliminary Injunction**

In order to obtain preliminary injunctive relief, a plaintiff must demonstrate that: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable injury; (3) that the balance of hardships tips in its favor; and (4) that an injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). As the Ninth Circuit has directed courts to evaluate the likelihood of success on a sliding scale, a preliminary injunction may be granted where the plaintiff establishes that serious questions on the merits exist and the balance of hardships tips sharply in its favor. *See Alliance for the Wild Rockies v. Cottrell*, 613 F.3d 960, 968 (9th Cir. 2010). The plaintiff also must demonstrate a likelihood of irreparable harm and that the public

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<sup>10</sup> The conference report adopted the House version of § 2905, so no legislative text changed between the committee report and the conference report.

<sup>11</sup> Though Plaintiffs in this claim seek a declaration that NARA violated the Federal Records Act by failing to pursue the outstanding record searches of the ARRB, the Federal Records Act imposes no independent obligation on NARA to complete those searches. As in Count 4, Plaintiffs fail to state a claim regarding the outstanding record searches.

1 interest favors granting the injunction. *Id.*


2 Plaintiffs have failed to demonstrate either a likelihood of irreparable harm or that they are  
3 likely to succeed on the merits. Plaintiffs waited years after President Trump’s first postponement  
4 memorandum in 2017 to file suit and did not move for a preliminary injunction until several  
5 months later. Moreover, the Transparency Plans that Plaintiffs contend came into effect on July 1,  
6 2023, have actually “been in effect since December 15, 2022.” Dkt. 61 at 8. Plaintiffs accordingly  
7 do not show a likelihood of irreparable harm. Since the motion for a preliminary injunction relies  
8 upon several arguments that were earlier rejected—NARA’s failure to follow up on outstanding  
9 record searches, status as a “successor in function” to the ARRB, and implementation of the  
10 Transparency Plans—Plaintiffs have also failed to show they are likely to succeed on the merits.  
11 Therefore, the motion for preliminary injunction is denied.

12 **V. CONCLUSION**

13 For the reasons articulated above, Defendants’ motion to dismiss is granted except as to the  
14 portions of Count 4 relating to release of legislative records and maintenance of certain reference  
15 aids, and the portion of Count 5 averring a failure to refer destruction of records to the Attorney  
16 General. Plaintiffs’ motion for a preliminary injunction is also denied.

17  
18 **IT IS SO ORDERED.**

19  
20 Dated: July 14, 2023

21   
22 RICHARD SEEBORG  
23 Chief United States District Judge  
24  
25  
26  
27  
28



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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THE MARY FERRELL FOUNDATION,  
INC.; JOSIAH THOMPSON; and GARY  
AGUILAR,

Plaintiffs,

v.

JOSEPH R. BIDEN, in his official capacity as  
President of the United States; and  
NATIONAL ARCHIVES AND RECORDS  
ADMINISTRATION,

Defendants.

No. 3:22-cv-06176-RS

**Declaration of William E. Kelly, Jr.**

**Date: July 13, 2023**

**Time: 1:30 pm**

**Dept: 17<sup>th</sup> Floor, Courtroom 3**

**Judge: Richard Seeborg**

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
///

I, William E. Kelly, Jr., declare:

1. I am a journalist in New Jersey. My work covers various subjects, including in-depth study of the JFK assassination.
2. In 1978, when I asked the head Archivist at NARA for JFK Assassination Records Marion Johnson, why the HSCA records were being sealed for 50 years as Congressional Records, and why not 35 or 70, he said that 50 years was the estimated time in which those mentioned in the documents were dead.
3. After Congress exempted itself from compliance with the Freedom of Information Act (FOIA), Congressional passage of the JFK Records Act of 1992 was the only way to obtain the release the congressional records related to the assassination. Since I began to study the assassination in 1969, I have interviewed a number of important witnesses who have since passed away, all of whom supplied important new information that I have shared that otherwise would not be publicly available. A number of important witnesses died shortly before I located them.
4. The JFK Act required the government to release all of their records in full by October 26, 2017, unless the president issue a certification claiming a need for additional time. This deadline that has come and gone with many records still being withheld and many more with redactions, mainly the names of living persons. Some important witnesses have died since then. I am informed and believe that we are still waiting to determine the identity of NIEXIT-3, who had Dallas contacts stating that JFK was killed due to a plot by the ChiComs and Castro jointly. There was also discussion that the Soviets made up the rumor to "make it rough" on the Chinese Communists and Castro. Memos of this story are attached as Exhibit 1.



5. The idea that it is the government's responsibility to "protect" these individuals is false, as is the belief that these living witnesses do not want to be questioned, as most of those who I have interviewed were anxious to talk for a number of reasons, especially to correct record against false allegations made against them. In addition, they expressed the desire for their children and grandchildren to know the truth from their perspective.
6. Both Jim Braden and John Rosselli expressed the desire for their testimony to be made public, and were extremely dismayed that they had to testify in secret executive sessions and that their testimony was then sealed for fifty years. Rosselli even went to Jack Anderson to tell him what he testified to so it would become known.
7. When the Secret Service claimed they had destroyed some of their records, including the Tampa Advance Report, after the passage of the JFK Act, SS Agent G. Blaine noted in his book that since he wrote the Tampa report he had a copy in a box under his bed. When I pointed that out to the Archives, they retrieved the documents from Blaine and made them publicly available.
8. For the CIA and FBI to continue withholding names of living witnesses hurts the witnesses as much as it does the journalists and historians who require such oral testimony to correct and supplement the incomplete and sometimes wrong public record. I declare under penalty of perjury that the foregoing is true and correct and of my own personal knowledge except for those matters stated on information and belief, and as to those matters I believe them to be true. Executed on June 29, 2023, in New Lisbon, New Jersey, USA.

  
\_\_\_\_\_  
WILLIAM E. KELLY, JR.



# EXHIBIT 1

**MARY FERRELL FOUNDATION**  
*preserving the legacy*

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## Cryptonym: NIEXIT-3

**Definition:** A CIA agent, name still unknown, serving as a communications circuit between Mexico and Cuba as a foreign embassy FI asset.

**Status:** Probable

**Discussion:** See 104-10335-10001, p. 11: NIEXIT-3 described as a foreign embassy FI asset.

**SEARCH CRYPTONYMS**[Search tips and techniques](#)

**Sources:** 104-10092-10453: PACKAGE AND ENVELOPES RECEIVED FROM ASSET ON 31 OCT  
Oct 1963: Cable MEXI 6759 from Mexico City to Director, slugline DYVOUR PBRUMEN NIEXIT: "Package and envelopes received from NIEXIT-3 on 31 October."

104-10528-10422: CABLE: RECEIPT OF ENVELOPE  
11/14/63 cable MEXI 6889 from Mexico City to Director, slugline DYVOUR PBRUMEN NIEXIT: "Envelope marked urgent received from NIEXIT-3 on 13 November."

104-10075-10172: JMWAVE CABLE RE IAPA DELEGATES SAID U.S. MUST OVERTHROW CASTRO BECAUSE THERE IS LITTLE CHANCE OF INTERNAL REVOLT  
Memo written in late evening hours of 11/22/63 (apparently sent 11/23), IMMEDIATE ACTION JMWAVE to Director, WAVE 8057: "...Miami Herald reported IAPA delegates said US must overthrow Castro because there is little chance (of) internal revolt. Latin editions did not think USSR would fight over Cuba, and agreed Castro regime must be eradicated for sake of hemispheric security...on WMIE 21 Nov Alfredo Perez Berreiro interviewed Brigade 2506 members to whom President spoke at airport on 18 Nov. They reported President said following: To Jose Perullero: 'I am not forgetting you.' To Bernardo Torres: 'I am not forgetting Cuba' and to Antonio Paz, 'Do not become desperate, everything will come.'...Operational Developments...Henry J. Sloman (Tony Sforza) departed WAVE for MEXI to meet (the) wife of AMHALF (note: a Uruguayan diplomat)."

104-10075-10177: JMWAVE CABLE RE CUBAN NAVAL PATROLS  
11/22/63 PRIORITY cable WAVE 8062 from WAVE to Director, slugline RYBAT TYPIC AMCANOE KEYKAY/CIA Europe Division, copy issued to Mr. Tilton 22 Nov: "Cancelling 22 Nov KEYKAY/CIA Europe Division exfil attempt for foll reasons: "SI traffic morning 22 Nov reflects Cuban naval patrols alerted in same general area exfil point "to intercept pirate boats"...AMRIPE-2/"Jose" telephoned AMRIPE-1/"Maggie" early morning 22 Nov and advised, obviously keyed to signals (WAVE 7712) that their son should not take any of courses suggested. WAVE tentatively interprets this conversation to mean exfil attempt should not be made. Phone conversation mentioned paragraph 2 (DIR 84284) indicates info passed and AMCANOE-3/ heading for exfil point. Sea area between Florida Keys and exfil point still (illegible) by heavy seas which makes any exfil attempt impractical with available station boats. AMRIPE-2/"Jose" also advised AMRIPE-1/"Maggie" that he mailed her letter 21 Nov. WAVE interprets this to mean that A-2 sent (shortwave) to WAVE, explaining change in plans, via NIEXIT pouch due Mexico 22 November. In view importance exfiltrating AMCANOE-3/Antonio Jose Ramirez Mendez and obvious complications which would ensue were he arrested, WAVE requests Headquarters use whatever influence available try convince AMCANOE/a Cuban resistance group assets refrain from all unnecessary phone calls to AMCANOES in Cuba."

104-10075-10179: JMWAVE CABLE CONCERNING MARITIME EXFIL OF HEADQUARTERS ASSET  
11/22/63, cable WAVE 8065 from WAVE to Director, slugline DYVOUR PBRUMEN: On 11/22, CIA maritime officer John Tilton was involved in the attempted exfiltration of AMCANOE-3/Antonio Jose Ramirez Mendez from Cuba, one of the most sensitive operations going, called off due to "heavy



seas". On 11/22, the story is that Henry Sloman/Tony Sforza leaves WAVE this day to meet with AMHALF-2 (note: a Uruguyan diplomat). "Henry J. Sloman arriving Mexi 22 Nov order meet with AMHALF-2. WAVE expecting priority message, \*concerning maritime exfil of Headquarters asset, in NIEKIT pouch which presumably will arrive MEXI 22 Nov. Sloman will contact Choaden (Phillips) by phone either at station or home 23 Nov arrange pick up any material NIEKIT-3 may have received 22 Nov." (Note: AMCANOE-3 killed by Cuban government by Jan. 1964. Bill Simpich, State Secret, Conclusion).

104-10075-10293: CABLE: PBPRIME CONTRACT AGENT AMPAL-1 (IDEN-1) GOING MEXI 29 NOV

11/23/63, Cable from JMWAVE to Director: Slugline DYVOUR PBRUMEN AMPAL AMWEE: REF MEXI 7079 (IN 68566) "1. U.S. contract agent AMPAL-1 (IDEN-1/Alec Resnick) going MEXI 29 Nov pick up AMWEE-1/Bohumil Jirkal messages and AMWEE-2/Zbynek Samonil passport for AMWEE-3/ and debrief AMWEE-3 re plans transfer to Guadalajara. 2. AMPAL-1 will stay Hotel Francis under alias Joe Anderson. Request MEXI staffer contact AMPAL-1 at hotel between 0900 and 1100 hours 30 Nov to deliver ref letter to A-1 who will bring back to WAVE same day. Staffer can introduce self as colleague of Gordon R. Hawlott (IDEN-2). C/S Comment: "Envelopes recd from NIEKIT-3 on 25 Nov." - - - 11/29/63, Cable from JMWAVE to Director: Slugline DYVOUR PBRUMEN AMPAL AMWEE: REF WAVE 8295 (IN 70381) "IDEN-1: True name is Alec (AKA Abe) Resnick. IDEN-2: (REDACTION)." <https://www.maryferrell.org/showDoc.html?docId=19220&relPageId=2>

104-10097-10425: NOTIFICATION OF RECEIPT OF ENVELOPES

11/27/63 cable MEXI-7079 from Mexico City to Director: "Envelopes received from NIEKIT-3 on 25 November."

104-10097-10050: HELP GIVEN WITH VISA APPLICATION

12/6/63 cable MEXI-7275 from Mexico City to Director: "Request to LITEMPO based upon NIEKIT-3 request; made on 4 December not 3 December; Station cannot account for timing of NIEKIT-3's telegram to Jentons. N-3 contacted Station 29 November said (QUOTE) a (US) agent of ours in (Cuba) must get out (of Cuba) but having difficulty; you must help him ASAP or else he will find his head in noose (QUOTE); not having all details locally on AMSOUR op nor any means determining on spot the precise nature of N-3 request, Station Mexi forced to act in good faith on basis (NIEKIT-3) oral request.

Oswald 201 File, Vol 6, CD6, Part 2, Addtl

12/9/63 cable DIR 87746 ref WAVE 8658 from WH/3 x 5613 to WAVE IMMEDIATE: "Tracing all names. (FBI) here tells us they questioned Robert Nieto in Miami on basis your tip but he denied all knowledge of plot. FBI pressing us for direct access to source, which of course not possible. Pls cable immediate what itinerary what (Mrs. Unstar) is. (For the accidental revelation of "Mrs. Unstar", see 104-10400-10215.) Can she still be reached? Can she securely come to Miami if still in Nassau? Could she delay her return to Cuba? What is WAVE commo to UNSTAR? Our file shows none. How will UNSTAR report to WAVE by 14 Dec. Note: WAVE 8658 reported from UNSTAR and (illegible) allegations about Cubans being behind Kennedy assassination."

104-10404-10246: MEMORANDUM: SUBJECT - LEE HARVEY OSWALD

12/9/63 Memorandum for the Record by Chief, CI/SIG Birch O'Neal: FBI liaison officer Sam Papich reports the re-emergence of the rumor "from a western (french) diplomat" who says JFK was killed due to a plot by the ChiComs and Castro jointly. Same as in JMWAVE 8658 (IN 75902). Papich even suggests that the Soviets made up the rumor to "make it rough" on the Chinese Communists and Castro. It also mentions that Ramon Cortes was indicted for impersonating the Guatemalan honorary consul back in 1960.

104-10076-10385: JMWAVE CABLE - FIDEL CASTRO REPORTEDLY EXTREMELY CONCERNED WITH PERSISTENCE OF INVESTIGATION INTO PRESIDENT KENNEDY'S MURDER AND WITH POSSIBLE DISCLOSURES THAT COULD RESULT

12/12/63, cable WAVE 8949 from WAVE to Director, slugline RYBAT GPFLOOR PBRUMEN: "JENTONS returned WAVE 12 Dec. In addition to commo channel outlined para 9 Ref C (WAVE 8736 - not sent to MEXI), JENTONS also included in his letter to UNSTAR suggestion that UNSTAR could also send name of source and other details via NIEKIT pouch to NIEKIT-3 in Mexico if UNSTAR felt personal letter via Nassau insecure or slow. UNSTAR should ask NIEKIT-3 pass letter personally to JENTONS. Re Ref B (DIR 87746 - not sent MEXI), assume (FBI) questioned Nieto on alleged Dallas contacts, since Ref A (WAVE 8658 - not sent MEXI) reported



only that Nieto could give info on Dallas contacts." Chief of Station comments: According to UNSTAR, Fidel Castro reportedly extremely concerned with persistence of investigation into President Kennedy's murder and with possible disclosures that could result. (FBI) pressing for direct access to source, which of course not possible. JENTONS queried Mrs. UNSTAR at length, but satisfied she has no further knowledge."

104-10436-10048: MEXICO CITY CHRONOLOGY

Goodpasture's memo copies this cable and fills in the blanks

([http://maryferrell.org/showDoc.html?](http://maryferrell.org/showDoc.html?docId=8660&relPageId=55&search=%22niexit%22)

[docId=8660&relPageId=55&search=%22niexit%22](http://maryferrell.org/showDoc.html?docId=8660&relPageId=55&search=%22niexit%22)): "JENTONS also included in his letter to UNSTAR suggestion that UNSTAR could also send name of source and other details via NIEXIT pouch to NIEXIT-3 in Mexico if UNSTAR felt personal letter via Nassau insecure or slow. UNSTAR should ask NIEXIT-3 pass letter personally to JENTONS...assume (FBI) questioned Nieto on alleged Dallas contacts, since Ref A reported only that Nieto could give info on Dallas contacts." Marginalia added "copy sent to NIEXIT-3".

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**See Also:** AMHALF-2  
UNSTAR  
AMCANOE-3

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**Contributors:** Bill Simpich

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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THE MARY FERRELL FOUNDATION,  
INC.; JOSIAH THOMPSON; and GARY  
AGUILAR,

Plaintiffs,

v.

JOSEPH R. BIDEN, in his official capacity as  
President of the United States; and  
NATIONAL ARCHIVES AND RECORDS  
ADMINISTRATION,

Defendants.

No. 3:22-cv-06176-RS

**Second Declaration of Lawrence P.  
Schnapf**

**Date: July 13, 2023**

**Time: 1:30 pm**

**Dept: 17<sup>th</sup> Floor, Courtroom 3**

**Judge: Richard Seeborg**



1. I, Lawrence P. Schnapf, hereby declare as follows. My residence is 55 E.87<sup>th</sup> Street, apt. 8b/8C, New York, New York 10128. I am an attorney at law duly admitted to practice in New York and New Jersey, and have been admitted *pro hac vice* to the United States District Court for the Northern District of California to serve as co-counsel for the plaintiffs in the above-captioned case.
2. Mary Ferrell Foundation (“MFF”) members and researchers, including the undersigned, regularly share and compare information and leads about individuals who might possess information about people who have knowledge about events involving the events surrounding the John F. Kennedy assassination, including, for example, anti-Castro Cuban exiles, organized crime, Lee Harvey Oswald, Jack Ruby, and covert government operations centered in the New Orleans, Miami and Dallas areas during 1963 and thereafter. MFF members and researchers frequently exchange information on internet platforms, weekly podcasts and periodic virtual meetings, annual or semi-annual conferences, along with emails and direct telephone calls.
3. It is not unusual for leads for researchers to begin with reviewing assassination records released by the National Archives (“NARA”) that are collected and collated on the MFF website. Indeed, the NARA website itself identifies the MFF website as a research resource on NARA’s own JFK Collection website (See attached Exhibit 1, a true and correct screengrab from NARA’s site.)
4. Immediately after NARA announces a new release of assassination records that had been previously redacted, researchers scour the documents for names that were previously unknown and then try to contact the individuals.
5. Many of the individuals that researchers contact were never previously interviewed during prior government investigations. On other occasions, researchers may interview individuals about their prior testimony, pursuing lines of questioning that were not followed or topics that government investigators had not examined in previous interviews. This work continues to contribute important information about the circumstances surrounding the assassination of President Kennedy.
6. I have learned from my own FOIA lawsuit that, unfortunately, some agencies such as the FBI and CIA initially adopted policies of not releasing names of individuals discussed in assassination records until these individuals died or 100 years had elapsed since their date of birth. I also have learned from my FOIA lawsuit that NARA had informed the agencies in the past that their postponement requests to continue to redact names of many individuals failed to comply with the standards of the JFK Records Act. Where an agency made broad statements that disclosure of names could result in stigmatization, harassment or violent retribution, NARA rejected these grounds as justification for postponement saying “As the information is concerning events more than 50 years old, it is difficult to imagine



circumstances under which an individual could be harmed by the release of their name in a file in the JFK Collection. NARA also wrote that “The standard set by the JFK Act and the Assassination Records Review Board during their deliberations is a high one: there has to be “clear and convincing evidence” of a “substantial risk of harm” and recommended denial of postponement requests . Email from William Bosanko to redacted name dated 08/21/17. Despite this conclusion, the executive orders of Presidents Trump and Biden allowed the names of many of these individuals to continue to be redacted.

7. As a result, when names have been released, the individuals may have already passed away and the information they possessed about events surrounding the assassination, along with the identities of other individuals who might have possessed relevant information, have been lost to history. On other occasions, when the individuals were still alive, their memories had so faded that they no longer adequately recalled useful information or the veracity of their information became questionable.
8. Just one recent example was that of former CIA employee Donald Heath, who passed away in 2019, but whose name was not released until December 15, 2022. The document containing Mr. Heath’s name confirmed that CIA had tasked the Miami CIA station to interview pro-Castro and anti-Castro activists in Miami the weekend of the assassination to determine if they had been involved in the assassination. The CIA had previously publicly denied that it had conducted such an investigation. Had Mr. Heath’s name been released while he was alive, researchers could have asked him, for example, for more information about this investigation, the names of the individuals who were investigated, the names of others who may have assisted him with this effort, how the results of this investigation were documented and communicated, and where the records of this investigation may have been stored. Because his name was not released until after he died, the knowledge he had will never be known and researchers will not be able to pursue any leads that may have resulted from his interview.
9. I also wish to respond to Defendant’s assertion that Plaintiffs waited too long to file their motion for preliminary injunction and declaratory relief (doc. #59). As Defendants know all too well, Plaintiffs did not sit back on their rights and do nothing for seven months. After Plaintiffs filed their complaint, the case was assigned to a magistrate judge who issued an Initial Case Management Scheduling Order with ADR Deadlines and providing for Initial Case Management Conference set for 1/17/2023. (doc #9). After Defendants filed an appearance (doc #13), Defendants requested the case be assigned to a district judge (doc #14) which resulted in a re-assignment to this Court with Case Management Statement due by 1/5/2023. At this point, Plaintiffs became aware that President Biden would be preparing a new Executive Order which was issued on December 15<sup>th</sup>. Defendants reached out to Plaintiffs to discuss the upcoming CMS. The parties mutually decided it made sense for Plaintiffs to file an amended complaint to incorporate the Biden Order. The Plaintiffs notified that counsel John Robinson would be taking over management of the case. Plaintiffs asked if there was a basis to narrow or resolve some of the issues. Defendants counsel said they would consult with their client. Plaintiffs were subsequently informed

that Defendants had decided to file a motion to dismiss and would wait until the court ruled on the motion before entertaining any settlement conversations. The parties agreed to a stipulation providing for filing the amended complaint by January 5<sup>th</sup> and pushing back the CMC to March 2<sup>nd</sup>. The parties then entered into another stipulation to continue the CMC to June 8<sup>th</sup>. On February 6<sup>th</sup>, Defendants filed their motion to dismiss (doc #23) followed by Plaintiffs opposition memorandum on March 7<sup>th</sup> (doc #33). After Defendants filed their reply brief (doc #40), Plaintiffs came across new evidence and the parties stipulated to Plaintiffs filing a second amended complaint (doc #40). Defendants then filed their Motion to dismiss the second amended complaint on May 1<sup>st</sup> (Doc #46). After filing their opposition to the Defendant's motion to dismiss the second complaint (doc #49), Plaintiffs filed their Motion for Preliminary Injunction and Declaratory Relief on May 25<sup>th</sup>, a little more than a month after the filing of the second amended complaint. Given the motion practice, the time that elapsed between Plaintiffs second amended complaint and its motion for preliminary injunction and declaratory relief is a reasonable and modest period that should not undermine the Plaintiff's assertion of irreparable harm.

