

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

**JUDICIAL WATCH, INC.**

Plaintiff,

v.

**U.S. DEPARTMENT OF JUSTICE,**

Defendant.

Case No. 1:24-cv-00700-TJK  
(Consolidated Cases)

**THE HERITAGE FOUNDATION, et al.**

Plaintiffs,

v.

**U.S. DEPARTMENT OF JUSTICE,**

Defendant.

**CABLE NEWS NETWORK, INC.,**

**AMERICAN BROADCASTING  
COMPANIES, INC., d/b/a ABC NEWS,**  
77 W 66th St.  
New York, NY 10023

**THE ASSOCIATED PRESS,**  
200 Liberty St.  
New York, NY 10128

**BLOOMBERG L.P.,**  
731 Lexington Ave.  
New York, NY 10022

**CBS BROADCASTING INC.**  
**o/b/o CBS NEWS,**  
524 W. 57th St.  
New York, NY 10019

**DOW JONES & COMPANY, publisher of  
THE WALL STREET JOURNAL,**  
1211 Avenue of the Americas  
New York, NY 10036

**THE E.W. SCRIPPS COMPANY,**  
312 Walnut St. Suite 2800  
Cincinnati, OH 45202

**INSIDER, INC., d/b/a BUSINESS INSIDER**  
One Liberty St. Eighth Floor  
New York, NY 10006

**NBCUNIVERSAL MEDIA, LLC,**  
**d/b/a NBCUNIVERSAL NEWS GROUP,**  
30 Rockefeller Plaza  
New York, NY 10112

**REUTERS NEWS & MEDIA INC.,**  
3 Times Square  
New York, NY 10036

**RADIO TELEVISION DIGITAL NEWS**  
**ASSOCIATION,**  
529 14th Street, Suite 1240  
Washington, DC 20045

**UNIVISION NETWORKS & STUDIOS,**  
**INC.,**  
9405 NW 41st St.  
Miami, FL 33178

**WP COMPANY LLC**  
**d/b/a THE WASHINGTON POST,**  
1301 K Street NW  
Washington, DC 20071

Plaintiffs,

v.

**U.S. DEPARTMENT OF JUSTICE,**

Defendant.

**AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Cable News Network, Inc., American Broadcasting Companies, Inc. d/b/a ABC News, The Associated Press, Bloomberg L.P., CBS Broadcasting Inc. o/b/o CBS News, Dow Jones & Company, Inc., publisher of The Wall Street Journal, E.W. Scripps Company, Insider, Inc., d/b/a Business Insider, NBCUniversal Media, LLC, d/b/a NBCUniversal News Group, Radio Television Digital News Association, Reuters News & Media Inc., Univision Networks &

Studios, Inc., and WP Company LLC d/b/a The Washington Post (together, the “Press Coalition”) bring this suit against Defendant the U.S. Department of Justice (“DOJ”) and state as follows:

### INTRODUCTION

1. This is an action brought pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, for declaratory, injunctive, and other appropriate relief.
2. Through FOIA, the Press Coalition seeks all audio and video recordings of President Joseph R. Biden, Jr.’s five-hour interview with Special Counsel Robert K. Hur in October 2023.
3. These recordings will help the public evaluate Hur’s decision not to charge Biden and to close the investigation into classified documents found at Biden’s former office and private residence. In particular, they will shed light on Hur’s controversial characterization of Biden as an “elderly man with a poor memory,” which Hur claimed would make it “difficult to convince a jury that they should convict him.” *Report of the Special Counsel on the Investigation Into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn Biden Center and the Delaware Private Residence of President Joseph R. Biden, Jr.* at 6, Special Counsel’s Office (Feb. 2024) (the “Hur Report”).<sup>1</sup>
4. Hur’s description of Biden caught the attention of the public and the White House alike. *See, e.g.,* Kaanita Iyer, *Biden slams special counsel Hur for raising son Beau’s death*, CNN (Feb. 8, 2024).<sup>2</sup> But without access to any of the interview records, the press and public initially could not form their own conclusions about Hur’s characterization of Biden.

