



to judicial action enjoining the agency from continuing to withhold agency records and ordering the production of agency records improperly withheld.

### **PARTIES**

5. Plaintiff American Oversight is a nonpartisan non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to promoting transparency in government, educating the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information it gathers, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant the U.S. Department of State (State) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). State has possession, custody, and control of the records that American Oversight seeks.

### **STATEMENT OF FACTS**

7. American Oversight submitted seven FOIA requests to State seeking to shed light on the influence of the president's business interests and those of his family members on State activities or policies.

#### *Embassy Guidance FOIA Request*

8. On July 2, 2018, American Oversight submitted a FOIA request to State, with internal tracking number STATE-18-0390, seeking the following records:

All guidance, directives, instructions and orders provided or communicated to any U.S. embassy or consulate concerning 1) the Trump

Organization or affiliated entities OR 2) the Kushner Companies LLC or affiliated entities, including, but not limited to, instructions concerning how embassies and consulates should respond to media inquiries related to the Trump Organization or the Kushner Companies LLC.

9. The request sought responsive records from January 20, 2017, to the date the search was conducted.

10. American Oversight requested that State search the following components and offices for responsive records, as well as any other offices and components that State determined are likely to contain responsive records:

(a) the Office of the Secretary, (b) the Office of the Deputy Secretary, (c) the Office of the Under Secretary for Public Diplomacy and Public Affairs, (d) the Bureau of Public Affairs, (e) the Bureau of Economic and Business Affairs, and (e) the Office of the Under Secretary for Political Affairs.

11. American Oversight also requested that State search State's database of cables, State telegrams, and the "Everest" database maintained by the Executive Secretariat.

12. State acknowledged receipt of American Oversight's FOIA request and assigned the request FOIA tracking number F-2018-04924.

13. American Oversight has not received any further communication from State regarding this FOIA request.

*First Embassy Communications FOIA Request*

14. On July 2, 2018, American Oversight submitted a FOIA request to State, with internal tracking number STATE-18-0391, seeking the following records:

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) concerning 1) the Trump

Organization or affiliated entities OR 2) the Kushner Companies LLC or affiliated entities, of [specified State officials.]

15. Specifically, American Oversight requested the records of the Ambassador, the Chief of Mission, and the Deputy Chief of Mission of the U.S. Embassies in the following nations: India, China, Israel, Mexico, Brazil, Egypt, Indonesia, Saudi Arabia, Ireland, Azerbaijan, Georgia, Qatar, Canada, Panama, Philippines, Russia, South Korea, Turkey, the United Arab Emirates, the United Kingdom, and Uruguay.

16. The request sought responsive records from January 20, 2017, to the date the search was conducted.

17. State acknowledged receipt of American Oversight's FOIA request and assigned the request FOIA tracking number F-2018-04925.

18. American Oversight has not received any further communication from State regarding this FOIA request.

*Second Embassy Communications FOIA Request*

19. On August 24, 2018, American Oversight submitted a FOIA request to State, with internal tracking number STATE-18-0459, seeking the following records:

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) any representative or employee of the Trump Organization or affiliated entities, (2) any representative or employee of the Kushner Companies LLC or affiliated entities, (3) Jared Kushner, (4) Donald Trump Jr., (5) Eric Trump, (6) Allen Weisselberg and [specified State officials.]

20. Specifically, American Oversight requested the records of the Ambassador, the Chief of Mission, or any Counselor for Public Affairs of the U.S. Embassies in the following

nations: India, China, Israel, Mexico, Brazil, Egypt, Indonesia, Saudi Arabia, Ireland, Azerbaijan, Georgia, Qatar, Canada, Philippines, Russia, South Korea, Turkey, the United Arab Emirates, the United Kingdom, and Uruguay.

21. The request sought responsive records from January 20, 2017, to the date the search was conducted.

22. State acknowledged receipt of American Oversight's FOIA request and assigned the request FOIA tracking number F-2018-06534.

23. American Oversight has not received any further communication from State regarding this FOIA request.

*Donald Trump Jr.–India Communications FOIA Request*

24. On August 24, 2018, American Oversight submitted a FOIA request to State, with internal tracking number STATE-18-0458, seeking the following records:

1. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between Donald Trump Jr. [and specified State officials.]
2. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) concerning Donald Trump Jr.'s February 2018 trip to India, including planning for that trip or other potential trips to India, of [specified State officials.]

25. Both portions of sought responsive records from January 20, 2017, to the date the search was conducted.

26. For both portions of the request, American Oversight requested the records of the following officials:

- A) The Ambassador, the Deputy Chief of Mission, or any other Senior Foreign Service officers of the U.S. Embassy in India;
- B) Political appointees\* or career Senior Executive Service (SES) or Senior Foreign Service officers in the Office of the Secretary of State;
- C) Political appointees\* or career Senior Executive Service (SES) or Senior Foreign Service officers in the Office of the Deputy Secretary of State; and
- D) Political appointees\* or career Senior Executive Service (SES) or Senior Foreign Service officers in the Bureau of Economic and Business Affairs, including the Office of Commercial and Business Affairs.