I hereby declare the foregoing to be true and correct, except for those matters of which I am informed and believe, which I believe to be true, under penalty of perjury under the laws of the States of California and New York. Signed this 29<sup>th</sup> day of June, 2023 at New York, New York.

By LS/  
Lawrence P. Schnapf



# EXHIBIT 1





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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THE MARY FERRELL FOUNDATION,  
INC.; JOSIAH THOMPSON; and GARY  
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Plaintiffs,

v.

JOSEPH R. BIDEN, in his official capacity as  
President of the United States; and  
NATIONAL ARCHIVES AND RECORDS  
ADMINISTRATION,

Defendants.

No. 4:22-cv-06176-RS

SECOND DECLARATION OF WILLIAM  
SIMPICH

Date: June 29, 2023

Time: 1:30 pm

Dept: Hon. Richard Seeborg

I, William M. Simpich, declare:

1. I am an attorney for the Plaintiffs in this action.

2. The 1998 Memorandum of Understanding referred to at pages 46:1-6 of the Second

Amended Complaint is part of the JFK Collection and is attached as Exhibit A.

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2 3. A published statement of NARA CEO William Bosanko in the internet magazine  
3 WhoWhatWhy is attached as Exhibit B.

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5 4. Copies of Subpart H to 36 CFR Part 1290 and 65 FR 39550 is attached as Exhibit  
6 C.

7 5. The December 15, 2022 Biden memorandum is attached as Exhibit D.

8 6. The CIA's Transparency Plan is a public document and attached as Exhibit E.

9 7. The DoD's 9/29/22 with "JFK Assassination Records Collection Withholds" is a  
10 public document is attached as Exhibit F.

11  
12 I declare under penalty of perjury that the foregoing is true and correct and based on my  
13 own personal belief. Executed on May 23, 2023, in Richmond, California.

14 Dated: May 23, 2023

/s/ William M. Simpich

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16 William M. Simpich  
17 Attorney for Plaintiffs  
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*Second Declaration of William Simpich*  
*Case No. 3:22-cv-06176-*



# EXHIBIT A



## MEMORANDUM OF UNDERSTANDING REGARDING CONTINUING OBLIGATIONS OF THE CIA UNDER THE JFK ACT

WHEREAS the operations of the Assassination Records Review Board ("Review Board") cease on September 30, 1998 in accordance with the President John F. Kennedy Assassination Records Collection Act of 1992, as amended, 44 U.S.C. § 2107 ("JFK Act");

WHEREAS the JFK Act provides that "the provisions of this Act [other than those pertaining to the appointment and operation of the Review Board] shall continue in effect until such time as the Archivist certifies to the President and the Congress that all assassination records have been made available to the public in accordance with [the] Act" (JFK Act § 12); and

WHEREAS the Central Intelligence Agency ("CIA"), the Review Board, and the National Archives and Records Administration ("NARA") seek to ensure that the CIA completes its continuing obligations under the JFK Act in a timely fashion;

IT IS HEREBY AGREED by the CIA (including any successor intelligence agency), the Review Board, and NARA that:

1. For purposes of this Memorandum of Understanding ("MOU"), the JFK Assassination Records Collection ("JFK Collection") refers to the collection of processed and declassified assassination records at NARA in College Park, Maryland. The "Protected Collection" at NARA refers to the collection of assassination records that have been postponed for release under Section 6 of the JFK Act.
2. All CIA records identified as assassination records under the JFK Act will be placed in the JFK Collection at NARA by September 30, 1998 unless otherwise noted in this MOU. In addition, the CIA may retain reference copies of any records that it sends to the JFK Collection or the Protected Collection.
3. The CIA will transmit the following assassination records to the JFK Collection after September 30, 1998:
  - a. Certain documents from the CIA-House Select Committee on Assassinations (CIA-HSCA) Sequestered Collection (both hardcopy and microfilm sets), most of which were voted on by the Board in September 1998 and which must still be processed for transmission to the JFK Collection. The CIA will ensure that, by October 30, 1998, the balance of non-duplicate documents from the CIA-HSCA Sequestered Collection



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(both hardcopy and microfilm sets) will be placed in the JFK Collection.

b. Duplicate documents within the CIA-HSCA Sequestered Collection (both hardcopy and microfilm sets).<sup>1</sup> The CIA will ensure that, by September 30, 1999, duplicate copies of documents from the CIA-HSCA Sequestered Collection (both hardcopy and microfilm sets) will be placed in the JFK Collection.

c. Duplicate documents within the working files of former CIA officer Russ Holmes. The CIA will ensure that, by December 31, 1998, duplicate copies of documents from the Russ Holmes working files will be placed in the JFK Collection.

d. The audio tapes, and any transcriptions or summaries made by the CIA, from surveillance of certain Soviet and Cuban diplomatic facilities in Mexico City for the period November 22, 1963 to January 1964. These tapes (approximately 185), and any transcriptions or summaries, shall be placed in the JFK Collection by September 30, 1999. The CIA will submit these tapes to the JFK Collection on a rolling basis, as the CIA completes review of individual tapes. Any postponements shall be identified to NARA and postponed information forwarded to the Protected Collection in accordance with Section 5(e)(2) of the JFK Act.

e. Working files from the DCI area, mostly from the DCI's Executive Registry, that had been compiled in anticipation of passage of the JFK Act. These working materials, which consist mostly of duplicate documents, will be placed in the JFK Collection by December 31, 1998.

f. A document containing a list of names and cryptonyms created by the HSCA staff. Given the detailed nature of information in this document (RIF No. 104-10061-10115), the Board agrees that this can be processed by December 31, 1998.

g. CIA's records regarding the JFK Act, as follows: certain CIA records reflecting, or relating to, its work under the JFK Act from the official Historical Review Group (or Historical Review Program) files on the JFK Act and from the working files of HRP's JFK Act Project Chief, Barry Harrelson; previously identified cables from the CIA to the field

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<sup>1</sup> "Duplicate documents" are exact copies of documents that are already publicly available in the JFK Collection as part of other CIA files or records.



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regarding requests under the JFK Act; and the completed certifications of compliance executed by each of the directorates and the DCI office. These records will be transmitted to the JFK Collection by September 30, 1999. Microfilmed copies of any postponed documents will be provided to the Protected Collection by September 30, 1999.

h. Any other non-duplicate assassination-related records created or discovered by the CIA after September 30, 1998. If any information contained in such records is deemed to require postponement under the terms of the JFK Act, then it will be placed in the Protected Collection.

4. The CIA will review its equities in records that have been referred to it, and the CIA will cooperate with NARA and other Federal agencies to ensure that such records are released under the standards of the JFK Act and placed into the JFK Collection, or are postponed in accordance with the Act and placed in the Protected Collection. The CIA will review the following major categories of records:

a. Church Committee records identified by the Review Board in August 1998 as being assassination-related.

b. Records from the files of Robert F. Kennedy, maintained at the JFK Library, identified by the Library and/or Review Board as either assassination records or as records that would enhance the historical understanding of the assassination.

c. Records of the Rockefeller Commission, maintained by the Manuscript Division at the Library of Congress, to the extent that the Library of Congress identifies assassination records that are not available as part of the Ford Library set of Rockefeller Commission documents in the JFK Collection.

d. The Army's Investigative Records Repository file on Alfredo Mirabal Diaz.

The CIA will complete its review and recommendations for release of the major record categories listed above no later than April 30, 1999. To the extent there may be other agency documents requiring CIA review under the JFK Act, the CIA will continue to undertake such review.

5. The CIA will transmit to the Protected Collection, in accordance with Section 5(e)(2) of the JFK Act, the following original or postponed records by the dates



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indicated:

- a. by September 30, 1998, the originals of all postponed records from Lee Harvey Oswald's 201 file, Office of Security file, and "A" file;
  - b. by September 30, 1998, the hardcopy original of Marina Oswald's 201 file;
  - c. by September 30, 1998, all original microfilm reels for the CIA-HSCA Sequestered Collection (The CIA and NARA will work out mutually agreeable arrangements for the secure storage of this microfilm at NARA, including provisions for holding this material in a safe with limited access. The CIA will retain the paper copies.);
  - d. by October 30, 1998, all other records with postponed information to the extent not otherwise specifically addressed in this MOU (The CIA will have the option to provide postponed information in microfilm form and to have the same security arrangements apply as in paragraph 5.c. for the CIA-HSCA Sequestered Collection microfilm reels.);
  - e. by October 30, 1998, the entire Oswald 201 file as printed from the CIA-HSCA Sequestered Collection microfilm; and
  - f. by December 31, 1998, the originals of all postponed records from the Russ Holmes working files.
6. The Review Board and the CIA have determined that certain materials reviewed under the JFK Act are not believed to be relevant to the Kennedy assassination (designated "NBR"), but nonetheless should ultimately be placed in the JFK Collection. These NBR materials are: certain files contained within the CIA-HSCA Sequestered Collection; certain CIA work files relating to Yuri Nosenko (but not related to the assassination);<sup>2</sup> certain materials within the Russ Holmes Collection; and the complete version of certain records, portions of which were designated as assassination-related by the Review Board in connection with its requests for additional records and information. These hard copy materials will be physically retained by the CIA and then forwarded to the JFK Collection for public release by October 26, 2017. The CIA will ensure the appropriate preservation of the Nosenko audio tapes in accordance with applicable NARA

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<sup>2</sup> The Nosenko materials related to the assassination have been placed in the JFK Collection.



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standards for audio-visual records, including those standards set forth in 36 C.F.R. Part 1232. By November 30, 1998, the CIA will provide to NARA, in writing, a list of the hardcopy files being retained until 2017 and confirm the arrangements for securing this material. NARA will have the right to inspect and inventory this material for archival and administrative purposes before 2017, and these materials shall be made available for inspection by NARA upon its request.

7. The CIA will cooperate and coordinate with NARA in carrying out the provisions of the JFK Act, including Section 5(g) of the JFK Act, which provides for the "periodic review" of postponed assassination records. Such review "shall address the public disclosure of additional assassination records in the Collection under the standards of the Act" (§ 5(g)(2) (A)) and "shall serve to downgrade and declassify security classified information" (§ 5(g)(2)(C)). As provided by Section 5(g)(2)(B) of the Act, "all postponed assassination records determined to require continued postponement shall require an unclassified written description of the reason for such continued postponement, which shall be provided to the Archivist and published in the Federal Register upon determination."
8. The CIA recognizes that, by October 26, 2017, "[e]ach assassination record shall be publicly disclosed in full" unless the President makes the certifications described in section 5(g)(2)(D) of the Act. To the extent that records are postponed but are to be released on a date prior to October 26, 2017, NARA will release the records on the date the Review Board set for release. If the CIA seeks continued postponement of any record due to be released by October 26, 2017 (or on an earlier scheduled release date), it will be incumbent upon the CIA to obtain from the President certification that continued postponement is necessary. Within one to six months prior to the scheduled release date, the CIA will be responsible for notifying NARA of any specific records, including records within the microfilm reels for the CIA-HSCA Sequestered Collection, for which it will seek Presidential certification of continued postponement. With respect to the NBR material identified in paragraph 6 of the present MOU, these NBR materials will be physically transferred to NARA by October 26, 2017 for release. In the event the CIA seeks further postponement of any NBR material, it will identify that material to NARA and seek Presidential certification that the material needs to be postponed.
9. With respect to the review of other agency documents referred to the CIA, the review of any new assassination records, or the periodic review of postponed assassination records, the CIA will, in good faith, continue to apply the

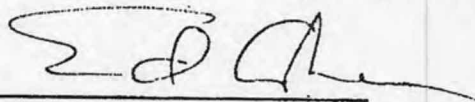


-6-

postponement criteria of the JFK Act as previously interpreted by decisions of the Review Board.

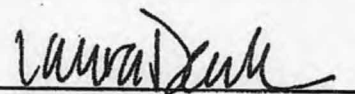
10. This Memorandum of Understanding is intended to clarify the CIA's obligations under the JFK Act in view of the expiration of the Review Board's term on September 30, 1998. This Memorandum of Understanding will not be interpreted to limit the CIA's obligations and rights under the JFK Act.

Date: 9/30/98

Signed: 

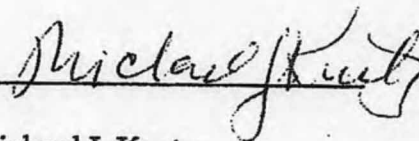
Edmund Cohen  
Director of Information Management  
Central Intelligence Agency

Date: 25 SEP 1998

Signed: 

Laura A. Denk  
Executive Director  
Assassination Records Review Board

Date: 9-30-98

Signed: 

Michael J. Kurtz  
Assistant Archivist for Records Services,  
Washington, D.C.  
National Archives and Records Administration  
of the United States

# EXHIBIT E

UNCLASSIFIED  
CIA's JFK Transparency Plan  
08 December 2022 FINAL

Key	Description of Information	Transparency Event	Conditions
1	<p><b>Intelligence Agents and Employees.</b> The names or aliases of living intelligence agents, officers, or employees who are still active or who retired under cover may generally be considered for postponement of release.</p>	<p>The names of such individuals will be released in accordance with the process described herein, when the individual is deceased, unless there is unambiguous information that the subject is still alive, unless the individual would be 100 years old, or unless the individual's connection to CIA has already been officially acknowledged. Names in the public domain that were not declassified and released through official channels will be evaluated for release by CIA in consultation with NARA. As part of the consultation, CIA may conduct a risk assessment to inform a release decision. Such risk assessments will include determinations of the degree and likelihood of harm to the sources or assets and their family members, consideration of the public interest in declassification and release, and whether or not harm would have most likely already occurred.</p>	<p>Job titles, when they do not identify a particular individual, are generally not appropriate for postponement.</p> <p>If NARA and CIA reviewers cannot find sufficient identifying information to determine whether the employee is likely still living, the employee will be assumed deceased at 100 years old.</p>
	<p><b>PII of Intelligence Agents and Employees.</b>  Personally identifiable information of confirmed living CIA employees, including but not limited to SSN, telephone number, address, DOB, tax ID number, and passport number, etc., will be withheld under Section 5(g)(2)(D) of the Act. If identifying information is proven to have been publically released it will be released. Telephone numbers or addresses may be considered for continued postponement only if the specific information is current.</p>	<p>This category is also tied to life status, which is reviewed every two years until all PII, such as SSN, telephone number, address, DOB, tax ID numbers, and passport number, etc., are released.</p> <p>Accordingly, a review and potential release of this category will occur on December 16, 2024, and every two years thereafter, and if necessary, a final release of remaining SSNs will occur on December 16, 2042, when all such individuals could reasonably be presumed deceased as the individuals will be assumed deceased at 100 years old.</p>	

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Key	Description of Information	Transparency Event	Conditions
	<p><b>Human Intelligence Sources or Assets.</b> The release of a name or other specific identifying information, to include information provided by the source or asset, would place a living human intelligence source at risk of life, or when the disclosure would expose ongoing intelligence operations, this information may generally be considered for postponement.</p>	<p>The names of such individuals will be released in accordance with the process described herein, when the individual is deceased, when 100 years old, or whose connection to the CIA has been previously officially acknowledged through declassification and release. Names in the public domain that were not declassified and released through official channels will be evaluated for release by CIA in consultation with NARA. As part of the consultation, CIA may conduct a risk assessment to inform a release decision. Such risk assessments will include determinations of the degree and likelihood of harm to the sources or assets and their family members, consideration of the public interest in declassification and release, and whether or not harm would have most likely already occurred. The risk assessment will also consider national security priorities when breaching any confidentiality of such relationships.</p>	<p>If the information pertains to a deceased source or a source whose association with the CIA has previously been officially acknowledged through declassification and release, the information may be considered only for continued postponement based on particularized information regarding the identifiable harm. However, for human intelligence sources who lived abroad, exceptions may be proposed if reviewers, despite due diligence, cannot find enough identifying information to determine whether the source is likely still living, the source will be assumed deceased at 100 years old.</p>
	<p><b>PII of Human Intelligence Sources or Assets.</b> Personally identifiable information of confirmed human intelligence sources or assets, including but not limited to SSN, telephone number, address, DOB, tax ID number, and passport ID number, etc., will be withheld under Section 5(g)(2)(D) of the Act. If identifying information is proven to have been publically released it will be released.</p>	<p>This category is also tied to life status, which is reviewed every two years until all PIIs released, or until December 16, 2042, whichever occurs first. Accordingly, a review and potential release of this category will occur on December 16, 2024, and every two years thereafter, and if necessary, a final release of remaining PII will occur on December 16, 2042, when all such individuals could reasonably be presumed deceased at 100 years old.</p>	

UNCLASSIFIED

Key	Description of Information	Transparency Event	Conditions
3	Other human sources or informants—counterintelligence, law enforcement, etc. Human sources that supported the counterintelligence or other activities of the Central Intelligence Agency may be considered for postponement if they are living and the release of a name or other specific identifying information would place the source or their family at high risk of harm.	The names of such individuals will be released in accordance with the process described herein, when the individual is deceased, unless there is unambiguous information that the subject is still alive, unless the individual would be 100 years old, or unless the individual's connection to the CIA has previously been officially acknowledged through declassification and release. Names in the public domain that were not declassified and released through official channels will be evaluated for release by CIA in consultation with NARA. CIA may conduct a risk assessment to inform a release decision. Such risk assessments will include determinations of the degree and likelihood of harm to the sources or assets and their family members, consideration of the public interest in declassification and release, and whether or not harm would have most likely already occurred. The risk assessment will also consider national security priorities when breaching any confidentiality of such relationships.	If the information pertains to a deceased source or a source whose cooperation with a U.S. agency has already become public knowledge, the information may be considered for continued postponement only based on particularized information regarding the identifiable harm. If their cooperation with the U.S. Government is otherwise already known, either in this collection or in other declassified and released documents, the name or identifying information shall be released. If NARA and agency reviewers cannot find enough identifying information to determine whether the source is likely still living, the source will be assumed deceased when the source is estimated to be at 100 years old.



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Key	Description of Information	Transparency Event	Conditions
<p>4</p>	<p>Intelligence installations or facilities. Information that would identify the specific location of an intelligence installation/facility generally may be considered for continued postponement when the facility has not been previously officially acknowledged and when the specific facility remains in-use or when the revelation of the location would place an individual or entity at high risk due to their current support of U.S. intelligence interests or would significantly harm ongoing intelligence operations.</p>	<p>Location information will be released in accordance with the process described herein, when the facility connection to the agency has previously been officially acknowledged by CIA. Location information found in the public domain that is connected to the agency, but that has not been officially acknowledged by the CIA, will be evaluated for release by CIA in consultation with NARA. Specific details of an installation or facility will be reviewed for official release only after consultation with a foreign government and relevant Departments or Agencies. Agreement with the foreign government would be ideal, but not required, so long as coordination has occurred between the foreign government and relevant U.S. Departments or Agencies. Postponement of specific details can be considered only to the extent the gravity of the harm outweighs the public interest in disclosure. In each of the above, CIA may conduct a risk assessment to inform a release decision. Such risk assessments will include determinations of the degree and likelihood of harm, consideration of the public interest in declassification and release, and whether or not harm would have most likely already occurred.</p>	<p>If a location has previously been officially acknowledged by the CIA for a defined period of time, then it shall generally be presumed to be releasable for the period of time covered by the documents in the JFK Assassination Records Collection up to the latest period of time it was officially acknowledged. Intelligence installations or facilities include those used for counterintelligence.</p>



UNCLASSIFIED

Key	Description of Information	Transparency Event	Conditions
5	<b>Intelligence Operational Details.</b> Information that would reveal specific details of CIA Intelligence Operations, to include targeting and recruitment information; details regarding handling of assets/sources; travel details; and operational methodology may generally be considered for postponement if revelation would place an individual or entity at high risk due to their current support of U.S. intelligence interests or would significantly harm ongoing intelligence operations.	Operational details will be released when CIA completes a risk assessment that determines the degree and likelihood of harm to CIA sources, methods, and liaison relationships related to the specific operation, and considers whether or not any harm would have most likely already occurred. The risk assessment will consider national security priorities when releasing such operational details.	The "fact of" certain intelligence operational details will be released when the details are generally known by the public and CIA completes a risk assessment that determines a high risk of harm to CIA sources, methods, and liaison relationships does not exist if released.
6	<b>Intelligence and Counterintelligence Methods.</b> An intelligence method may be considered for continued postponement when it has not been previously officially acknowledged and the method remains under active use or remains viable for continued use.	The specific application of Intelligence and Counterintelligence Methods will be released when the release is determined to not have a high degree of harm to the use for current intelligence operations or viability for use, OR when CIA Chief Data Officer approves official release in support of national security priorities.	The "fact of" certain intelligence and counterintelligence methods will be released when the methodology is generally known by the public and CIA completes a risk assessment that determines a high risk of harm to CIA sources, methods, and liaison relationships does not exist if released.
7	<b>Cover arrangements.</b> Information regarding the use of official cover arrangements in specific instances may be considered for continued postponement when the official cover arrangement has not been officially acknowledged by the CIA and the official cover arrangement remains in active use or is available for future use.	Details of cover arrangements will be released when the specific application of cover mechanism is no longer in use OR when CIA Chief Data Officer approves official release in support of national security priorities.	The "fact of" certain cover arrangements will be released when the arrangement is generally known by the public and CIA completes a risk assessment that determines a high risk of harm to CIA sources, methods, and liaison relationships does not exist if released.

UNCLASSIFIED

Key	Description of Information	Transparency Event	Conditions
8	<b>Covert Action.</b> Information related to the fact of specific unacknowledged covert operations, or sensitive details associated with the planning or execution of covert action.	The President, via the National Security Council (NSC), approves the declassification of the covert action program.	This action will take place via the existing High Level Panel (HLP) activities, of which CIA is a member. If the HLP is not active, then the members would consist of WH, CIA, NSC, NARA and any agency involved in said Covert Action, with WH as the lead. The "Fact of" covert activity will be assessed separately from operational details. Specific CIA equities will be released when minimal risk exists to intelligence sources and methods, as determined through the White House-led process for assessing covert action. Relationships with foreign partners will be assessed in the same manner, via the above Panel process.
9	<b>Foreign Government Cooperation (intelligence, counterintelligence, law enforcement, military defense, etc.).</b> Foreign governments must be engaged to seek their input in the release of information concerning the specifics of cooperation that has to date been postponed under the Act.	Specific details regarding cooperation will be released in accordance with the process described herein, after consultation with the foreign government and relevant Departments or Agencies. If CIA cannot obtain agreement after consultation, then release will be determined through an NSC-led interagency process. Specific agreement for release is ideal, but not required, so long as coordination has occurred between the foreign government and relevant Departments or Agencies. Postponement of remaining details can only be considered to the extent the harm outweighs the public interest in disclosure. The agency will revisit and review relevant agreements and harm statements every 3 years.	Distinctions need to be made between the fact of cooperation and the specifics of the cooperation. The fact of cooperation should generally not be considered for postponement.
10	<b>Other Government Agency (OGA) Information.</b> CIA cannot unilaterally approve the release of OGA equities.	All OGA information will be coordinated for release with NARA.	