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<sup>1</sup> Available at <https://www.justice.gov/storage/report-from-special-counsel-robert-k-hur-february-2024.pdf>.

<sup>2</sup> Available at <https://www.cnn.com/2024/02/08/politics/biden-special-counsel-beau->

5. The subsequent release of the interview transcript has made it possible for the press and public to somewhat assess Hur's description of Biden for themselves. *See, e.g.,* Matt Viser, *Full transcript of Biden's special counsel interview paints nuanced portrait*, The Washington Post (Mar. 12, 2024).<sup>3</sup> Transcripts, however, are no substitute for recordings, which reveal "intonations, hesitations, inflections, and tone of voice." *See, e.g., United States v. Criden*, 648 F.2d 814, 824 (3d Cir. 1981). Those qualities amount to "a substantial part of the real record," which is completely "lost to public scrutiny" when only a transcript is released. *Id.*

6. To better assess Hur's characterization of Biden, therefore, the Press Coalition requested copies of the interview recordings as well. Releasing these recordings would greatly inform the public about "what their government is up to," *Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773 (1989), with respect to Hur's decision not to charge Biden.

7. The Press Coalition now brings this lawsuit to compel DOJ to satisfy its obligations under FOIA and release the recordings of Biden's interview with Hur.

### **PARTIES**

8. Plaintiff Cable News Network, Inc. ("CNN") owns and operates numerous news platforms and services, including the television network known as CNN and the website [www.cnn.com](http://www.cnn.com).

9. Plaintiff American Broadcasting Companies, Inc. d/b/a ABC News regularly gathers and reports news to the public. ABC News produces the television programs *World*

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[death/index.html](#).

<sup>3</sup> Available at <https://www.washingtonpost.com/politics/2024/03/12/biden-hur-transcript-classified-documents/>.

*News Tonight with David Muir, Good Morning America, Nightline, 20/20, and This Week*, among others.

10. Plaintiff The Associated Press (“AP”) is a mutual news cooperative organized under the Not-For-Profit Corporation Law of the State of New York.

11. Plaintiff Bloomberg L.P. (“Bloomberg”) is the owner and operator of Bloomberg News. Bloomberg’s newsroom of more than 2,700 journalists and analysts delivers thousands of stories a day, producing content that is featured across multiple platforms, including digital, TV, radio, print and live events.

12. Plaintiff CBS Broadcasting Inc. o/b/o CBS News produces morning, evening and weekend news programming, such as “60 Minutes,” “Face the Nation,” and “Sunday Morning,” and reports and streams news around the clock on CBSNews.com and CBS News 24/7.

13. Plaintiff Dow Jones & Company, Inc. (“Dow Jones”) is the publisher of *The Wall Street Journal*. For over 130 years, Dow Jones has been a global provider of news and business information, delivering content to consumers and organizations around the world across multiple formats, including print, digital, mobile, and live events.

14. Plaintiff The E.W. Scripps Company is one of the nation’s largest local TV broadcasters. It also operates national outlets Court TV and Scripps News.

15. Plaintiff Insider Inc. d/b/a Business Insider (“Insider”) is an American online media company with 148 million audience members. It publishes *Business Insider*, which focuses on business and financial news.

16. Plaintiff NBCUniversal News Group is one of the world’s leading news organizations. NBCUniversal News Group includes NBC News, MSNBC, CNBC, Telemundo, and NBC and Telemundo local news stations. NBCUniversal News Group is the most viewed

news organization in the nation, reaching seven in ten American adults each month-172 million people across television, streaming news, and digital.

17. The Radio Television Digital News Association (“RTDNA”) is the world’s largest professional organization devoted exclusively to broadcast and digital journalism.

18. Reuters News & Media Inc. (“Reuters”) is an international news agency and is one of the largest and most trusted news agencies in the world.