27. American Oversight clarified that “political appointee” should be understood as any person who is a Presidential Appointee with Senate Confirmation (PAS), a Presidential Appointee (PA), a non-career SES, any Schedule C employees, or any persons hired under Temporary Non-Career SES Appointments, Limited Term SES Appointments, or Temporary Transitional Schedule C Appointments.

28. State acknowledged receipt of American Oversight’s FOIA request and assigned the request FOIA tracking number F-2018-06529.

29. American Oversight has not received any further communication from State regarding this FOIA request.

*Panama–White House Communications FOIA Request*

30. On August 24, 2018, American Oversight submitted a FOIA request to State, with internal tracking number STATE-18-0460, seeking the following records:

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) concerning the ownership dispute regarding the former-Trump Ocean Club International Hotel and Tower in Panama City between State and the White House.

31. American Oversight requested that State search, at a minimum, the Office of the Secretary, the Office of the Deputy Secretary, the Office of the Assistant Secretary for Western Hemisphere Affairs, and the U.S. Embassy in Panama.

32. The request sought responsive records from January 1, 2018, to the date the search was conducted.

33. State acknowledged receipt of American Oversight's FOIA request and assigned the request FOIA tracking number F-2018-06536.

34. American Oversight has not received any further communication from State regarding this FOIA request.

*Panama–Trump Organization Communications FOIA Request*

35. On August 24, 2018, American Oversight submitted a FOIA request to State, with internal tracking number STATE-18-0461, seeking the following records:

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) concerning the ownership dispute

regarding the former-Trump Ocean Club International Hotel and Tower in Panama City between State and any representative of the Trump Organization or its affiliated entities including, but not limited to, Donald Trump Jr., Eric Trump, Allen Weisselberg, or attorneys from the law firm Britton and Iglesias.

36. American Oversight requested that State search, at a minimum, the Office of the Secretary, the Office of the Deputy Secretary, the Office of the Assistant Secretary for Western Hemisphere Affairs, and the U.S. Embassy in Panama.

37. The request sought responsive records from January 1, 2018, to the date the search was conducted.

38. In telephone and email correspondence between September 12, 2018, through September 17, 2018, State proposed modifying the request to the following:

All records in State Department custody regarding the ownership dispute around the former Trump Ocean Club International Hotel and Tower in Panama City. Time frame is January 1, 2018 to the present. Excluded are press summaries and releases already in the public domain.

39. American Oversight agreed to State's proposed modification, based on State's representation that the modification would capture all records sought in American Oversight's original request.

40. State then acknowledged receipt of American Oversight's FOIA request and assigned the request FOIA tracking number F-2018-06544.

41. American Oversight has not received any further communication from State regarding this FOIA request.

*Panama Cables FOIA Request*

42. On August 24, 2018, American Oversight submitted a FOIA request to State, with internal tracking number STATE-18-0462, seeking the following records:

All State Department cables concerning the ownership dispute regarding the former-Trump Ocean Club International Hotel and Tower in Panama City.

43. The request sought responsive records from January 1, 2018, to the date the search was conducted.

44. State acknowledged receipt of American Oversight's FOIA request and assigned the request FOIA tracking number F-2018-06547.

45. American Oversight has not received any further communication from State regarding this FOIA request.

*Exhaustion of Administrative Remedies*

46. As of the date of this Complaint, State has failed to (a) notify American Oversight of a final determination regarding American Oversight's FOIA requests, including the scope of responsive records Defendants intend to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

47. Through State's failure to respond to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

**COUNT I**

**Violation of FOIA, 5 U.S.C. § 552**

**Failure to Conduct Adequate Searches for Responsive Records**

48. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

49. American Oversight properly requested records within the possession, custody, and control of State.

50. State is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

51. State has failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA requests.

52. State's failure to conduct adequate searches for responsive records violates FOIA.

53. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring State to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA requests.

**COUNT II**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Wrongful Withholding of Non-Exempt Records**

54. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

55. American Oversight properly requested records within the possession, custody, and control of State.

56. State is an agency subject to FOIA and must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

57. State is wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce records responsive to its FOIA requests.

58. State is wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA requests.

59. State's failure to provide all non-exempt responsive records violates FOIA.

60. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring State to promptly produce all non-exempt records responsive to its FOIA requests and provide an index justifying the withholding of any responsive records withheld under claim of exemption.

**REQUESTED RELIEF**

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order State to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA requests;
- (2) Order State to produce, by such date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and an index justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin State from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (4) Award American Oversight attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant American Oversight such other relief as the Court deems just and proper.

Dated: November 8, 2018

Respectfully submitted,

/s/ Cerissa Cafasso  
Cerissa Cafasso  
D.C. Bar No. 1011003

/s/ John E. Bies  
John E. Bies  
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*Pro hac vice* motion to be submitted

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\*Member of the MA bar only; practicing in the District of Columbia under the supervision of members of the D.C. Bar while application for D.C. Bar membership is pending.

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