UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON, Plaintiff, v. U.S. DEPARTMENT OF JUSTICE, Defendant.	Civil Action No. 25-cv-4426-CKK

REPLY IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE OR CLARIFY THE COURT'S FEBRUARY 19 AND MARCH 24 ORDERS

DOJ's silence speaks volumes in its Opposition, ECF 23 (the "Opposition" or "Opp.") to CREW's Motion to Enforce or Clarify, ECF 22, (the "Motion" or "Mot.").

CREW's Motion seeks relief on three grounds: (1) the Court's February 19 and March 24 Orders bind the Consulting Agencies under Federal Rule 65(d)(2)(c); (2) FOIA's processing requirement is not satisfied while DOJ's consultations remain pending with the other agencies: and (3) DOJ's interim *Vaughn* indices are facially inadequate. DOJ's Opposition ignores and therefore concedes each. *See* Local Civ. R. 7(b); *Texas v. United States*, 798 F.3d 1108, 1110 (D.C. Cir. 2015) ("[Local Rule 7(b)] is understood to mean that if a party files an opposition to a motion and therein addresses only some of the movant's arguments, the court may treat the unaddressed arguments as conceded."). Because DOJ "file[d] a responsive memorandum, but fail[ed] to address certain arguments made by [CREW], the court may treat those arguments as conceded." *M.R.S. Enters., Inc. v. Sheet Metal Workers' Int'l Ass'n, Loc. 40*, 429 F. Supp. 2d 72, 78 (D.D.C. 2006) (Kollar-Kotelly, J).

Rather than responding to CREW's Motion on the substance, DOJ makes a smattering of arguments grounded in a distorted view of fundamental fairness. But those erroneous arguments

do not change a single keystone fact at the heart of this case: since CREW submitted its FOIA requests to DOJ last year, and even in the face of repeated orders from this Court taking them to task, DOJ has stalled and dodged. On February 19, the Court ordered DOJ to expedite processing of CREW's FOIA requests and provide *Vaughn* indices with its rolling productions. When CREW filed the Motion more than two months later, DOJ still had not completed processing 575 high priority pages pending consultation with the Consulting Agencies, Mot., ECF 22-1 at 2, and DOJ still has not produced an adequate *Vaughn* index, *id.* at 13-14. DOJ's Opposition makes clear that another week later, all 575 pages pending consultation are still in limbo with the Consulting Agencies, Opp., ECF 23 at 3, 4, 7, and DOJ still has not corrected its four interim *Vaughn* indices. This violates the Court's orders, and is contrary to the Federal Rules of Civil Procedure, FOIA, and all relevant caselaw.

ARGUMENT

I. The Court's February 19 and March 24 Orders bind the Consulting Agencies under Federal Rule 65(d)(2)(c).

DOJ did not respond to and thus conceded that the "Court's February 19 and March 24 Orders bind the Consulting Agencies[1] under Federal Rule 65(d)(2)(c)." *Compare* Mot., ECF 22-1 at 4-8 *with* Opp., ECF 23. Indeed, DOJ's Opposition does not even mention Rule 65, let alone attempt to argue that Rule 65(d)(2)(c) is inapplicable here. *See generally* Opp., ECF 23. Nor does DOJ dispute that the Consulting Agencies (1) received actual notice of the Court's February 19 and March 24 Orders, and (2) are acting in concert or participating with DOJ. *See* Fed. R. Civ. P. 65(d)(2)(c). By failing to respond, DOJ has conceded that under Rule 65(d)(2)(c), the Court's orders bind the Consulting Agencies.

[1] *See* Mot., ECF 22-1 at 1 fn.1.

To the extent DOJ musters any argument that could conceivably bear on the Court's authority to apply the plain text of Rule 65(d)(2)(c) to the Consulting Agencies, DOJ is wrong. DOJ says "CREW cites no authority, nor is Defendant aware of any, that would permit this Court to exercise jurisdiction over and compel the processing rate of agencies that are not before it, were not named in the Complaint, and were not themselves the subject of CREW's FOIA requests." Opp., ECF 23 at 2-3. This is wrong for two reasons.