19. Univision Networks & Studios, Inc. (“Univision”) is a Spanish-language television network company owned by TelevisaUnivision, Inc., the leading Spanish-language media and content company in the world.

20. Plaintiff WP Company LLC d/b/a *The Washington Post* (the “Post”) is a news organization based in Washington, D.C. It publishes the leading daily newspaper, by print circulation, in the nation’s capital, as well as the website [www.washingtonpost.com](http://www.washingtonpost.com).

1. Defendant DOJ is an agency within the meaning of 5 U.S.C. § 552(f)(1). DOJ has possession and control of records requested by the Press Coalition.

### **JURISDICTION AND VENUE**

2. This action arises under FOIA. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) & (a)(6)(C)(i). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

3. Venue is proper in this judicial district under 5 U.S.C. § 552(a)(4)(B).

### **FACTUAL ALLEGATIONS**

#### **The Special Counsel’s Investigation**

4. On January 9, 2023, the public learned that Biden’s personal attorneys had come across documents marked classified two months earlier while packing up files at the Penn Biden

Center for Diplomacy and Global Engagement in Washington, DC. *See, e.g.,* Adriana Diaz et al., *U.S. attorney reviewing documents marked classified from Joe Biden’s vice presidency found at Biden think tank*, CBS News (Jan. 10, 2023).<sup>4</sup> The public also learned that Attorney General Merrick Garland had initially assigned John Lausch, U.S. Attorney for the Northern District of Illinois, “to find out how the material marked classified ended up at the Penn Biden Center.” *Id.*

5. Three days later, on January 12, 2023, the White House confirmed that Biden’s attorneys had located a second set of documents bearing classification markings at Biden’s private residence in Wilmington, Delaware. *See, e.g.,* Ben Gittleson, *More classified documents found in garage at Biden’s Wilmington home, White House says*, ABC News (Jan. 12, 2023).<sup>5</sup>

6. That same day, Garland announced that he had appointed Hur “to serve as Special Counsel for the United States Department of Justice” and “conduct the investigation” into the “possible unauthorized removal and retention of classified documents or other records discovered at the Penn Biden Center for Diplomacy and Global Engagement and the Wilmington, Delaware private residence of President Joseph R. Biden, Jr.” *See* Order No. 5588-2023, *Appointment of Robert K. Hur as Special Counsel*, Dep’t of Justice (Jan. 12, 2023).<sup>6</sup>

7. In August 2023, eight months into the resulting investigation, news reports revealed that Hur’s office and Biden’s attorneys were negotiating “over the terms under which [Biden] would be interviewed,” including “whether the interview would be in person and, if so, where it might happen – as well as the range of topics and questions that would be covered.”

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<sup>4</sup> Available at <https://www.cbsnews.com/news/biden-center-classified-documents/>.

<sup>5</sup> Available at <https://abcnews.go.com/Politics/classified-documents-found-bidens-wilmington-home-garage-white/story?id=96390141>.

<sup>6</sup> Available at <https://www.justice.gov/d9/2023-01/Order.Appointment%20of%20Robert%20Hur.11223%20%28002%29.pdf>.

*See, e.g.,* Monica Alba & Carol E. Lee, *Biden attorneys in talks with federal prosecutors over terms of his interview in classified documents case*, NBC News (Aug. 11, 2023).<sup>7</sup>

8. Hur ultimately interviewed Biden in person – for approximately five hours, split across two days – on October 8-9, 2023. The interview was recorded, though as of this filing DOJ has not yet made public whether that recording was solely audio or both audio and video.

### **The Hur Report**

9. On February 5, 2024, Hur transmitted to Garland a ““confidential report explaining the prosecution or declination decisions”” that Hur had reached as to Biden. *See* Hur Report at 1 (quoting 28 C.F.R. § 600.8(c)).

