

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
JASON LEOPOLD, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:21-cv-558 (APM)
)	
U.S. DEPARTMENT OF JUSTICE, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

DEFENDANTS’ MOTION TO CONSOLIDATE CASES

For the reasons set out in the attached statement of points and authorities, Defendants respectfully move under Rule 42(a) of the Federal Rules of Civil Procedure and Rule 40.5(d) of the Local Civil Rules to consolidate this case with *CREW v. DOJ*, No. 1:21-cv-572 (RC) (D.D.C.), and *American Oversight v. DOD*, No. 1:21-cv-624 (RDM) (D.D.C.). Consistent with Local Rule 7(m), Defendants’ counsel conferred with opposing counsel in each case. Plaintiffs oppose the motion. Plaintiff American Oversight stated that it plans to file an opposition.

Dated: April 14, 2020

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JASON LEOPOLD, *et al.*,)
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 Plaintiffs,)
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 v.) Case No. 1:21-cv-558 (APM)
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 U.S. DEPARTMENT OF JUSTICE, *et al.*,)
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STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF
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INTRODUCTION

The events of January 6, 2021, unsurprisingly, generated numerous Freedom of Information Act (“FOIA”) requests to multiple federal agencies. At least nine of those requests are currently the subject of litigation,¹ before seven different judges of this District. Many of these cases seek the same documents. In an effort to manage these cases more effectively, and to assist the Court in avoiding conflicting rulings, Defendants respectfully move under Rule 42(a) of the Federal Rules of Civil Procedure and Rule 40.5(d) of the Local Civil Rules to consolidate this case with two others that raise common factual and legal issues: *CREW v. DOJ*, No. 1:21-cv-572 (RC) (D.D.C.), and *American Oversight v. DOD*, No. 1:21-cv-624 (RDM) (D.D.C.).

Plaintiffs in these three cases ask the Court to compel the U.S. Department of Justice (“DOJ”), under FOIA, to disclose the same records generated during the same period: various categories of records related to events that took place at the U.S. Capitol on January 6, 2021. In particular, each complaint seeks documents related to the planning of protests leading up to January 6, the events that occurred on January 6, and the deployment of law enforcement on January 6. Because these portions of Plaintiffs’ FOIA requests seek the same records, consolidating these cases would serve the interests of judicial economy and avoid the risk of inconsistent judgments. And because all three cases are at an identical stage of litigation, consolidating these cases would not prejudice any Plaintiff.

PROCEDURAL BACKGROUND

On January 11, 2021, Plaintiff Leopold submitted a FOIA request to DOJ components

¹ See, e.g., *Leopold v. DOT*, No. 1:21-cv-581 (CJN) (D.D.C.); *Leopold v. DOI*, No. 1:21-cv-579 (RDM) (D.D.C.); *Leopold v. DOD*, No. 1:21-cv-577 (RC) (D.D.C.); *Leopold v. DHS*, No. 1:21-cv-545 (TJK) (D.D.C.); *Leopold v. DOJ*, No. 1:21-cv-942 (TNM) (D.D.C.); *CREW v. DOJ*, No. 1:21-cv-572 (RC) (D.D.C.); *American Oversight v. DOD*, No. 1:21-cv-624 (RDM) (D.D.C.); and *American Oversight v. DOD*, No. 1:21-cv-638 (CRC) (D.D.C.).

requesting, among other things, “[a]ll records . . . referring to the planning^[2] of protests in Washington, DC on January 6, 2021 by supporters of President Donald Trump referred to as S[ave] A[merica] R[ally] and S[top the] S[teal] and M[arch for] T[rump] and First Amendment demonstrations and O[perations] F[irst] A[mendment].” *See Leopold* Compl. ¶ 7, ECF No. 1 (emphasis omitted) (“*Leopold* Planning Request”). The timeframe for this request was “December 1, 2020 through the date [of] the search.” *Id.* Plaintiff Leopold’s request also requested “[a]ll records . . . referring to the January 6, 2021 speech by President Trump at the Washington, DC protest and the subsequent insurrection and siege . . . that took place at the Capitol.” *See id.* (“*Leopold* Speech Request”).³ The timeframe for this request was “January 6, 2021 through the date [of] the search.” *Id.*

On January 10, 2021, Plaintiff CREW submitted a FOIA request to DOJ requesting, among other things, “[a]ll records . . . reflecting any plans for demonstrations” and “any tips . . . regarding planned demonstrations . . . in Washington, D.C. on January 6, 2021.” *See* Compl. ¶ 24, *CREW v. DOJ*, No. 1:21-cv-572 (RC) (D.D.C. Mar. 4, 2021), ECF No. 1 (“*CREW* Planning and Tips Request”).⁴ Two days earlier, CREW submitted a separate FOIA request to DOJ requesting “[a]ll records” (1) “reflecting any request by the U.S. Capitol Police for assistance or

² Although paragraph 7 of the Complaint included the word “planning,” the actual request did not. *Compare Leopold* Compl. ¶ 7, ECF No. 1, *with id.*, Ex. 1 at 6, ECF No. 1-1 at 6. Based on the complaint, Defendants assume that Plaintiffs meant to include “planning” in the actual request. Undersigned counsel has reached out to Plaintiffs’ counsel to see if Plaintiffs would agree to narrow Item 1 of the request to the “planning of protests.” As of the date of this filing, undersigned counsel had not received Plaintiffs’ position.

³ The *Leopold* Planning Request and the *Leopold* Speech Request were included as different items of the same request that Plaintiff Leopold sent to DOJ on January 11, 2021. *See id.* For clarity, we refer to the items separately. Also on January 11, 2021, Plaintiff Leopold submitted an identical request to certain DOJ components that added an item 6. *See id.* ¶ 8; *see also id.*, Ex. 2 at 1–2, ECF No. 1-1 at 9–10.

⁴ The *CREW* complaint is attached as Exhibit 1.

support to secure the U.S. Capitol Building” on January 6, 2021; (2) “reflecting any offer by the [DOJ] to provide assistance or support to U.S. Capitol Police to secure the U.S. Capitol Building” on January 6, 2021; and (3) “relating to securing the U.S. Capitol Building” on January 6, 2021. *See id.* ¶ 16 (“*CREW* Support and Securing Request”).⁵ The timeframe for both the *CREW* Planning and Tips Request and the *CREW* Support and Securing Request was “December 1, 2020 to January 6, 2021.” *Id.* ¶¶ 24, 16.

On January 11, 2021, Plaintiff American Oversight submitted a FOIA request to DOJ requesting, among other things, “[a]ll communications . . . sent or received,” and “[a]ll orders, directives, protocols, or guidance prepared, written, approved, or signed,” by listed custodians “regarding events at the U.S. Capitol . . . on January 6, 2021, including . . . President Trump’s rally.” *See* Compl. ¶ 19, *American Oversight v. DOD*, No. 1:21-cv-624 (D.D.C. Mar. 9, 2021), ECF No. 1 (request sent to DOJ’s Office of Information Policy); *id.* ¶ 22 (request sent to DOJ’s Office of Legal Counsel) (collectively, “*American Oversight* Rally Request”).⁶ Plaintiff American Oversight also requested from the same custodians the same types of records “regarding events at the U.S. Capitol . . . on January 6, 2021, including . . . the potential or actual deployment of law enforcement officers.” *See id.* ¶ 19 (request sent to DOJ’s Office of Information Policy); *id.* ¶ 22 (request sent to DOJ’s Office of Legal Counsel) (collectively, “*American Oversight* Deployment Request”).⁷ For both requests, Plaintiff American Oversight requested “all responsive records from December 31, 2020, through January 7, 2021.” *Id.* ¶¶ 19,

⁵ *CREW* sent “materially identical” requests to the Federal Bureau of Investigation, the U.S. Department of Defense, and the U.S. Department of the Army. *Id.*

⁶ The *American Oversight* complaint is attached as Exhibit 2.

