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13
14 **UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
16

17 THE MARY FERRELL FOUNDATION,
18 INC.; JOSIAH THOMPSON; and GARY
19 AGUILAR,

20 Plaintiffs,

21 v.

22 JOSEPH R. BIDEN, in his official capacity as
23 President of the United States; and the
24 NATIONAL ARCHIVES AND RECORDS
25 ADMINISTRATION,

26 Defendants.

No. 3:22-cv-06176-RS

PLAINTIFFS’ REPLY BRIEF RE RELEASE
OF LEGISLATIVE RECORDS

Date: January 18, 2024

Time: 1:30 pm

Dept: Hon. Richard Seeborg

27 ***1. NARA’s broad claim of “national security” is not well-founded***

28 NARA mistakenly alleges that “the President specifically found that the release of the legislative records “would jeopardize national security” if disclosed. 1:13-14. The President’s statement referred to an “identifiable harm to the military defense, intelligence operations, law enforcement, or the conduct of foreign relations that is of such gravity that it outweighs the

1 public interest in disclosure.” 2022 Biden Memo, Section 6. Many of these “harms” refer to
2 law enforcement informants. As stated in the adjoining brief, six FBI agents worked full-time
3 for a prolonged period of time to identify these informants to see if they were still alive – another
4 4 agents took this on as a part-time task. “Identifiable harm”? Possibly yes. National security?
5 In many cases, absolutely not.

6 **2. Timeliness of claim**

7 Plaintiffs did not know that a claim existed for making a claim for the legislative records
8 until a short time before the filing of the complaint in October 2022. ECF 1; Second
9 Supplemental Declaration of Counsel. Plaintiffs went on to amend the complaint twice in the
10 next six months based on new evidence. ECF 63, p. 4. These amendments were also based on
11 the newly-filed 2022 Biden Memo and the Transparency Plans issued during December 2022
12 regarding the JFK Collection. ECF 21, 44. Plaintiffs also attempted to engage in mediation with
13 the Defendant, and filed an injunction based on several other pressing issues in May 2023, a
14 month and a half after the filing of the second amended complaint. ECF 52; ECF 63, pp. 3-4.
15 Plaintiffs also incorporate the arguments made in ECF 99, 7-9.
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17 Plaintiffs would sum up the timeliness issue by stating that they have moved with alacrity
18 to attempt to get these legislative branch records released after the favorable ruling made by the
19 court during July 2023. Plaintiffs are well aware that the court did not order the legislative
20 records released, contrary to Defendant’s contentions in its opposition brief. ECF 94, 7:21-24.
21 There are many issues involved in this public interest lawsuit based on both the remedial statute
22 known as the JFK Records Act and the Federal Records Act, Plaintiffs have acted swiftly to
23 resolve these issues in a focused manner without unnecessary discovery.

24 **3. Irreparable Injury**

25 Evidence is lost forever when elderly witnesses die. That is not a matter of conjecture.
26 These witnesses lead to other witnesses and documents, all of which may need some degree of
27 protection – or not. The Defendant spent an extraordinary amount of money trying to locate
28 hundreds of government informants to see if these individuals are still alive. This taxpayers’

1 money should not be spent in vain. The argument now is that all parties should wait until these
2 witnesses die. Plaintiffs respectfully argue that this is the time for the argument. Defendant rests
3 on its power by preserving rights to make arguments later – instead of now. ECF 94, 7:25-27.

4 Plaintiffs have cited the stories of numerous individuals who need to be identified, such
5 as NIEXIT-3 who knew of a plot to kill the President; individuals who were identified too late,
6 such as Donald Heath, who knew the story of the anti-Castro activists who were investigated
7 about a plot to kill the President; and individuals such as Paul Landis, the 88 year old Secret
8 Service agent who was standing fifteen feet from the President when he was shot and provided
9 evidence that may change the arc of the entire story.

10 Since NARA is unwilling to share all of its arguments in this brief, the court should either
11 rule in favor of the Plaintiffs or set a final date for all arguments to be submitted. The
12 withholding of the legislative branch records constitutes a classic separation of powers argument
13 that should be resolved as soon as possible.

14 Dated: January 4, 2024

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17 _____
18 /s/
19 William M. Simpich
20 Lawrence P. Schnapf
21 Attorneys for Plaintiffs
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