First, Rule 65(d)(2)(c)—which CREW's Motion discusses at length, *see* Mot., ECF 22-1 at 4-8—is itself authority for the proposition that Consulting Agencies are bound by the Court's orders. The Rule unambiguously establishes that other parties "who are **in active concert or participation with**" a party subject to an injunction are likewise bound by it if have "actual notice" of the order. Fed. R. Civ. P. 65(d)(2)(c) (emphasis added). CREW established the Consulting Agencies satisfy those prerequisites. Mot., ECF 22-1 at 4-8.

Second, there are many cases where, following Rule 65(d)(2)(c), courts across the country have applied their orders to federal agencies other than the federal agency defendants. *See*, *e.g.*, *City & Cnty. of San Francisco v. Trump*, 779 F. Supp. 3d 1077, 1083 (N.D. Cal.), *opinion clarified*, 782 F. Supp. 3d 830, 832 (N.D. Cal. 2025) (enjoining federal defendants "and their officers, agents, servants, employees, and attorneys, and **any other persons in active concert or participation with them**." (emphasis added)).[2] That is because, under Rule 65(d)(2)(c), a federal court's injunction "against any federal agency or official" also binds "any other agency or individual

[2] *Accord Thakur v. Trump*, 787 F. Supp. 3d 955, 1007 (N.D. Cal. 2025); *Colorado v. HHS*, 788 F. Supp. 3d 277, 315 (D.R.I. 2025), *appeal dismissed*, No. 25-1671, 2025 WL 4057116 (1st Cir. July 29, 2025); *G.F.F. v. Trump*, 781 F. Supp. 3d 195, 213 (S.D.N.Y. 2025); *PFLAG, Inc. v. Trump*, 769 F. Supp. 3d 405, 455 (D. Md. 2025); *United States v. Trump*, --- F. Supp. 3d ---, No. 23-80101, 2026 WL 491163, at *6 (S.D. Fla. Feb. 23, 2026); *Illinois v. Vought*, No. 26-1566, 2026 WL 403762, at *1 (N.D. Ill. Feb. 12, 2026), *opinion clarified*, No. 26 CV 1566, 2026 WL 962382 (N.D. Ill. Feb. 25, 2026).

acting in concert with or as an agent of the President or other defendants." *Id.* at 1083 n.5 (citing Fed. R. Civ. P. 65(d)(2)). Rule 65(d)(2)(c) is dispositive here.

II. FOIA's processing requirement is not satisfied while DOJ's consultations remain pending with the other agencies.

DOJ also does not respond to—and thus concedes—CREW's argument that "under FOIA, processing ends when an agency has determined whether a record is responsive and either (1) discloses it or (2) withholds it under a claimed exemption," and *not* when the recipient agency sends a record to an external agency for consultation. *Compare* Mot., ECF 22-1 at 8-12 *with* Opp., ECF 23 at 3-5. Rather than responding to the substance of CREW's legal arguments about how FOIA treats records sent for consultation, DOJ asserts only that the Court should not grant relief to CREW because it is "unfair to hold DOJ in violation of the Court's Orders when DOJ has completed all steps of the process within its control." Opp., ECF 23 at 3; *see id.* at 4. This is wrong twice over.

First, as noted above, the Consulting Agencies' compliance is not out of the Court's or DOJ's control because the Consulting Agencies themselves became bound by the Court's orders once DOJ gave them actual notice of the orders—which DOJ does not deny doing. Second, even if the Court credits DOJ's argument that the plain text of FOIA making consultation part of processing "might lead to some unfair results, . . . the court cannot ignore the plain text and structure of the statute." *12 Percent Logistics, Inc. v. Unified Carrier Registration Plan Bd.*, 282 F. Supp. 3d 190, 198 (D.D.C. 2017); *see also United States v. Harris*, 451 F. Supp. 3d 64, 70 (D.D.C. 2020) (during statutory interpretation, even a "fair question" that leaves a court "puzzled" is "not enough to overcome the plain language of the statute").