⁷ The *American Oversight* Rally Request and the *American Oversight* Deployment Request were included in the same request that Plaintiff American Oversight sent to DOJ on January 11, 2021. *See id.* ¶¶ 19, 22. For clarity, we refer to the topics separately.

22.

On March 3, 2021, Plaintiff Leopold filed this lawsuit. The next day, Plaintiff CREW filed its lawsuit. And on March 9, 2021, Plaintiff American Oversight filed its lawsuit. All three cases seek disclosure of records responsive to the FOIA requests explained above. *See* Leopold Compl. ¶¶ 7, 44, Prayer for Relief; *CREW* Compl. ¶¶ 16, 24, 59–60, Requested Relief; *American Oversight* Compl. ¶¶ 19, 22, 46–47, Requested Relief.⁸

Defendants filed their answer in all three cases on April 14, 2021, the same day that Defendants filed this motion. *See* ECF No. 10; *see also* Answer, *CREW v. DOJ*, No. 1:21-cv-572 (RC) (D.D.C. Apr. 14, 2021), ECF No. 6; Answer, *American Oversight v. DOD*, No. 1:21-cv-624 (D.D.C. Apr. 14, 2021), ECF No. 8.

LEGAL STANDARD

Courts may consolidate actions that “involve a common question of law or fact.” Fed. R. Civ. P. 42(a)(2). Under Local Civil Rule 40.5(d), “[m]otions to consolidate cases assigned to different judges of this Court” are “heard and determined by the judge to whom the earlier-numbered case is assigned.” *See also Singh v. Carter*, 185 F. Supp. 3d 11, 25 n.8 (D.D.C. 2016).

District courts have “broad discretion” in deciding “whether to consolidate related cases.” *Biochem Pharma, Inc. v. Emory Univ.*, 148 F. Supp. 2d 11, 13 (D.D.C. 2001). “To determine whether consolidation is appropriate, a court should consider both equity and judicial economy.” *Hanson v. District of Columbia*, 257 F.R.D. 19, 21 (D.D.C. 2009). Thus, when deciding whether to consolidate cases that “share common issues of law or fact,” courts consider whether “consolidation would serve the interests of judicial economy” and whether consolidation would

⁸ The cases also seek disclosure of documents related to other FOIA requests, some of which we discuss below. *See Leopold* Compl. ¶¶ 34–39, 49; *CREW* Compl. ¶¶ 16–19, 21–23, 28–53, 61–84; *American Oversight* Compl. ¶¶ 12–18, 25–28, 47.

prejudice the parties. *See Judicial Watch, Inc. v. DOE*, 207 F.R.D. 8, 8 (D.D.C. 2002); *see also Am. Postal Workers Union v. USPS*, 422 F. Supp. 2d 240, 245 (D.D.C. 2006) (explaining that when courts decide whether to consolidate, they “weigh considerations of convenience and economy against considerations of confusion and prejudice” (citation omitted)). “Consolidation is particularly appropriate where . . . ‘cases each involve review of the same underlying decision.’” *Chang v. United States*, 217 F.R.D. 262, 265 (D.D.C. 2003).

“Identity of the parties is not a prerequisite” for consolidation. *Nat’l Ass’n of Mortg. Brokers v. Bd. of Governors of the Fed. Reserve Sys.*, 770 F. Supp. 2d 283, 286 (D.D.C. 2011). Instead, “cases may be consolidated even where certain defendants are named in only one of the [c]omplaints or where . . . the plaintiffs are different but are asserting identical questions of law against the same defendant.” *Id.*

ARGUMENT

JUDICIAL ECONOMY FAVORS CONSOLIDATING FOIA REQUESTS THAT SEEK SOME OF THE SAME RECORDS AND ARE AT THE SAME STAGE OF PROCEEDING

I. The Three Complaints Raise Common Factual and Legal Issues Against DOJ

The Court should consolidate these three cases because they raise common factual and legal issues under FOIA. Consolidation would promote judicial economy, and it would not prejudice any Plaintiff.

First, these cases raise common factual and legal issues because many of the same records will likely be at issue in multiple cases. Each case deals with requests that ask the same agency—DOJ—for records related to the events that took place at the U.S. Capitol on January 6, 2021. *See Leopold Compl.* ¶ 1; *CREW Compl.* ¶ 1; *American Oversight Compl.* ¶ 11. This means the cases will tee up common factual and legal issues: the search for responsive records, what

information can be disclosed, and what information is protected under a FOIA exemption? *Cf. Media Rsch. Ctr. v. DOJ*, 818 F. Supp. 2d 131, 136 (D.D.C. 2011) (noting consolidation of two “cases concern[ing] FOIA requests for documents with the same subject matter that were created within the same period of time”).

For example, the *Leopold* Planning Request asks for “[a]ll records . . . mentioning or referring to the planning of protests in Washington, DC on January 6, 2021 by supporters of President Donald Trump referred to as S[ave] A[merica] R[ally] and S[top the] S[teal] and M[arch for] T[rump] and First Amendment demonstrations and O[peration] F[irst] A[mendment].” *Leopold* Compl. ¶ 7 (emphasis omitted). Records responsive to that request would likely be responsive to the *CREW* Planning and Tips Request as well. *See CREW* Compl. ¶ 24 (requesting records “reflecting any plans for demonstrations . . . in Washington, D.C. on January 6, 2021 that were identified by the DOJ”); *id.* (requesting records “reflecting any tips . . . submitted to the DOJ regarding planned demonstrations . . . in Washington, D.C. on January 6, 2021”). And it is likely that records responsive to the *Leopold* Speech Request would also be responsive to the *American Oversight* Rally Request. *Compare Leopold* Compl. ¶ 7 (requesting “[a]ll records . . . referring to the January 6, 2021 speech by President Trump at the Washington, DC protest and the subsequent insurrection and siege . . . at the Capitol”), *with American Oversight* Compl. ¶¶ 19, 22 (requesting “[a]ll communications . . . sent or received,” and “[a]ll orders directives, protocols, or guidance prepared, written, approved, or signed,” by certain custodians “regarding events at the U.S. Capitol . . . on January 6, 2021, including . . . President Trump’s rally”).⁹

⁹ Although *American Oversight*’s request specifies certain custodians, *see id.* ¶ 19 (listing the Acting Attorney General, the Principal Associate Deputy Attorney General, “[a]nyone serving in the capacity of Chief of Staff to the Acting Attorney General,” and “[a]nyone serving as White House Liaison”); *id.* ¶ 22 (listing the Assistant Attorney General for the Office of Legal

Even beyond the planning and rally contexts, the requests overlap on another topic. For example, the *American Oversight* Deployment Request asks for “[a]ll communications . . . sent or received,” and “[a]ll orders directives, protocols, or guidance prepared, written, approved, or signed,” by certain custodians “regarding events at the U.S. Capitol . . . on January 6, 2021, including . . . the potential or actual deployment of law enforcement officers.” *American Oversight* Compl. ¶¶ 19, 22. Records responsive to that request would likely be responsive to the *CREW* Support and Securing Request. *See CREW* Compl. ¶ 16 (requesting “[a]ll records . . . reflecting any request by the U.S. Capitol Police for assistance or support to secure the U.S. Capitol Building” and “any offer by the [DOJ] to provide assistance or support to U.S. Capitol Police to secure the U.S. Capitol Building” on January 6, 2021); *id.* (requesting “[a]ll records . . . relating to securing the U.S. Capitol Building” on January 6, 2021).¹⁰ Records showing requests for assistance to secure the Capitol—and offers to provide assistance—will almost surely relate to the potential or actual deployment of officers.