# EXHIBIT F





INTELLIGENCE  
AND SECURITY

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
5000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-5000

September 29, 2022

Ellen Knight  
Senior Director for Records Access and  
Information Security  
National Security Council  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

**CLEARED**  
**For Open Publication**

**Dec 09, 2022**

Department of Defense  
OFFICE OF PREPUBLICATION AND SECURITY REVIEW

Dear Ms. Knight:

On behalf of the Secretary of the Defense and in response to the President's memorandum, "Temporary Certification Regarding Disclosure of Information in Certain Records Related to the Assassination of President John F. Kennedy," dated October 22, 2021, the Department of Defense (DoD) conducted intensive joint reviews with National Archives staff of our proposed December 2021 withholds. As a result of these reviews, DoD recommends release of additional records in full, and fewer redactions in other DoD records contained in the John F. Kennedy (JFK) Assassination Records Collection. DoD assesses continued withholding of certain classified and controlled unclassified information from public disclosure beyond December 15, 2022 is necessary for parts of records originated by the Department of the Army, National Security Agency (NSA), and Office of the Secretary of Defense staff. The harm that release of this redacted information would cause, coupled with the fact that these records are themselves unrelated to the assassination of JFK outweighs disclosure for the public interest.

Each proposed redaction is identified for each record along with the justification in the enclosed updated matrices resulting from the one-year intensive review, and meets at least one of the criteria for postponement from public disclosure as described in section 5(g)(2)(D) of the President John F. Kennedy Assassination Records Collection Act of 1992 (the Act). Specifically:

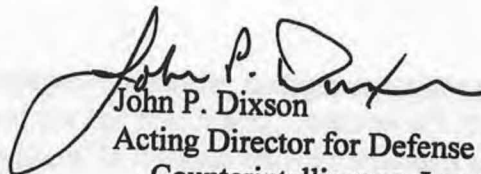
- An intelligence source or method, which is currently used, or reasonably expected to be used, by the U.S. Government, and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities. Some of the records at issue identify specific nation states that continue to be targets of Signals Intelligence (SIGINT) operations. Revealing current SIGINT targets or specific sources and methods in use to target, collect, and/or process SIGINT would enable adversaries to adopt denial practices. Employment of such denial practices would impede our ability to provide SIGINT to our military forces and foreign defense partners.
- Any other matter currently relating to the military defense, intelligence operations, or conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States. Some of the records

contain nuclear weapon yields, nuclear deterrence planning and foreign military partner coordination, or social security numbers of living persons.

In order to balance protections of certain information and in keeping with the intent to maximize public access and disclosure to the extent practicable, DoD proposes a "Path to Transparency" for the remaining redacted information. Rather than conducting arbitrary date reviews, DoD proposes the remaining redacted information releases be "event triggered" as it pertains to partnerships, equities, and sources and methods identified. For each of DoD's remaining redactions in the JFK Records Collection, DoD would release the information when one or more of the following events or conditions occur:

- From the date NSA determines the specific sources or methods detailed in the JFK records are no longer in use, and their release presents no risk or harm to national security.
- From the date that NSA partner(s) approve release of their equities for the NSA JFK records.
- From the date the partnership(s) or diplomatic relationship(s) are formally dissolved and the date the partner is no longer a party to a security agreement or leaves international organizations to which DoD is also a member.
- From the date when the nuclear weapons system is no longer part of the U.S. nuclear arsenal, and disclosure of weapons yields of nuclear weapons systems will not hinder U.S. nuclear war planning and civil defense.
- From the date of death of a living person.

My point of contact is Mr. Jeffrey P. Spinnanger, who can be reached at (703) 692-6422 or [jeffrey.p.spinnanger.civ@mail.mil](mailto:jeffrey.p.spinnanger.civ@mail.mil).

  
John P. Dixon  
Acting Director for Defense Intelligence  
Counterintelligence, Law Enforcement,  
& Security

Enclosure:  
As stated

cc:  
Ms. Debra Steidel Wall, Acting Archivist



William M. Simpich #106672  
Attorney at Law  
528 Grand Avenue  
Oakland, CA 94610  
Telephone: (415) 542-6809  
bsimpich@gmail.com

Lawrence P. Schnapf  
Schnapf LLC  
55 E. 87<sup>th</sup> Street #8N  
New York, New York 10128  
Telephone: (212) 876-3189  
[Larry@schnapflaw.com](mailto:Larry@schnapflaw.com)

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THE MARY FERRELL FOUNDATION,  
INC.; JOSIAH THOMPSON; and GARY  
AGUILAR,

Plaintiffs,

v.

JOSEPH R. BIDEN, in his official capacity as  
President of the United States; and  
NATIONAL ARCHIVES AND RECORDS  
ADMINISTRATION,

Defendants.

No. 4:22-cv-06176-RS

AMENDED DECLARATION OF  
WILLIAM SIMPICH

Date: April 30, 2022

Time: 1:30 pm

Dept: Hon. Richard Seeborg

I, William M. Simpich, declare:

1. I am the attorney for the Plaintiffs in this action.
2. NARA's pattern and practice is to urge researchers to file FOIA cases to seek  
assassination records – exactly the reason that the JFK Act was passed. I have spoken



- 1 with Mr. Alcorn and with other individuals who have told me that they were also  
2 advised by NARA to file FOIA requests rather than JFK Record Act requests.
- 3 3. Attached as Exhibit A is a document of public record, CIA counterintelligence chief  
4 James Angleton's instruction to his subordinate Ray Rocca to "[wait out](#)" the Warren  
5 Commission when the CIA was asked to pass on certain records to the Warren  
6 Commission. Based on my review of this document and related documents, I can  
7 state that this instruction was given after the Warren Commission asked the CIA to  
8 provide documents that it sent to the Secret Service in the immediate aftermath of the  
9 events of 11/22/63.
- 10  
11 4. NARA failed to conduct periodic reviews between NARA and the releasing agencies  
12 pursuant to Sec. 5(g)(1) for many years. Less than 6000 records were released  
13 between 2000-2016, and more than 4000 of them were released during 2004.  
14 Similarly, virtually no periodic reviews occurred between 2000-2016 until the 2017  
15 deadline was front and center. In my review of the documents, I have found  
16 documents stating that the outstanding searches pursuant to the NARA agreement  
17 with the Board and the CIA of 1998 were continued into 1999, but I cannot find any  
18 documents stating that these searches were completed nor that any new searches were  
19 conducted after 1999. See Exhibit B (both the tables of releases and the 1999 letter).
- 20  
21 5. Based on my information and belief, my research indicates each of the following  
22 statements is true. The Executive Office of the President is now five years late in  
23 releasing in full about 4,000 files.
- 24  
25 6. NARA did virtually nothing regarding evaluating the files for disclosure between  
26 1999 and 2013, but for a tiny bump in activity in the 2003-2004 period.  
27  
28

1 7. NARA created a "four-person team" only in 2013 to prepare for the 2017 release.

2 8. NARA did virtually nothing to continue the ARRB's work re new searches since  
3 1999, notwithstanding the representations to the American public in the Federal  
4 Register.

5 9. NARA did virtually nothing to continue the ARRB's work re identified documents  
6 that needed to be obtained between 1999 and the present.  
7

8 10. NARA did virtually nothing to search for missing and destroyed files between 1998  
9 and the present, even though such files can also be found in computer databases.

10 11. NARA did nothing that we know of to ask the Attorney General to enforce the search  
11 for missing and destroyed files between 1998 and the present.  
12

13 12. Jeremy Dunn, general counsel of the Board, advised the Board take on the roles of the  
14 agencies in writing the analyses of whether an assassination record should be  
15 postponed or not, and offered insights on how to use the JFK Act. See Exhibit C,  
16

17 13. CIA officers urged that certain documents not be released to the Board in the 1990s  
18 stating they didn't want "the camel's nose under the tent." See Exhibit D, page 1.

19 I declare under penalty of perjury that the foregoing is true and correct and of my own  
20 personal knowledge, except those stated on information and belief, and as for those  
21 matters I believe them to be true. Executed on March 7, 2023, in Richmond, Contra  
22 Costa County, California.  
23

24  
25 /s/ William M. Simpich

26 \_\_\_\_\_  
27 William M. Simpich  
28 Attorney for Plaintiffs

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*Declaration of William Simpich*  
*Case No. 3:22-cv-06176-*



## Exhibit A

MARY  
FERRELL  
FOUNDATION  
*preserving the legacy*

[www.maryferrell.org](http://www.maryferrell.org)



**Title:** NOTE:WE HAVE A PROBLEM HERE FOR YOUR DETERMINATION

**Author:** n/a

**Pages:** 2

**Agency:** CIA

**RIF#:** 104-10423-10190

**Subjects:** OSWALD, L.H

**Source:** AARC



Date: 01/25/99  
Page: 1

JFK ASSASSINATION SYSTEM  
IDENTIFICATION FORM

-----  
AGENCY INFORMATION

AGENCY : CIA  
RECORD NUMBER : 104-10423-10190  
RECORD SERIES : JFK  
AGENCY FILE NUMBER : RUSS HOLMES WORK FILES

-----  
DOCUMENT INFORMATION

ORIGINATOR : CIA  
FROM : ROCK  
TO : DICK  
TITLE : NOTE:WE HAVE A PROBLEM HERE FOR YOUR DETERMINATION.  
DATE : 03/05/64  
PAGES : 1  
SUBJECTS : OSWALD, L.H.

DOCUMENT TYPE : PAPER, TEXTUAL DOCUMENT  
CLASSIFICATION : SECRET  
RESTRICTIONS : OPEN IN FULL  
CURRENT STATUS : OPEN  
DATE OF LAST REVIEW : 12/07/98  
OPENING CRITERIA :  
COMMENTS : JFK-RH12:F216 1998.12.07.16:24:32:123120:

-----  
[R] - ITEM IS RESTRICTED



THE HISTORICAL REVIEW PROGRAM  
RELEASE IN FULL 1998

5 March 1964

Dick:

We have a problem here for your determination.

This is responsive to paragraph 3 of Rankin's letter (see reference tab). JA does not desire to respond directly to paragraph 2 of that letter which made a levy for our material which had gotten into the hands of the Secret Service since 23 November. We found that, except for three telegrams, all that the Secret Service had was material we had sent to McGeorge Bundy at the White House. Apparently, he had simply passed it to the Secret Service as a matter of internal information.

Unless you feel otherwise, Jim would prefer to wait out the Commission on the matter covered by paragraph 2. If they come back on the point he feels that you, or someone from here, should be prepared to go over to show the Commission the materials rather than pass them to them in copy. Incidentally, none of these items are of new substantive interest. We have either passed the material in substance to the Commission in response to earlier levies, or the items refer to aborted leads, for example, the famous six photographs which were not of Oswald, and the passenger manifest on an airline which also did not pertain to Oswald.

If you desire to take note of the levy in paragraph 2, we would recommend that you indicate in the attached proposed memorandum solely that we will take care of it separately.

Rock

~~SECRET~~

## Exhibit B

# JFK Database Explorer: Date of Last Review

Listing of starting values of field Date of Last Review, sorted alphabetically.

Sort by: **Alphabetical** Document Count

**Number of rows: 47**

Total Count	on MFF	Date of Last Review
4754	10	<u>0000</u>
1	0	<u>1926</u>
1	0	<u>1934</u>
1	0	<u>1938</u>
1	1	<u>1948</u>
1	0	<u>1959</u>
1	0	<u>1960</u>
2	1	<u>1962</u>
288	0	<u>1963</u>
17	0	<u>1964</u>
1	0	<u>1965</u>
1	0	<u>1967</u>
14	0	<u>1969</u>
5	0	<u>1975</u>
3	0	<u>1976</u>
6	0	<u>1977</u>
132	49	<u>1978</u>
2	0	<u>1981</u>
1	0	<u>1982</u>
2	0	<u>1984</u>
1	1	<u>1986</u>
3	0	<u>1987</u>
25	11	<u>1989</u>
32099	647	<u>1992</u>
90603	5166	<u>1993</u>
48307	2844	<u>1994</u>
10583	6014	<u>1995</u>
13888	6851	<u>1996</u>
13865	5009	<u>1997</u>
48844	39444	<u>1998</u>
13172	3910	<u>1999</u>
46	4	<u>2001</u>
3	0	<u>2002</u>
451	213	<u>2003</u>



4269	3669	<u>2004</u>
58	18	<u>2005</u>
26	0	<u>2006</u>
1	0	<u>2007</u>
2	0	<u>2008</u>
31	0	<u>2009</u>
1	0	<u>2010</u>
2	0	<u>2011</u>
47	1	<u>2014</u>
131	1	<u>2015</u>
87	50	<u>2016</u>
16093	16066	<u>2017</u>
21234	20281	<u>2018</u>

# MARY FERRELL FOUNDATION

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Title: MEMO: STATUS OF OBLIGATIONS UNDER MEMORANDUM OF UNDERST...

Pages: 3

RIF#: 104-10331-10205

Source: National Archives

## ADMINISTRATIVE - INTERNAL USE ONLY

22 June 1999

MEMORANDUM FOR: •Edmund Cohen  
Director, OIM

FROM: J. Barry Harrelson  
JFK Project Officer  
OIM/HRP

SUBJECT: Status of Obligations under Memorandum of Understanding With the  
Assassination Records Review Board

REFERENCE: Memorandum of Understanding Regarding Continuing Obligations of the  
CIA Under the JFK Act

On September 30, 1998, the Assassination Records Review Board, National Archives (NARA), and the CIA signed a Memorandum of Understanding to clarify the CIA's obligations under the JFK Act in view of the expiration of the Review Board's term on September 30, 1998. The MOU addresses categories of documents and activities that the Review Board had agreed could be postponed beyond September 1998. We have completed, or are on track to complete, most of these obligations by September 1999; however, we have missed deadlines on a few items. We are working closely with NARA in completing the JFK project, and I keep them apprised of our progress; our relationship with NARA remains excellent. Given the massive job that NARA has in processing the JFK collection, our missed deadlines have not been a problem to NARA, nor have they delayed NARA's release of information to the public. The following is a status report for each item listed in the MOU (numbers and letters reflect references in the MOU):

**3. This section addresses assassination records in the CIA's JFK collection to be reviewed, processed and transferred to NARA after September 30, 1998.**

- a. By October 30, 1998, the balance of non-duplicate documents from the CIA-HSCA Sequestered Collection.

*The bulk of these documents were provided within the October/November 1998 timeframe. As part of our duplicate processing, we are finding some "non-duplicate" documents that were missed during the review for the Board or not acted on by the Board. These include a number of "open in full" documents that were originally thought to be duplicates. We are including these documents in our duplicate processing.*

- b. By September 30, 1999, the duplicate documents within the CIA-HSCA Sequestered Collection.

*We are on track to complete by September 30. We have completed approximately 70% of the collection.*

- c. By December 31, 1999<sup>8</sup>, the duplicate documents within the working files of CIA officer Russ Holmes.

*We completed the Russ Holmes files in January 1999. NARA recently opened this collection to the public.*

- d. By September 30, 1999, 185 audio tapes of CIA surveillance of Soviet and Cuban diplomatic facilities in Mexico City.



## ADMINISTRATIVE - INTERNAL USE ONLY

*Of the 185 tapes, 98 have been reviewed and transferred to NARA (all released in full); DO has said they will be completed by the deadline, however, we have not received any tapes recently. [Eileen Wukitch is following-up]*

e. By December 31, 1998, DCI area working files.

*Completed May 1999.*

f. By December 31, 1998, document # 104-10061-10115 (list of names and crypts).

*Completed February 1999.*

g. By September 30, 1999, CIA's JFK project records (HRG/HRP files, JFK Project working files, DO cables, certifications, etc.).

*In progress, the bulk of this work will be done in August/September timeframe. Due to the impact of Nazi project, this is the one item that could miss the September deadline.*

h. Non-duplicate assassination-related records created or discovered by the CIA after September 30, 1998.

*A small number of additional assassination records have in found in response to a FOIA request and by ADD's 25-year program. Approximately 1 ft hardcopy material plus 44 microfiches related to the HSCA investigation were located in OGC files being retired to Records Center. The new records have been reviewed and incorporated into the collection; the OGC HSCA material is pending a duplicate review.*

**4. Referrals of assassination records from other Agencies by April 30, 1999.**

- a. Church Committee records (10,000 pages). *Completed May 1999.*
- b. JFK Presidential Library's RFK files (2,000 pages). *Completed May 1999*
- c. Rockefeller Commission Records at LC (15 linear ft) *Believed duplicate of Ford Library Collection; no action required.*
- d. Army file on individual (147 pages) *Completed January 1999*

Other referrals: ARRB files at NARA (11,200 pages) *Completed April 1999*

**5. This section addresses the JFK Act's requirement that the classified original (or full text copy) of sanitized or postponed documents be transferred to NARA for secure storage until 2017.**

a., b. By September 30, 1998, classified originals of Oswald files (Lee and Marina).

*Completed September 1998.*

c. By September 30, 1998, original microfilm reels for the CIA-HSCA Sequestered Collection.

*We "technically" met the deadline in that the reels are at NARA. However, they are stored in a safe in the Agency's 25-year unit's area. A final decision on secure storage until 2017 has to be made.*

d. By October 30, 1998, all other assassination records not otherwise addressed in this MOU.

*We have taken no action on this item. The DO has concerns with this requirement and there are a few sensitive documents that it would like to hold at the Agency; we need to work the details of secure storage with NARA and resolve any sensitive document issues. In addition, the process is very labor*

## ADMINISTRATIVE - INTERNAL USE ONLY

*intensive, and I have not had the resources to handle the task. This process requires locating each sanitized document in the collection; making a copy of the document and Iden aid; sending either an original or a copy of document to NARA, or, if a sensitive document, microfiche the document and send the fiche to NARA.*

e. By October 30, 1998, the printed version of the Oswald 201 file from the CIA-HSCA sequestered Collection microfilm.

*Completed in October 1998.*

f. By December 31, 1998, the originals of all postponed records from the Russ Holmes working files.

*See "5.d." above.*

**6. This section addresses the handling of the Not Believed Relevant (NBR) records which remain in the Agency's custody. There are three action items required of the agency:**

(1) preservation of the Nosenko audio tapes

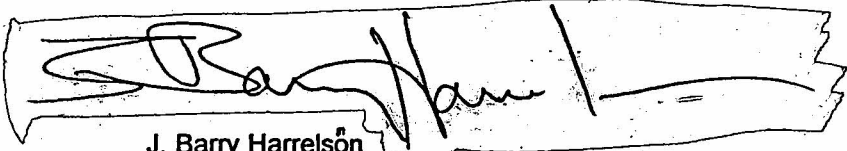
*The tapes need to be indexed (low priority); once indexed, we will contact Records Center re proper storage.*

(2) by November 30, 1998, provide NARA a list of the hardcopy files being retained until 2017.

*No action taken; we plan to use the database to create the listing, however, it may require some programming work on the by SAIC team. We have asked NARA for a delay until September 1999 to complete the updating of the database.*

(3) confirm with NARA arrangements for securing this material.

*Part of the final decision concerning the disposition of the JFK collection; NARA requires the right of inspection upon request.*



J. Barry Harrelson

Attachment: See Reference

CC: Lee Strickland  
Jim Oliver

## Exhibit C



CIA HAS NO OBJECTION TO  
DECLASSIFICATION AND/OR  
RELEASE OF THE INFORMATION  
IN THIS DOCUMENT

**Analysis of the President John F. Kennedy  
Assassination Records Collection Act of 1992  
June 6, 1995**

**T. Jeremy Gunn**

- 2 -

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<b>Part I: Statutory Duties of the Review Board .....</b>	<b>3</b>
<b>Part II: Statutory Powers of the Review Board .....</b>	<b>7</b>
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<i>Immunity power .....</i>	<i>10</i>
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- 4 -

## Introduction

This memorandum analyzes the principal duties, responsibilities, and procedures of the Assassination Records Review Board (Review Board) and other government offices under the President John F. Kennedy Records Collection Act of 1992 (the "JFK Act" or "the Statute"). Because the JFK Act establishes the duties and powers of the Assassination Records Review Board, it is important to understand the scope of the Statute's provisions and anticipate its potential pitfalls. This memorandum – which is based principally on an analysis of the JFK Act and its Senate Report<sup>1</sup> – identifies: (a) the statutory provisions governing the Review Board's duties, including *all* of the Board's reporting obligations under the Statute; (b) the Board's powers under the JFK Act; (c) the statutory procedures governing the review process;<sup>2</sup> and (d) the responsibilities of other governmental entities to further the goals of the Statute.<sup>3</sup>

## Part I: Statutory Duties of the Assassination Records Review Board

The JFK Act does not systematically set forth the duties of the Review Board. Rather, the description of the Board's duties are interspersed among several different statutory

---

<sup>1</sup>S. Rep. No. 102-328, 102d Cong., 2d Sess. (1992) ("Senate Report"), *reprinted in part*, in 1992 U.S.C.C.A.N. 2965. The Senate Report provides, *inter alia*, a section-by-section analysis of the final Senate version of the JFK Act.

<sup>2</sup>This memorandum does not address the substantive guidelines pertaining to postponements that are addressed in Section 6.

<sup>3</sup>This memorandum is designed to identify comprehensively the issues that are of immediate importance and concern to the Board. Accordingly, some important statutory provisions that are not of immediate concern are not discussed. For example, there is no discussion of the qualifications or appointment of Board members (Sec. 7(b)), removal of Board members (Sec. 7(g)), definitions (unless they pertain to the review process or the powers of the Board) (Sec. 3), or provisions pertaining to the hiring of staff (Sec. 8(b)).

- 5 -

provisions.<sup>4</sup> With the exception of the Board's procedural duties related to the review process, which will be described in Part III below, the remaining duties (including reporting obligations) of the Board are as follows:

***First, the Board should publish a schedule for review of records in the Federal Register.*** "The Review Board shall . . . not later than 90 days after the date of its appointment, publish a schedule for review of all assassination records in the Federal Register." Sec. 9(b)(1). The Statute does not disclose the meaning of "schedule" – that is whether it is a list or a time-frame. Assuming an enactment date of October 6, 1994,<sup>5</sup> a "schedule" should have been published by January 2, 1995. Although the Review Board does not have sufficient information to draft or to describe with particularity such a schedule, it would be advisable to prepare promptly a general schedule so that the Board will come into compliance as soon as possible with this provision of the Statute.

---

<sup>4</sup>The sections of the JFK Act may be described as follows:

Section 1	Short Title
Section 2	Findings, Declarations, and Purposes
Section 3	Definitions
Section 4	Creation and Implementation of the JFK Collection at NARA
Section 5	Government Office Responsibilities (identify, review, and transfer records)
Section 6	Grounds for Postponement of Assassination Records
Section 7	Establishment and Powers of Review Board
Section 8	Review Board Staff
Section 9	Review of Records by the Review Board
Section 10	Records Under Seal; Foreign Records
Section 11	Rules of Statutory Construction
Section 12	Termination of the JFK Act
Section 13	Appropriations
Section 14	Severability Clause

<sup>5</sup>Several of the Board's reporting obligations are triggered by the date of enactment of the Statute. In addition to the requirement to publish a schedule raised above, another such example is that the Board's first annual "report shall be issued on the date that is 1 year after the date of enactment of this Act . . . ." Sec. 9(f)(2). Technically, the date of enactment was October 26, 1992, although this memorandum will assume that the "date of enactment" for the Board's purposes – although not for the purposes of the obligations of other government offices – was October 6, 1994, the date the technical amendments were enacted. Pub.L. 103-345 §§ 2 to 5, 108 Stat. 3128-3130.



