

20 business days, as well as injunctive relief ordering DOJ to process and release to CREW immediately the requested records in their entirety.

Jurisdiction and Venue

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202. Venue in this district is proper under 5 U.S.C. § 552(a)(4)(B).

Parties

4. Plaintiff CREW is a non-profit, non-partisan organization organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials and agencies, and to ensuring the integrity of government officials and agencies. To advance its mission, CREW uses a combination of research, litigation, and advocacy. As part of its research, CREW uses government records made available to it under the FOIA. Additionally, CREW seeks to empower citizens to have an influential voice in government decisions and in the government decision-making process through the dissemination of information about public officials and their actions.

5. Defendant DOJ is an agency within the meaning of 5 U.S.C. §§ 552(f)(1) and 701(b)(1). DOJ and its subcomponent OLC have possession, custody, and control of records responsive to CREW's FOIA request.

Factual Background

6. Following the 2020 presidential election through at least January 6, 2021, when the Congress certified Joseph Biden as the president-elect of the United States, President Trump

and White House allies, including then-White House Chief of Staff Mark Meadows, pressured senior DOJ officials to pursue politically motivated and frivolous election fraud investigations and to file a groundless legal complaint in the United States Supreme Court.

7. Emails released by the House Committee on Oversight and Reform in June 2021 document that pressure. They include a cover email from “POTUS” via a top White House aide to then-Deputy Attorney General Jeffrey Rosen dated December 14, 2020, accompanied by talking points and a forensic report purportedly documenting voting irregularities in Antrim County, Michigan. *See* Selected Documents, President Trump Pressure Campaign on Department of Justice, House Committee on Oversight and Reform, June 2021 (“Trump Pressure Campaign Documents”), at 4-30, <https://bit.ly/3iyq2sF>. The White House sent Mr. Rosen the email on the very day he was announced as the successor to Attorney General William Barr.

8. The allegations and purported evidence that the White House provided Mr. Rosen through this email were entirely discredited in June 2021 by three Republican state senators and one Democratic state senator in Michigan following a months-long investigation. Report on the November 2020 Election in Michigan, Michigan Senate Oversight Committee, <https://bit.ly/3zf2HCU>. The results of that investigation were so devastating that the Republican members of the Michigan Senate Oversight Committee recommended a criminal investigation of those involved in spreading “misleading and false information[.]” *Id.*

9. Significantly, just two weeks prior to the December 14 email, on December 1, 2020, Attorney General Barr told the *Associated Press* he had not seen “fraud on a scale that could have effected a different outcome in the election.” Michael Balsamo, Disputing Trump, Barr says no widespread election fraud, *Associated Press*, Dec. 1, 2020, <https://bit.ly/3zfYmPH>.

10. Later that same day, Attorney General Barr met with President Trump, Mark Meadows, and others at the White House. The President verbally abused the Attorney General for his statement that day to the press and asked him why he had said it, to which Attorney General Barr responded, “Because it’s true[.]” Jonathan D. Karl, Inside William Barr’s Breakup With Trump, *The Atlantic*, June 27, 2021, <https://bit.ly/3eCRiVL>; see also Jonathan Swan, Trump turns on Barr, *Axios*, Jan. 18, 2021, <https://bit.ly/3BfFUbQ>. The President then reeled off a “litany of claims—stolen ballots, fake ballots, dead people voting, rigged voting machines,” before switching to complaints about DOJ’s failure to take steps the President appeared to believe would have helped him win the election. *Id.*

11. President Trump’s conduct and refusal to accept the results of the election ultimately led Attorney General Barr to announce his resignation two weeks later, on December 14, 2020. *Id.*; Matt Zapposky, Josh Dawsey, and Devlin Barrett, William P. Barr to depart as attorney general, Trump announces, *Washington Post*, Dec. 14, 2020, <https://wapo.st/3ezau6r>.