On top of the overlapping subject matter, the requests also ask for records that were generated during the same period, primarily December 2020 and January 2021. *See Leopold* Compl. ¶ 7 (timeframe for the *Leopold* Planning Request was “December 1, 2020 through the date” the search is conducted); *id.* (timeframe for the *Leopold* Speech Request was “January 6, 2021 through the date” the search is conducted); *CREW* Compl. ¶¶ 24, 16 (timeframe for *CREW* Planning and Tips Request and *CREW* Support and Securing Request was “December 1, 2020 to

Counsel, “[a]nyone serving in the capacity of Deputy Assistant Attorney General” for the Office of Legal Counsel, and an Office of Legal Counsel Special Counsel), it is likely that records responsive to Plaintiff Leopold’s request would involve one or more of these same custodians, who held senior DOJ political leadership positions.

¹⁰ Again, records responsive to Plaintiff *CREW*’s request would likely involve one or more of the custodians—senior DOJ political leadership—that *American Oversight*’s request specified.

January 6, 2021”); *American Oversight* Compl. ¶¶ 19, 22 (timeframe for *American Oversight* Rally Request and *American Oversight* Deployment Request was “December 31, 2020, through January 7, 2021”).

In sum, the similarities among the requests at issue in these three cases means there will likely be common issues related to the search for responsive documents and what information must be produced versus what information is protected under a FOIA exemption. That overlap justifies consolidating the three cases here, even though some material may be responsive to only one or a subset of the FOIA requests. *See* 9A Charles Wright & Arthur Miller, *Federal Practice and Procedural* § 2382 (Oct. 2020 Update) (“[T]he existence of a common question by itself is enough to permit consolidation”); Minute Order, *Judicial Watch, Inc. v. CIA*, No. 1:19-cv-3807 (TJK) (Apr. 2, 2020 D.D.C.) (consolidating, over the plaintiff’s opposition, cases despite differences in the scope of the requests and the FOIA exemptions at issue); *Nat’l Ass’n of Mortg. Brokers*, 770 F. Supp. 2d at 287 (explaining that consolidation was appropriate despite the plaintiff’s objection that one action was narrower than the other); *see also Hanson*, 257 F.R.D. at 21–22 (same).

Second, consolidating these cases would increase judicial efficiency while avoiding the risk of inconsistent judgments. It would promote judicial efficiency by preventing multiple judges from having to familiarize themselves with the same issues. *See Chang*, 217 F.R.D. at 265 (“Consolidation may increase judicial efficiency by . . . eliminating the need for more than one judge to familiarize themselves with the issues presented.”). It could also save the parties the costs of duplicative litigation. *See Hanson*, 257 F.R.D. at 21 (explaining that consolidation “is ‘a valuable and important tool of judicial administration’” that “helps to ‘relieve [] the parties and the [c]ourt of the burden of duplicative pleadings and [c]ourt orders’” (alternations in original)

(citations omitted)).

While avoiding duplicative review, consolidating these cases would also avoid the risk of conflicting rulings on the same records. *See Nat'l Ass'n of Mortg. Brokers*, 770 F. Supp. 2d at 286 (noting that the “risk of inconsistent rulings on common . . . legal questions” favors consolidation); *Judicial Watch*, 207 F.R.D. at 9 (“[I]n the interest of promoting judicial economy and preventing potentially inconsistent rulings, consolidation seems appropriate.”). By contrast, conflicting rulings create confusion. And the need for uniform guidance is especially strong here because DOJ’s Office of Information Policy is conducting a comprehensive records search designed to locate records that may be responsive to any or all of the requests. This comprehensive search will also cover requests from two other requesters that seek some of the same records related to the events that took place at the Capitol on January 6, 2021, that are at issue in one or more of these cases. Those requests are pending before DOJ at the administrative level and are not yet in litigation. This comprehensive search will increase administrative efficiency and facilitate records searches and the processing and consultation of potentially responsive records, which will ultimately allow the Office of Information Policy to more efficiently respond to the requestors’ FOIA requests. Indeed, this administrative action will eliminate any redundancies among the Office of Information Policy’s records searches and will avoid needing to process and consult on duplicative records that would have been responsive to one or more of the individual requests. Thus, consolidation—and the uniform guidance that would flow from it—is in the best interest of the parties and the general public.

Third, consolidating these cases would not prejudice any Plaintiff. Each Plaintiff is free to raise separate claims or arguments because consolidated cases do not merge into a single case. *Mylan Pharms. Inc. v. Henney*, 94 F. Supp. 2d 36, 43 (D.D.C. 2000) (“Consolidation . . . ‘does

not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another.” (citation omitted)), *vacated on other grounds*, 276 F.3d 627 (D.C. Cir. 2002) (per curiam). And consolidation would not delay proceedings because all three cases are at the identical stage of litigation. All three cases were filed during the same two-week span, and Defendants filed their answers in all three cases the same day they filed this motion.

II. The Common Issues Outweigh the Differences Between the Cases

The differences between the three cases are minor and do not outweigh the factors that support consolidation. Although the cases include other FOIA requests that might be unique to a single case, consolidated cases need not be identical—it is enough if there is “a common question of law or fact.” *See* Fed. R. Civ. P. 42(a); *see also Mylan Pharms.*, 94 F. Supp. 2d at 44 (“[C]onsolidation is proper to *any or all* matters in issue which are common.”). And, as explained, each Plaintiff can raise separate claims or arguments. Thus, the presence of other FOIA requests—which all relate to the same general subject matter—does not outweigh the substantial benefits that would flow from consolidation.

While *CREW* and *American Oversight* include requests that were sent to other agencies, many of those requests still overlap. This, again, means records from the same agencies will likely be at issue in both cases. So these requests actually support consolidation because they will likely raise additional common issues. For example, Plaintiff *CREW* sent requests to the U.S. Department of Defense (“DOD”) that ask for records related to DOD’s role in securing the Capitol on January 6, 2021. *See CREW* Compl. ¶ 16 (requesting records “relating to securing the U.S. Capitol”); *id.* ¶ 33 (requesting records “relating to DOD . . . providing assistance or support to the D.C. Metropolitan Police Department”); *id.* (requesting records “reflecting the parameters

for the National Guard’s deployment” and “communications . . . regarding the parameters for the National Guard’s deployment”).

Records responsive to those requests may also be responsive to a request that Plaintiff American Oversight sent to DOD that seeks records related to deploying officers to the U.S. Capitol. *See American Oversight* Compl. ¶ 12 (requesting “[a]ll communications . . . sent or received,” and “[a]ll orders directives, protocols, or guidance prepared, written, approved, or signed,” by listed custodians “regarding events at the U.S. Capitol . . . on January 6, 2021, including . . . the potential or actual deployment of law enforcement officers and/or National Guard troops”).¹¹ Not only do the requests in both cases deal with the same subject matter, but they also seek records that were created around the same time. *Compare CREW* Compl. ¶¶ 16, 33 (requesting “[a]ll records from December 1, 2020 to January 6, 2021”), *with American Oversight* Compl. ¶ 12 (requesting “all responsive records from December 31, 2020, through . . . January 7, 2021”). This similarity favors consolidation. *See Media Rsch. Ctr.*, 818 F. Supp. 2d at 136 (discussing consolidation of two “cases concern[ing] FOIA requests for documents with the same subject matter that were created within the same period of time”).

Plaintiffs CREW and American Oversight sent requests to the U.S. Department of Homeland Security (“DHS”)—requests nearly identical to those they sent to DOD—that will likely involve the same responsive documents, if any exist. *Compare CREW* Compl. ¶ 41 (requesting records “relating to any DHS component . . . providing assistance or support to . . .