- 6 -

*Second, the Board should have begun its review of records by the first week of April, 1995.* "The Review Board shall . . . not later than 180 days after the date of enactment of this Act, begin its review of assassination records under this Act." Sec. 9(b)(2). Technically, the Board has begun its review — although it has as of yet made no final decisions. In order to comply with the "spirit" of the Statute, the Board should begin making decisions promptly.

*Third, the Board must submit four ongoing reports regarding the results of its decisions to postpone or to release information.* The Board has four separate reporting requirements for describing the ongoing results of its decisions. First, the Board is required to report the results of its decisions on a document-by-document basis to the government office whose records it is reviewing as well as to the President (or to Congress in the case of legislative records). Second, the results of decisions must be reported in the *Federal Register* within 14 days of the date of the decision. Third, the Board must make a monthly summary report in the *Federal Register*. Fourth, the Board must prepare a document-by-document report to be submitted to NARA that describes the decision-making process for each record. Sec. 9(c)(3).

*Fourth, the Board must produce an Annual Report to Congress.* The Board must submit an Annual Report to Congress on the anniversary of the enactment of the legislation. Thus the Board's first Annual Report is due on or before October 6, 1995. The Annual Report must include information on the following topics: (a) finances; (b) progress made on review; (c) estimates for completion of the review; (d) any special problems (including the degree of cooperation of government agencies); (e) a record of the volume of records reviewed and a summary of decisions; (f) an explanation of any additional needs of the Review Board; and (g) an appendix containing copies of reports of postponed records. Sec. 9(f)(3).

*Fifth, the Board must produce a Final Report.* "Upon its termination, the Review Board shall submit reports to the President and the Congress including a complete and accurate accounting of expenditures during its existence, and shall complete all other reporting requirements under this Act." Sec. 7(o)(2).

*Sixth, the Board must inform the President and Congress in advance of the termination of its activities.* The Review Board must give Congress 90 days notice of the anticipated termination date for its operations. Sec. 9(f)(4).

*Seventh, the Board must transfer its own records to NARA.* "[A]ll Review Board records" are to be transferred to NARA. Sec. 4 (a)(2)(C). See also 7(l) and 7(o)(3). The Statute is silent on the question whether the Review Board must prepare Record Identification Forms (or Identification Aids) for its own records prior to their



- 7 -

submission to NARA.

*Eighth, the Review Board is under the Oversight Jurisdiction of the Appropriate Senate and House Committees.* The Review Board operates under the continuing oversight jurisdiction of House and Senate committees. Sec. 7(l).

## **Part II: Statutory Powers of the Review Board.**

The powers granted to the Review Board are not listed in any single section of the Statute, but are instead interspersed throughout. The Review Board's powers will first be enumerated below, followed by a more detailed discussion of the four most significant powers: the subpoena power; the power to grant immunity; powers to order federal agencies to comply with the Statute; and the power to require the transfer of records to the Review Board.<sup>6</sup>

*Enumeration of powers.* The JFK Act grants the Review Board the authority to:

- (1) "direct Government offices to complete identification aids and organize assassination records" Sec. 7(j)(1)(A).
- (2) "direct Government offices to transmit to the Archivist assassination records" Sec. 7(j)(1)(B); see also Sec. 9(1).
- (3) "direct Government offices" to provide "*substitutes and summaries of [postponed] assassination records*" Sec. 7(j)(1)(B) (emphasis added).
- (4) "obtain access to assassination records that have been identified and organized by a Government office" Sec. 7(j)(1)(C)(i).
- (5) "direct a Government office to . . . make available additional information, records, or testimony from individuals" and, "if necessary[,] investigate the facts surrounding additional information, records, or testimony from individuals" provided that the "Review Board has reason to believe" that obtaining such additional information "is required to fulfill its functions and responsibilities under this Act." Sec. 7(j)(1)(C)(ii).

---

<sup>6</sup>The Board is given some additional authority that is not important for present purposes, such as the power to "receive information from the public," "use the Federal Supply Service" and "use the United States mails . . ." Sec. 7(j)(E), (G), and (H). The Review Board also may use the services of GSA. Sec. 7(m).

- 8 -

- (6) "request the Attorney General to subpoena private persons to compel testimony, records, and other information" Sec. 7(j)(1)(C)(iii) (see discussion below).
- (7) "require any Government office to account in writing for the destruction of any records relating to the assassination" Sec. 7(j)(1)(D).
- (8) "hold hearings, administer oaths, and subpoena witnesses and documents." Sec. 7(j)(1)(F) (see discussion below)..
- (9) grant immunity to witnesses. Sec. 7(k)<sup>7</sup> (see discussion below).
- (10) issue interpretive regulations. Sec. 7(n).
- (11) extend its tenure by one additional year from September 30, 1996 to September 30, 1997. Sec. 7(o)(1).
- (12) create advisory committees Sec. 8(d)(1).
- (13) require Government offices to transfer assassination records to the Review Board. Sec. 5(b); Sec. 5(c)(2)(E); Sec. 9(a) (see discussion below).
- (14) "request the Attorney General to petition any court in the United States or abroad to release any information relevant to the assassination . . . ." Sec. 10(a)(1) (see discussion in Part IV below).
- (15) "request the Attorney General to petition any court in the United States to release any information relevant to the assassination . . . that is held under the injunction of secrecy of a grand jury." Sec. 10(b)(1).<sup>8</sup> (see discussion in Part IV below).

**Subpoena power.** The JFK Act is ambiguous with respect to the Review Board's subpoena powers. The Statute refers to the subpoena power in two provisions. The Statute first states that the Review Board has the authority to "*request the Attorney General to subpoena private persons to compel testimony, records, and other information*" Sec. 7(j)(1)(C)(iii) (emphasis added). This provision may be read in one of

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<sup>7</sup>Items (1) through (9) are also identified in the Senate Report 42-43.

<sup>8</sup>Such requests are deemed to constitute "a particularized need" under Rule 6 of the Federal Rules of Criminal Procedure. Sec. 10(a)(2)(B).



two different ways. It could be read to give the Board authority only to request the assistance of the Attorney General, but not to have the authority to issue subpoenas on its own behalf. The second way of reading the provision is that the Board has the power to issue subpoenas on its own authority *and* that it may request the Attorney General to provide assistance to the Board in issuing such subpoenas.

The second provision of the Statute that addresses the subpoena power provides that the Board may “hold hearings, administer oaths, *and subpoena witnesses and documents.*” Sec. 7(j)(1)(F) (emphasis added). This second provision is also ambiguous. There are at least three different ways that it could be read. First, it could be read in tandem with the earlier provision, meaning that the Board may issue subpoenas only with the Attorney General’s authorization. Second, it could mean that the Board may issue subpoenas on its own authority, but only as ancillary to holding hearings. Finally, the provision could be a simple and direct grant of authority to the Review Board to issue subpoenas.

Although the Statute on its face does not clearly require or exclude any of these interpretations, the Senate Report provides useful guidance in its statement that the Review Board has the full power to issue subpoenas on its own authority and that the role of the Attorney General is simply to provide additional assistance to the Board. The Senate Report interprets the JFK Act as providing that: “[T]he Review Board . . . *has the authority to subpoena private persons and to enforce the subpoenas through the courts.*”<sup>9</sup>

Because the Senate Report speaks clearly, and because it can be read consistently with the Statute,<sup>10</sup> the Review Board may reasonably conclude that it may issue subpoenas on its own authority and that the role of the Attorney General is to provide assistance to the Board.<sup>11</sup> However, because there is a degree of ambiguity in the Statute, it would be prudent for the Board to reach an understanding with the Attorney General prior to the issuance of its first subpoena.

---

<sup>9</sup>Senate Report 19 (emphasis added).

<sup>10</sup>Under federal law, an agency is entitled to “substantial deference” when interpreting its own enabling legislation, provided that its interpretation is “reasonable.”

<sup>11</sup>Moreover, it should perhaps be noted that the grant of the subpoena power to an agency, such as the Board, implies that the power may be extended to the staff when acting in accordance with the Board’s authority. See Administrative Procedure Act, 5 U.S.C. 556(c).



- 10 -

**Immunity power.** The Board is granted the power to immunize witnesses from criminal prosecution. Sec. 7(k). This is an important power that can be very useful in eliciting testimony from reluctant witnesses. Because granting of immunity may affect the prosecutorial function, it would be advisable to consult in advance with the Attorney General regarding the manner and procedures for immunizing witnesses.

**Power to order federal offices to comply with the JFK Act.** The Board is given the authority to order government offices within the executive and legislative branches to comply with the terms of the JFK Act.<sup>12</sup> Thus the Board may “direct a Government office to . . . make available additional information, records, or testimony from individuals” and, “if necessary[,] investigate the facts surrounding additional information, records, or testimony from individuals” provided that the “Review Board has reason to believe” that obtaining such additional information “is required to fulfill its functions and responsibilities under this Act.” Sec. 7(j)(1)(C)(ii).

The Senate Report speaks of this particular power as being “extremely important to the proper implementation and effectiveness of the Act because it provides the Review Board with the authority to seek the fullest disclosure possible by going beyond the information and records which government offices initially chose to make available to the public and the Review Board.”<sup>13</sup> The Report further presumes that all government offices should “comply expeditiously to satisfy the Review Board’s request and need for access.”<sup>14</sup> The Senate Report summarizes this by stating that: “the Review Board has the *authority to direct any government office to produce additional information* and records which it believes are related to the assassination.”<sup>15</sup>

Although the Board is granted the power to order government offices to comply, there remains the question of what measures are available to the Board in order to enforce compliance. The Statute does not, however, answer this question. Under general provisions of federal law, one agency does not have the power to seek judicial relief against another agency unless it is specifically granted power to do so in its enabling

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<sup>12</sup>The Statute defines “government office” as “any office of the Federal Government that has possession or control of assassination records” (Sec. 5), which would seem to extend to the judiciary as well. However, the specific examples listed in Section 5 are all from the executive and legislative branches.

<sup>13</sup>Senate Report 31.

<sup>14</sup>Senate Report 31.

<sup>15</sup>Senate Report 19 (emphasis added).

legislation. The JFK Act does not clearly provide the Board with such power. In the absence of any statutory provision, inter-agency legal disputes are traditionally resolved by seeking the opinion of the Attorney General.<sup>16</sup> "The issuance of an Attorney General's opinion is frequently used to settle inter-agency disputes . . . . Professor Peter Strauss states: 'Once the agencies have received advice from the Attorney General, they may lack the means to generate valid litigation that would test its correctness . . . .'"<sup>17</sup>

***Power to require government offices to transfer records to the Review Board.***

Government agencies are to maintain custody of their own records during the review process *unless* "the Review Board requires the physical transfer of records for purposes of conducting an independent and impartial review" or "transfer is necessary for an administrative hearing or other Review Board function . . . ." Sec. 5(b). See also 5(c)(2)(E); Sec. 9(a). Agencies also are instructed to make records available for the Review Board's inspection. Sec. 5(b) and 5(c)(2)(E-F); 5(c)(2)(H) – including any records about which there is any uncertainty as to whether they are assassination records. Sec. 5(c)(2)(F). Agencies also must "[m]ake available to the Review Board any additional information and records that the Review Board has reason to believe it requires for conducting a review under this Act." Sec. 5(c)(2)(H).

**Part III: Statutory Guidance on Review Procedures and Transfer of Records to NARA.**

The JFK Act establishes general guidelines for the procedures to be followed in reviewing records. The basic procedures are relatively straightforward: government offices that possess assassination records are to locate and review the records to determine what can be released and what should be postponed. The postponed records are then to be made available to the Review Board for its independent assessment. But there are many questions left unanswered. For example, agencies are allowed to present "clear and convincing evidence" in order to sustain their postponements, but no

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<sup>16</sup>The President could, of course, solve the *political* aspects of an inter-agency dispute by ordering the relevant agency to comply with his directives.

<sup>17</sup>William F. Fox, Jr., *Understanding Administrative Law* 60 (2d ed. 1992) (quoting Peter Strauss, *An Introduction to Administrative Justice in the United States* 101 n.152 (1989)).



mechanism is established for when and how such evidence should be presented.<sup>18</sup>

The JFK Act provides two types of guidance relating to the review process. *First*, the Statute provides substantive guidance relating to postponements. *Second*, the Statute explains the basic procedural steps that follow from the Review Board's decisions. This memorandum addresses only the procedural steps established by the Statute.<sup>19</sup>

#### A. Review Board Quorum and Voting Requirements.

The JFK Act does not directly address quorum or voting requirements for Board meetings. The sole relevant guidance from the Act is its repeated statement that it *presumes* disclosure, which suggests that a *majority* of the members of the Board would need to vote *for a postponement* (rather than requiring a majority to vote for a release) in order for the postponement to be sustained.<sup>20</sup>

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<sup>18</sup>Given the absence of clear statutory guidance on the question of when agencies should be able to present their evidence, it would be appropriate for the Review Board to consult with the government offices to determine efficient, fair, and reasonable procedures to afford opportunities to present evidence. The Senate Report offers the following guidance: "to the extent possible, consultation with the government offices creates an understanding on each side as to the basis and reasons for their respective recommendations and determinations." Senate Report 31.

<sup>19</sup>The substantive rules relating to postponement decisions will be addressed in a separate memorandum.

<sup>20</sup>See, for example, "The underlying principles guiding the legislation are independence, public confidence, efficiency and cost effectiveness, speed of records disclosure, and enforceability. In order to achieve these objectives, the Act creates a presumption of disclosure upon the government, and it establishes an expeditious process for the review and disclosure of the records." Senate Report 17.

The JFK Act is, however, silent on several procedural issues affecting internal Review Board decisionmaking, including: (a) whether Board voting must be by a majority or supermajority; (b) whether the statutory presumption of disclosure necessarily implies that a majority (or supermajority) must vote *against* release rather than requiring a majority (or supermajority) to *favor* release; (c) whether the statutory presumption favoring disclosure implies that a "tie vote" requires release of information; (d) what constitutes a quorum for the purpose of decisions on the release of information and for other purposes; (e) whether the Board may delegate some or all of its postponement



The Administrative Procedures Act, which regulates agency rulemaking and establishes federal agency notice and publication requirements, does not establish rules governing agencies' internal rulemaking and voting requirements, although the Sunshine Act does establish some limited voting requirements related to decisions on holding meetings.<sup>21</sup> Similarly, Executive Order 12,866 (Sept. 30, 1993), exempts from reporting requirements those rules that "are limited to agency organization, management, or personnel matters . . . ."<sup>22</sup> Accordingly, the significant legal restriction on the Board's internal voting procedures, quorum requirements, and other internal operating procedures, is that they be reasonable and rational.<sup>23</sup>

It would be advisable for the Review Board to establish voting and quorum requirements as soon as practicable. Although the law does not require the formal establishment of voting and quorum requirements, it would probably be advisable for the Board to establish such rules (subject to later revision or amendment) and to make the rules and procedures available for public inspection in the Reading Room.

#### **B. Statutory Constraints on Postponement Decisions.**

The Statute provides that when postponements are sustained in whole or in part, the Board must nevertheless disclose as much information as possible – including through the use of substitute language. The Statute requires that whenever a record cannot be

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decisions to subcommittees of the Board; (f) whether a roll-call is required; and (g) whether the votes of the individual members must be recorded.

<sup>21</sup>The relevant portion of the Administrative Procedure Act provides that the reporting requirements that pertain to most federal rulemaking procedures do not apply to an agency's "interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice . . . ." 5 U.S.C. 553(b)(A). The Administrative Procedures Act contains some quorum and voting requirements with respect to noticing meetings. 5 U.S.C. 552b.

<sup>22</sup>Exec. Order No. 12,866.

<sup>23</sup>See, for example, *Idaho v. ICC*, 939 F.2d 784, 788 (9th Cir. 1991) ("In the absence of Congress' explicit direction, the [Interstate Commerce] Commission is empowered to prescribe regulations and procedures to carry out [its obligations under its enabling statute]. We need only satisfy ourselves that the Commission set forth a rational basis for its notational vote counting policy.")

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disclosed in its entirety, the Review Board shall attempt to "provide for the disclosure of segregable parts, substitutes, or summaries of such a record." Sec. 9(c)(2)(A). These substitutes shall be performed "in consultation with the originating body and consistent with the standards for postponement under this Act . . . ." Sec. 9(c)(2)(B). Although this language provides that the substitutes shall be drafted in consultation with the agencies, the Statute does not disclose when, how, or under what circumstances such consultations should take place.<sup>24</sup> The Senate Report nevertheless presumes that because the Statute mandates broad disclosure, the need for such summaries will be infrequent.

While it is intended that government office[s] shall have the ability to issue such substitutes or summaries in lieu of an actual record, this practice should be limited to the rarest cases if ever, with the understanding that the release of information other than official records will perpetuate public distrust and undermine public confidence in the government's responsibility to disclose the assassination records.<sup>25</sup>

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<sup>24</sup>The Statute requires that:

all postponed assassination records determined to require continued postponement shall require an unclassified written description of the reason for such continued postponement. Such description shall be provided to the Archivist and published in the Federal Register upon determination.

Sec. 5(g)(2)(B). The Statute does not state which entity bears the responsibility for drafting written explanations for continued postponements. Because the requirement is placed in Section 5 of the JFK Act, it would appear that the obligation would belong to the Government office that was in possession of the records in question. The specific provision in which the requirement appears, Subsection (g), is titled "Periodic review of postponed assassination records." Thus the location of the requirement within the Statute, the title of the section, and the subtitle of subsection all point to the requirement of drafting the written description for the reason for the postponement as adhering to the Government office where the record originated. Although neither the language nor the location of the subsection obligates the Review Board to undertake the responsibility, it may, as a practical matter, be advisable for the Review Board to accept the burden.

<sup>25</sup>Senate Report 45.



### C. Review Board Reporting Requirements.

Once the Review Board has made its decision, it must report the results to the government office whose record has been reviewed, to the President (or Congress), to NARA, and in the *Federal Register*. (See Part I above.) The Board must not only report its decisions in a timely manner, but it must report specific types of information about its decisions.

**Timing of reports.** After a decision is made to postpone or to release a document, “the Review Board shall notify the head of the originating body of its determination and publish a copy of the determination in the Federal Register within 14 days after the determination is made.” Sec. 9(c)(4)(A). At the same time (*i.e.*, within 14 days), the Review Board must give notice regarding its decisions to the President (for Executive Branch records) or to the Congressional oversight committees (for Legislative Branch records). Sec. 9(c)(4)(B). In addition, there must be ongoing monthly reports to the *Federal Register*.

**Content of the Reports to the President, Congress, and the originating office.** The Report to the President (or Congress) and to the originating office “shall contain a written unclassified justification for public disclosure or postponement of disclosure, including an explanation of the application of any standards contained in section 6.” Sec. 9(c)(4)(B).

**Content of monthly reports in the Federal Register.** There must be a “Notice to the Public” of decisions once every 30 days in Federal Register. (Sec. 9(d)(3)). These notices must include “a description of the subject, originating agency, length or other physical description, and each ground for postponement that is relied upon.” Sec. 9(e).

**Content of the Report to NARA.** For *each* postponed record, the Board must send a Report to the Archivist containing the following information: (a) a description of actions; and (b) a specified time or occurrence for the record to be opened. (Although the Statute requires a form for NARA and for the Agencies, it appears that the forms could easily be consolidated so as to include the relevant information and prevent unnecessary duplication.)

### D. The Role of the President (Executive Branch Records).

The Statute provides no clear guidance with respect to the mechanics of Presidential review of Board decisions. It is frequently assumed in discussions of the JFK Act that the President’s role is that of route of appeal for an agency that is displeased with a



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decision by the Board. This is not, however, what the Statute provides. According to the Statute, the President possesses the full power and authority to make all decisions for both postponement and disclosure of executive branch records.<sup>26</sup> According to the Statute, once the Board makes a

formal determination . . . *the President shall have the sole and nondelegable authority to require the disclosure or postponement of such record* or information under the standards set forth in section 6, and the President shall provide the Review Board with an unclassified written certification specifying the President's decision with 30 days . . . stating the justification for the president's decision, including the applicable grounds for postponement under section 6, accompanied by a copy of the identification aid . . . .

Sec. 9(d)(1) (*emphasis added*).<sup>27</sup> This language clearly suggests that it is not the Board that makes decisions, subject to appeal by the President, but it is the President that makes decisions after having been informed of the Board's "formal determination." The Senate Report makes the same point: "the President has the sole and nondelegable authority to require the disclosure or postponement of such record or information

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<sup>26</sup>The provision acknowledging presidential authority over executive branch records intentionally excluded the President from any responsibility over legislative branch records. Senate Report 32. The Senate Report recognizes that there might be a dispute between the President and the Congress with respect to identifying records as executive or congressional:

For example, within the files of the House Select Committee on Assassinations (HSCA) there are staff notes [that] rely in part on information obtained or developed by the CIA. Under the 'third agency' rule in the Act, the CIA could choose to recommend that the Review Board postpone those portions which it identifies as originating at the CIA. If the Review Board declined the recommendation and the President sought to override the determination, the President would be limited to postpone those sentences or words which were originated or developed by the CIA. The remainder of the document would have to be publicly disclosed.

Senate Report 32.

<sup>27</sup>Postponement decisions made by the President continue to be subject to periodic review and downgrading. Sec. 9(d)(2).

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under the standards set forth in section 6, and the President must provide the Review Board with an unclassified written certification specifying his decision within 30 days after the Review."<sup>28</sup>

Although the Statute requires the President to be faithful to the requirements of section 6 of the Act when making his decisions, there is no procedural mechanism either to ensure that the President fulfills this responsibility or that he complies within the statutorily mandated 30 day period.

Given these constraints, it would seem advisable for the Review Board to begin negotiations with the White House for the disposition of records once the Board has made its "formal determination." It may be that the White House, which no doubt does not want to be distracted from its other duties by confronting the task of a document-by-document review, will be willing adopt a procedure that effectively ratifies the Board's decision within thirty days *unless* an agency makes a particularized appeal. The Statute does not seem to require the President to make such an agreement, but it would seem to be consistent with the Statute, to be time and effort efficient, and to spare all parties needless confusion.

Once the Review Board is notified of the President's decision, it must memorialize that decision on the record form that it forwards to NARA. Sec. 9(d)(3).

#### E. The Role of the Congress (Legislative Branch Records).

Unlike Executive Branch records, where the President retains final decisionmaking authority, legislative records are not subject to further procedural review by Congress. Although Congress must be notified of the Board's decisions, it does not have a role comparable to that which the President retains for executive branch documents. The Review Board's decisions are thus automatic, with one important exception: Congress retains the power to pass a resolution in both houses to limit the Review Board's actions. The Senate Report explains that "[f]or congressional records, in the event that the Congress disagrees with a determination by the Review Board, each House would be required to adopt a resolution to change or create a rule governing the disposition of its records at issue."<sup>29</sup> This suggests that Congress will remove itself from the

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<sup>28</sup>Senate Report 46.