12. On December 15, 2020, the White House summoned Acting Attorney General Rosen to meet with President Trump. Katie Benner, Meadows Pressured Justice Dept. to Investigate Election Law Claims, *New York Times*, June 5, 2021, <https://nyti.ms/3ist29U>. During that meeting President Trump reportedly pressured Mr. Rosen to weaponize DOJ in support of the President’s political campaign to overturn his election loss. *Id.* President Trump specifically demanded that the Acting Attorney General direct DOJ to provide support for the President’s various lawsuits seeking to overturn the election and appoint a special counsel to investigate a conspiracy theory that the election software company Dominion Voting Systems had somehow switched votes. *Id.*

13. After Attorney General Barr departed from DOJ, President Trump and his allies ramped up their pressure on Acting Attorney General Rosen and DOJ's senior leadership on multiple fronts. The Trump Pressure Campaign Documents reveal that on December 29, 2020, President Trump's team began urging Mr. Rosen and DOJ to file a lawsuit in the Supreme Court aimed at overturning the election in six states: Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin. Email from Molly A. Michael to DOJ Officials, Dec. 29, 2021 (Trump Pressure Campaign Documents at 32-88). That same email noted that the draft lawsuit attached to the email at the explicit instructions of President Trump had been shared with Mr. Meadows and White House Counsel Pat Cipollone and explained how DOJ officials could reach President Trump if they wanted to discuss the lawsuit. *Id.*

14. At the same time the White House ramped up its pressure campaign against the Department of Justice an attorney who had represented Texas in an unsuccessful lawsuit before the Supreme Court to overturn the election results bombarded DOJ's senior leadership with emails and calls about the potential Supreme Court lawsuit. The attorney indicated he was acting at the direction of President Trump. *See, e.g.*, Email from Kurt Olsen to John Moran, Dec. 29, 2020 (Trump Pressure Campaign Documents at 90).

15. On a separate front, White House Chief of Staff Meadows began pressuring Acting Attorney General Rosen to investigate purported voting irregularities in Georgia. Email from Mark R. Meadows to Jeff Rosen, Dec. 30, 2020 (Trump Pressure Campaign Documents at 219-22). A January 1, 2021 email from Mr. Meadows asked Mr. Rosen to "get [then-Assistant Attorney General] Jeffrey Clark to engage on this issue immediately." Email from Mark R. Meadows to Jeffrey A. Rosen, Jan. 1, 2021 (Trump Pressure Campaign Documents at 226).

16. That pressure campaign appeared to work, as the following morning Assistant Attorney General Clark confirmed to Acting Attorney General Rosen that he “spoke to the source and [was] on [a call] with the guy who took the video,” adding that he was “[w]orking on it” and that there was “[m]ore diligence to do.” Email from Jeffrey Clark to Jeffrey A. Rosen, Jan. 2, 2021 (Trump Pressure Campaign Documents at 202). Hours later President Trump and several associates, including Mr. Meadows, called Georgia Secretary of State Brad Raffensperger to pressure him to overturn the results of Georgia’s presidential election. Amy Gardner and Paulina Firozi, Here’s the full transcript and audio of the call between Trump and Raffensperger, *Washington Post*, Jan. 5, 2021, <https://wapo.st/3hRZjYX>.

17. Then-Assistant Attorney General Steven Engel—who headed OLC—also was pulled into the efforts to overturn the presidential election results. For example, a December 28, 2020 email then-Acting Deputy Attorney General Richard Donoghue sent Mr. Engel references a meeting the following day and “some antics that could potentially end up on your radar.” Email from Richard Donoghue to Steven A. Engel, Dec. 28, 2020 (Trump Pressure Campaign Documents at 198). Those “antics” are revealed by an email Mr. Donoghue sent to Mr. Engel the following day forwarding an email Mr. Donoghue received from a White House official concerning the planned Supreme Court lawsuit. The White House official stated in part: “The President asked me to send the attached draft document for your review. I have also shared with Mark Meadows and Pat Cipollone. If you’d like to discuss with POTUS, the best way to reach him in the next few days is through the operators[.]” Trump Pressure Campaign Documents at 158.