¹¹ Although American Oversight’s request specifies certain custodians, *see id.* (listing the Acting Secretary of Defense, the Chief of Staff to the Acting Secretary, the Senior Advisor to the Acting Secretary, the Deputy Secretary of Defense, the Chairman and Vice Chairman of the Joint Chiefs of Staff, the Acting Under Secretary of Defense for Policy, the General Counsel, and “[a]nyone serving as White House Liaison”), it is likely that records responsive to CREW’s request would involve one or more of these same custodians, who held senior DOD political leadership positions.

any agency” on January 6, 2021), with *American Oversight* Compl. ¶ 25 (requesting “[a]ll communications . . . sent or received,” and “[a]ll orders directives, protocols, or guidance prepared, written, approved, or signed,” by listed custodians “regarding events at the U.S. Capitol . . . on January 6, 2021, including . . . the potential or actual deployment of law enforcement officers”).¹² These requests also seek records that were created around the same time. *Compare* *CREW* Compl. ¶ 41 (requesting “[a]ll records from December 1, 2020 to January 6, 2021”), with *American Oversight* Compl. ¶ 25 (requesting “all responsive records from December 31, 2020, through . . . January 7, 2021”).

In sum, the requests that Plaintiffs *CREW* and *American Oversight* sent to other agencies create even more common issues among the cases.¹³ These additional common issues magnify the benefits of consolidating these cases.

CONCLUSION

For these reasons, Defendants request that the Court consolidate this case with *CREW v. DOJ*, No. 1:21-cv-572 (RC) (D.D.C.), and *American Oversight v. DOD*, No. 1:21-cv-624 (RDM) (D.D.C.).

Dated: April 14, 2020

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

ELIZABETH J. SHAPIRO

¹² Although *American Oversight*’s request specifies certain custodians, *see American Oversight* Compl. ¶ 25 (listing the Secret Service’s Director, Deputy Director, Chief Operating Officer, and Chief of Staff), it is likely that records responsive to *CREW*’s request would involve one or more of these same custodians.

¹³ The *CREW* case also includes a request that was sent to the U.S. Department of the Interior. *See CREW* Compl. ¶¶ 50–53 (describing the request sent to the Park Police); *id.* ¶ 10 (explaining that the Park Police is a component of the U.S. Department of the Interior).

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EXHIBIT 1

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

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,
1101 K Street, NW, Suite 201
Washington, DC 20005,

Plaintiff,

v.

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

U.S. DEPARTMENT OF HOMELAND
SECURITY,
245 Murray Lane, SW
Washington, DC 20528,

U.S. DEPARTMENT OF DEFENSE,
1600 Pentagon 3E788
Washington, DC 20301-1600,

U.S. DEPARTMENT OF THE ARMY,
104 Army Pentagon
Washington, DC 20310-0104, and

U.S. DEPARTMENT OF THE INTERIOR,
1849 C Street, NW
Washington, DC 20240,

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, seeking records relating to the January 6, 2021 insurrection at the U.S. Capitol from Defendants U.S. Department of Justice (“DOJ”), U.S. Department of Homeland Security (“DHS”), U.S. Department of

Defense (“DOD”), U.S. Department of the Army (“Army”), and U.S. Department of the Interior (“Interior”).

2. CREW seeks declaratory relief that Defendants have violated FOIA by failing to timely respond to CREW’s requests, 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 DOJ is an agency within the meaning of 5 U.S.C. § 552(f)(1). The Federal Bureau of Investigation (“FBI”) is a component of DOJ. DOJ has possession, custody, and control of records responsive to CREW’s FOIA requests.

7. Defendant DHS is an agency within the meaning of 5 U.S.C. § 552(f)(1). The U.S. Secret Service (“Secret Service”), the Federal Protective Service (“FPS”), and the Office of Intelligence & Analysis (“I&A”) are components of DHS. DHS has possession, custody, and control of records responsive to CREW’s FOIA request.

8. Defendant DOD is an agency within the meaning of 5 U.S.C. § 552(f)(1). DOD has possession, custody, and control of records responsive to CREW’s FOIA requests.

9. Defendant Army is an agency within the meaning of 5 U.S.C. § 552(f)(1). The Army has possession, custody, and control of records responsive to CREW’s FOIA requests.

10. Defendant Interior is an agency within the meaning of 5 U.S.C. § 552(f)(1). The U.S. Park Police (“Park Police”) is a component of Interior. Interior has possession, custody, and control of records responsive to CREW’s FOIA request.

Factual Background

11. On January 6, 2021, a violent mob of Trump supporters stormed the U.S. Capitol Building to prevent Congress from certifying the results of the 2020 presidential election.¹

12. The horrific attack led to multiple deaths and injuries, defacement of government property, and removal of sensitive government records.² It is regarded as the most significant breach of the U.S. Capitol since the War of 1812.³

13. Soon after January 6, it became clear that the insurrection had been openly planned for weeks in advance, raising widespread concern about the government’s lack of security preparedness.⁴

¹ Associated Press Timeline of events at the Capitol, *Associated Press*, Jan. 6, 2021, <https://bit.ly/396br3O>.

² *Id.*

³ John Haltiwanger, The attempted coup by a pro-Trump mob was the most significant breach of the Capitol since the War of 1812, *Business Insider*, Jan. 6, 2021, <https://bit.ly/2OdsEka>.

⁴ Logan Jaffe, Capitol Rioters Planned for Weeks in Plain Sight. The Police Weren’t Ready, *ProPublica*, Jan. 7, 2021, <https://bit.ly/380QS8k>; W.J. Hennigan and Vera Bergengruen, Insurrectionists Openly Planned for Weeks to Storm the Capitol. Why Were Police So Easily Overwhelmed?, *Time*, Jan. 7, 2021, <https://bit.ly/3868eRc>; Ben

14. The U.S. Capitol Police officers' labor union has called this "lack of planning" by various agencies a "failure of leadership at the very top."⁵

15. To help answer questions about these issues, CREW submitted FOIA requests on January 8, 2021 to DOJ, the FBI, DOD, and the Army. On January 10, 2021, CREW submitted another set of FOIA requests to DOJ, the FBI, DOD, the Army, DHS, and the Park Police.

January 8, 2021 FOIA Requests to DOJ, FBI, DOD, and the Army

16. On January 8, 2021, CREW submitted four materially identical FOIA requests to DOJ, the FBI, DOD, and the Army seeking the following:

1. All records from December 1, 2020 to January 6, 2021 relating to securing the U.S. Capitol Building during the January 6, 2021 congressional session to count electoral votes.
2. All records from December 1, 2020 to January 6, 2021 reflecting any request by the U.S. Capitol Police for assistance or support to secure the U.S. Capitol Building during the January 6, 2021 congressional session to count electoral votes, and any response to such requests.
3. All records from December 1, 2020 to January 6, 2021 reflecting any offer by the [Defendant agencies] to provide assistance or support to U.S. Capitol Police to secure the U.S. Capitol Building during the January 6, 2021 congressional session to count electoral votes, and any response to such offers.

17. Each of CREW's requests sought expedited processing and a fee waiver.

18. On January 8, 2021, CREW received confirmation through FOIA.gov that the Army had received CREW's request, and was provided the confirmation ID 184816.

Collins and Brandy Zadrozny, Extremists made little secret of ambitions to 'occupy' Capitol in weeks before attack, *NBC News*, Jan. 8, 2021, <https://nbcnews.to/2NU5M9q>; David Ignatius, Why weren't officials at the Capitol more prepared for this insurrection?, *Washington Post*, Jan. 6, 2021, <https://wapo.st/3rcg4js>.

⁵ John Henry (JohnHenryWUSA), Twitter (Jan. 7, 2021), <https://bit.ly/3igysEa>.

19. By letter dated January 14, 2021, DOD acknowledged receipt of CREW's request, assigned it tracking number 21-F-0403, granted CREW's request for expedited processing, and invoked a 10-working day extension to its response deadline due to "unusual circumstances."

20. By letter dated January 14, 2021, DOJ acknowledged receipt of CREW's request, assigned it tracking number FOIA-2021-00559, granted CREW's request for expedited processing, and invoked a 10-working day extension to its response deadline due to "unusual circumstances."

21. By letter dated January 21, 2021, the FBI acknowledged receipt of CREW's request, assigned it tracking number FOIPA Request No. 1486993-000, and invoked a 10-working day extension to its response deadline due to "unusual circumstances."

