

EXHIBIT F

Plaintiffs' Motion for a Temporary Restraining Order

CREW | citizens for responsibility and ethics in washington

Katheryn L. Wyer
Federal Programs Branch
U.S. Department of Justice, Civil Division
1100 L Street, N.W., Room 12014
Washington, DC 20005

BY EMAIL: kathryn.wyer@usdoj.gov

Re: Parties' Duty to Preserve Documents in Pending Litigation
CREW v. Trump, Case No. 19-cv-1333 (D.D.C. May 7, 2019)

Dear Ms. Wyer:

On May 7, 2019, Plaintiffs Citizens for Responsibility and Ethics in Washington (“CREW”), National Security Archive, and Society for Historians of American Foreign Relations filed a lawsuit against Donald J. Trump and the Executive Office of the President (“EOP”) challenging (1) their compliance with mandatory obligations imposed by the Presidential Records Act, 44 U.S.C. §§ 2201–2209 (“PRA”), to create, classify, and preserve records, and (2) their implementation of policies and practices that violate the PRA, the Federal Records Act (“FRA”), 44 U.S.C. §§ 3101, et seq., and the Take Care Clause of the Constitution, Art. II, Sec. 3. In particular, Plaintiffs allege that the President has a policy and practice of affirmatively failing to create and preserve records of the meetings and discussions the President and other senior White House staff have with certain foreign leaders, including Russian President Vladimir Putin and North Korean leader Kim Jung Un. Plaintiffs have also alleged that the President has interfered with the adequate and proper documentation of agency records of bilateral meetings.

As you are no doubt aware, parties to litigation are under clear obligations to preserve documents in their possession, custody, or control. Further, discovery may extend to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case” Fed. R. Civ. P. 26. For these reasons, we are assuming that Defendants have already taken steps to preserve the following categories of records¹ that are relevant to Plaintiffs’ claims in this litigation:

1. All records reflecting Defendants’ meetings, phone calls, and other communications with foreign leaders;

¹ Plaintiffs’ identification of specific categories does not serve to reduce or limit Defendants’ obligation to preserve all documents covered by Rule 26 of the Federal Rules of Civil Procedure. Defendants’ litigation hold should, at a minimum, include preservation notices to President Trump and to all components and personnel at EOP with relevant recordkeeping responsibilities, follow-up reminders to those individuals about their responsibilities under the litigation hold, notification of records custodians at the EOP and/or White House, and the suspension of any automated deleting systems and processes that could impact relevant records.

2. All records reflecting policies and practices regarding recordkeeping of Defendants' meetings, phone calls, and other communications with foreign leaders;
3. All records reflecting White House or agency investigations of Defendants' recordkeeping policies and practices regarding meetings, phone calls, and other communications with foreign leaders; and
4. All records reflecting Defendants' communication of recordkeeping policies or practices to other components of the executive branch.

In light of recent reports that the inspector general ("IG") of the Intelligence Community found that a whistleblower complaint regarding President Trump's communications with foreign leader was credible and a matter of "urgent concern,"² and the refusal of the Office of the Director of National Intelligence ("ODNI") to disclose documentation of the IG's findings or the whistleblower complaint to Congress as the law requires, *see* 50 U.S.C. § 3033(k)(5), we write to establish a mutual understanding of Defendants' obligations in the above-referenced lawsuit as they pertain to this reported incident.

The disagreement between the Acting Director of ODNI and the Inspector General of the Intelligence Community over the scope of agency jurisdiction relates to the allegations in our Complaint that Defendants in this action are improperly asserting control over records that are central to Plaintiffs' claims. Further, as reported, the whistleblower complaint likely contains evidence of the President's recordkeeping practices that lie at the heart of Plaintiffs' Complaint and that would be subject to discovery. For example, in the weeks preceding the whistleblower's complaint, President Trump had at least one phone conversation with President Putin and news reports raised questions about whether it was adequately documented. Similarly, Plaintiffs' Complaint concerns at least five separate meetings President Trump had with President Putin that he failed to document, contrary to the requirements of the PRA. Compl. ¶ 7, *CREW v. Trump*, No. 19-cv-1333 (D.D.C. May 7, 2019).

We therefore ask that you confirm that in addition to the aforementioned categories of records, the Defendants are preserving any materials relating to the ODNI whistleblower complaint and the underlying incident, which would be subject to discovery pursuant to Rule 26.

Please provide me written confirmation **no later than 5 p.m. on Monday, September 23, 2019** that Defendants have implemented a litigation hold that covers these materials. If you are unable or unwilling to provide such assurances, we may be compelled to request court intervention at this early stage in the litigation.

² Greg Miller, Ellen Nakashima, and Shane Harris, Trump's communications with foreign leader are part of whistleblower complaint that spurred standoff between spy chief and Congress, former officials say, *Washington Post*, Sept. 18, 2019, available at <https://wapo.st/2kos98a>; Nicholas Fandos, Eileen Sullivan, Julian E. Barnes and Matthew Rosenberg, Watchdog Refuses to Detail Whistle-Blower Complaint About Trump, *N.Y. Times*, Sept. 19, 2019, available at <https://nyti.ms/2mqYpbx>.

We look forward to and appreciate your cooperation in his matter.

Sincerely,



Anne Weismann
Chief FOIA Counsel

**NATIONAL
SECURITY
ARCHIVE**

This document is from the holdings of:

The National Security Archive

Suite 701, Gelman Library, The George Washington University

2130 H Street, NW, Washington, D.C., 20037

Phone: 202/994-7000, Fax: 202/994-7005, nsarchiv@gwu.edu