

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

**CITIZENS FOR RESPONSIBILITY  
AND ETHICS IN WASHINGTON,**  
1101 K Street, N.W., Suite 201  
Washington, D.C. 20005

Plaintiff,

v.

**U.S. DEPARTMENT OF STATE,**  
2201 C Street, N.W.  
Washington, D.C. 20520

Defendant.

Civil Action No.

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, for injunctive, declaratory, and other appropriate relief. Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) challenges the failure of the U.S. Department of State (“State Department” or “State”) to respond to a request for documents related to a plan promoted by Lev Parnas, Igor Fruman, and another businessman with connections to then-President Donald Trump and his personal attorney, Rudy Giuliani, to replace the leadership of Naftogaz, a state gas company in Ukraine.

2. This case seeks declaratory relief that the State Department is in violation of the FOIA, specifically, 5 U.S.C. § 552(a)(3)(A), for failing to provide CREW all responsive records and 5 U.S.C. § 552(a)(6)(A), for failing to provide CREW with a determination on its request within 20 business days, as well as injunctive relief ordering defendant State Department to process and release to CREW immediately the requested records in their entirety.

### **Jurisdiction and Venue**

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

### **Parties**

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

5. Defendant State Department is an agency within the meaning of 5 U.S.C. §§ 552(f)(1) and 701(b)(1). Defendant has possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA request.

### **Statutory and Regulatory Background**

6. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

7. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency's determination of which of the requested records

it will release, which it will withhold and why, and the requester's right to appeal the determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

8. An agency's failure to make this determination within 20 business days is subject to judicial review without exhausting administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

9. In "unusual circumstances" an agency may extend the time to respond to a request by no more than 10 working days provided that the agency gives the requester written notice setting forth the unusual circumstances and the date on which the agency expects to make a determination. 5 U.S.C. § 552(a)(6)(B)(i)-(iii). The FOIA defines "unusual circumstances" as including the need to search for and collect responsive records from offices other than the office processing the request; the need to search for, collect, and examine a "voluminous amount of separate and distinct records"; and the need to consult with another agency. 5 U.S.C. § 552(a)(6)(B)(iii)(I)-(III).

### **Factual Background**

10. In the spring of 2019, while President Trump's personal attorney Rudy Giuliani was urging Ukraine officials to open an investigation into the president's main political rival, Joe Biden, and his son Hunter Biden, three businessmen with ties to Trump and Giuliani were promoting a plan to replace Andriy Kobolyev, the chief executive officer of Naftogaz, a Ukrainian state gas company, with Andrew Favorov, a senior Naftogaz executive. Desmond Butler, Michael Biesecker, and Richard Lardner, Profit, not politics: Trump allies sought Ukraine gas deal, *Associated Press*, Oct. 7, 2019, <https://apnews.com/article/d7440cffba4940f5b85cd3dfa3500fb2>. The three men included Lev Parnas and Igor Fruman, who had made political donations to Republicans totaling hundreds of thousands of dollars, and a Florida oil magnate, Harry

Sargeant III, who along with his wife and corporate entities with ties to his family had donated at least \$1.2 million over the previous 20 years to Republican candidates and PACs. *Id.*

11. As publicly reported, Parnas, Fruman, and Sargeant approached Favorov while he was attending an energy industry conference in Texas about being their partner in a new venture to export up to 100 tanker shipments a year of U.S. liquefied gas into Ukraine, where Naftogaz is the largest distributor. *Id.* During that discussion Sargeant told Favorov that he regularly met with President Trump at Mar-a-Lago and that Trump fully supported the gas sales plan the three businessmen were proposing to Favorov. *Id.*

12. Mr. Favorov subsequently described his meeting with Parnas, Fruman and Sargeant to Dale W. Perry, an American and managing partner of Energy Resources of Ukraine, as “a shakedown.” *Id.* According to Perry, a former business partner of Favorov, Parnas told Favorov that “Trump planned to remove U.S. Ambassador Marie Yovanovitch and replace her with someone more open to aiding their business interests.” *Id.*