22. By letter dated February 4, 2021, the FBI granted CREW's request for expedited processing.

23. To date, CREW has received no other communications from Defendants regarding its January 8, 2021 FOIA requests.

January 10, 2021 FOIA Request to DOJ

24. On January 10, 2021, CREW submitted a FOIA request to DOJ seeking the following:

1. All records from December 1, 2020 to January 6, 2021 reflecting any plans for demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021 that were identified by the DOJ or other agencies through social media monitoring, threat assessments, or other means.
2. All records from December 1, 2020 to January 6, 2021 reflecting any tips, complaints, referrals, allegations, or reports submitted to the DOJ regarding planned demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021.

3. All records from December 1, 2020 to January 6, 2021 reflecting the DOJ's communication to other agencies—including without limitation the U.S. Capitol Police, the D.C. Metropolitan Police Department, the Department of Defense, or the Department of Homeland Security—of the risks or threats posed by planned demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021.
4. All records from December 1, 2020 to January 6, 2021 relating to the DOJ providing assistance or support to the D.C. Metropolitan Police Department or any other agency in connection with the January 6, 2021 congressional session to count electoral votes.
25. CREW's request sought expedited processing and a fee waiver.
26. By letter dated January 15, 2021, DOJ acknowledged receipt of CREW's request, assigned it tracking number FOIA-2021-00561, granted CREW's request for expedited processing, and invoked a 10-working day extension to its response deadline due to "unusual circumstances."
27. To date, CREW has received no other communications from DOJ regarding its January 10, 2021 FOIA request.

January 10, 2021 FOIA Request to the FBI

28. On January 10, 2021, CREW submitted a FOIA request to the FBI seeking the following:
 1. All records from December 1, 2020 to January 6, 2021 reflecting any plans for demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021 that were identified by the FBI or other agencies through social media monitoring, threat assessments, or other means.
 2. All records from December 1, 2020 to January 6, 2021 reflecting any tips, complaints, referrals, allegations, or reports submitted to the FBI regarding planned demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021.
 3. All records from December 1, 2020 to January 6, 2021 reflecting the FBI's communication to other agencies—including without limitation the U.S. Capitol Police, the D.C. Metropolitan Police Department, the Department

of Defense, or the Department of Homeland Security—of the risks or threats posed by planned demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021.

4. All records from December 1, 2020 to January 6, 2021 relating to the FBI providing assistance or support to the D.C. Metropolitan Police Department or any other agency in connection with the January 6, 2021 congressional session to count electoral votes.
29. CREW’s request sought expedited processing and a fee waiver.
30. By letter dated January 21, 2021, the FBI acknowledged receipt of CREW’s request, assigned it tracking number FOIPA Request No. 1486993-000, and invoked a 10-working day extension to its response deadline due to “unusual circumstances.”
31. By letter dated February 4, 2021, the FBI granted CREW’s request for expedited processing.
32. To date, CREW has received no other communications from the FBI regarding its January 10, 2021 FOIA request.

January 10, 2021 FOIA Request to DOD

33. On January 10, 2021, CREW submitted a FOIA request to DOD seeking the following:
 1. All records from December 1, 2020 to January 6, 2021 relating to DOD, the National Guard, or the Army providing assistance or support to the D.C. Metropolitan Police Department in connection with the January 6, 2021 congressional session to count electoral votes.
 2. All records reflecting the parameters for the National Guard’s deployment to D.C. on January 6, 2021, including any limitations imposed on the number of personnel deployed, their movement within the District, or their use of force.
 3. All communications with the D.C. Mayor’s Office or the D.C. Metropolitan Police Department regarding the parameters for the National Guard’s deployment to D.C. on January 6, 2021.

This request includes without limitation any responsive communications sent or received by Acting Secretary of Defense Christopher Miller, Chief of Staff to the Acting Secretary of Defense Kashyap Patel, or Assistant Secretary of Defense for Homeland Defense and Global Security Kenneth Rapuano.

34. CREW's request sought expedited processing and a fee waiver.

35. By letter dated January 14, 2021, DOD acknowledged receipt of CREW's request, assigned it tracking number 21-F-0408, granted CREW's request for expedited processing, and invoked a 10-working day extension to its response deadline due to "unusual circumstances."

36. By letter dated January 22, 2021, DOD stated that it was partially referring CREW's request to the U.S. National Guard Bureau for processing.

37. To date, CREW has received no other communications from DOD regarding its January 10, 2021 FOIA request.

January 10, 2021 FOIA Request to the Army

38. On January 10, 2021, CREW submitted a FOIA request to the Army seeking the following:

1. All records from December 1, 2020 to January 6, 2021 relating to DOD, the National Guard, or the Army providing assistance or support to the D.C. Metropolitan Police Department in connection with the January 6, 2021 congressional session to count electoral votes.
2. All records reflecting the parameters for the National Guard's deployment to D.C. on January 6, 2021, including any limitations imposed on the number of personnel deployed, their movement within the District, or their use of force.
3. All communications with the D.C. Mayor's Office or the D.C. Metropolitan Police Department regarding the parameters for the National Guard's deployment to D.C. on January 6, 2021.

This request includes without limitation any responsive communications sent or received by Secretary of the Army Ryan McCarthy or Chief of Staff of the Army General James McConville.

39. On January 10, 2021, CREW received confirmation through FOIA.gov that the Army had received CREW's request, and was provided the confirmation ID 185206.

40. To date, CREW has received no other communications from the Army regarding its January 10, 2021 FOIA request.

January 10, 2021 FOIA Request to DHS

41. On January 10, 2021, CREW submitted a FOIA request to DHS seeking the following:

1. All records from December 1, 2020 to January 6, 2021 reflecting any plans for demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021 that were identified by any DHS component—including without limitation the Office of Intelligence & Analysis (“I&A”) and the Federal Protective Service (“FPS”)—or other agencies through social media monitoring, threat assessments, or other means.
2. All records from December 1, 2020 to January 6, 2021 reflecting any tips, complaints, referrals, allegations, or reports submitted to any DHS component—including without limitation I&A and FPS—regarding planned demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021.
3. All records from December 1, 2020 to January 6, 2021 reflecting DHS's communication to other agencies—including without limitation the U.S. Capitol Police, the D.C. Metropolitan Police Department, the Federal Bureau of Investigation, the Department of Justice, or the Department of Defense—of the risks or threats posed by planned demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021.
4. All records from December 1, 2020 to January 6, 2021 relating to any DHS component—including without limitation I&A and FPS—providing assistance or support to the U.S. Capitol Police, the D.C. Metropolitan Police Department, or any other agency in connection with the January 6, 2021 congressional session to count electoral votes.

42. CREW's request sought expedited processing and a fee waiver.

43. By letter dated January 20, 2021, DHS acknowledged receipt of CREW's request, assigned it tracking number 2021-HQFO-00392, granted CREW's request for expedited processing, conditionally granted CREW's request for a fee waiver, and invoked a 10-working day extension to its response deadline due to "unusual circumstances."

44. DHS's January 20, 2021 letter noted that it was referring CREW's request to FPS, I&A, and the Secret Service for processing.

45. By letter dated January 21, 2021, DHS acknowledged receipt of CREW's request, assigned it tracking number 2021-FPFO-00060, granted CREW's request for expedited processing, conditionally granted CREW's request for a fee waiver, and invoked a 10-working day extension to its response deadline due to "unusual circumstances."

46. By letter dated January 21, 2021, the Secret Service acknowledged receipt of CREW's request, assigned it tracking number 20210320, and granted CREW's request for expedited processing.

47. By letter dated March 1, 2021, the Secret Service noted it had completed its search and located potentially responsive records, but did not state that it had made any determination on releasing records to CREW.