10. On February 7, 2024, Garland notified House and Senate Judiciary Committee leadership that Hur had concluded his investigation. *See* Ltr. from Att’y Gen. Garland to Sen. Durbin et al. (Feb. 7, 2024).<sup>8</sup> Garland stated that he is “committed to making as much of the [Hur Report] public as possible, consistent with legal requirements and Department policy.” *Id.*

11. On February 8, 2024, DOJ released the Hur Report, which declined to charge Biden in connection with the classified documents investigation. *See, e.g.,* Evan Perez et al., *Special counsel report concludes Biden willfully retained classified information but will not face charges*, CNN (Feb. 8, 2024).<sup>9</sup>

12. One section of the Hur Report that caught the public’s interest was the description of Biden’s interview with Hur. In explaining his decision not to charge Biden, Hur wrote:

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<sup>7</sup> Available at <https://www.nbcnews.com/politics/joe-biden/biden-attorneys-negotiating-special-counsel-interview-terms-rcna99360>.

<sup>8</sup> Available at <https://www.justice.gov/d9/2024-02/Attorney%20General%20Letter%20to%20Judiciary%20Committees%202024.pdf>.

<sup>9</sup> Available at <https://www.cnn.com/2024/02/08/politics/white-house-special-counsels-report-response/index.html>.



We have also considered that, at trial, Mr. Biden would likely present himself to a jury, as he did during our interview of him, as a sympathetic, well-meaning, elderly man with a poor memory. Based on our direct interactions with and observations of him, he is someone for whom many jurors will want to identify reasonable doubt. It would be difficult to convince a jury that they should convict him—by then a former president well into his eighties—of a serious felony that requires a mental state of willfulness.

Hur Report at 6. Indeed, the Hur Report repeatedly characterized Biden’s memory in negative terms, calling it “hazy” and “faulty” and stating that Biden exhibited “diminished faculties in advancing age.” *Id.* at 208, 248, 242. In particular, Hur wrote that Biden “did not remember when he was vice president” and that “[h]e did not remember, even within several years, when his son Beau died.” *Id.* at 208.

13. In correspondence released with the Hur Report, White House counsel challenged Hur’s characterization of Biden’s memory, writing that they “do not believe that the report’s treatment of President Biden’s memory is accurate or appropriate” and that “there is ample evidence from your interview that the President did well in answering your questions about years-old events over the course of five hours.” *Id.* at 384.

14. In remarks to the press, Biden likewise forcefully disputed Hur’s characterization of his memory. *See, e.g.,* Justin Gomez & Luke Barr, *Biden rages that ‘you think I would ... forget the day my son died?’ after special counsel report*, ABC News (Feb. 9, 2024).<sup>10</sup>

15. Biden’s remarks further increased public interest in and scrutiny of his memory, however, as he “mistakenly referred to Egyptian President Abdel Fattah El-Sisi as the leader of

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<sup>10</sup> Available at <https://abcnews.go.com/Politics/president-biden-reacts-special-counsels-comments-memory/story?id=107083455>.

Mexico.” *See, e.g.,* Akayla Gardner, *Biden’s Attempt to Address Memory Issue Backfires With New Gaffe*, Bloomberg (Feb. 9, 2024).<sup>11</sup>

### **The Interview Transcripts**

16. On March 12, 2024, Hur testified before the House Judiciary Committee about his investigation and decision not to charge Biden and “stood steadfastly by the assessments in his 345-page report that questioned Biden’s age and mental competence.” *See, e.g.,* Zeke Miller et al., *Congressional hearing on the Biden classified documents probe turns into a proxy campaign battle*, AP (Mar. 13, 2024).<sup>12</sup>

17. That same day, DOJ and Congress released transcripts of Biden’s interview with Hur. *Id.* Those transcripts “provide[] a fuller picture of the five-hour conversation between the two and context around some of the statements that appeared in the report,” including that “[w]hile the president did stumble over some dates and facts, he recalled many others clearly, frequently describing events or details from years ago.” *See, e.g.,* Kaia Hubbard & Robert Legare, *Robert Hur defends special counsel report at tense House hearing on Biden documents probe*, CBS News (Mar. 12, 2024).<sup>13</sup>

18. During the hearing, Rep. Jim Jordan questioned Hur about “the audio tapes of the people you interviewed during your investigation” and asked, “Is there any reason you can see why the American people and their representatives in the United States Congress should not have

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<sup>11</sup> Available at <https://www.bloomberg.com/news/articles/2024-02-09/biden-assails-special-counsel-for-questioning-his-mental-acuity>.