Recent facts also refute DOJ's assertion that it is blame-free for the consultation bottleneck. *See* Opp., ECF 23 at 4-5. As CREW stated in the parties' most recent Joint Status Report, one of

CREW's highest priority categories of records in this case is "[a]ll records relating to DOJ's use of the Department of Homeland Security's Systematic Alien Verification for Entitlements ("SAVE") system for purposes of verifying the citizenship of voters or voter registrants in any state." April 22, 2026, Joint Status Report (the "April 22 JSR"), ECF 20 at 13. And in this FOIA action, "DOJ has not produced any agreement between DOJ and DHS concerning DOJ using SAVE" presumably because hundreds of pages are pending consultation by DHS. *Id.* at 13-14. Recently, however, DOJ produced a SAVE Memorandum of Agreement between DHS and DOJ to the plaintiffs *in another case* in this District. *See* Index of Administrative Record, *Common Cause v. DOJ*, No. 1:26-cv-01352-SLS, ECF No. 24-1 (D.D.C. May 7, 2026) (including "Memorandum of Agreement DHS, USCIS and DOJ re SAVE _Executed Jan 2026" in administrative record). The fact that DOJ did not withhold the SAVE Agreement from the administrative record in the *Common Cause* case—or was able to convince DHS to sign off on its inclusion—but has indefinitely delayed the release of the same document here demonstrates the issues with DOJ's approach to consultation and processing. Clearly, DOJ has not "done everything within its power to process the 575 external consult documents." Opp., ECF 23 at 4.

III. DOJ's interim *Vaughn* indices are facially inadequate.

As with each of CREW's other primary arguments, DOJ does not offer any caselaw to refute—and therefore concedes—CREW's central point about the interim *Vaughn* indices: they are legally deficient because they do not "adequately describe each withheld document or deletion from a released document," and do not "state the exemption claimed for each deletion or withheld document, and explain why the exemption is relevant." Mot., ECF 22-1 at 13 (quoting *Summers v. DOJ*, 140 F.3d 1077, 1080 (D.C. Cir. 1998)).

The most DOJ does is offer a cursory *factual* explanation of how some (not all) entries in the *Vaughn* indices include a document title that, according to DOJ, impliedly reflects "the basis

for the identified exemption, such as documents with the phrase 'tracked changes' or 'edits' included in their title or contemporaneous 'clean versions' of such obvious drafts." *Id.* at 7. First, DOJ's scour-the-titles suggestion that CREW sift through 13,000+ document titles for occasional instances of descriptive language is a non-starter; as a matter of law, the *Vaughn* indices must "adequately describe *each* withheld document or deletion," *Summers*, 140 F.3d at 1080 (emphasis added), and must "explain[] why *each* exemption applies." *Prison Legal News v. Samuels,* 787 F.3d 1142, 1145, fn. 1 (D.C. Cir. 2015) (emphasis added). This case provides why: DOJ's proposed method for identifying the bases for withholdings would not remedy the fact that far more entries in the *Vaughn* indices have nondescript titles than have descriptive ones.[3] Second, DOJ's scour-the-titles suggestion would also turn the burdens in FOIA cases on their head. "When an agency declines to produce a requested document, the agency bears the burden before the trial court of proving the applicability of claimed statutory exemptions." Mot., ECF 22-1 at 13 (quoting *Summers*, 140 F.3d at 1080). The Court should dispense with this paper tiger argument.

Rather than meaningfully litigate the adequacy of the interim *Vaughn* indices, DOJ seeks to stall revisions until summary judgment. Opp., ECF 23 at 6-7. But as CREW demonstrated in its Motion, "DOJ must address endemic issues—the inadequacy of document descriptions and its bases for withholding—on a systemic rather than individual level and it must do so before summary judgment so that the parties know what the operative facts are." Mot., ECF 22-1 at 14 (citing *Schoenman v. FBI*, 604 F. Supp. 2d 174, 179, 195 (D.D.C. 2009) (Kollar-Kotelly, J.)).