48. On March 3, 2021, FPS issued a final response to CREW's request, releasing four pages in full and 81 pages in part, and withholding nine pages in full.

49. To date, CREW has received no other communications from DHS or its components regarding CREW's January 10, 2021 FOIA request.

January 10, 2021 FOIA Request to the Park Police

50. On January 10, 2021, CREW submitted a FOIA request to the Park Police seeking the following:

1. All records from December 1, 2020 to January 6, 2021 relating to the U.S. Park Police (“USPP”) providing assistance or support to the U.S. Capitol Police, the D.C. Metropolitan Police Department, or any other agency in connection with the January 6, 2021 congressional session to count electoral votes.
2. All records from December 1, 2020 to January 6, 2021 reflecting any plans for demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021 that were identified by the USPP or other agencies through social media monitoring, threat assessments, or other means.
3. All records from December 1, 2020 to January 6, 2021 reflecting any tips, complaints, referrals, allegations, or reports submitted to the USPP regarding planned demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021.
4. All records from December 1, 2020 to January 6, 2021 reflecting the USPP’s communication to other agencies—including without limitation the U.S. Capitol Police, the D.C. Metropolitan Police Department, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense, or the Department of Homeland Security—of the risks or threats posed by planned demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021.

51. CREW’s request sought expedited processing and a fee waiver.

52. By email sent through foiaonline.gov on January 10, 2021, the Park Police acknowledged receipt of CREW’s request and assigned it tracking number DOI-NPS-2021-001744.

53. To date, CREW has received no other communications from the Park Police regarding its January 10, 2021 FOIA request.

CREW'S CLAIMS FOR RELIEF

COUNT I

**DOJ's wrongful withholding of Records Responsive to
CREW's January 8 and 10, 2021 FOIA Requests**

(DOJ Tracking Nos. FOIA-2021-00559 and FOIA-2021-00561)
(FBI FOIPA Request No. 1486993-000)

54. CREW repeats and re-alleges the foregoing paragraphs.

55. In its January 8, 2021 FOIA requests, CREW properly asked for records within the possession, custody, and control of DOJ and its component the FBI.

56. In its January 10, 2021 FOIA requests, CREW properly asked for records within the possession, custody, and control of DOJ and its component the FBI.

57. DOJ and the FBI are wrongfully withholding records responsive to CREW's FOIA requests.

58. DOJ and the FBI have failed to conduct adequate searches in response to CREW's FOIA requests.

59. By failing to timely release all requested records in full to CREW, DOJ and the FBI are in violation of FOIA.

60. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the records requested in its January 8 and 10, 2021 FOIA requests to DOJ and the FBI.

COUNT II

**DHS's wrongful withholding of Records Responsive to
CREW's January 8 and 10, 2021 FOIA Request**

(DHS Tracking Nos. 2021-HQFO-00392 and 2021-FPFO-00060)
(Secret Service Tracking No. 20210320)

61. CREW repeats and re-alleges the foregoing paragraphs.

62. In its January 10, 2021 FOIA request, CREW properly asked for records within the possession, custody, and control of DHS and its components.

63. DHS and its components are wrongfully withholding records responsive to CREW's FOIA request.

64. DHS and its components have failed to conduct adequate searches in response to CREW's FOIA request.

65. By failing to timely release all requested records in full to CREW, DHS and its components are in violation of FOIA.

66. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the records requested in its January 10, 2021 FOIA request to DHS.

COUNT III

DOD's wrongful withholding of Records Responsive to CREW's January 8 and 10, 2021 FOIA Requests

(DOD Tracking Nos. 21-F-0403 and 21-F-0408)

67. CREW repeats and re-alleges the foregoing paragraphs.

68. In its January 8 and 10, 2021 FOIA requests, CREW properly asked for records within the possession, custody, and control of DOD and its components.

69. DOD and its components are wrongfully withholding records responsive to CREW's FOIA requests.

70. DOD and its components have failed to conduct adequate searches in response to CREW's FOIA requests.

71. By failing to timely release all requested records in full to CREW, DOD and its components are in violation of FOIA.

72. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the records requested in its January 8 and 10, 2021 FOIA requests to DOD.

COUNT IV

**The Army's wrongful withholding of Records Responsive to
CREW's January 8 and 10, 2021 FOIA Requests**

(Army Tracking Nos. 184816 and 185206)

73. CREW repeats and re-alleges the foregoing paragraphs.

74. In its January 8 and 10, 2021 FOIA requests, CREW properly asked for records within the possession, custody, and control of the Army.

75. The Army is wrongfully withholding records responsive to CREW's FOIA requests.

76. The Army has failed to conduct an adequate search in response to CREW's FOIA requests.

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

78. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the records requested in its January 8 and 10, 2021 FOIA requests to the Army.

COUNT V

**Interior's wrongful withholding of Records Responsive to
CREW's January 8 and 10, 2021 FOIA Requests**

(Interior Tracking No. DOI-NPS-2021-001744)

79. CREW repeats and re-alleges the foregoing paragraphs.

80. In its January 10, 2021 FOIA request, CREW properly asked for records within the possession, custody, and control of Interior and its component the Park Police.

81. Interior and the Park Police are wrongfully withholding records responsive to CREW's FOIA request.

82. Interior and the Park Police have failed to conduct adequate searches in response to CREW's FOIA request.

83. By failing to timely release all requested records in full to CREW, Interior and the Park Police are in violation of FOIA.

84. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the records requested in its January 10, 2021 FOIA request to Interior.

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 documents 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: March 4, 2021

Respectfully Submitted,

/s/ Nikhel S. Sus

Nikhel S. Sus

(D.C. Bar No. 1017937)

Laura C. Beckerman

(D.C. Bar No. 1008120)

CITIZENS FOR RESPONSIBILITY AND
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EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

v. Case No. 21-cv-624

U.S. DEPARTMENT OF DEFENSE,
1600 Pentagon 3E788
Washington, DC 20301-1600

NATIONAL GUARD BUREAU,
111 S George Mason Dr
Arlington, VA 22204

U.S. ARMY,
Office of the Army General Counsel
104 Army Pentagon
Washington, DC 20310-0104

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

and

U.S. SECRET SERVICE
245 Murray Ln SW – Bldg. T-5,
Washington, DC 20223

Defendants.

COMPLAINT

1. Plaintiff American Oversight brings this action against the U.S. Department of Defense, the National Guard Bureau, the U.S. Army, the U.S. Department of Justice, and the U.S. Secret Service under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the

Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

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

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

4. Because Defendants have failed to comply with the applicable time-limit provisions of the FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the Defendants from continuing to withhold department or agency records and ordering the production of department or agency records improperly withheld.

PARTIES

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

6. Defendant U.S. Department of Defense (DOD) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal

government within the meaning of 5 U.S.C. § 552(f)(1). DOD has possession, custody, and control of the records that American Oversight seeks.

7. Defendant National Guard Bureau (National Guard) is a component of the Department of Defense (DOD), which is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). The National Guard Bureau has possession, custody, and control of the records that American Oversight seeks.

8. Defendant U.S. Army (Army) is a component of the Department of Defense (DOD), which is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). Army has possession, custody, and control of the records that American Oversight seeks.

9. Defendant U.S. Department of Justice (DOJ) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). The Office of Information Policy (OIP) is a component of DOJ that processes FOIA requests for other components of DOJ, including the Office of the Attorney General (OAG). The Office of Legal Counsel (OLC) is a component of DOJ that processes its own FOIA requests. DOJ has possession, custody, and control of the records that American Oversight seeks.

10. Defendant U.S. Secret Service (Secret Service) is a component of the Department of Homeland Security (DHS), which is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within

the meaning of 5 U.S.C. § 552(f)(1). The Secret Service has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

11. On January 11, 2021, American Oversight submitted similar FOIA requests to DOD, the National Guard, Army, DOJ, and the Secret Service seeking, broadly speaking, communications, directives, and other records related to the potential or actual deployment of resources to the U.S. Capitol, requests for assistance from members of Congress, protests or armed activity at the Capitol, former President Trump's rally, or other security matters from the time period surrounding the January 6, 2021 attack on the Capitol.