<sup>12</sup> Available at <https://apnews.com/article/classified-documents-biden-hur-special-counsel-122526da6d89d7bf4d6ccfc54590312b>.

<sup>13</sup> Available at <https://www.cbsnews.com/news/special-counsel-robert-hur-testify-house-biden-documents-report/>.

access to those tapes?” Hur responded: “What I can tell you is that my assessment that went into my conclusions that I describe in my report was based not solely on the transcript. It was based on all of the evidence, including the audio recordings,” and that “the audio recordings were part of the evidence, of course, that I considered in coming to my conclusions.” *See Former Special Counsel Hur Testifies on Biden Classified Documents Report* at 3:33:09 – 3:34:45, C-SPAN (Mar. 12, 2024).<sup>14</sup>

### **The Press Coalition’s FOIA Requests**

19. Between February 16, 2024 and April 1, 2024, the Press Coalition plaintiffs submitted FOIA requests to DOJ for recordings of the Special Counsel Office’s interviews of President Joe Biden (the “Requests”).

20. OIP responded with individual but substantively identical acknowledgements to each of the Requests, stating that the Requests “require a search in and/or consultation with another Office,” and, as a result, the request “falls within ‘unusual circumstances’” such that DOJ “need[s] to extend the time limit to respond to your request beyond the ten additional days provided by the statute.” Those requests are as follows:

21. **CNN Request:** On February 16, 2024, CNN submitted multiple FOIA requests to DOJ for records related to Hur’s investigation. One of those requests, assigned tracking number FOIA-2024-01345, sought in part “[a]ny video and audio recordings from the SCO’s interview with President Joe Biden on October 8 and 9, 2023, as well as the transcript of the interview.”

22. In correspondence with DOJ via email on March 14-15, 2024, CNN agreed to narrow that request (the “CNN Request”) to seek only the “video and audio recordings” of the

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<sup>14</sup> Available at <https://www.c-span.org/video/?534073-1/special-counsel-hur-testifies-biden-classified-documents-report-part-1>.

Hur/Biden interview, and DOJ agreed to “consider this request to be [CNN’s] top priority.” A true and correct copy of this correspondence is attached hereto as Exhibit A.

23. On March 15, 2024, DOJ notified CNN that the CNN Request “require[s] a search in and/or consultation with another Office,” and, as a result, the request “falls within ‘unusual circumstances’” such that DOJ “need[s] to extend the time limit to respond to [CNN’s] request beyond the ten additional days provided by the statute.” A true and correct copy of DOJ’s letter is attached hereto as Exhibit B.

24. **Bloomberg Request:** On March 21, 2024, Bloomberg submitted a FOIA request to DOJ for “[a] copy of the audio file containing the recorded interview Special Counsel Robert Hur or his investigators conducted with President Joe Biden during their investigation into President Biden’s handling of classified records found at his think tank and residence.” A true and correct copy of the request (the “Bloomberg Request”) is attached hereto as Exhibit C.

25. On March 27, 2024, DOJ notified Bloomberg that because of “unusual circumstances,” it needed an additional ten days to respond to the Bloomberg Request. A true and correct copy of DOJ’s letter is attached hereto as Exhibit D.

26. **Dow Jones Request:** On March 21, 2024, Dow Jones submitted a FOIA request to DOJ for “[a]ll audio recordings of Special Counsel Robert Hur’s interviews of President Joe Biden.” A true and correct copy of that request (the “Dow Jones Request”) is attached hereto as Exhibit E.