13. Mr. Perry, concerned about what he had heard, in turn reported it to Suriya Jayanti, a State Department Foreign Service officer stationed at the embassy in Kyiv. Butler, Biesecker, Lardner, *Associated Press*, Oct. 7, 2019. Perry also write “a detailed memo about Favorov’s account, dated April 12, which was shared with another current State Department official” at the U.S. Embassy in Kyiv. *Id.*

14. According to the *Associated Press*, the plan to replace the top management of Naftogaz “hit a snag after Ukrainian President Petro Poroshenko lost his reelection bid to Volodymyr Zelensky,” but then-Energy Secretary Rick Perry soon took up the effort to “install a friendlier management team at the helm of . . . Naftogaz[.]” *Id.* It was unclear if Secretary Perry was coordinating that effort with allies of Giuliani. *Id.* As the *Associated Press* noted, however,

“the affair shows how those with ties to Trump and his administration were pursuing business deals in Ukraine that went far beyond advancing the president’s personal political interests.” *Id.*

*FOIA Request at Issue*

15. On October 9, 2019, CREW submitted to the State Department by email a FOIA request seeking three categories of records pertaining to the efforts of the Giuliani allies to replace the leadership of Naftogaz. First, CREW requested copies of all communications between Dale W. Perry and Suriya Jayanti from March 1, 2019 to the present. Second, CREW requested copies of all communications to or from Ms. Jayanti between March 1, 2019 and the date of CREW’s request that mention, refer, or relate to Perry, Favorov, Naftogaz, Parnas, Fruman, or Sargeant or the removal of now-former U.S. Ambassador to Ukraine Marie Yovanovitch. Third, CREW requested a copy of the memo dated April 12, 2019, that Perry provided to the U.S. Embassy in Kyiv.

16. CREW sought a waiver of fees associated with processing its request. CREW explained that it intends to analyze the information responsive to these requests and to share its analysis with the public through reports, press releases, or other means.

17. CREW further explained that the requested records would shed light on how the State Department responded to information concerning an alleged effort by American businessmen to shake up the management of Ukraine’s state gas company and to replace the U.S. ambassador with someone “more open to aiding their business interests.” Butler, Biesecker, Lardner, *Associated Press*, Oct. 7, 2019. Further, the requested records also would provide insight into whether Secretary Perry’s encouragement for board changes at Naftogaz had any relation to the alleged efforts of the three businessmen that were reported to the embassy.

18. CREW further requested that it not be charged search or review fees as a member of the news media, explaining the various ways in which it routinely and systematically disseminates information to the public.

19. By letter dated November 21, 2019, State acknowledged receipt of CREW's request and indicated that because of "unusual circumstances," specifically the need to search offices separate from the office processing the request, State was extending its response time by 10 days. State further informed CREW it had assigned the request to its complex track.

20. To date, plaintiff CREW has received no further response from defendant State Department.

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

**PLAINTIFF'S CLAIM FOR RELIEF**

22. Plaintiff repeats and re-alleges paragraphs 1-21.

23. Plaintiff properly asked for records within the custody and control of the State Department.

24. Defendant State Department wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for making a determination on plaintiff's request, and by withholding from disclosure records responsive to plaintiff's request.

25. Plaintiff CREW is therefore entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the records requested in its October 9, 2019 FOIA request.

**Requested Relief**

WHEREFORE, plaintiff respectfully requests that this Court:

- (1) Order defendant to immediately and fully process plaintiff's October 9, 2019 FOIA request to the State Department and to disclose all non-exempt documents immediately to plaintiff;
- (2) Issue a declaration that plaintiff 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 plaintiff its costs and reasonable attorneys' fees in this action; and
- (6) Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Anne L. Weismann  
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Dated: March 22, 2021

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