18. A newly released report from the majority staff of the Senate Committee on the Judiciary revealed that after receiving the draft lawsuit from the White House, DOJ’s Office of

the Solicitor General (“OSG”) prepared “a one-page summary of the ‘numerous significant procedural hurdles’ DOJ would face if it filed the proposed action.” Majority Staff of S. Comm. on the Judiciary, *Subverting Justice How the Former President and His Allies Pressured DOJ to Overturn the 2020 Election*, at 26, <https://www.judiciary.senate.gov/imo/media/doc/Interim%20Staff%20Report%20FINAL.pdf> (citation omitted). At the request of Acting Attorney General Rosen, Assistant Attorney General Engel prepared “a plain-English version of the OSG analysis that would be more easily understood by non-lawyers; Engel’s version confirmed that ‘[t]here is no legal basis to bring this lawsuit.’” *Id.* at 26-27 (citation omitted).

19. On January 3, 2021, Acting Attorney General Rosen, Acting Deputy Attorney General Donoghue, and Assistant Attorney General Engel along with others attended a “high-stakes” evening meeting in the Oval Office. Matt Zaptosky, et al., ‘Pure insanity’: How Trump and his allies pressured the Justice Department to help overturn the election, *Washington Post*, June 16, 2021, <https://wapo.st/3hTVOMM>. Prior to the meeting Assistant Attorney General Clark, who supported the President’s efforts to overturn the results of the Georgia presidential election, advised Mr. Rosen that President Trump intended to replace him with Mr. Clark, “who could then try to stop Congress from certifying the Electoral College results.” Katie Benner, Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting Attorney General, *New York Times*, Jan. 22, 2021, <https://nyti.ms/3rrjyjk>. Based on that information Acting Attorney General Rosen, Deputy Attorney General Donoghue, and Assistant Attorney General Engel agreed to resign en masse should Mr. Rosen be fired, a threat that stopped President Trump from firing the Acting Attorney General. *Id.*; Zaptosky, *Washington Post*, June 16, 2021.

20. The Department of Justice had no legitimate role to play in pursuing President Trump’s personal political agenda. Moreover, under long-standing DOJ policy, DOJ defers

principal responsibility for overseeing the election process to the states, which have “primary authority to ensure that only qualified individuals register and vote, that the polling process is conducted fairly, and that the candidate who received the most valid votes is certified as the winner.” Federal Prosecution of Election Offenses 53 (Richard C. Pilger et al. eds., 8th ed. 2017), <https://www.justice.gov/criminal/file/1029066/download>.

FOIA Request At Issue

21. On August 2, 2021, CREW submitted a FOIA request to DOJ seeking all opinions, memoranda or analyses issued by OLC, including by former Assistant Attorney General Steven Engel, between November 4, 2020 and January 20, 2021, pertaining in any way to DOJ involvement in litigation or investigations relating to the results of the 2020 election. CREW’s request included, but was not limited to, opinions provided to former Attorney General Barr or former Acting Attorney General Rosen on whether DOJ’s involvement would be in compliance with federal law and agency policy.

22. CREW also requested a waiver of the fees associated with the processing of its request.

23. By email dated August 2, 2021, DOJ acknowledged receipt of CREW’s request.

24. To date, DOJ has not granted CREW’s request for a fee waiver, nor has DOJ made any other communication to CREW regarding CREW’s FOIA request.

25. Under 5 U.S.C. § 552(a)(6)(C)(i), CREW has now effectively exhausted all applicable administrative remedies with respect to its request of DOJ.

CREW’S CLAIMS FOR RELIEF

COUNT I

DOJ’s Wrongful Withholding of Records Responsive to CREW’s FOIA Request

26. Plaintiff repeats and re-alleges paragraphs 1-25.

27. In its August 2, 2021 FOIA request, CREW properly asked for records within the custody and control of DOJ.

28. DOJ is wrongfully withholding records responsive to CREW's FOIA request.

29. By failing to timely release all requested records in full to CREW, DOJ is in violation of the FOIA.

30. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the records requested in its August 2, 2021 FOIA request.

Requested Relief

WHEREFORE, CREW respectfully requests that this Court:

- (1) Order the Defendant to immediately and fully process CREW's August 2, 2021 FOIA request and to disclose all non-exempt documents immediately to CREW;
- (2) Issue a declaration that CREW is entitled to immediate processing and disclosure of the requested records;
- (3) Provide for expeditious proceedings in this action;
- (4) Retain jurisdiction of this action to ensure no agency records are wrongfully withheld;
- (5) Award CREW its costs and reasonable attorneys' fees in this action; and
- (6) Grant such other relief as the Court may deem just and proper.

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