

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

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	
v.)	Case No.: 24-cv-03427 (DLF)
)	
U.S. DEPARTMENT OF)	
HOMELAND SECURITY,)	
)	
Defendant.)	
)	

**PLAINTIFF’S MOTION TO EXPEDITE
FREEDOM OF INFORMATION ACT ACTION**

Plaintiff Judicial Watch, Inc., by counsel, respectfully submits this motion to expedite this Freedom of Information Act lawsuit for records concerning President-Elect Donald J. Trump’s nominee to the Director of National Intelligence, an intelligence-community appointment that will likely receive a confirmation vote on or about President-Elect Trump’s first day of office. There is good cause to expediate this matter to ensure the public has the requested information before such vote takes place.

MEMORANDUM OF POINTS AND AUTHORITIES

1. In addition to their inherent authority to manage their docket, Congress has provided the courts with a mechanism to expediate certain civil actions, including FOIA cases. The Civil Expediting Act provides, “[T]he court shall expedite the consideration” of a civil action “if good cause therefor is shown.” 28 U.S.C. § 1657(a). “[G]ood cause” is shown if a right under the Constitution of the United States or a Federal Statute (*including rights under section 552 of title 5*) would be maintained in a factual context that indicates that a request for expedited consideration has merit.” *Id.* (emphasis added). “Congress reasoned that prompt adjudication of FOIA cases (a) foster the important goal of creating an informed citizenry; (b) involve remedies

of a ‘transitory’ nature, *i.e.*, that delay could render an information request ‘of no value at all’; and (c) do not ‘involve extended discovery or testimony and therefore do not burden court dockets for extensive periods of time.’” *Ontario Forest Indus. Assoc. v. United States*, 444 F. Supp. 2d 1309, 1319 (C.I.T. 2006) (quoting H. Rep. No. 98-985, at 5–6 (1984)). “Speed is an essential element in this process of *de novo* review under FOIA” and “[p]rompt review of decisions denying access to government information is critical to FOIA users and to the purposes of the Act.” *Ferguson v. FBI*, 722 F. Supp. 1137, 1144 (S.D.N.Y. 1989) (quoting H.R. Rep. No. 985, 98th Cong., 2d Sess. 6). Thus, it is Congress’ intent that the “good cause” provision be “liberally construed by the courts in granting requests for expedited consideration under the Freedom of Information Act.” *Id.* at 1144 (quoting 1984 U.S.C.C.A.N. at 5784).

2. On August 5, 2024, Plaintiff submitted three FOIA requests to Defendant U.S. Department of Homeland Security concerning its use of the Quiet Skies terrorist watch program to surveil former U.S. Representative and Presidential candidate Tulsi Gabbard. On August 7 and August 9, 2024, Defendant acknowledged receiving all three requests. As of the date of this motion, Plaintiff has not received any records or additional communication from Defendant.

3. Access to the requested records is of significant public interest and integral to Plaintiff’s mission, the American public’s knowledge of the Defendant’s use of the Quiet Skies terrorist watch program, Gabbard’s identification and targeted surveillance under the program, and Congress’ investigation and oversight in the matter, specifically pertaining to the alleged use the program to surveil political opponents. This action meets the “good cause” standard for expedition under § 1657(a) for at least two reasons.

4. First, there is significant public interest in the requested records. On August 4, 2024, Federal Air Marshal whistleblowers came forward to report that Gabbard was being targeted

for surveillance under the Transportation Security Administration’s Quiet Skies terrorist watch program,¹ which operates under the authority of the Defendant.² This event garnered national attention, especially because in 2023, the director of the Air Marshal National Council (“AMNC”) disclosed that for the last two years, air marshals were reassigned by the Biden Administration under the Quiet Skies program to monitor illegal immigration and to track individuals linked to January 6th.³ On August 21, 2024, Senator Rand Paul, the Ranking Member of the U.S. Senate Committee on Homeland Security and Governmental Affairs, requested detailed information related to the management of watchlists and screening procedures by the TSA.⁴ He wrote, “Recent disclosures from whistleblowers raise serious concerns that these mechanisms may have been improperly employed to target individuals based on their political views and participation in constitutionally protected activities, rather than legitimate security threats.”⁵ In a September 4, 2024 video shared on X, Gabbard explained that she believes she was added to the Quiet Skies watchlist the day after she called Vice President Harris “dangerous” in an interview on Fox News.⁶

¹ Under such surveillance, Gabbard is secretly monitored on every flight she boards, along with the alleged use of “two Explosive Detention Canine Teams, one Transportation Security Specialist specializing in explosives, one plainclothes TSA Supervisor, and three Federal Air Marshalls.” Jim Hoft, *Concerns emerge that the government is conducting domestic surveillance to target people based on their political views*, DALLAS EXPRESS (Aug. 5, 2024), <https://dallasexpress.com/national/domestic-surveillance-are-targets-politically-motivated/>.