27. On March 27, 2024, DOJ notified Dow Jones that because of “unusual circumstances,” it needed an additional ten days to respond to the Dow Jones Request. A true and correct copy of DOJ’s letter is attached hereto as Exhibit F.

28. **ABC News Request:** On March 26, 2024, undersigned counsel submitted on behalf of ABC News a FOIA request to DOJ for “all video or audio recordings of Special Counsel Hur’s interview with President Biden on October 8 and 9, 2023.” A true and correct copy of that request (the “ABC Request”) is attached hereto as Exhibit G.

29. On March 27, 2024, DOJ notified ABC News that because of “unusual circumstances,” it needed an additional ten days to respond to the ABC Request. A true and correct copy of DOJ’s letter is attached hereto as Exhibit H.

30. **AP Request:** On March 26, 2024, AP submitted a FOIA request to DOJ for “all video or audio recordings of Special Counsel Hur’s interview with President Biden on October 8 and 9, 2023.” A true and correct copy of that request (the “AP Request”) is attached hereto as Exhibit I.

31. On March 27, 2024, DOJ notified AP that because of “unusual circumstances,” it needed an additional ten days to respond to the AP Request. A true and correct copy of DOJ’s letter is attached hereto as Exhibit J.

32. **Insider Request:** On March 26, 2024, undersigned counsel submitted on behalf of Insider a FOIA request to DOJ for “[a]ll audio recordings of Special Counsel Robert Hur’s interviews of President Joe Biden.” A true and correct copy of that request (the “Insider Request”) is attached hereto as Exhibit K.

33. On March 27, 2024, DOJ notified Insider that because of “unusual circumstances,” it needed an additional ten days to respond to the Insider Request. A true and correct copy of DOJ’s letter is attached hereto as Exhibit L.

34. **CBS News Request:** On March 26, 2024, undersigned counsel submitted on behalf of CBS News a FOIA request to DOJ for “all video or audio recordings of Special

Counsel Hur's interview with President Biden on October 8 and 9, 2023." A true and correct copy of that request (the "CBS News Request") is attached hereto as Exhibit M.

35. On March 27, 2024, DOJ notified CBS News that because of "unusual circumstances," it needed an additional ten days to respond to the CBS News Request. A true and correct copy of DOJ's letter is attached hereto as Exhibit N.

36. **Scripps News Request:** On March 26, 2024, undersigned counsel submitted on behalf of Scripps News a FOIA request to DOJ for "all video or audio recordings of Special Counsel Hur's interview with President Biden on October 8 and 9, 2023." A true and correct copy of that request (the "Scripps News Request") is attached hereto as Exhibit O.

37. On March 27, 2024, DOJ notified Scripps News that because of "unusual circumstances," it needed an additional ten days to respond to the Scripps News Request. A true and correct copy of DOJ's letter is attached hereto as Exhibit P.

38. **NBC News Request:** On March 27, 2024, NBC News submitted a FOIA request to DOJ for "all video or audio recordings of Special Counsel Hur's interview with President Biden on October 8 and 9, 2023." A true and correct copy of that request (the "NBC News Request") is attached hereto as Exhibit Q.

39. On April 1, 2024, DOJ notified NBC News that because of "unusual circumstances," it needed an additional ten days to respond to the NBC News Request. A true and correct copy of DOJ's letter is attached hereto as Exhibit R.

40. **Univision Request:** On March 27, 2024, undersigned counsel submitted on behalf of Univision a FOIA request to DOJ for "all video or audio recordings of Special Counsel Hur's interview with President Biden on October 8 and 9, 2023." A true and correct copy of that request (the "Univision Request") is attached hereto as Exhibit S.

41. On March 27, 2024, DOJ notified Univision that because of “unusual circumstances,” it needed an additional ten days to respond to the Univision Request. A true and correct copy of DOJ’s letter is attached hereto as Exhibit T.