<sup>29</sup> Senate Report 18. Elsewhere the Report explains this in somewhat different terms: when documents contain both executive and legislative equities, the President may protect only executive branch interests. "The remainder of the document would



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document-by-document review process, but could undercut the Review Board's decisions if it becomes sufficiently disturbed by the Board's decisions.

#### F. Transfer of Records to NARA.

Once the executive and legislative branch records decisions are final, the Board is required to transfer the *original records* and identification forms directly to NARA. Sec. 4 (d)(2). The Senate Report clearly anticipates that *all* originals will be transferred to the JFK Collection, regardless of whether there are continuing postponements. "The Committee believes that such review should occur at a single facility. That will be most effectively achieved by bringing the review committee to the documents and not vice versa. . . . [T]here is less likelihood of loss or destruction, and therefore ease of access at a single central location."<sup>30</sup>

The records at NARA will be subject to periodic and continuing review, even after the Review Board ceases to operate. The periodic review will be conducted jointly by NARA and the originating body. "All postponed or redacted records shall be reviewed periodically by the originating agency and the Archivist consistent with the recommendations of the Review Board under section 9(c)(3)(B)." Sec. 5(g)(1). For congressional records, the House and Senate committees "shall have continuing oversight jurisdiction with respect to . . . the disposition of postponed records after termination of the Review Board." Sec. 7(l). The Act "shall continue in effect until such time as the Archivist certifies to the President and the Congress that all assassination records have been made available to the public in accordance with the Act." Sec. 12(b).

#### Part IV: Statutory Responsibilities of Government Offices under the JFK Act

*Obligations of all Government offices possessing assassination records.* The Statute required all government offices possessing assassination records to "review, identify and organize each assassination record in its custody or possession for disclosure to the public, review by the Review Board, and transmission to the Archivist." Sec. 5(c)(1). This provision effectively ordered agencies to have completed the review process by August, 1993. The Senate Report is even more explicit: "Government offices holding assassination records are required to begin organizing and reviewing such records

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have to be publicly disclosed." Senate Report 32.

<sup>30</sup>Senate Report 25.



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upon enactment and have this work completed within ten months of enactment."<sup>31</sup>

***Specific Obligation of Presidential and Other Libraries to Comply with JFK Act.***

The Statute instructs Presidential libraries to give priority to processing assassination records. Sec. 5(c)(3). According to the Senate Report, the JFK Act "specifically requires the directors of presidential libraries to expedite the review of all assassination records and make them available to the Review Board as required by this Act. It is incumbent on the presidential libraries to determine which of its records may qualify as 'assassination records', regardless of whether the records were conveyed to the government by a deed or gift or donation . . . ."<sup>32</sup>

***General Obligations to Cooperate With the Review Board.*** In addition to their statutory obligations to identify and review assassination records, it is the sense of Congress that "all Executive agencies should cooperate in full with the Review Board to seek the disclosure of all information relevant to the assassination of President John F. Kennedy consistent with the public interest." Sec. 10(b)(3).

***Specific Obligations of Justice and State to Cooperate With the Review Board.*** The Department of Justice and the Department of State are given particularized responsibilities to assist the Review Board. The Attorney General is to assist in issuing subpoenas, obtaining court records, and obtaining Grand Jury testimony under seal. Sec. 10(a)(1)-(2) and 10(b)(1). The Statute also provides that it is "the sense of Congress" that the Secretary of State should assist the Review Board in obtaining records from foreign governments. Sec. 10(b)(2).

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<sup>31</sup>Senate Report 18. See also *ibid* at 38, 39 (300 days).

<sup>32</sup>Senate Report 26.

## Exhibit D

# MARY FERRELL FOUNDATION

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Title: NOTE: JFK RECORDS

Pages: 6

RIF#: 104-10331-10062

Source: National Archives



New Note

NOTE FOR: Edward P. Moffett @ DCI  
FROM: John N. Greer  
DATE: 02/27/95 06:02:46 PM  
SUBJECT: JFK Records

This is in response to your request that I review ASAP the proposed regulations by the JFK Assassination Records Review Board.

I see Sheryl Walters hand very much in evidence here. I see from the attachment that she is the Board's GC.

Like you, I am very concerned about the breadth of the reg's definitions. The key to keep in mind is the statutory authority for the Board. I would argue that the definition of "assassination record" in the statute (44 U.S.C. section 2107 note; section 3(2) of the Act) is more limited than the reg. The statute defines an assassination record as one "related" to the assassination of JFK. Thus, when section 1400.2(d) and (e) of the reg authorize Board access to organizational charts of governmental agencies and records necessary and sufficient to describe the agency's records policies and schedules, filing systems and organization, and storage facilities and locations, I would argue that such information is way too far afield. There is no way we can allow the Board to have access to this information, which in any event is prohibited by section 403g from disclosure notwithstanding any other law.

The same issue arises with respect to section 1400.7(d) of the reg that proposes to include in the definition of record any records for a person by another name or personal identifier. This would appear to authorize Board access to all information about an agent who may have only been tangentially involved in the assassination but whose crypt is given in many other unrelated documents about unrelated operations. Talk about your camel's nose under the tent!

Finally, section 1400.5 of the reg raises an old dog of an issue. The National Security Archive (Sheryl's old employer) has been fighting for a long time in FOIA litigation that the FOIA refers to records and that therefore all information in a responsive record must be released unless otherwise exempt. There is no FOIA exemption, they argue, for non-responsive material in a record. This is a big problem for multi-topic documents, such as the NID. We, of course, argue that agencies are only required to process that which is asked for and delete non-responsive material as unrequested. The proposed reg would mean that the Board would have access to all information in a document about several unrelated operations or events if that document even mentioned the assassination or anything related to it. Again, the camel's nose.

CC: Thomas J. Benjamin @ DCI

## ADMINISTRATIVE - INTERNAL USE ONLY

CSI-0316/95  
16 February 1995

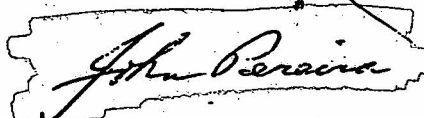
NOTE FOR: D/IM/ADDA/IS  
DCI/IRO  
DA/IRO  
DI/IRO  
DO/IRO  
DS&T/IRO  
OGC (Bob Eatinger)  
~~DD/OCA~~  
C/IP&CRD  
C/RDP/MSG/OIT

FROM: John Pereira  
Historical Review Group

SUBJECT: JFK Assassination Records  
Proposed Regulations

1. Attached for your review and comment is a copy of proposed regulations prepared by the JFK Assassination Records Review Board. The regulations focus on the definition of "assassination record", which is very broad. The possibility of requiring additional records searches is raised.

2. The Board plans to discuss the regulations at its next meeting on 6-7 March, so it would be helpful to give the Board our input in advance of that meeting. Please provide Barry Harrelson (x30292) or me (x30373) with your comments by 1 March.



John F. Pereira

Attachment

703-243-8343

# facsimile

## TRANSMITTAL

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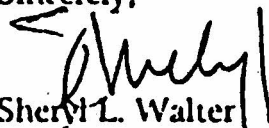
to: John Pereira, CIA Historical Review Program  
fax #: (703) 243-8343  
re: ARRB proposed interpretive regulations  
date: February 9, 1995  
pages: 4, including cover sheet.

Dear John:

Following this cover sheet is a courtesy copy of the Assassination Records Review Board's proposed interpretive regulations, published yesterday in the Federal Register. The proposed regulations include guidance on interpretation of the scope of certain provisions of the Assassination Records Collection Act, including the terms "assassination record" and "additional records and information." The Board is soliciting comment from all interested parties and would welcome any comments that the CIA may have. (The comment period is 30 days; the deadline is March 10.)

If you have any questions or need any additional information, please don't hesitate to give me a call on my direct line or at our main number, 724-0088.

Sincerely,

  
Sheryl L. Walter  
General Counsel

From the desk of

Sheryl L. Walter  
General Counsel  
Assassination Records Review Board  
600 E Street, NW, Second Floor  
Washington, D.C. 20530

(202) 724-0815  
Fax (202) 724-0457



(B) For dependents of active duty members in pay grades of E-5 and above, \$25; and,

(C) For retirees and their dependents, \$25.

(vi) The copayment for prescription drugs per prescription, for a maximum 30-day supply, is as follows:

(A) For dependents of active duty members in pay grades E-1 through E-4, \$5;

(B) For dependents of active duty members in pay grades of E-5 and above, \$5; and,

(C) For retirees and their dependents, \$9.

(vii) The copayment for ambulance services is as follows:

(A) For dependents of active duty members in pay grades of E-1 through E-4, \$10;

(B) For dependents of active duty members in pay grades of E-5 and above, \$15; and,

(C) For retirees and their dependents, \$20.

(e) *Inpatient cost sharing requirements under the Uniform HMO Benefit.*—(1) *In general.* In lieu of usual CHAMPUS cost sharing requirements (see § 199.4(f)), special cost sharing amounts are required. The specific requirements shall be uniform and shall be published as a notice annually by the Assistant Secretary of Defense (Health Affairs).

(2) *Structure of cost sharing.* For services other than mental illness or substance use treatment, there is a nominal copayment for active duty dependents and for retired members, dependents of retired members, and survivors. For inpatient mental health and substance use treatment, a separate per day charge is established.

(3) *Amount of inpatient cost sharing requirements.* Beginning in fiscal year 1995, the inpatient cost sharing requirements are as follows:

(i) For acute care admissions and other non-mental health/substance use treatment admissions, the per diem charge is as follows, with a minimum charge of \$25 per admission:

(A) For dependents of active duty members in pay grades E-1 through E-4, \$11;

(B) For dependents of active duty members in pay grades of E-5 and above, \$11; and,

(C) For retirees and their dependents, \$11.

(ii) For mental health/substance use treatment admissions, and for partial hospitalization services, the per diem charge is as follows, with a minimum charge of \$25 per admission:

(A) For dependents of active duty members in pay grades E-1 through E-4, \$20;

(B) For dependents of active duty members in pay grades of E-5 and above, \$20; and,

(C) For retirees and their dependents, \$40.

(f) *Updates.* The enrollment fees for fiscal year 1995 set under paragraph (c) of this section and the per services specific dollar amounts for fiscal year 1995 set under paragraphs (d) and (e) of this section may be updated for subsequent years to the extent necessary to maintain compliance with statutory requirements pertaining to government costs. This updating does not apply to cost sharing that is expressed as a percentage of allowable charges; these percentages will remain unchanged.

(g) *Applicability of the Uniform HMO Benefit to Uniformed Services Treatment Facilities Managed Care Program.* The provisions of this section concerning the Uniform HMO Benefit shall apply to the Uniformed Services Treatment Facilities Managed Care Program, effective October 1, 1995. Under that program, non-CHAMPUS eligible beneficiaries have the same payment responsibilities as CHAMPUS-eligible beneficiaries.

Dated: February 2, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-3028 Filed 2-7-95; 8:45 am]  
BILLING CODE 5000-04-M

## ASSASSINATION RECORDS REVIEW BOARD

### 38 CFR Part 1400

Guidance on Interpreting and Implementing the President John F. Kennedy Assassination Records Collection Act of 1992

AGENCY: Assassination Records Review Board (ARRB).

ACTION: Proposed Interpretive regulation.

SUMMARY: The ARRB proposes to issue regulations providing guidance on the interpretation of certain terms defined in and the implementation of the President John F. Kennedy Assassination Records Collection Act of 1992.

DATES: To be considered, comments must be received on or before March 10, 1995.

ADDRESSES: Comments should be mailed to the Assassination Records Review Board at 600 E Street, NW, Second floor, Washington, D.C. 20530 or delivered in person to that address

between the hours of 9:30 a.m. and 4:30 p.m., Monday through Friday (except legal holidays). Comments may also be faxed to the Board at (202) 724-0457. Comments received may be inspected in the Board's public reading room, located at the address shown above, between 10 a.m. and 3 p.m. Monday through Friday (except legal holidays). Persons wishing to inspect comments in the Board's public reading room should call the Board's office beforehand at (202) 724-0088 for further information.

FOR FURTHER INFORMATION CONTACT: Sheryl L. Walter (General Counsel), (202) 724-0088.

## SUPPLEMENTARY INFORMATION:

### Background

The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107 note (as amended) (ARCA), established the President John F. Kennedy Assassination Records Collection (the JFK Collection) at the National Archives and Records Administration (NARA). In establishing the process for public disclosure of all records relating to the assassination, Congress created an independent agency within the executive branch, the Assassination Records Review Board (the Board), which consists of five citizens appointed by the President. Under the statute, the Board is empowered to decide "whether a record constitutes an assassination record." 44 U.S.C. 2107 note, Sec. 7(i)(2)(A).

Congress further made clear its intent that the Board "issue guidance to assist in articulating the scope or universe of assassination records." President John F. Kennedy Assassination Records Collection Act of 1992, S.Rep. 102-328, 102d Cong., 2d Sess. (1992) at 21.

In constructing the proposed guidance set out here, the Board seeks to implement congressional intent that the JFK Collection contain "the most comprehensive disclosure of records related to the assassination of President Kennedy." *Id.* at 18. The Board is also mindful of Congress's instruction that the Board apply a "broad and encompassing" working definition of "assassination record" in order to achieve the goal of assembling the fullest historical record on this tragic event in American history and on the investigations that were undertaken in the assassination's aftermath. The Board recognizes that many agencies have already begun to organize and review records responsive to the ARCA even before the Board was appointed and began its work. Nevertheless, the Board's aim is that this guidance will aid in the ultimate assembly and public



disclosure of the fullest possible historical record on this tragedy and on subsequent investigations and inquiries into it.

The Board's proposed guidance is designed to help government agencies and the Board identify and make available to the public all documents that will enhance, enrich, and broaden the historical record of the assassination of President John F. Kennedy. The Board seeks through this guidance to fulfill Congress's "intent[is] and emphasis that the search and disclosure of records under this Act must go beyond" the records of previous commissions and committees established to investigate President Kennedy's assassination. *Id.* at 21. The Board also seeks to provide notice of the scope of its intended exercise of authority to seek additional information or records in order to fulfill its functions and responsibilities under the ARCA.

In addition, the Board proposes to create a mechanism to facilitate the Board's ongoing work and to further ensure future public access to the broadest possible historical record. This mechanism will be known as the "Catalog of Assassination Records" (COAR). The COAR is intended to be an official listing of all records determined by the Board to meet the definition of "assassination record" and included in the JFK Collection.

#### Request for Comments

The Board seeks public comment on its proposed interpretive regulations intended to provide guidance on the interpretation of the term assassination record, the intended scope of its exercise of authority to seek additional information or records, and its additional proposals for implementation of the ARCA.

#### List of Subjects in 36 CFR Part 1400

Administrative practice and procedure, Archives and records.

Accordingly, the Assassination Records Review Board hereby proposes to establish a new chapter XIV in title 36 of the Code of Federal Regulations to read as follows:

#### CHAPTER XIV—ASSASSINATION RECORDS REVIEW BOARD

##### PART 1400—GUIDANCE FOR INTERPRETATION AND IMPLEMENTATION OF THE PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION ACT OF 1992 (ARCA)

###### Soc.

- 1400.1 Interpretation of assassination record.
- 1400.2 Interpretation of additional records and information.
- 1400.3 Sources of assassination records and additional records and information.
- 1400.4 Types of materials included in scope of assassination record and additional records and information.
- 1400.5 Requirement that assassination records be released in their entirety.
- 1400.6 Originals and copies.
- 1400.7 Additional guidance.
- 1400.8 Implementing the ARCA—Catalog of Assassination Records.

Authority: 44 U.S.C. 2107 note.

###### § 1400.1 Interpretation of assassination record.

(a) An assassination record includes, but is not limited to, all records, public and private, regardless of how labeled or identified, that document, describe, report, analyze, or interpret activities and events that may have led to the assassination of President John F. Kennedy; the assassination itself; and investigations of or inquiries into the assassination.

(b) An assassination record further includes, without limitation:

- (1) All records as defined in Soc. 3(2) of the ARCA;
- (2) All records called by or segregated by all federal, state, and local government agencies in conjunction with any investigation or analysis of or inquiry into the assassination of President Kennedy (for example, any intra-agency investigation or analysis of or inquiry into the assassination; any inter-agency communication regarding the assassination; any request by the House Select Committee on Assassinations to collect documents and other materials; or any inter- or intra-agency collection or segregation of documents and other materials);
- (3) Other records or groups of records listed in the Catalog of Assassination Records, as described in § 1400.8 of this chapter.

###### § 1400.2 Interpretation of additional records and information.

The term *additional information and records* includes:

- (a) All documents used by government offices and agencies during their declassification review of

assassination records as well as all other documents, indices, records, and other material that disclose cryptonyms, code names, or other identification material in assassination records.

(b) All training manuals, instructional materials, and guidelines created or used by the agencies in furtherance of their review of assassination records.

(c) All records, lists, and documents describing the procedure by which the agencies identified or selected assassination records for review.

(d) Organizational charts of government agencies.

(e) Records necessary and sufficient to describe the agency's:

- (1) Records policies and schedules;
- (2) Filing systems and organization; and
- (3) Storage facilities and locations.

###### § 1400.3 Sources of assassination records and additional records and information.

Assassination records and additional records and information may be located at, or under the control of, without limitation:

- (a) Agencies, offices, and entities of the executive, legislative, and judicial branches of the federal government;
- (b) Agencies, offices, and entities of the executive, legislative, and judicial branches of state and local governments;
- (c) Record repositories and archives of federal, state, and local governments, including presidential libraries;
- (d) Record repositories and archives of universities, libraries, historical societies, and other similar organizations;
- (e) Individuals who possess such records by virtue of service with a government agency, office, or entity;
- (f) Persons, including individuals and corporations, who have obtained such records from sources identified in paragraphs (a) through (e) of this section;
- (g) Federal, state, and local courts where such records are being held under seal; or
- (h) Foreign governments.

###### § 1400.4 Types of materials included in scope of assassination record and additional records and information.

The term *record* in assassination record and additional records and information includes, for purposes of interpreting and implementing the ARCA:

- (a) Papers, maps, and other documentary material;
- (b) Photographs;
- (c) Motion pictures;
- (d) Sound and video recordings;
- (e) Machine readable information in any form; and



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## (f) Artifacts.

§ 1400.5 Requirement that assassination records be released in their entirety.

An assassination record shall be disclosed in its entirety except for portions specifically postponed pursuant to the grounds for postponement of public disclosure of records established in section 6 of the ARCA, and no portions of any assassination records shall be withheld from public disclosure solely on grounds of non-relevance.

## § 1400.6 Originals and copies.

(a) For purposes of determining whether originals or copies of assassination records may be made part of the President John F. Kennedy Assassination Records Collection (the JFK Records Collection) to be established under the ARCA:

(1) In the case of papers, maps, and other documentary material, the Assassination Records Review Board (the Board) may determine that a true and accurate copy of the original is sufficient;

(2) In the case of photographs, the term record means the original negative if available, otherwise, the earliest generation print;

(3) In the case of motion pictures, the term record means the camera original if available, otherwise, the earliest generation print;

(4) In the case of sound and video recordings, the term record means the original recording, if available, otherwise, the earliest generation copy;

(5) In the case of machine-readable information, the Board may determine that a true and accurate copy of the original is sufficient; and

(6) Artifacts means the original object itself.

(b) In cases where a copy, as defined in paragraph (a) of this section is authorized by the Board to be included in the JFK Records Collection the Board may, at its discretion, require a certified copy. In cases where an original, as defined in paragraph (a) of this section, is required for inclusion in the JFK Records Collection the Board may, at its discretion, accept the best available copy.

## § 1400.7 Additional guidance.

(a) A government agency, office, or entity includes, for purposes of interpreting and implementing the ARCA, all departments, agencies, offices, divisions, foreign offices, bureaus, and deliberative bodies of any federal, state, or local government and includes all inter- or intra-agency working groups, committees, and

meetings that possess or created records relating to the assassination of President John F. Kennedy.

(b) The inclusion of artifacts in the scope of the term assassination record is understood to apply solely for purposes of establishing the President John F. Kennedy Assassination Records Collection and for fully implementing the terms of the ARCA and has no direct or indirect bearing on the interpretation or implementation of any other statute or regulation.

(c) In the case of artifacts deemed to be assassination records and included in the John F. Kennedy Assassination Records Collection, provision to the public of photographs, drawings, or similar materials depicting the artifacts shall be sufficient to comply with the ARCA's requirement that copies of assassination records be provided to the public upon request. Other display to or examination by the public of artifacts in the John F. Kennedy Assassination Records Collection shall occur under terms and conditions established by the National Archives and Records Administration that are adequate to preserve and protect the artifacts for posterity.

(d) The terms *and*, *or*, *any*, *all*, and the plural and singular forms of nouns shall be understood in their broadest and most inclusive sense and shall not be understood to be terms of limitation.

Any records identified with respect to a particular person also includes any records for that person by any other name, pseudonym, codeword, symbol, number, cryptonym or alias. Any record described with respect to an operation or program includes any record pertaining to that program by any other name, pseudonym, codeword, symbol, number or cryptonym.

## § 1400.8 Implementing the ARCA—Catalog of Assassination Records.

(a) A Catalog of Assassination Records (COAR) shall be created as the official listing of all records determined by the Board to meet the definition of assassination record.

(b) Notice of all decisions to include records in the COAR will be published in the Federal Register within 30 days of the decision.

(c) In listing records or groups of records in the COAR, the Board must determine that the record or group of records will more likely than not enhance, enrich, and broaden the historical record of the assassination.

Dated: February 3, 1995.

David G. Maxwell,

Executive Director, Assassination Records Review Board.

(FR Doc. 95-3112 Filed 2-7-95; 8:45 am)

BILLING CODE 4420-TD-M

## ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[FRL-5149-9]

Transportation Conformity Rule Amendments: Transition to the Control Strategy Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** This action proposes to permanently align the timing of certain transportation conformity consequences with the imposition of Clean Air Act highway sanctions. For ozone nonattainment areas with an incomplete 15% emissions-reduction state implementation plan with a protective finding; incomplete ozone attainment/3% rate-of-progress plan; or finding of failure to submit an ozone attainment/3% rate-of-progress plan, and areas whose control strategy implementation plan for ozone, carbon monoxide, particulate matter, or nitrogen dioxide is disapproved with a protective finding, the conformity status of the transportation plan and program would not lapse as a result of such failure until highway sanctions for such failure are effective under other Clean Air Act sections.

This action would delay the lapse in conformity status, which would otherwise prevent approval of new highway and transit projects, and allow States more time to prevent the lapse by submitting complete ozone implementation plans.

EPA has published in the final rule section of this Federal Register a similar interim final rule which takes effect immediately and applies for six months. This proposal would apply the provisions of the interim final rule permanently.