² *Id.*

³ *Id.*

⁴ Sen. Rand Paul (R-KY), *Letter to The Honorable David P. Pekoske*, United States Senate Committee on Homeland Security and Governmental Affairs (Aug. 21, 2024), https://www.hsgac.senate.gov/wp-content/uploads/2024.08.21_Ranking-Member-Rand-Paul-Letter-to-TSA-Administrator-Pekoske_FINAL.pdf.

⁵ *Id.*

⁶ Anna Rascouet-Paz, *Tulsi Gabbard Is on Terror Watchlist?*, SNOPE (Nov. 15, 2024), <https://www.snopes.com/fact-check/tulsi-gabbard-terror-watchlist/>.

In fact, AMNC Executive Director Sonya LaBosco affirmed Gabbard's suspicions that her enrollment in the Quiet Skies program is likely politically motivated.⁷

5. Public awareness on this matter is critical given the expansive and secretive nature of the Quiet Skies terrorist watch program, Gabbard's placement on the watchlist, and the allegations of politically motivated domestic surveillance efforts against Americans. "[A] meaningful and truly democratic debate on the legality and propriety of [the contested program] cannot be based solely upon information that the [government] voluntarily chooses to disseminate." *Elec. Privacy Info. Ctr. v. Dep't of Justice*, 416 F. Supp. 2d 30, 41 n.9 (D.D.C. 2006) (internal quotation marks and citations omitted).

6. Second, there is an immediate public need for the requested records, which did not exist when Plaintiff submitted its FOIA request. On November 13, 2024, President-Elect Donald J. Trump nominated Gabbard as the next Director of National Intelligence. It is likely that the Senate will vote on the nomination as early as January 20, 2025, because the current DNI, Avril Haines, was sworn in on January 21, 2021.⁸ Any hearing about the nomination prior to the vote may begin in early January.⁹

7. Gabbard's placement on the Quiet Skies terrorist watchlist, as well as her alleged status as a domestic terrorist under the program, will certainly be considered during the upcoming

⁷ *Exclusive - Federal Air Marshal Whistleblowers Report Tulsi Gabbard Actively under Surveillance via Quiet Skies Program*, UNCOVERDC (Aug. 28, 2024), uncoverdc.com/2024/08/04/fams-whistleblowers-report-tulsi-gabbard-on-quiet-skies-list.

⁸ *Director of National Intelligence*, DNI.GOV, www.dni.gov/index.php/who-we-are/leadership/director-of-national-intelligence (last visited Dec. 10, 2024).

⁹ Historically, the Senate has begun consideration of top nominees before Inauguration Day. See "Nomination of Hillary R. Clinton to be Secretary of State," Hearing Before the S. Comm. on Foreign Relations, 111th Cong. (2009), at 25, available at <https://www.govinfo.gov/content/pkg/CHRG-111shrg54615/pdf/CHRG-111shrg54615.pdf>.

confirmation hearings. Thus, the need for prompt release of these requested records is particularly acute because their value to the public will diminish after the Senate confirmation hearing.

8. It is imperative that Plaintiff and the American public receive access to the requested records before Gabbard's Senate confirmation hearing and vote. The potential information from the requested records is of a time-sensitive nature and essential to the integrity of the Senate confirmation process. *See Heritage Found. v. United States DOJ*, No. 23-cv-1854 (DLF), 2023 U.S. Dist. LEXIS 128665 (D.D.C. July 19, 2023) ("Courts in our district have generally found irreparable harm . . . only where the requested documents are time sensitive and highly probative, or even essential to the integrity, of an imminent event, after which event the utility of the records would be lessened or lost.") (internal quotation marks and citations omitted); *see also Elec. Privacy Info. Ctr.*, 416 F. Supp. 2d at 40-41 ("[S]tale information is of little value" and "the loss of [this] 'value' constitutes a cognizable harm" when "time is necessarily of the essence.").

CONCLUSION

For these reasons, this lawsuit should be expedited so that the American public may review the responsive records before the Senate holds a confirmation vote on or about January 20, 2025.

Dated: December 11, 2024

Respectfully submitted,

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