DOD Request

12. On January 11, 2021, American Oversight submitted a FOIA request to DOD seeking the following on an expedited basis:

- 1) All communications (including emails, email attachments, complete email chains, text messages (or messages on similar applications such as Signal or WhatsApp) and calendar invitations) sent or received by the officials listed below regarding events at the U.S. Capitol, U.S. National Mall, or surrounding grounds in Washington D.C. on January 6, 2021, including but not limited to the potential or actual deployment of law enforcement officers and/or National Guard troops, requests for assistance from members of Congress or Congressional staff, protests or armed activity at the Capitol, President Trump's rally, or concerns about security.

Please note that American Oversight does not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications forwarding such emails are responsive to this request. In other words, for example, if a specified official received a mass-distribution news clip email referencing protests or violent activity at the Capitol, that initial email would not be responsive to this request. However, if a specified official forwarded that email to another individual with his own

commentary, that subsequent message would be responsive to this request and should be produced.

- 2) All orders, directives, protocols, or guidance prepared, written, approved, or signed by the officials listed below, regarding events at the U.S. Capitol, U.S. National Mall, or surrounding grounds in Washington D.C. on January 6, 2021, including but not limited to the potential or actual deployment of law enforcement officers and/or National Guard troops, requests for assistance from members of Congress or Congressional staff, protests or armed activity at the Capitol, President Trump's rally, or concerns about security.

Specified officials:

- a. Chris Miller, Acting Secretary of Defense
- b. Kash Patel, Chief of Staff to the Acting Secretary of Defense
- c. Douglas Macgregor, Senior Advisor to the Acting Secretary of Defense
- d. David Norquist, Deputy Secretary of Defense
- e. Gen. Mark A. Milley, Chairman of the Joint Chiefs of Staff
- f. Gen. John Hyten, Vice Chairman of the Joint Chiefs of Staff
- g. Anthony Tata, Acting Under Secretary of Defense for Policy
- h. Paul Ney Jr., General Counsel
- i. Anyone serving as White House Liaison, including but not limited to Joshua Whitehouse

Please provide all responsive records from December 31, 2020, through the January 7, 2021.

13. On January 11, 2021, DOD acknowledged this request, assigned the request tracking number 21-F-0430, and granted expedited processing.

14. American Oversight has not received any further communication from DOD regarding this request.

National Guard Bureau Request

15. Also on January 11, 2021, American Oversight submitted a FOIA request to the National Guard Bureau seeking the following on an expedited basis:

- 1) All communications (including emails, email attachments, complete email chains, text messages (or messages on similar applications such as Signal or WhatsApp) and calendar invitations) sent or received by the officials listed below

regarding events at the U.S. Capitol, U.S. National Mall, or surrounding grounds in Washington D.C. on January 6, 2021, including but not limited to the potential or actual deployment of law enforcement officers and/or National Guard troops, requests for assistance from members of Congress or Congressional staff, protests or armed activity at the Capitol, President Trump's rally, or concerns about security.

Please note that American Oversight does not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications forwarding such emails are responsive to this request. In other words, for example, if a specified official received a mass-distribution news clip email referencing protests or violent activity at the Capitol, that initial email would not be responsive to this request. However, if a specified official forwarded that email to another individual with his own commentary, that subsequent message would be responsive to this request and should be produced.

- 2) All orders, directives, protocols, or guidance prepared, written, approved, or signed by the officials listed below, regarding events at the U.S. Capitol, U.S. National Mall, or surrounding grounds in Washington D.C. on January 6, 2021, including but not limited to the potential or actual deployment of law enforcement officers and/or National Guard troops, requests for assistance from members of Congress or Congressional staff, protests or armed activity at the Capitol, President Trump's rally, or concerns about security.

Specified officials:

- a. Gen. Daniel Hokanson, Chief, National Guard Bureau
- b. Lt. Gen. Marc Sasseville, Vice Chief, National Guard Bureau
- c. Tony Whitehead, Senior Enlisted Advisor to the Chief
- d. Lt. Gen. Jon Jenson, Director, Army National Guard
- e. Maj. Gen. William Walker, Commanding General, DC National Guard
- f. Brigadier Gen. Aaron Dean II, Adjutant General, DC National Guard
- g. Brigadier Gen. Mark Maldonado, Commander, DC National Guard

Please provide all responsive records from December 31, 2020, through the January 7, 2021.

16. American Oversight has not received any communication from the National Guard Bureau regarding this request.

Army Request

17. Also on January 11, 2021, American Oversight submitted a FOIA request to the Army seeking the following on an expedited basis:

- 1) All communications (including emails, email attachments, complete email chains, text messages (or messages on similar applications such as Signal or WhatsApp) and calendar invitations) sent or received by the officials listed below regarding events at the U.S. Capitol, U.S. National Mall, or surrounding grounds in Washington D.C. on January 6, 2021, including but not limited to the potential or actual deployment of law enforcement officers and/or National Guard troops, requests for assistance from members of Congress or Congressional staff, protests or armed activity at the Capitol, President Trump's rally, or concerns about security.

Please note that American Oversight does not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications forwarding such emails are responsive to this request. In other words, for example, if a specified official received a mass-distribution news clip email referencing protests or violent activity at the Capitol, that initial email would not be responsive to this request. However, if a specified official forwarded that email to another individual with his own commentary, that subsequent message would be responsive to this request and should be produced.

- 2) All orders, directives, protocols, or guidance prepared, written, approved, or signed by the officials listed below, regarding events at the U.S. Capitol, U.S. National Mall, or surrounding grounds in Washington D.C. on January 6, 2021, including but not limited to the potential or actual deployment of law enforcement officers and/or National Guard troops, requests for assistance from members of Congress or Congressional staff, protests or armed activity at the Capitol, President Trump's rally, or concerns about security.

Specified officials:

- a. Ryan McCarthy, Secretary of the Army
- b. Gen. James McConville, Chief of Staff to the Army
- c. James E. McPherson, Undersecretary and General Counsel of the Army
- d. Gen. Joseph Martin, Vice Chief of Staff of the Army
- e. Lt. Gen. Walter E. Piatt, Director of the Army Staff

For both parts of this request, please provide all responsive records from December 31, 2020, through January 7, 2021.

18. American Oversight has not received any communication from the Army regarding this request.

DOJ OIP Request

19. Also on January 11, 2021, American Oversight submitted a FOIA request to DOJ OIP seeking the following on an expedited basis:

- 1) All communications (including emails, email attachments, complete email chains, text messages (or messages on similar applications such as Signal or WhatsApp) and calendar invitations) sent or received by the officials listed below regarding events at the U.S. Capitol, U.S. National Mall, or surrounding grounds in Washington D.C. on January 6, 2021, including but not limited to the potential or actual deployment of law enforcement officers and/or National Guard troops, requests for assistance from members of Congress or Congressional staff, protests or armed activity at the Capitol, President Trump's rally, or concerns about security.

Please note that American Oversight does not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications forwarding such emails are responsive to this request. In other words, for example, if a specified official received a mass-distribution news clip email referencing protests or violent activity at the Capitol, that initial email would not be responsive to this request. However, if a specified official forwarded that email to another individual with his own commentary, that subsequent message would be responsive to this request and should be produced.

- 2) All orders, directives, protocols, or guidance prepared, written, approved, or signed by the officials listed below, regarding events at the U.S. Capitol, U.S. National Mall, or surrounding grounds in Washington D.C. on January 6, 2021, including but not limited to the potential or actual deployment of law enforcement officers and/or National Guard troops, requests for assistance from members of Congress or Congressional staff,

protests or armed activity at the Capitol, President Trump's rally, or concerns about security.