**DATES:** Comments on this action must be received by March 10, 1995. A public hearing will be held at 10:30 a.m. on February 22, 1995 in Washington, DC.

**ADDRESSES:** Interested parties may submit written comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Attention: Docket No. A-95-02, 401 M Street, SW., Washington, DC 20460.



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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THE MARY FERRELL FOUNDATION,  
INC.; JOSIAH THOMPSON; and GARY  
AGUILAR,

Plaintiffs,

v.

JOSEPH R. BIDEN, in his official capacity as  
President of the United States; and  
NATIONAL ARCHIVES AND RECORDS  
ADMINISTRATION,

Defendants.

No. 3:22-cv-06176-RS

DECLARATION OF DANIEL S. ALCORN

Date: April 30, 2023

Time: 1:30 pm

Dept: Hon. Richard Seeborg

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DECLARATION

1. My name is Daniel S. Alcorn, and I reside at 1335 Ballantrae Lane, McLean, Virginia. I received my undergraduate degree from the University of Virginia, and a Juris Doctor from the School of Law at the University of Virginia in 1980. That year I was admitted to the Virginia State Bar and began the practice of law. In 1984 I was admitted to the District of Columbia Bar. I have been in continuous practice of law since these admissions.
2. In the course of my law practice I have handled a number of federal Freedom of Information Act cases. In 1997 I represented the National Association of Criminal Defense Lawyers in their case against the U.S. Department of Justice to obtain records related to accusations of misconduct in the FBI crime laboratory. In that case we were successful in obtaining early release of an Inspector General's Report on such allegations, which resulted in significant reforms at the FBI crime lab.
3. Since 1985 I have been aware of the controversy surrounding the assassination of President Kennedy. In May 1963, when I was seven years old, my father took me to a speech by President Kennedy at Vanderbilt University in Nashville, Tennessee, which I remember to this day as an exciting event.
4. By November 22, 1963 my father's career had taken him to Wilmington, Delaware where he was assistant superintendent of the public schools. On Sunday, November 24, 1963 my father took my sister and me to Washington, DC to line the procession route as President Kennedy's body was moved from the White House to the Capitol. My father was an educator who believed we children should be exposed to the history of our country.

5. As time passed I learned that the owner of the Texas School Book Depository building from which shots are alleged to have been fired at President Kennedy was a man named David Harold Byrd. The Byrd name was familiar to me as a resident of Virginia in that the Byrd organization led by US Sen. Harry Byrd, Sr. dominated state politics for half a century, and led a nationwide “Massive Resistance” movement to the *Brown v. Board* school desegregation decision with the aim to close public schools that desegregated under *Brown v. Board*. My research revealed that David Harold Byrd was a cousin of the Virginia Byrds and financially supported the Antarctic explorations of Admiral Richard Byrd, brother of US Senator Harry Byrd, Sr. Admiral Byrd named a mountain range in Antarctica the Harold Byrd Mountains.
6. As I learned more about David Harold Byrd, I came to understand that he was a powerful political figure in Dallas. I came to understand that he was close to early advocates of military aviation such as General James Doolittle and General Carl Spaatz. Byrd’s autobiography stated that he was a close friend of Ernst Udet, number two under Herman Goering in the Luftwaffe in charge of research and development. Shortly before Pearl Harbor David Harold Byrd co-founded the Civil Air Patrol nationally and served in leadership positions in the organization thereafter. After the assassination Byrd had the “sniper’s window” removed from the Texas School Book Depository building and set up in his mansion in Dallas. Byrd financed defense contractors after World War II, in particular US Air Force and intelligence agency contractors.
7. As I continued to research David Harold Byrd I learned that on November 22, 1963 he was reported to be on Safari in the camp Safarilandia operated by Werner von Alvensleben in Portuguese East Africa. Following advice from Martha Murphy of the



Archives staff I ordered the OSS records on von Alvensleben. They revealed that von Alvensleben was a German aristocrat who had been a valued double agent for OSS in World War II. They also revealed that in 1933 von Alvensleben served under Heinrich Himmler with the Bavarian Military Police (Himmler was the head of the SS in Nazi Germany). The OSS records state that von Alvensleben in 1933 while working for Himmler undertook an assignment to assassinate an Austrian official, and was arrested and convicted by the Austrians for attempted assassination.

8. Safari hunter von Alvensleben was known in big game hunting circles for using the Mannlicher-Schoenauer rifle, the finest hunting rifle of its era (a different rifle to the Mannlicher-Carcano that was allegedly the rifle used in the assassination). I learned that during the Warren Commission investigation Commission member John McCloy questioned the FBI ballistics expert as to whether the spent hulls found on the sixth floor of the book depository building could have been fired from a Mannlicher-Schoenauer rifle. The ammunition for the two rifles is virtually identical in appearance and dimensions. The FBI expert said he know nothing of the Mannlicher-Schoenauer rifle.
9. I have worked with the Assassination Archives and Research Center since 1985. During 2012, the Assassination Archives and Research Center and its President James H. Lesar wrote a letter to NARA general counsel asking for the CIA assassination records in the JFK Collection to be released in 2013; Mr. Stern informed us that due to logistical reasons, the CIA and NARA could not release the records before 2017. See the attached letter, marked as Exhibit A.
10. In June 2016, I asked Martha Murphy from the Archives for records on Byrd and von Alvensleben under the JFK Act. She responded that since the JFK Act index does not

show records for these individuals, she did not consider these records to be “assassination records” under the JFK Act. She suggested that I file a FOIA request.

See attached emails between us, marked as Exhibit B.

11. On July 4, 2020 the Assassination Archives and Research Center and its President James H. Lesar filed a FOIA request to CIA for information on Byrd and von Alvensleben and the Doolittle Report. In May 2021, having not heard a response from CIA, the requesters filed suit in the US District Court for the District of Columbia, Civil No. 21-1237.
12. On November 23, 2022, having seen discussion that the Archives might be willing to expand its search for JFK Act records, I contacted Gary Stern, General Counsel of NARA to request a search under the JFK Act for records requested in the lawsuit related to Byrd, von Alvensleben and the Doolittle Report. Mr. Stern has not responded to my request, attached as Exhibit C.
13. In AARC and Lesar’s case for the records, the CIA has refused to search its operational files despite the requirement that such files be searched for material that has been the subject of investigation by executive agencies or the Congressional intelligence committees. CIA Information Act of 1984 (50 USC §3141(c)(3)). The John F. Kennedy assassination has been investigated by executive agencies and the Congressional intelligence committees. The D.C. Circuit has held that the exemption from an FOIA search does not apply to matters investigated by the Senate Select Committee on Government Operations With Respect to Intelligence Activities (“Church Committee”) and that the scope of the Church Committee investigation specifically encompassed operations of the CIA and other federal agencies in investigating the assassination of President Kennedy. *Morley v. CIA*, 508 F. 3d 1108, 1117 (D.C. Cir. 2007). On February

22, 2023 Judge Cooper of the US District Court for the District of Columbia granted summary judgment to the CIA in the case stating that the association of the owner of the Texas School Book Depository building with a convicted assassin at the time of the assassination was not the specific subject of prior investigation. Plaintiffs are considering their options for an appeal to the D.C. Circuit. Civil No. 21-1237 (DDC Feb. 22, 2023)

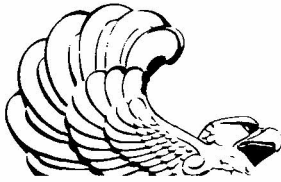
14. I have a serious concern that if relevant government files, including CIA operational files, are not searched and released under the JFK Act, the widespread doubt and confusion about the government's investigation of the Kennedy assassination will continue. To me, the better and perhaps necessary approach by the government would be to search and release any matters of concern over the assassination as assassination records, such as the records requested by AARC and Lesar described above, to restore public trust.

I declare under penalty of perjury <sup>under the laws of the United States of America</sup> that the forgoing is true and correct and of my own personal knowledge. Executed on March 4, 2023 ~~in~~ at sea near Cape Horn.

  
\_\_\_\_\_  
Daniel S. Alcorn



## Exhibit A



NATIONAL  
ARCHIVES

June 12, 2012

Jim Lesar, President  
Assassination Archives and Research Center  
1003 K Street, NW, Suite 640  
Washington, DC 20001  
[jhlesar@gmail.com](mailto:jhlesar@gmail.com)

By Email and First Class Mail

Dear Mr. Lesar:

I write in response to the letter of January 20, 2012, from you and five colleagues to David S. Ferriero, Archivist of the United States, requesting that the National Archives and Records Administration review the remaining classified documents that were “postponed” from public disclosure in accordance with the John F. Kennedy Assassination Records Collection Act of 1992 in time for the 50<sup>th</sup> anniversary of the assassination in November 2013.

We share your passion and commitment to providing access to JFK assassination records as quickly as possible. As your letter recounts, the JFK Act established a rigorous process for declassification review and release that was administered by the Assassination Records Review Board until 1998. For any assassination records that were not released by the ARRB, subsequent release could be postponed until a date certain not to exceed 25 years from the enactment of the JFK Act, i.e., no later than 2017.

The JFK Act Collection consists of a total of approximately 5 million pages, and less than 1% of the documents in the Collection are “postponed in full” until 2017. I note that your letter states that in 2010, Assistant Archivist “Michael Kurtz revealed that the CIA continues to withhold approximately 50,000 pages of JFK assassination-related records.” I would like to clarify that NARA has never counted, and thus does not know, the actual number of pages that are postponed in full. Dr. Kurtz accurately stated that “less than one percent” of the total volume of assassination records was still being withheld; he also provided our rough estimate that the collection totals approximately five million pages. Thus, it appears that the 50,000 page number in your letter may have been derived by incorrectly calculating a full one percent of five million pages. All we do know is that the CIA withheld in full a total of 1,171 documents as national security classified (there is a small number of other agency documents also postponed in full, principally for law enforcement).

NATIONAL ARCHIVES and  
RECORDS ADMINISTRATION

8601 ADELPHI ROAD  
COLLEGE PARK MD 20740-6001

[www.archives.gov](http://www.archives.gov)

GARY M. STERN  
GENERAL COUNSEL

SUITE 3110  
T 301 837 3026  
[garym.stern@nara.gov](mailto:garym.stern@nara.gov)

Your letter asks NARA to submit these remaining 1171 documents “currently withheld by the CIA” for declassification review as part of the National Declassification Center’s (NDC) project to complete the declassification of the “400 million page backlog” identified in the President’s December 29, 2009, Memorandum Implementing Executive Order 13526, by December 31, 2013. We recognize that, in a 2010 public forum, Dr. Kurtz stated that the postponed JFK assassination records would be included as part of the NDC project. However, as we have tried to explain before, Dr. Kurtz misspoke. Rather, because the postponed JFK assassination records have already been subject to a full and complete government-wide declassification review, they are not part of the 400 million page backlog of records that have yet to receive a final review.

Because of the mandated December 31, 2013 deadline for our review and processing of the extremely large set of backlogged records, the NDC must target its efforts exclusively on records contained within that backlog. In addition, because we are limited in the resources we can assign to these special reviews, we try to balance historical impact, public interest, and extent of other government agency involvement in order to manage government-wide declassification resource constraints as efficiently and effectively as possible.

As you know, the JFK Act authorized unprecedented powers for the ARRB, including the ability to overturn an agency decision on declassification, with the President as the only appeal authority. Although agencies did appeal ARRB decisions, President Clinton did not overturn any access determinations on appeal. The power wielded by the ARRB meant that more records were declassified and made available under the JFK Act than would have been released under the Freedom of Information Act (FOIA) or any currently applicable review provision of the prior or current Executive Order on Classified National Security Information.

As previously mentioned, the 1171 remaining postponed documents will be released in 2017, unless the President personally certifies on a document by document basis that continued postponement is necessary and that the harm from disclosure is of such gravity that it outweighs the public interest in disclosure. Moreover, as you point out, the JFK Act clearly intended for periodic releases prior to the 2017 date. To date all of the periodic release dates have been met, including in 2006, when the CIA made preemptory releases of all documents that were postponed from release until 2010. Thus, the only documents in the Collection that are still withheld in full for classification reasons are the 1171 CIA documents that the ARRB agreed should not be released until 2017.

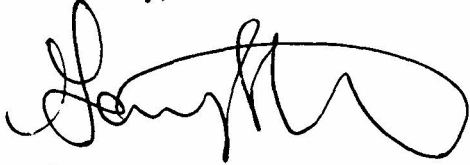
We recognize that the remaining records are of high public interest and historical value, and we appreciate your stated desire not to have to wait five more years to obtain access to these records. Given this public interest, we have been consulting with the CIA to see if it would be possible to review and release any of these remaining documents in time for the 50<sup>th</sup> anniversary of President Kennedy’s assassination in 2013. Although the CIA shares NARA’s interest in wanting to be responsive to your request, they have concluded there are substantial logistical requirements that must take place prior to the release of these remaining records and there is



simply not sufficient time or resources to complete these tasks prior to 2017. Accordingly, we will not be able to accommodate your request.

Thank you for your interest in this matter. Please share this letter with the co-signatories to your letter, and let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary M. Stern", with a large, sweeping flourish at the end.

GARY M. STERN  
General Counsel

## Exhibit B

----- Forwarded Message -----

**Subject:**Re: JFK Assassination Records Collection Act

**Date:**Thu, 30 Jun 2016 15:16:06 -0400

**From:**Daniel Alcorn <[dalcorn@rcn.com](mailto:dalcorn@rcn.com)>

**To:**Martha Murphy <[martha.murphy@nara.gov](mailto:martha.murphy@nara.gov)>

Okay. I am not sure I agree as the ARRB definition was meant to be broad in scope, and cover issues brought up by researchers. What we have in this situation is a convicted assassin in the company of the owner of the TSBD building at the time of the JFK assassination. A professional shooter using a rifle that shoots ammunition almost identical to the Mannlicher-Carcano. Researchers I have talked to about this have been intensely interested. It would be a shame if we missed something significant. Thank you for your consideration of these concerns.

On 6/30/2016 2:31 PM, Martha Murphy wrote:

At this point, I think these fall under the FOIA, rather than the JFK Act, using the definition of an assassination record as stipulated by the ARRB in their Report.

<http://www.archives.gov/research/jfk/review-board/report/>

On Thu, Jun 30, 2016 at 2:28 PM, Daniel Alcorn <[dalcorn@rcn.com](mailto:dalcorn@rcn.com)> wrote:

Right. The documents I would be interested in would be CIA records on both men, for example, and I am assuming those are probably still at CIA. Also Department of State. I was hoping you might seek the records and add to the JFK Collection under the authority of the JFK Act to seek and release such records, to avoid having to use FOIA.

On 6/30/2016 2:22 PM, Martha Murphy wrote:

You certainly have the right to file a FOIA. I have conducted a search in the JFK Assassination Records Collection and could find no records relating this gentleman. You have already received documents that are in NARA's holdings outside of the Collection, as you mention in your email.

On Thu, Jun 30, 2016 at 2:19 PM, Daniel Alcorn <[dalcorn@rcn.com](mailto:dalcorn@rcn.com)> wrote:

Thank you for your response. Should I do FOIA's on these?

-- Dan Alcorn

On 6/30/2016 2:07 PM, Martha Murphy wrote:



Dear Mr. Alcorn,

I have received your email and we will take your comments into consideration. Thank you for your interest in this topic,

Sincerely

Martha Wagner Murphy  
Chief, Special Access and FOIA Staff  
National Archives at College Park

On Wed, Jun 29, 2016 at 2:21 PM, Daniel Alcorn <[dalcorn@rcn.com](mailto:dalcorn@rcn.com)> wrote:

Dear Ms. Murphy,

You were helpful to me in 2014 in obtaining OSS records on Werner von Alvensleben, who served as a valuable double agent for OSS codenamed "DRAM" in Africa in World War II. The OSS records I obtained from NARA included the attached OSS X-2 report on von Alvensleben, stating that he had served in 1933 as an assassin for Nazi leader Heinrich Himmler and had been convicted of attempted assassination by the Austrians. The report further states that a reliable source said that von Alvensleben's father was known as a specialist in political assassination in Germany after World War I.

Werner von Alvensleben was in Dallas in late 1963 as the guest of the owner of the Texas School Book Depository ("TSBD") building, D. Harold Byrd (see attached Dallas Morning News articles). It is said that Byrd was on African safari at von Alvensleben's hunting preserve at the time of the assassination and later returned to Dallas. Von Alvensleben is reported to have favored a Mannlicher-Schoenauer rifle for hunting, which uses ammunition virtually indistinguishable from Mannlicher-Carcano ammunition. After the assassination, Byrd had the "sniper's window" removed from the TSBD building and installed for display in his home in Dallas, where it reportedly became the focus of high-powered social events (see attached Washington Times article).

The purpose of this e-mail is to urge you to designate government records related to Werner von Alvensleben and D. Harold Byrd as assassination-related records under the JFK Assassination Records Collection Act and release them to the public. Neither of these persons was the focus of much official attention during the investigations of the assassination, rather information that has become known recently has made them of interest to researchers. Government agencies that would likely have records on von Alvensleben would be: CIA and forerunners, and Department of State as to visa records and records from the U.S. Embassy in Mozambique. Agencies that would likely have records on D. Harold Byrd would include CIA, Department of State, Air Force, Civil Air Patrol and others.

I would be pleased to provide you with such additional information as I might have.

Sincerely,

Dan Alcorn  
McLean, Virginia  
[\(703\) 442-0704](tel:(703)442-0704)

--

Martha Wagner Murphy  
Chief, Special Access and FOIA Staff  
National Archives at College Park

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Martha Wagner Murphy  
Chief, Special Access and FOIA Staff  
National Archives at College Park

## Exhibit C



----- Forwarded Message -----

**Subject:**JFK Assassination Records

**Date:**Wed, 23 Nov 2022 12:28:19 -0500

**From:**Daniel Alcorn <[dalcorn@rcn.com](mailto:dalcorn@rcn.com)>

**To:**[garym.stern@nara.gov](mailto:garym.stern@nara.gov)

Dear Mr. Stern:

The purpose of this email is to call to your attention government records that should be part of the President John F. Kennedy Assassination Collection. I attach a Freedom of Information request filed on behalf of the Assassination Archives and Research Center on July 4, 2020. The request is for CIA records related to David Harold Byrd, owner of the Texas School Book Depository building n November 22, 1963; Werner von Alvensleben, an associate of Mr. Byrd who served as a valued double agent for the OSS in World War II and previously was convicted of participating in an assassination attempt against an Austrian official at the behest of Heinrich Himmler, head of the Nazi SS; and CIA records on the Doolittle report of 1954 that proposed allowing the CIA to act ruthlessly and beyond norms of human conduct in pursuit of Cold War aims. Mr. Doolittle was a substantial friend of Mr. Byrd. The FOIA request gives additional background information.

This request is currently in litigation in the US District Court for the District of Columbia, civil case no. 21-1237. The purpose of this email is to alert you to the existence of these JFK assassination related records as NARA works on updating the collection. Please feel free to contact me for any further information.

Regards,

Daniel S. Alcorn, Esq.

Counsel for Assassination Archives and Research Center

Te. (703) 442-0704

email: [dalcorn@rcn.com](mailto:dalcorn@rcn.com)

**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF** NORTHERN CALIFORNIA

**Form 1. Notice of Appeal from a Judgment or Order of a  
United States District Court**

U.S. District Court case number: 22-6176-RS

Notice is hereby given that the appellant(s) listed below hereby appeal(s) to the United States Court of Appeals for the Ninth Circuit.

Date case was first filed in U.S. District Court: 10/19/2022

Date of judgment or order you are appealing: 01/18/2024

Docket entry number of judgment or order you are appealing: 107

Fee paid for appeal? (*appeal fees are paid at the U.S. District Court*)

☒ Yes   ☐ No   ☐ IFP was granted by U.S. District Court

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**List all Appellants** (*List **each** party filing the appeal. Do not use "et al." or other abbreviations.*)

The Mary Ferrell Foundation, Josiah Thompson and Gary Aguilar

Is this a cross-appeal?   ☐ Yes   ☒ No

If yes, what is the first appeal case number?

Was there a previous appeal in this case?   ☐ Yes   ☒ No

If yes, what is the prior appeal case number?

Your mailing address (if pro se):

City:  State:  Zip Code:

Prisoner Inmate or A Number (if applicable):

**Signature**

*William M. Simpson*



**Date**

03/17/2024

*Complete and file with the attached representation statement in the U.S. District Court*

*Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)*

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 6. Representation Statement**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>*

**Appellant(s)** (List *each* party filing the appeal, do not use “et al.” or other abbreviations.)

Name(s) of party/parties:

The Mary Ferrell Foundation, Inc., Josiah Thompson, and Gary Aguilar

Name(s) of counsel (if any):

William M. Simpich and Lawrence P. Schanpf

Address: 528 Grand Ave, Oakland, CA 94610; 55 E 87th St., #8N, New York, NY 10128

Telephone number(s): (415) 542-6809; (212) 876-3189

Email(s): bsimpich@gmail.com; Larry@schnapflaw.com

Is counsel registered for Electronic Filing in the 9th Circuit? ☒ Yes ☐ No

**Appellee(s)** (List only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.)

Name(s) of party/parties:

National Archives and Records Administration

Name(s) of counsel (if any):

Brian Boynton, Elizabeth J. Shapiro, M. Andrew Zee and John Robinson

Address: Civil Division, Federal Programs Branch, U.S. Department of Justice, 450 Golden Gate Avenue, Room 7-5395, San Francisco, CA 94102

Telephone number(s): (415) 436-6646

Email(s): m.andrew.zee@usdoj.gov

*To list additional parties and/or counsel, use next page.*

*Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)*



Continued list of parties and counsel: *(attach additional pages as necessary)*

**Appellants**

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Is counsel registered for Electronic Filing in the 9th Circuit? ☒ Yes ☐ No

---

**Appellees**

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

---

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

---

*Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)*

**U.S. District Court  
California Northern District (San Francisco)  
CIVIL DOCKET FOR CASE #: 3:22-cv-06176-RS**

Mary Ferrell Foundation, Inc. v. Biden et al  
Assigned to: Judge Richard Seeborg  
Case in other court: 9th Circuit, 24-01606  
Cause: 46:1156 Administrative Procedure Act

Date Filed: 10/19/2022  
Jury Demand: None  
Nature of Suit: 899 Other Statutes:  
Administrative Procedures  
Act/Review or Appeal of Agency  
Decision  
Jurisdiction: Federal Question

**Plaintiff**

**Mary Ferrell Foundation, Inc.**

represented by **Lawrence P. Schnapf**  
Lawrence Schnapf  
55 E.87th Street #8b  
Ste 8b  
New York, NY 10128  
917-576-3667  
Email: larry@schnapflaw.com  
*ATTORNEY TO BE NOTICED*

**William Morris Simpich**  
Attorney at Law  
1736 Franklin Street  
10th Floor  
Oakland, CA 94612  
510-444-0226  
Email: bsimpich@gmail.com  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Gary Aguilar**

represented by **William Morris Simpich**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Josiah Thompson**

represented by **William Morris Simpich**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

V.