42. **Post Request:** On March 27, 2024, undersigned counsel submitted on behalf of the Post a FOIA request to DOJ for “all video or audio recordings of Special Counsel Hur’s interview with President Biden on October 8 and 9, 2023.” A true and correct copy of that request (the “Post Request”) is attached hereto as Exhibit U.

43. On March 29, 2024, DOJ notified the Post that because of “unusual circumstances,” it needed an additional ten days to respond to the Post Request. A true and correct copy of DOJ’s letter is attached hereto as Exhibit V.

44. **Reuters Request:** On April 1, 2024, undersigned counsel submitted on behalf of Reuters a FOIA request to DOJ for “all video or audio recordings of Special Counsel Hur’s interview with President Biden on October 8 and 9, 2023.” A true and correct copy of that request (the “Reuters Request”) is attached hereto as Exhibit W.

45. On April 2, 2024, DOJ notified Reuters that because of “unusual circumstances,” it needed an additional ten days to respond to the Reuters Request. A true and correct copy of DOJ’s letter is attached hereto as Exhibit X.

46. To date, DOJ has not informed any of the Press Coalition plaintiffs as to the scope of the records, if any, that the agency will produce in response to the Press Coalition’s Requests.

47. To date, DOJ has not provided a timetable for the production of any records in response to the Press Coalition’s Requests.

**CLAIM FOR RELIEF**

**COUNT I**

**Declaratory and Injunctive Relief:  
Constructive Denial in Violation of FOIA, 5 U.S.C. § 552**

48. The Press Coalition realleges and incorporates by reference all previous paragraphs as if fully set forth herein.

49. FOIA provides this Court with “jurisdiction to enjoin [an] agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

50. The withheld records that the Press Coalition seeks, which are the subject of the Requests, are agency records within DOJ’s control.

51. DOJ received the Press Coalition Requests between February 16, 2024, and April 1, 2024. *See* Ex. B at 1.

52. Pursuant to FOIA, DOJ was required to make and communicate to the Press Coalition plaintiffs a “determination” on their Requests no later than twenty working days after the Requests were submitted. 5 U.S.C. § 552(a)(6)(A)(ii).

53. Even with the ten additional working days that FOIA provides for agencies to respond in “unusual circumstances,” 5 U.S.C. § 552(a)(6)(B)(i), DOJ was required to make and communicate to the Press Coalition plaintiffs a “determination” on their requests within thirty working days. That deadline has passed with respect to each of the Requests.

54. To date, DOJ has not made and communicated to the Press Coalition plaintiffs a “determination” on their Requests within the meaning of 5 U.S.C. § 552(a)(6)(A)(ii).

55. DOJ has instead failed to respond to the Requests, and thus constructively denied them.



56. DOJ has not cited any basis under FOIA for withholding, in whole or in part, the interview recordings that the Press Coalition has requested. Nor could any FOIA exemption apply to those records given that DOJ has already released the corresponding interview transcripts. DOJ has wrongfully withheld these agency records in violation of FOIA.

57. The Press Coalition requests a declaratory judgment that DOJ has violated FOIA and that the Press Coalition is entitled to immediately receive the requested records.

58. The Press Coalition further requests that, pursuant to 5 U.S.C. § 552(a)(4)(B), the Court issue an injunction directing DOJ to produce the requested records in full and setting a deadline for compliance.

#### **REQUEST FOR RELIEF**

WHEREFORE, the Press Coalition respectfully requests that this Court:

- A. Declare DOJ's failure to provide responsive records unlawful under FOIA;
- B. Enter an injunction, pursuant to 5 U.S.C. § 552(a)(4)(B), directing DOJ to make the requested records available to the Press Coalition without further delay, and setting a deadline for compliance;
- C. Provide for expeditious proceedings in this action;
- D. Award the Press Coalition its costs and reasonable attorneys' fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- E. Grant such other and further relief as the Court may deem just and proper.

Dated: May 15, 2024

Respectfully submitted,

BALLARD SPAHR LLP

/s/ Charles D. Tobin

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