Specified officials:

- a. Jeffrey Rosen, Acting Attorney General
- b. Richard Donoghue, Principal Associate Deputy Attorney General
- c. Anyone serving in the capacity of Chief of Staff to the Acting Attorney General
- d. Anyone serving as White House Liaison

For both parts of this request, please provide all responsive records from December 31, 2020, through January 7, 2021.

20. On January 19, 2021, DOJ OIP acknowledged this request, assigned the request tracking number 2021-00563, and granted expedited processing.

21. American Oversight has not received any further communication from DOJ OIP regarding this request.

DOJ OLC Request

22. Also on January 11, 2021, American Oversight submitted a FOIA request to DOJ OLC seeking the following on an expedited basis:

- 1) All communications (including emails, email attachments, complete email chains, text messages (or messages on similar applications such as Signal or WhatsApp) and calendar invitations) sent or received by the officials listed below regarding events at the U.S. Capitol, U.S. National Mall, or surrounding grounds in Washington D.C. on January 6, 2021, including but not limited to the potential or actual deployment of law enforcement officers and/or National Guard troops, requests for assistance from members of Congress or Congressional staff, protests or armed activity at the Capitol, President Trump's rally, or concerns about security.

Please note that American Oversight does not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications forwarding such emails are responsive to this request. In other words, for example, if a specified official received a mass-distribution news clip email referencing protests or violent activity at the Capitol, that initial email would

not be responsive to this request. However, if a specified official forwarded that email to another individual with his own commentary, that subsequent message would be responsive to this request and should be produced.

- 2) All orders, directives, protocols, or guidance prepared, written, approved, or signed by the officials listed below, regarding events at the U.S. Capitol, U.S. National Mall, or surrounding grounds in Washington D.C. on January 6, 2021, including but not limited to the potential or actual deployment of law enforcement officers and/or National Guard troops, requests for assistance from members of Congress or Congressional staff, protests or armed activity at the Capitol, President Trump's rally, or concerns about security.

Specified officials:

- a. Steven Engel, Assistant Attorney General
- b. Anyone serving in the capacity of Deputy Assistant Attorney General
- c. Rosemary Hart, Special Counsel

For both parts of this request, please provide all responsive records from December 31, 2020, through January 7, 2021.

23. On January 15, 2021, DOJ OLC acknowledged this request, assigned the request tracking number FY21-069, and granted expedited processing.

24. American Oversight has not received any further communication from DOJ OLC regarding this request.

Secret Service Request

25. Also on January 11, 2021, American Oversight submitted a FOIA request to the Secret Service seeking the following on an expedited basis:

- 1) All communications (including emails, email attachments, complete email chains, text messages (or messages on similar applications such as Signal or WhatsApp) and calendar invitations) sent or received by the officials listed below regarding events at the U.S. Capitol, U.S. National Mall, or surrounding grounds in Washington D.C. on January 6, 2021, including but not limited to the potential or actual deployment of law enforcement officers and/or National Guard troops,

requests for assistance from members of Congress or Congressional staff, protests or armed activity at the Capitol, President Trump's rally, or concerns about security.

Please note that American Oversight does not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications forwarding such emails are responsive to this request. In other words, for example, if a specified official received a mass-distribution news clip email referencing protests or violent activity at the Capitol, that initial email would not be responsive to this request. However, if a specified official forwarded that email to another individual with his own commentary, that subsequent message would be responsive to this request and should be produced.

- 2) All orders, directives, protocols, or guidance prepared, written, approved, or signed by the officials listed below, regarding events at the U.S. Capitol, U.S. National Mall, or surrounding grounds in Washington D.C. on January 6, 2021, including but not limited to the potential or actual deployment of law enforcement officers and/or National Guard troops, requests for assistance from members of Congress or Congressional staff, protests or armed activity at the Capitol, President Trump's rally, or concerns about security.

Specified officials:

- a. James Murray, Director
- b. Leonza Newsome III, Deputy Director
- c. George Mulligan, Chief Operating Officer
- d. Brian Ebert, Chief of Staff

For both parts of this request, please provide all responsive records from December 31, 2020, through January 7, 2021.

26. On January 12, 2021, the Secret Service acknowledged this request, assigned the request tracking number 20210271, and granted expedited processing.

27. On March 1, 2021, the Secret Service informed American Oversight that the agency had conducted a search but did not provide responsive documents or identify what documents would be produced and what exemptions would be asserted.

28. American Oversight has not received any further communication from the Secret Service regarding this request.

Exhaustion of Administrative Remedies

29. As of the date of this complaint, Defendants have failed to (a) notify American Oversight of any determination regarding its FOIA requests, including the scope of any responsive records Defendants intend to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

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

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Grant Expedited Processing
(As to the National Guard Bureau and Army)

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

32. American Oversight properly requested records within the possession, custody, and control of Defendants National Guard Bureau and Army on an expedited basis.

33. Defendants National Guard Bureau and Army are agencies subject to FOIA and must process FOIA requests on an expedited basis pursuant to the requirements of FOIA and agency regulations.

34. The records American Oversight has requested are urgently needed to inform the public about government activities of extraordinary public importance, and American Oversight

is primarily engaged in disseminating information to the general public. Therefore American Oversight's requests justify expedited processing under FOIA and agency regulations.

35. American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendants National Guard Bureau and Army to grant expedited processing of American Oversight's FOIA requests.

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

36. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

37. American Oversight properly requested records within the possession, custody, and control of Defendants.

38. Defendants are agencies subject to FOIA and must therefore make reasonable efforts to search for requested records.

39. Defendants have failed to promptly review agency records for the purpose of locating those records that are responsive to Plaintiff's FOIA requests.

40. Defendants' failure to conduct an adequate search for responsive records violates FOIA.

41. Plaintiff is therefore entitled to injunctive and declaratory relief requiring Defendants to promptly make reasonable efforts to search for records responsive to Plaintiff's FOIA requests.

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

42. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

43. American Oversight properly requested records within the possession, custody, and control of Defendants.

44. Defendants are agencies subject to FOIA and must therefore make reasonable efforts to search for requested records.

45. Defendants are wrongfully withholding non-exempt agency records requested by Plaintiff by failing to produce non-exempt records responsive to its FOIA requests.

46. Defendants' failure to provide all non-exempt responsive records violates FOIA.

47. Plaintiff is therefore entitled to declaratory and injunctive relief requiring Defendants to promptly produce all non-exempt records responsive to its FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendants National Guard Bureau and Army to grant expedited processing of American Oversight's requests;
- (2) Order Defendants to conduct a search reasonably calculated to uncover all records responsive to American Oversight's FOIA requests;
- (3) Order Defendants to produce, within twenty days of the Court's order, any and all non-exempt records responsive to American Oversight's FOIA requests and *Vaughn* indexes of any responsive records withheld under claim of exemption;

- (4) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (5) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (6) Grant American Oversight such other relief as the Court deems just and proper.

Dated: March 9, 2021

Respectfully submitted,

/s/ Daniel A. McGrath

Daniel A. McGrath

D.C. Bar No. 1532723

AMERICAN OVERSIGHT

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Washington, DC 20005

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Counsel for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
JASON LEOPOLD, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:21-cv-558 (APM)
)	
U.S. DEPARTMENT OF JUSTICE, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

PROPOSED ORDER

After considering Defendants’ motion to consolidate cases, it is hereby

ORDERED that the motion is **GRANTED**, and it is **FURTHER ORDERED** that this case is consolidated with *CREW v. DOJ*, No. 1:21-cv-572 (RC) (D.D.C.), and *American Oversight v. DOD*, No. 1:21-cv-624 (RDM) (D.D.C.); and it is **FURTHER ORDERED** that these two cases shall be reassigned to the undersigned in accordance with Local Rule 40.5(c)–(d).

Dated: _____

AMIT P. MEHTA
United States District Judge