**Defendant****Joseph R. Biden**represented by **John Robinson**

U.S. Department of Justice, Civil  
Division  
Federal Programs Branch  
1100 L Street NW  
Washington, DC 20005  
202-616-8489  
Email: john.j.robinson@usdoj.gov  
*ATTORNEY TO BE NOTICED*

**Michael Andrew Zee**

United States Department of Justice  
Civil Division, Federal Programs  
Branch  
450 Golden Gate Avenue, Room 7-  
5395  
San Francisco, CA 94102  
415-436-6646  
Fax: 415-436-6632  
Email: m.andrew.zee@usdoj.gov  
*ATTORNEY TO BE NOTICED*

**Defendant****National Archives and Records  
Administration**represented by **John Robinson**

(See above for address)  
*ATTORNEY TO BE NOTICED*

**Michael Andrew Zee**

(See above for address)  
*ATTORNEY TO BE NOTICED*

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
10/19/2022	<a href="#"><u>1</u></a>	COMPLAINT <i>FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND WRIT OF MANDAMUS</i> against Joseph R. Biden, National Archives and Records Administration ( Filing fee \$ 402, receipt number ACANDC-17640360.). Filed by Mary Ferrell Foundation, Inc., Josiah Thompson, Gary Aguilar. (Simpich, William) (Filed on 10/19/2022) (Entered: 10/19/2022)
10/19/2022	<a href="#"><u>2</u></a>	Certificate of Interested Entities by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson re <a href="#"><u>1</u></a> Complaint, <i>for Declaratory</i>



		<i>Relief, Injunctive Relief, or Writ of Mandamus</i> (Simpich, William) (Filed on 10/19/2022) (Entered: 10/19/2022)
10/19/2022	<a href="#"><u>3</u></a>	Civil Cover Sheet by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson <i>re Complaint for Declaratory Relief, Injunctive Relief, and Writ of Mandamus</i> . (Simpich, William) (Filed on 10/19/2022) (Entered: 10/19/2022)
10/19/2022	<a href="#"><u>4</u></a>	Proposed Summons. (Attachments: # <a href="#"><u>1</u></a> Summons for National Archives and Records Administration)(Simpich, William) (Filed on 10/19/2022) (Entered: 10/19/2022)
10/19/2022		<a href="#">Electronic filing error</a> . Please resubmit Civil Cover Sheet. Under Section V. Origin, please choose one. No judge assignment will be made until the document is e-filed. Submit your document using Civil Events > Other Filings > Other Documents > Civil Cover Sheet Re: <a href="#"><u>3</u></a> Civil Cover Sheet filed by Mary Ferrell Foundation, Inc., Gary Aguilar, Josiah Thompson (mbc, COURT STAFF) (Filed on 10/19/2022) (Entered: 10/19/2022)
10/19/2022		<a href="#">Electronic filing error</a> . ONLY ONE SUMMONS TO BE ISSUED PER CASE, USE AN ATTACHMENT TO SUMMONS IF NEEDED TO LIST ADDITIONAL DEFENDANTS INFORMATION [err201].This filing will not be processed by the clerks office.Please re-file in its entirety. Re: <a href="#"><u>4</u></a> Proposed Summons filed by Mary Ferrell Foundation, Inc., Gary Aguilar, Josiah Thompson (far, COURT STAFF) (Filed on 10/19/2022) (Entered: 10/19/2022)
10/19/2022	<a href="#"><u>5</u></a>	First MOTION for leave to appear in Pro Hac Vice ( Filing fee \$ 317, receipt number ACANDC-17641994.) filed by Mary Ferrell Foundation, Inc.. (Attachments: # <a href="#"><u>1</u></a> Certificate/Proof of Service good standing certificate)(Schnapf, Lawrence) (Filed on 10/19/2022) (Entered: 10/19/2022)
10/19/2022	<a href="#"><u>6</u></a>	Civil Cover Sheet by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson <i>RE COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND WRIT OF MANDAMUS</i> . (Simpich, William) (Filed on 10/19/2022) (Entered: 10/19/2022)
10/19/2022	<a href="#"><u>7</u></a>	Proposed Summons. (Simpich, William) (Filed on 10/19/2022) (Entered: 10/19/2022)
10/19/2022	8	Case assigned to Magistrate Judge Kandis A. Westmore.  Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the

		<p>opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at <a href="http://cand.uscourts.gov/ecf/caseopening">http://cand.uscourts.gov/ecf/caseopening</a>.</p> <p>Standing orders can be downloaded from the court's web page at <a href="http://www.cand.uscourts.gov/judges">www.cand.uscourts.gov/judges</a>. Upon receipt, the summons will be issued and returned electronically. A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days.</p> <p>Consent/Declination due by 11/2/2022. (mbc, COURT STAFF) (Filed on 10/19/2022) (Entered: 10/19/2022)</p>
10/20/2022	<a href="#"><u>9</u></a>	<p><b>Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 1/10/2023. Initial Case Management Conference set for 1/17/2023 01:30 PM in Oakland, - To be determined. (far, COURT STAFF) (Filed on 10/20/2022) (Entered: 10/20/2022)</b></p>
10/20/2022	<a href="#"><u>10</u></a>	<p>Summons Issued as to Joseph R. Biden, Mary Ferrell Foundation, Inc., National Archives and Records Administration, Josiah Thompson, U.S. Attorney and U.S. Attorney General (far, COURT STAFF) (Filed on 10/20/2022) (Entered: 10/20/2022)</p>
10/20/2022	<a href="#"><u>11</u></a>	<p><b>Order by Magistrate Judge Kandis A. Westmore granting <a href="#"><u>5</u></a> Motion for Pro Hac Vice as to Lawrence P. Schnapf. (wft, COURT STAFF) (Filed on 10/20/2022) (Entered: 10/20/2022)</b></p>
11/02/2022	<a href="#"><u>12</u></a>	<p>CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Mary Ferrell Foundation, Inc... (Simpich, William) (Filed on 11/2/2022) (Entered: 11/02/2022)</p>
11/04/2022	<a href="#"><u>13</u></a>	<p>NOTICE of Appearance by Michael Andrew Zee (Zee, Michael) (Filed on 11/4/2022) (Entered: 11/04/2022)</p>
11/04/2022	<a href="#"><u>14</u></a>	<p>CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Joseph R. Biden, National Archives and Records Administration.. (Zee, Michael) (Filed on 11/4/2022) (Entered: 11/04/2022)</p>
11/04/2022	15	<p>CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned.</p>



		<p>ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED.</p> <p><i>This is a text only docket entry; there is no document associated with this notice.</i> (kc, COURT STAFF) (Filed on 11/4/2022) (Entered: 11/04/2022)</p>
11/07/2022	<a href="#">16</a>	<p><b>ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge Richard Seeborg for all further proceedings. Magistrate Judge Kandis A. Westmore no longer assigned to case. Signed by The Clerk on 11/07/2022. (jrs, COURT STAFF) (Filed on 11/7/2022) (Entered: 11/07/2022)</b></p>
11/07/2022	17	<p>CLERK'S NOTICE RE REASSIGNED CASE:</p> <p>You are notified that the Court has scheduled an Initial Case Management Conference set for 1/12/2023 at 10:00 AM before Judge Richard Seeborg upon reassignment. Case Management Statement due by 1/5/2023.</p> <p>All parties shall appear by videoconference using log-in instructions the Court will provide in advance. For a copy of Judge Seeborg's Standing Order and other information, please refer to the Court's website at <a href="http://www.cand.uscourts.gov">www.cand.uscourts.gov</a></p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cl, COURT STAFF) (Filed on 11/7/2022) (Entered: 11/07/2022)</p>
12/19/2022	<a href="#">18</a>	<p>NOTICE of Appearance by John Robinson <i>for Defendants</i> (Robinson, John) (Filed on 12/19/2022) (Entered: 12/19/2022)</p>
12/23/2022	<a href="#">19</a>	<p>STIPULATION WITH PROPOSED ORDER <i>to Set Deadline for Plaintiffs' Amended Complaint, to Set Deadline for Defendants' Response to Complaint, and to Continue the Case Management Conference</i> filed by Joseph R. Biden, National Archives and Records Administration. (Attachments: # <a href="#">1</a> Declaration of John Robinson)(Robinson, John) (Filed on 12/23/2022) (Entered: 12/23/2022)</p>
12/23/2022	<a href="#">20</a>	<p><b>ORDER by Chief Judge Richard Seeborg granting <a href="#">19</a> Stipulation. Initial Case Management Conference previously scheduled for</b></p>



		<b>1/12/2023 is continued to 3/2/2023 at 10:00 AM in San Francisco - Videoconference Only. Case Management Statement due by 2/23/2023. (rslc2, COURT STAFF) (Filed on 12/23/2022) (Entered: 12/23/2022)</b>
01/05/2023	<a href="#">21</a>	AMENDED COMPLAINT <i>FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND WRIT OF MANDAMUS</i> against Joseph R. Biden, National Archives and Records Administration. Filed by Gary Aguilar, Josiah Thompson, Mary Ferrell Foundation, Inc.. (Simpich, William) (Filed on 1/5/2023) (Entered: 01/05/2023)
01/20/2023	<a href="#">22</a>	<b>ORDER DENYING LEAVE TO FILE AMICUS BRIEF. Signed by Chief Judge Richard Seeborg on 1/20/2023. (Attachments: # <a href="#">1</a> Proposed Brief, # <a href="#">2</a> Certificate/Proof of Service)(wsn, COURT STAFF) (Filed on 1/20/2023) (Entered: 01/20/2023)</b>
02/06/2023	<a href="#">23</a>	MOTION to Dismiss filed by Joseph R. Biden, National Archives and Records Administration. Motion Hearing set for 3/30/2023 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. Responses due by 2/21/2023. Replies due by 2/28/2023. (Attachments: # <a href="#">1</a> Proposed Order)(Robinson, John) (Filed on 2/6/2023) (Entered: 02/06/2023)
02/07/2023	<a href="#">24</a>	MOTION for Reconsideration re <a href="#">22</a> ORDER DENYING LEAVE TO FILE AMICUS BRIEF, by Lyn Denise Hazelwood. (wsn, COURT STAFF) (Filed on 2/7/2023) (Entered: 02/08/2023)
02/17/2023	<a href="#">25</a>	STIPULATION WITH PROPOSED ORDER filed by Joseph R. Biden, National Archives and Records Administration. (Attachments: # <a href="#">1</a> Declaration of John Robinson)(Robinson, John) (Filed on 2/17/2023) (Entered: 02/17/2023)
02/17/2023	26	ADR Clerks Notice re: Non-Compliance with Court Order. The parties have failed to file an ADR Certification as required by the Initial Case Management Scheduling Order. Counsel shall comply promptly with the requirements of ADR L.R. 3-5(b) and shall file the ADR Certification. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cmf, COURT STAFF) (Filed on 2/17/2023) (Entered: 02/17/2023)
02/17/2023	<a href="#">27</a>	<b>STIPULATION AND ORDER RE <a href="#">25</a> TO SET BRIEFING SCHEDULE FOR DEFENDANTS MOTION TO DISMISS AND TO CONTINUE CASE MANAGEMENT CONFERENCE.</b>  <b>Case Management Statement due by 6/1/2023. Initial Case Management Conference previously set for 3/2/2023 is continued to 6/8/2023 at 10:00 AM in San Francisco, - Videoconference Only.</b>

		<p><b>Signed by Judge Richard Seeborg on 2/17/2023.</b></p> <p><b>(cl, COURT STAFF) (Filed on 2/17/2023)</b></p> <p><b>(Entered: 02/17/2023)</b></p>
02/21/2023	<a href="#">28</a>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Robinson, John) (Filed on 2/21/2023) (Entered: 02/21/2023)
03/06/2023	<a href="#">29</a>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options <i>for The Mary Ferrell Foundation, Inc.</i> (Simpich, William) (Filed on 3/6/2023) (Entered: 03/06/2023)
03/06/2023	<a href="#">30</a>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options <i>with Plaintiff Gary Aguilar</i> (Simpich, William) (Filed on 3/6/2023) (Entered: 03/06/2023)
03/06/2023	<a href="#">31</a>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options <i>with Plaintiff Josiah Thompson</i> (Simpich, William) (Filed on 3/6/2023) (Entered: 03/06/2023)
03/07/2023	<a href="#">32</a>	ADMINISTRATIVE MOTION Enlargement of briefs <i>pursuant to Stipulation and seeking leave of court</i> , filed by Gary Aguilar. Responses due by 3/7/2023. (Attachments: # <a href="#">1</a> Declaration Stipulation, # <a href="#">2</a> {Proposed Order} (Simpich, William) (Filed on 3/7/2023) (Entered: 03/07/2023)
03/07/2023	<a href="#">33</a>	OPPOSITION/RESPONSE (re <a href="#">23</a> Motion to Dismiss, <a href="#">32</a> Administrative Motion Enlargement of briefs <i>pursuant to Stipulation and seeking leave of court</i> , ) <i>Plaintiffs' Opposition to Motion to Dismiss</i> filed by Mary Ferrell Foundation, Inc.. (Attachments: # <a href="#">1</a> Declaration of Daniel S. Alcorn) (Simpich, William) (Filed on 3/7/2023) (Entered: 03/07/2023)
03/07/2023	<a href="#">34</a>	OPPOSITION/RESPONSE (re <a href="#">23</a> MOTION to Dismiss ) <i>Declaration of Lawrence Schnapf</i> filed by Mary Ferrell Foundation, Inc.. (Attachments: # <a href="#">1</a> Declaration of Rex Bradford) (Simpich, William) (Filed on 3/7/2023) (Entered: 03/07/2023)
03/07/2023	<a href="#">35</a>	Declaration of William Simpich - OPPOSITION/RESPONSE (re <a href="#">23</a> MOTION to Dismiss ) filed by Mary Ferrell Foundation, Inc.. (Simpich, William) (Filed on 3/7/2023) Modified on 3/8/2023 (kmg, COURT STAFF). (Entered: 03/07/2023)
03/08/2023	<a href="#">36</a>	Amended Declaration of William Simpich - OPPOSITION/RESPONSE (re <a href="#">23</a> MOTION to Dismiss ) filed by Mary



		Ferrell Foundation, Inc.. (Simpich, William) (Filed on 3/8/2023) Modified on 3/8/2023 (kmg, COURT STAFF). Modified on 3/8/2023 (kmg, COURT STAFF). (Entered: 03/08/2023)
03/08/2023	<a href="#">37</a>	OPPOSITION/RESPONSE (re <a href="#">23</a> MOTION to Dismiss ) <i>Plaintiffs' Conforming Brief in Opposition to Motion to Dismiss</i> filed by Mary Ferrell Foundation, Inc.. (Simpich, William) (Filed on 3/8/2023) (Entered: 03/08/2023)
03/09/2023	<a href="#">38</a>	<b>ORDER by Judge Richard Seeborg Granting <a href="#">32</a> Administrative Relief. (cl, COURT STAFF) (Filed on 3/9/2023) (Entered: 03/09/2023)</b>
03/09/2023	<a href="#">39</a>	OPPOSITION/RESPONSE (re <a href="#">23</a> MOTION to Dismiss ) <i>Plaintiffs' Final Conforming Brief in Opposition to Motion to Dismiss</i> filed by Mary Ferrell Foundation, Inc.. (Simpich, William) (Filed on 3/9/2023) (Entered: 03/09/2023)
03/21/2023	<a href="#">40</a>	REPLY (re <a href="#">23</a> MOTION to Dismiss ) filed by Joseph R. Biden, National Archives and Records Administration. (Robinson, John) (Filed on 3/21/2023) (Entered: 03/21/2023)
03/22/2023	41	CLERK'S NOTICE Continuing Motion Hearing as to <a href="#">23</a> MOTION to Dismiss .  Motion Hearing previously set for 3/30/2023 is continued to 4/27/2023 at 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg.  <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i>  (cl, COURT STAFF) (Filed on 3/22/2023) (Entered: 03/22/2023)
03/29/2023	<a href="#">42</a>	<b>ORDER by Chief Judge Richard Seeborg denying <a href="#">24</a> Motion for Reconsideration re <a href="#">22</a> Order. (rslc2, COURT STAFF) (Filed on 3/29/2023) (Entered: 03/29/2023)</b>
04/10/2023	<a href="#">43</a>	STIPULATION WITH PROPOSED ORDER <i>PURSUANT TO STIPULATION OF THE PARTIES</i> filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Attachments: # <a href="#">1</a> Proposed Order Order Taking 4/27/23 hearing off calendar and new briefing schedule)(Simpich, William) (Filed on 4/10/2023) (Entered: 04/10/2023)
04/10/2023	<a href="#">44</a>	COMPLAINT ( <i>SECOND AMENDED</i> ) against Joseph R. Biden, National Archives and Records Administration. Filed by Gary Aguilar,



		Josiah Thompson, Mary Ferrell Foundation, Inc.. (Simpich, William) (Filed on 4/10/2023) (Entered: 04/10/2023)
04/10/2023	<a href="#">45</a>	<b>STIPULATION AND ORDER RE <a href="#">43</a> PURSUANT TO STIPULATION OF THE PARTIES AS MODIFIED BY THE COURT.</b>  <b>Signed by Judge Richard Seeborg on 4/10/2023. (cl, COURT STAFF) (Filed on 4/10/2023) (Entered: 04/10/2023)</b>
04/10/2023		Set/Reset as to <a href="#">23</a> MOTION to Dismiss . Motion Hearing previously set for 4/27/2023 is continued to 6/29/2023 at 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. (cl, COURT STAFF) (Filed on 4/10/2023) (Entered: 04/10/2023)
05/01/2023	<a href="#">46</a>	MOTION to Dismiss filed by Joseph R. Biden, National Archives and Records Administration. Motion Hearing set for 6/29/2023 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. Responses due by 5/22/2023. Replies due by 6/5/2023. (Attachments: # <a href="#">1</a> Proposed Order)(Robinson, John) (Filed on 5/1/2023) (Entered: 05/01/2023)
05/19/2023	<a href="#">47</a>	STIPULATION WITH PROPOSED ORDER filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Attachments: # <a href="#">1</a> Declaration Motion for Administrative Order, # <a href="#">2</a> Proposed Order Proposed Order)(Simpich, William) (Filed on 5/19/2023) (Entered: 05/19/2023)
05/19/2023	<a href="#">48</a>	<b>ORDER by Judge Richard Seeborg Granting <a href="#">47</a> Administrative Relief. (cl, COURT STAFF) (Filed on 5/19/2023) (Entered: 05/19/2023)</b>
05/22/2023	<a href="#">49</a>	OPPOSITION/RESPONSE (re <a href="#">46</a> MOTION to Dismiss ) <i>Second Amended Complaint</i> filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Simpich, William) (Filed on 5/22/2023) (Entered: 05/22/2023)
05/23/2023	<a href="#">50</a>	OPPOSITION/RESPONSE (re <a href="#">46</a> MOTION to Dismiss ) <i>TABLES OF CONTENTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS SECOND AMENDED COMPLAINT</i> filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Simpich, William) (Filed on 5/23/2023) (Entered: 05/23/2023)
05/23/2023	<a href="#">51</a>	Declaration of William Simpich in Support of <a href="#">49</a> Opposition/Response to Motion, <a href="#">50</a> Opposition/Response to Motion, <i>Second Declaration of William Simpich with Exhibits A-F</i> filed by Gary Aguilar, Mary Ferrell

		Foundation, Inc., Josiah Thompson. (Related document(s) <a href="#">49</a> , <a href="#">50</a> ) (Simpich, William) (Filed on 5/23/2023) (Entered: 05/23/2023)
05/25/2023	<a href="#">52</a>	MOTION for Preliminary Injunction <i>Declaratory Relief, or Mandamus</i> filed by Mary Ferrell Foundation, Inc., Josiah Thompson. Motion Hearing set for 6/29/2023 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. Responses due by 6/8/2023. Replies due by 6/15/2023. (Simpich, William) (Filed on 5/25/2023) (Entered: 05/25/2023)
05/25/2023	<a href="#">53</a>	ADMINISTRATIVE MOTION Oversized brief re <a href="#">52</a> MOTION for Preliminary Injunction <i>Declaratory Relief, or Mandamus</i> filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. Responses due by 5/30/2023. (Attachments: # <a href="#">1</a> Declaration)(Simpich, William) (Filed on 5/25/2023) (Entered: 05/25/2023)
05/26/2023	<a href="#">54</a>	Declaration of William Simpich in Support of <a href="#">53</a> ADMINISTRATIVE MOTION Oversized brief re <a href="#">52</a> MOTION for Preliminary Injunction <i>Declaratory Relief, or Mandamus Supplemental Declaration</i> filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Attachments: # <a href="#">1</a> Proposed Order)(Related document(s) <a href="#">53</a> ) (Simpich, William) (Filed on 5/26/2023) (Entered: 05/26/2023)
05/26/2023	<a href="#">55</a>	OPPOSITION/RESPONSE (re <a href="#">53</a> ADMINISTRATIVE MOTION Oversized brief re <a href="#">52</a> MOTION for Preliminary Injunction <i>Declaratory Relief, or Mandamus</i> ) filed by Joseph R. Biden, National Archives and Records Administration. (Attachments: # <a href="#">1</a> Proposed Order)(Robinson, John) (Filed on 5/26/2023) (Entered: 05/26/2023)
05/26/2023	<a href="#">56</a>	<b>ORDER by Chief Judge Richard Seeborg denying <a href="#">53</a> Administrative Motion. Plaintiffs will need to refile any Motion for Preliminary Injunction.</b>  <b>Hearing for the Motion to Dismiss previously set for 6/29/2023 is continued to 7/13/2023 at 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Chief Judge Richard Seeborg. (rslc2, COURT STAFF) (Filed on 5/26/2023) (Entered: 05/26/2023)</b>
05/26/2023		Set/Reset as to <a href="#">46</a> MOTION to Dismiss . Motion Hearing previously set for 6/29/2023 is continued to 7/13/2023 at 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. (cl, COURT STAFF) (Filed on 5/26/2023) (Entered: 05/26/2023)
05/30/2023	57	CLERK'S NOTICE. Initial Case Management Conference previously set for 6/8/2023 is continued to 8/17/2023 at 10:00 AM in San Francisco - Videoconference Only. Case Management Statement due



		by 8/10/2023. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (rslc2, COURT STAFF) (Filed on 5/30/2023) (Entered: 05/30/2023)
06/05/2023	<a href="#">58</a>	REPLY (re <a href="#">46</a> MOTION to Dismiss ) filed by Joseph R. Biden, National Archives and Records Administration. (Robinson, John) (Filed on 6/5/2023) (Entered: 06/05/2023)
06/08/2023	<a href="#">59</a>	MOTION for Preliminary Injunction <i>Declaratory Relief, or Writ of Mandamus</i> filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. Motion Hearing set for 7/13/2023 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. Responses due by 6/22/2023. Replies due by 6/29/2023. (Simpich, William) (Filed on 6/8/2023) (Entered: 06/08/2023)
06/08/2023	<a href="#">60</a>	Request for Judicial Notice re <a href="#">34</a> Opposition/Response to Motion, <a href="#">33</a> Opposition/Response to Motion, <a href="#">51</a> Declaration in Support, <a href="#">36</a> Opposition/Response to Motion, <a href="#">59</a> MOTION for Preliminary Injunction <i>Declaratory Relief, or Writ of Mandamus</i> , <a href="#">49</a> Opposition/Response to Motion <i>to Dismiss Second Amended Complaint</i> filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Related document(s) <a href="#">34</a> , <a href="#">33</a> , <a href="#">51</a> , <a href="#">36</a> , <a href="#">59</a> , <a href="#">49</a> ) (Simpich, William) (Filed on 6/8/2023) (Entered: 06/08/2023)
06/22/2023	<a href="#">61</a>	OPPOSITION/RESPONSE (re <a href="#">59</a> MOTION for Preliminary Injunction <i>Declaratory Relief, or Writ of Mandamus</i> ) filed by Joseph R. Biden, National Archives and Records Administration. (Zee, Michael) (Filed on 6/22/2023) (Entered: 06/22/2023)
06/29/2023	<a href="#">62</a>	REPLY (re <a href="#">59</a> MOTION for Preliminary Injunction <i>Declaratory Relief, or Writ of Mandamus</i> ) filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Attachments: # <a href="#">1</a> Proposed Order Proposed Order Granting Preliminary Injunctive Relief (And/Or Preliminary Declaratory Relief And/Or Setting a Hearing for Declaratory Judgment)(Simpich, William) (Filed on 6/29/2023) (Entered: 06/29/2023)
06/30/2023	<a href="#">63</a>	REPLY (re <a href="#">59</a> MOTION for Preliminary Injunction <i>Declaratory Relief, or Writ of Mandamus</i> ) <i>2nd Declaration of Lawrence P. Schnapf</i> filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Attachments: # <a href="#">1</a> Declaration Declaration of William E. Kelly, Jr.)(Simpich, William) (Filed on 6/30/2023) (Entered: 06/30/2023)
06/30/2023	<a href="#">64</a>	REPLY (re <a href="#">59</a> MOTION for Preliminary Injunction <i>Declaratory Relief, or Writ of Mandamus</i> ) <i>Table of Contents and Table of Authorities for Reply Brief</i> filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah



		Thompson. (Simpich, William) (Filed on 6/30/2023) (Entered: 06/30/2023)
06/30/2023	<a href="#">65</a>	NOTICE by Joseph R. Biden, National Archives and Records Administration of <i>June 30, 2023 Presidential Memorandum</i> (Attachments: # <a href="#">1</a> Exhibit A - June 30, 2023 Presidential Memorandum)(Zee, Michael) (Filed on 6/30/2023) (Entered: 06/30/2023)
07/06/2023	<a href="#">66</a>	REPLY (re <a href="#">59</a> MOTION for Preliminary Injunction <i>Declaratory Relief, or Writ of Mandamus</i> , <a href="#">46</a> MOTION to Dismiss ) <i>Addendum to Reply and Request for Judicial Notice</i> filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Simpich, William) (Filed on 7/6/2023) (Entered: 07/06/2023)
07/11/2023	67	CLERK'S NOTICE: MOTION TO DISMISS AND MOTION FOR PRELIMINARY INJUNCTION [#46, #59] SCHEDULED FOR HEARING ON JULY 13, 2023 AT 1:30 P.M. SHALL BE SUBMITTED WITHOUT ORAL ARGUMENT PURSUANT TO CIVIL LOCAL RULE 7-1(b). ACCORDINGLY, THE MOTION HEARING IS VACATED.  <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i>  (cl, COURT STAFF) (Filed on 7/11/2023)  (Entered: 07/11/2023)
07/14/2023	<a href="#">68</a>	<b>ORDER by Chief Judge Richard Seeborg granting in part and denying in part <a href="#">46</a> Motion to Dismiss and denying <a href="#">59</a> Motion for Preliminary Injunction. (rslc2, COURT STAFF) (Filed on 7/14/2023) (Entered: 07/14/2023)</b>
07/28/2023	<a href="#">69</a>	STIPULATION to Extend Defendants' Deadline to Answer Plaintiffs' Second Amended Complaint filed by Joseph R. Biden, National Archives and Records Administration. (Zee, Michael) (Filed on 7/28/2023) (Entered: 07/28/2023)
08/09/2023	<a href="#">70</a>	STIPULATION WITH PROPOSED ORDER to Continue Case Management Conference and Extend Answer Deadline filed by Joseph R. Biden, National Archives and Records Administration. (Attachments: # <a href="#">1</a> Declaration of M. Andrew Zee)(Zee, Michael) (Filed on 8/9/2023) (Entered: 08/09/2023)
08/09/2023	<a href="#">71</a>	<b>ORDER by Judge Richard Seeborg GRANTING <a href="#">70</a> STIPULATION TO CONTINUE CASE</b>

		<p><b>MANAGEMENT CONFERENCE AND EXTEND ANSWER DEADLINE.</b></p> <p><b>Initial Case Management Conference previously set for 8/17/2023 is continued to 10/19/2023 at 10:00 AM in San Francisco, - Videoconference Only. Case Management Statement due by 10/12/2023.</b></p> <p><b>(cl, COURT STAFF) (Filed on 8/9/2023)</b></p> <p><b>(Entered: 08/09/2023)</b></p>
08/14/2023	<a href="#">72</a>	<p>MOTION for Leave to File <i>Third Amended Complaint</i> filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Attachments: # <a href="#">1</a> Affidavit Memo of Points and Authorities, # <a href="#">2</a> Declaration Declaration and proposed Third Amended Complaint)(Simpich, William) (Filed on 8/14/2023) (Entered: 08/14/2023)</p>
08/17/2023	<a href="#">73</a>	<p>Amended MOTION to Amend/Correct <a href="#">72</a> MOTION for Leave to File <i>Third Amended Complaint</i> filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. Motion Hearing set for 9/21/2023 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. Responses due by 8/31/2023. Replies due by 9/7/2023. (Attachments: # <a href="#">1</a> Affidavit Amended Memorandum of Points and Authorities for Leave to File a Third Amended Complaint, # <a href="#">2</a> Declaration Amended Declaration of William M. Simpich for Leave to File a Third Amended Complaint)(Simpich, William) (Filed on 8/17/2023) (Entered: 08/17/2023)</p>
08/31/2023	<a href="#">74</a>	<p>STIPULATION WITH PROPOSED ORDER re <a href="#">73</a> Amended MOTION to Amend/Correct <a href="#">72</a> MOTION for Leave to File <i>Third Amended Complaint Regarding Plaintiffs' Third Amended Complaint and to Continue Case Management Conference</i> filed by Joseph R. Biden, National Archives and Records Administration. (Attachments: # <a href="#">1</a> Declaration of M. Andrew Zee)(Zee, Michael) (Filed on 8/31/2023) (Entered: 08/31/2023)</p>
08/31/2023	<a href="#">75</a>	<p>OPPOSITION/RESPONSE (re <a href="#">73</a> Amended MOTION to Amend/Correct <a href="#">72</a> MOTION for Leave to File <i>Third Amended Complaint</i> ) filed by Joseph R. Biden, National Archives and Records Administration. (Zee, Michael) (Filed on 8/31/2023) (Entered: 08/31/2023)</p>
09/01/2023	<a href="#">76</a>	<p><b>ORDER by Judge Richard Seeborg GRANTING <a href="#">74</a> STIPULATION REGARDING PLAINTIFFS</b></p>



		<b>THIRD AMENDED COMPLAINT AND TO CONTINUE CASE MANAGEMENT CONFERENCE. (jlg, COURT STAFF) (Filed on 9/1/2023) (Entered: 09/01/2023)</b>
09/11/2023	<a href="#">77</a>	COMPLAINT <i>Third Amended Complaint for Damages, Injunctive Relief, and Declaratory Relief</i> against National Archives and Records Administration. Filed by Gary Aguilar, Josiah Thompson, Mary Ferrell Foundation, Inc.. (Simpich, William) (Filed on 9/11/2023) (Entered: 09/11/2023)
10/26/2023	<a href="#">78</a>	MOTION to Dismiss <i>Third Amended Complaint</i> filed by Joseph R. Biden, National Archives and Records Administration. Motion to Dismiss Hearing set for 12/14/2023 01:30 PM in San Francisco, Courtroom 03, 17th Floor. Responses due by 11/9/2023. Replies due by 11/16/2023. (Attachments: # <a href="#">1</a> Proposed Order)(Zee, Michael) (Filed on 10/26/2023) (Entered: 10/26/2023)
10/26/2023	<a href="#">79</a>	NOTICE by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson re <a href="#">63</a> Reply to Opposition/Response, <a href="#">77</a> Complaint, <a href="#">76</a> Order on Stipulation, <a href="#">51</a> Declaration in Support, <a href="#">65</a> Notice (Other) <i>Notice of Motion and Motion for Injunctive Relief, Declaratory Relief, and Mandamus; Supporting Memorandum of Points and Authorities</i> , (Attachments: # <a href="#">1</a> Declaration of Larry Schnapf, # <a href="#">2</a> Exhibit 2017 Bosanko Memo, attached to Schnapf Declaration)(Simpich, William) (Filed on 10/26/2023) (Entered: 10/26/2023)
10/27/2023		Set/Reset Hearing re <a href="#">79</a> Motion Hearing set for 11/30/2023 at 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. (cl, COURT STAFF) (Filed on 10/27/2023) (Entered: 10/27/2023)
10/30/2023	80	CLERK'S NOTICE CONTINUING Motion for Injunctive Relief, Declaratory Relief, and Mandamus [Dkt. 79].  Motion Hearing previously set for 11/30/2023 is continued to 12/14/2023 at 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. Responses due by 11/9/2023. Replies due by 11/16/2023.  <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cl, COURT STAFF) (Filed on 10/30/2023) (Entered: 10/30/2023)



11/01/2023	<a href="#"><u>81</u></a>	STIPULATION WITH PROPOSED ORDER re <a href="#"><u>79</u></a> Notice (Other),, <a href="#"><u>78</u></a> MOTION to Dismiss <i>Third Amended Complaint for Scheduling Order on Defendants' Motion to Dismiss Third Amended Complaint and Plaintiffs' Motion for Injunctive Relief</i> filed by Joseph R. Biden, National Archives and Records Administration. (Attachments: # <a href="#"><u>1</u></a> Declaration of M. Andrew Zee)(Zee, Michael) (Filed on 11/1/2023) (Entered: 11/01/2023)
11/01/2023	<a href="#"><u>82</u></a>	<b>STIPULATION AND ORDER RE <a href="#"><u>81</u></a> for Scheduling Order on Defendants' Motion to Dismiss Third Amended Complaint and Plaintiffs' Motion for Injunctive Relief. Signed by Judge Richard Seeborg on 11/1/2023. (cl, COURT STAFF) (Filed on 11/1/2023) (Entered: 11/01/2023)</b>
11/01/2023		Set/Reset as to <a href="#"><u>78</u></a> MOTION to Dismiss <i>Third Amended Complaint</i> . Motion Hearing previously set for 12/14/2023 is continued to 1/11/2024 at 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. (cl, COURT STAFF) (Filed on 11/1/2023) (Entered: 11/01/2023)
11/01/2023		Set/Reset Hearing Plaintiff's Motion for Injunctive Relief previously set for 12/14/2023 is continued to 1/11/2024 at 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. (cl, COURT STAFF) (Filed on 11/1/2023) (Entered: 11/01/2023)
11/07/2023	<a href="#"><u>83</u></a>	STIPULATION WITH PROPOSED ORDER to Continue Hearing Date filed by Joseph R. Biden, National Archives and Records Administration. (Attachments: # <a href="#"><u>1</u></a> Declaration of M. Andrew Zee)(Zee, Michael) (Filed on 11/7/2023) (Entered: 11/07/2023)
11/08/2023	<a href="#"><u>84</u></a>	<b>ORDER by Judge Richard Seeborg Granting <a href="#"><u>83</u></a> Stipulation to Continue Hearing Date. (cl, COURT STAFF) (Filed on 11/8/2023) (Entered: 11/08/2023)</b>
11/08/2023		Set/Reset Deadlines as to <a href="#"><u>78</u></a> MOTION to Dismiss <i>Third Amended Complaint</i> . Motion Hearing previously set for 1/11/2024 is continued to 1/18/2024 at 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg.  (cl, COURT STAFF) (Filed on 11/8/2023) (Entered: 11/08/2023)
11/16/2023	<a href="#"><u>85</u></a>	STIPULATION WITH PROPOSED ORDER re <a href="#"><u>82</u></a> Stipulation and Order,, Terminate Motions, re <i>Briefing Deadlines</i> filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Simpich, William) (Filed on 11/16/2023) (Entered: 11/16/2023)

11/16/2023	<a href="#"><u>86</u></a>	<b>ORDER by Judge Richard Seeborg Granting <a href="#"><u>85</u></a> Stipulation Continuing Briefing Deadlines. (cl, COURT STAFF) (Filed on 11/16/2023) (Entered: 11/16/2023)</b>
11/22/2023	<a href="#"><u>87</u></a>	OPPOSITION/RESPONSE (re <a href="#"><u>78</u></a> MOTION to Dismiss <i>Third Amended Complaint</i> ) filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Simpich, William) (Filed on 11/22/2023) (Entered: 11/22/2023)
11/27/2023	<a href="#"><u>88</u></a>	OPPOSITION/RESPONSE (re <a href="#"><u>78</u></a> MOTION to Dismiss <i>Third Amended Complaint</i> ) - <i>Table of Contents and Table of Authorities</i> - filed by Mary Ferrell Foundation, Inc., Josiah Thompson. (Simpich, William) (Filed on 11/27/2023) (Entered: 11/27/2023)
11/30/2023	<a href="#"><u>89</u></a>	OPPOSITION/RESPONSE (re <a href="#"><u>78</u></a> MOTION to Dismiss <i>Third Amended Complaint</i> ) - <i>Declaration of William M. Simpich</i> - filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Simpich, William) (Filed on 11/30/2023) (Entered: 11/30/2023)
12/14/2023	<a href="#"><u>90</u></a>	REPLY (re <a href="#"><u>78</u></a> MOTION to Dismiss <i>Third Amended Complaint</i> ) and <i>Opposition to Plaintiffs' Motion for Injunctive Relief, Declaratory Relief, or Mandamus</i> filed by Joseph R. Biden, National Archives and Records Administration. (Zee, Michael) (Filed on 12/14/2023) (Entered: 12/14/2023)
12/14/2023	<a href="#"><u>91</u></a>	MOTION for Preliminary Injunction <i>Declaratory Relief or Mandamus to Order NARA to Collect All Assassination Records and to Halt Advising Researchers to File FOIA Actions Rather than JFK Act Requests</i> filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. Motion Hearing set for 1/18/2024 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. Responses due by 12/28/2023. Replies due by 1/4/2024. (Simpich, William) (Filed on 12/14/2023) (Entered: 12/14/2023)
12/14/2023	<a href="#"><u>92</u></a>	MOTION for Preliminary Injunction <i>Declaratory Relief, or Mandamus Ordering NARA to Publicly Disclose Legislative Records Pursuant to the JFK Records Act; Points and Authorities</i> filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. Motion Hearing set for 1/18/2024 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. Responses due by 12/28/2023. Replies due by 1/4/2024. (Simpich, William) (Filed on 12/14/2023) (Entered: 12/14/2023)
12/18/2023	<a href="#"><u>93</u></a>	AMENDED DOCUMENT by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. Amendment to <a href="#"><u>91</u></a> MOTION for Preliminary Injunction <i>Declaratory Relief or Mandamus to Order NARA to Collect All Assassination Records and to Halt Advising Researchers to File</i>



		<i>FOIA Actions Rather than JFK Act Requests - Supporting Table of Contents and Table of Authorities.</i> (Simpich, William) (Filed on 12/18/2023) (Entered: 12/18/2023)
12/21/2023	<a href="#">94</a>	OPPOSITION/RESPONSE (re <a href="#">92</a> MOTION for Preliminary Injunction <i>Declaratory Relief, or Mandamus Ordering NARA to Publicly Disclose Legislative Records Pursuant to the JFK Records Act; Points and Authorities</i> , <a href="#">91</a> MOTION for Preliminary Injunction <i>Declaratory Relief or Mandamus to Order NARA to Collect All Assassination Records and to Halt Advising Researchers to File FOIA Actions Rather than JFK Act Requests</i> ) filed by Joseph R. Biden, National Archives and Records Administration. (Zee, Michael) (Filed on 12/21/2023) (Entered: 12/21/2023)
12/21/2023	<a href="#">95</a>	MOTION for Extension of Time to File Response/Reply as to <a href="#">82</a> Stipulation and Order, Terminate Motions, <i>Re Motion for Injunctive Relief, et al., filed on 10/26/23</i> , filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Attachments: # <a href="#">1</a> Proposed Order) (Simpich, William) (Filed on 12/21/2023) (Entered: 12/21/2023)
12/28/2023	<a href="#">96</a>	REPLY (re <a href="#">95</a> MOTION for Extension of Time to File Response/Reply as to <a href="#">82</a> Stipulation and Order,, Terminate Motions, <i>Re Motion for Injunctive Relief, et al., filed on 10/26/23</i> , ) filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Simpich, William) (Filed on 12/28/2023) (Entered: 12/28/2023)
12/28/2023	<a href="#">97</a>	REPLY (re <a href="#">95</a> MOTION for Extension of Time to File Response/Reply as to <a href="#">82</a> Stipulation and Order,, Terminate Motions, <i>Re Motion for Injunctive Relief, et al., filed on 10/26/23</i> , ) <i>Supplemental Declaration of William Simpich</i> filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Attachments: # <a href="#">1</a> Exhibit Cover sheet for Exhibit A, # <a href="#">2</a> Errata Exhibit A)(Simpich, William) (Filed on 12/28/2023) (Entered: 12/28/2023)
01/04/2024	<a href="#">98</a>	<b>ORDER by Judge Richard Seeborg Granting <a href="#">95</a> Motion for Extension of Time to File Response/Reply. (cl, COURT STAFF) (Filed on 1/4/2024) (Entered: 01/04/2024)</b>
01/04/2024	<a href="#">99</a>	REPLY (re <a href="#">91</a> MOTION for Preliminary Injunction <i>Declaratory Relief or Mandamus to Order NARA to Collect All Assassination Records and to Halt Advising Researchers to File FOIA Actions Rather than JFK Act Requests</i> ) filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Simpich, William) (Filed on 1/4/2024) (Entered: 01/04/2024)
01/04/2024	<a href="#">100</a>	REPLY (re <a href="#">92</a> MOTION for Preliminary Injunction <i>Declaratory Relief, or Mandamus Ordering NARA to Publicly Disclose Legislative Records</i>



		<i>Pursuant to the JFK Records Act; Points and Authorities )</i> filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Simpich, William) (Filed on 1/4/2024) (Entered: 01/04/2024)
01/08/2024	<a href="#"><u>101</u></a>	REPLY (re <a href="#"><u>92</u></a> MOTION for Preliminary Injunction <i>Declaratory Relief, or Mandamus Ordering NARA to Publicly Disclose Legislative Records Pursuant to the JFK Records Act; Points and Authorities</i> , <a href="#"><u>91</u></a> MOTION for Preliminary Injunction <i>Declaratory Relief or Mandamus to Order NARA to Collect All Assassination Records and to Halt Advising Researchers to File FOIA Actions Rather than JFK Act Requests ) SECOND SUPPLEMENTAL DECLARATION OF COUNSEL; EXHIBITS 1-3</i> , filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Simpich, William) (Filed on 1/8/2024) (Entered: 01/08/2024)
01/09/2024	<a href="#"><u>102</u></a>	Proposed Order re <a href="#"><u>87</u></a> Opposition/Response to Motion, <a href="#"><u>78</u></a> MOTION to Dismiss <i>Third Amended Complaint</i> by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Simpich, William) (Filed on 1/9/2024) (Entered: 01/09/2024)
01/09/2024	<a href="#"><u>103</u></a>	Proposed Order re <a href="#"><u>79</u></a> Notice (Other),, <i>for Injunctive Relief, Declaratory Relief, or Mandamus</i> by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Simpich, William) (Filed on 1/9/2024) (Entered: 01/09/2024)
01/09/2024	<a href="#"><u>104</u></a>	Proposed Order re <a href="#"><u>91</u></a> MOTION for Preliminary Injunction <i>Declaratory Relief or Mandamus to Order NARA to Collect All Assassination Records and to Halt Advising Researchers to File FOIA Actions Rather than JFK Act Requests</i> by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Simpich, William) (Filed on 1/9/2024) (Entered: 01/09/2024)
01/09/2024	<a href="#"><u>105</u></a>	Proposed Order re <a href="#"><u>92</u></a> MOTION for Preliminary Injunction <i>Declaratory Relief, or Mandamus Ordering NARA to Publicly Disclose Legislative Records Pursuant to the JFK Records Act; Points and Authorities</i> by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. (Simpich, William) (Filed on 1/9/2024) (Entered: 01/09/2024)
01/12/2024	106	CLERK'S NOTICE THE MOTIONS [#78, #91, #92] SCHEDULED FOR HEARING ON JANUARY, 18, 2024 AT 1:30 P.M. SHALL BE SUBMITTED WITHOUT ORAL ARGUMENT PURSUANT TO CIVIL LOCAL RULE 7-1(b). ACCORDINGLY, THE MOTION HEARING IS VACATED. ( <i>This is a text-only entry generated by the court. There is no document associated with this entry.</i> ) (cl, COURT STAFF) (Filed on 1/12/2024) (Entered: 01/12/2024)

01/18/2024	<a href="#"><u>107</u></a>	<b>ORDER</b> by Chief Judge Richard Seeborg granting in part and denying in part <a href="#"><u>78</u></a> Motion to Dismiss; denying <a href="#"><u>91</u></a> Motion for Preliminary Injunction; denying <a href="#"><u>92</u></a> Motion for Preliminary Injunction. (rslc2, COURT STAFF) (Filed on 1/18/2024) (Entered: 01/18/2024)
02/01/2024	<a href="#"><u>108</u></a>	<i>Defendant's ANSWER to Complaint Plaintiffs' Third Amended Complaint</i> by National Archives and Records Administration. (Zee, Michael) (Filed on 2/1/2024) (Entered: 02/01/2024)
03/17/2024	<a href="#"><u>109</u></a>	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Gary Aguilar, Mary Ferrell Foundation, Inc., Josiah Thompson. Appeal of Order on Motion to Dismiss, Order on Motion for Preliminary Injunction, <a href="#"><u>107</u></a> (Appeal fee of \$605 receipt number ACANDC-19229122 paid.) <i>and Representation Statement</i> (Simpich, William) (Filed on 3/17/2024) (Entered: 03/17/2024)
03/20/2024	<a href="#"><u>110</u></a>	USCA Case Number 24-1606 9th Circuit for <a href="#"><u>109</u></a> Notice of Appeal to the Ninth Circuit, filed by Mary Ferrell Foundation, Inc., Gary Aguilar, Josiah Thompson. (far, COURT STAFF) (Filed on 3/20/2024) (Entered: 03/20/2024)