[3] By CREW's count, approximately 174 document titles in the *Vaughn* indices contain some form of the word "draft," approximately six document titles contain some form of the word "track," approximately 80 document titles contain the word "redline," and approximately 66 document titles contain some form of the word "edit." Even accepting DOJ's premise that such language should help CREW determine DOJ's basis for withholding certain documents, that universe comprises approximately 326 entries in the *Vaughn* indices, or roughly 3% of the more than 13,000 total entries for documents DOJ withheld.

The only reason DOJ claims it should not have to produce an adequate *Vaughn* index is that, in DOJ's view, correcting its deficiencies would be premature and waste resources. The opposite is true. According to DOJ, all of CREW's supporting cases deal "with the legal sufficiency of *Vaughn* indices only when litigation has reached the point of a motion for summary judgment." Opp. at 6. But in each case, the courts were forced to waste time and resources by denying or deferring motions for summary judgment until the government produced cured *Vaughn* indices, which is far more inefficient than ordering DOJ to correct the unrefuted deficiencies with its *Vaughn* indices now. In *Schoenman*, for example, this Court denied partial summary judgment and granted a similar "Motion for an Order Requiring the FBI to Provide a Complete *Vaughn* Index" because courts "cannot resolve the merits . . . until an adequate *Vaughn* index is compiled." 604 F. Supp. 2d at 178-179. Indeed, this Court has routinely denied summary judgment motions without prejudice and sent federal defendants back to the drawing board to first fix lacking *Vaughn* indices. *See*, *e.g.*, *Liounis v. DOJ*, No. 17-1621 (CKK), 2018 WL 3838819, at *1 (D.D.C. July 10, 2018) (noting court had previously "denied both parties' motions for summary judgment without prejudice and ordered Defendant to prepare a Vaughn index that provides more information about all withheld documents that are responsive to Plaintiff's FOIA request so that the Court can decide whether or not those documents are exempt"); *accord Buzzfeed Inc. v. DOJ*, No. 19-3194 (CKK), 2024 WL 3858544, at *7 (D.D.C. Aug. 19, 2024) (similar); *Hornbeck Offshore Transp., LLC v. U.S. Coast Guard,* No. 04-1724 (CKK), 2006 WL 696053, at *24 (D.D.C. Mar. 20, 2006) (similar). To avoid the parties briefing summary judgment twice in this case—once before DOJ corrects the *Vaughn* indices and once after—and to avoid any further delays caused by DOJ's repeated failures to follow the Court orders, the Court should order DOJ to correct its interim *Vaughn* indices now as well as produce adequate *Vaughn* indices with all future productions going forward.

Finally, DOJ's arguments about their inadequate *Vaughn* indices rely on the faulty premise that this is a routine FOIA case in which DOJ is entitled to litigate issues surrounding the *Vaughn* indices in the normal course. But as the Court has already concluded, this case belongs in the "small category" of "a few rare FOIA cases in this District involving 'ongoing proceedings of national importance.'" Feb. 19, 2026, Op., ECF 15 at 21. As a result, the Court has already recognized that DOJ's urgency in processing CREW's FOIA requests has not been "commensurate with the 'importance and urgency' of CREW's FOIA requests, which this Court previously concluded give rise to 'an unusually strong public interest in timely disclosure.'" March 24, 2026, Order, ECF 18, at 3. Just as the Court rejected DOJ's ho-hum attitude towards its processing obligations, the Court should likewise reject DOJ's kick-the-can proposal regarding the *Vaughn* indices and adopt an approach that is once again "commensurate with the 'importance and urgency' of CREW's FOIA requests." *Id.*

CONCLUSION

For the reasons above, and as stated in the Motion, CREW respectfully requests that the Court (1) clarify that its February 19 and March 24 Orders apply to responsive records DOJ has sent to external agencies for "consultation," (2) clarify that DOJ has not completed processing the Consultation Pages that are still pending consultation with the Consulting Agencies, and (3) enforce the February 19 and March 24 Orders against DOJ by ordering it to produce a revised, comprehensive *Vaughn* index, including adequate detail about the withheld documents and adequate withholding justifications for CREW to assess whether DOJ's claims of exemptions are meritorious.

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Respectfully submitted,

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