

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

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,
1331 F Street NW, Suite 900
Washington, DC 20004,

Plaintiff,

v.

U.S. DEPARTMENT OF THE
TREASURY,
1500 Pennsylvania Avenue NW
Washington, DC 20220, and

U.S. DEPARTMENT OF STATE,
2201 C Street NW
Washington, DC 20520,

Defendants.

Civil Action No. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, against Defendants U.S. Department of the Treasury (“Treasury”) and U.S. Department of State (“State”) seeking any records relating to discussions about invoking the 25th Amendment to remove former President Trump from office following the January 6 attack on the U.S. Capitol.

2. CREW seeks declaratory relief that Defendants are in violation of FOIA, and injunctive relief requiring Defendants to immediately process and release the requested records.

Jurisdiction and Venue

3. This Court has subject-matter jurisdiction and personal jurisdiction under 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.

4. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

5. 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. 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. To advance its mission, CREW uses a combination of research, litigation, and advocacy. As part of those efforts, CREW uses government records it obtains under FOIA.

6. Defendant Treasury is an agency within the meaning of 5 U.S.C. § 552(f)(1). Treasury has possession, custody, and control of the requested records.

7. Defendant State is an agency within the meaning of 5 U.S.C. § 552(f)(1). State has possession, custody, and control of the requested records.

Factual Background

8. Press reports allege that former Treasury Secretary Steven Mnuchin and former Secretary of State Mike Pompeo discussed invoking the 25th Amendment to remove former President Trump from office following the January 6 attack on the U.S. Capitol.¹

9. According to these reports, Mr. Mnuchin called Mr. Pompeo “on the evening of Jan. 6 to suggest using the 25th Amendment” and had several other “conversations about the 25th Amendment.”² And Mr. Pompeo reportedly “asked for a legal analysis of the 25th

¹ Peter Wade, Mnuchin and Pompeo Discussed a Plan to Oust Trump from Office on Jan. 6: Report, *Rolling Stone*, Nov. 15, 2021, <https://www.rollingstone.com/politics/politics-news/mnuchin-pompeo-trump-25th-amendment-1257958/>.

² *Id.*

Amendment and how it would work.”³ However, the idea was “‘quickly jettisoned’ the next day as Education Secretary Betsy DeVos and Transportation Secretary Elaine Chao resigned, leaving Mnuchin to realize that using the Constitution to push Trump out of office would take too much time and would almost certainly face legal challenges.”⁴

10. In response to this reporting, Mr. Pompeo issued a statement “denying he was involved in any 25th Amendment conversations.”⁵

11. To help answer questions about this matter, CREW submitted FOIA requests to Treasury and State.

November 16, 2021 FOIA Request to Treasury

12. On November 16, 2021, CREW submitted a FOIA request to Treasury seeking the following records from January 6 to January 20, 2021:

1. All records sent or received by former Treasury Secretary Steven Mnuchin mentioning or relating to the 25th Amendment to the U.S. Constitution.
2. All emails, call logs, summaries, agendas, minutes, readouts, or other similar records reflecting discussions with former Secretary Mnuchin concerning the 25th Amendment.
3. All emails, call logs, summaries, agendas, minutes, readouts, or other similar records reflecting discussions between former Secretary Mnuchin and former Secretary of State Mike Pompeo.

13. CREW’s request sought a fee waiver.

14. By letter dated November 16, 2021, Treasury acknowledged receipt of CREW’s request and assigned it Case Number 2022-FOIA-00081.

15. To date, CREW has received no further communications from Treasury regarding its FOIA request.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

November 16, 2021 FOIA Request to State

16. On November 16, 2021, CREW submitted a FOIA request to State seeking the following records from January 6 to January 20, 2021:

1. All records sent or received by former Secretary of State Mike Pompeo mentioning or relating to the 25th Amendment to the U.S. Constitution.
2. All emails, call logs, summaries, agendas, minutes, readouts, or other similar records reflecting discussions with former Secretary Pompeo concerning the 25th Amendment.
3. All emails, call logs, summaries, agendas, minutes, readouts, or other similar records reflecting discussions between former Secretary Pompeo and former Treasury Secretary Steven Mnuchin.

17. CREW's request sought a fee waiver.

18. By email dated December 2, 2021, State acknowledged receipt of CREW's request, assigned it tracking number F-2022-01557, and invoked an extension of its response deadline due to "unusual circumstances."

19. To date, CREW has received no other communications from State regarding its FOIA request.

CREW'S CLAIMS FOR RELIEF

COUNT I

**Treasury's Wrongful Withholding of Records
Responsive to CREW's FOIA Request**

20. CREW repeats and re-alleges the preceding paragraphs.
21. In its November 16, 2021 FOIA request, CREW properly asked for records within the possession, custody, and control of Treasury.
22. Treasury has failed to conduct adequate searches in response to CREW's request.
23. Treasury is wrongfully withholding records responsive to CREW's request.

24. By failing to timely release all requested records in full to CREW, Treasury is in violation of FOIA.

25. CREW has constructively exhausted its administrative remedies.

26. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the requested records.

COUNT II
State's Wrongful Withholding of Records
Responsive to CREW's FOIA Request

27. CREW repeats and re-alleges the preceding paragraphs.

28. In its November 16, 2021 FOIA request, CREW properly asked for records within the possession, custody, and control of State.

29. State has failed to conduct an adequate search in response to CREW's request.

30. State is wrongfully withholding records responsive to CREW's request.

31. By failing to timely release all requested records in full to CREW, State is in violation of FOIA.

32. CREW has constructively exhausted its administrative remedies.

33. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the requested records.

Requested Relief

WHEREFORE, CREW respectfully requests that this Court:

1. Order Defendants to immediately and fully process CREW's FOIA requests and disclose all non-exempt records 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.

Date: January 12, 2022

Respectfully Submitted,

/s/ Nikhel S. Sus

Nikhel S. Sus

(D.C. Bar No. 1017937)

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