

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,

Plaintiff,

v.

HARMEET DHILLON, in her official
capacity as Assistant Attorney General, Civil
Rights Division, U.S. Department of Justice, *et*
al.,

Defendants.

Civil Action No. 26-3461 (SLS)

**DEFENDANTS' SUR-REPLY IN FURTHER OPPOSITION
TO PLAINTIFF'S MOTION FOR EMERGENCY RELIEF**

Pursuant to the Court's October 19, 2026, Minute Order, Defendants, by and through undersigned counsel, respectfully submit this sur-reply in further opposition to Plaintiff's Motion for Emergency Relief (ECF No. 5; "Pl.'s Mot."), responding to arguments raised for the first time in Plaintiff's reply (ECF No. 20; "Pl.'s Reply"). As set out below, Plaintiff's new arguments are both improper and unavailing.

BACKGROUND

On October 5, 2026, Plaintiff filed its Motion for Emergency Relief, asking the Court to order Defendants to, within one week, produce and transmit the records requested in Plaintiff's September 1, 2026, Freedom of Information Act ("FOIA") request. Pl.'s Mot. at 1. The next day, at the Court's direction, *see* Min. Order (Oct. 5, 2026), the parties filed a joint status report that set out different proposed briefing schedules for Plaintiff's motion. ECF No. 10. The Court adopted Defendants' proposal. *See* Min. Order (Oct. 6, 2026). In so ruling, the Court noted that Plaintiff's motion "did not address why it did not seek expedited processing of its FOIA request or . . . engage

with the governing standards for the extraordinary relief that it seeks (i.e., a mandatory preliminary injunction in a FOIA case)” and stated that it “expect[ed] the Plaintiff to address those issues in its reply.” *Id.*

On October 13, 2026, Defendants filed their opposition to Plaintiff’s motion. *See* ECF No. 17 (“Defs.’ Opp’n”). Engaging with the relevant factors for emergency relief, Defendants established that Plaintiff had failed to demonstrate both a likelihood of success on the merits and irreparable harm, *id.* at 8-24, and that the balance of equities and public interest weighed against the emergency relief requested by Plaintiff, *id.* at 24-28. Defendants showed, among other things, that Plaintiff had failed to request expedited processing in its FOIA request, and thus that its claim for expedited processing was not properly before the Court; had not connected the records requested to the harm alleged; and had demonstrated a lack of urgency through its own actions, thus undermining its claim of irreparable injury. *Id.* at 10-12, 17-22. Defendants also explained that Plaintiff’s requested emergency relief would harm other requesters, require production on an impractical timeline, and raise a significant risk of inadvertent disclosure of information exempt from disclosure under FOIA. *Id.* at 24-28.

On October 15, 2026, Plaintiff amended its complaint to add the Civil Rights Division (“CRT”) of the Department of Justice (“DOJ”) as a named defendant. *See* ECF No. 18.¹ On October 16, 2026, Plaintiff filed its reply. Therein, Plaintiff failed to squarely respond to certain arguments in Defendants’ opposition—such as Defendants’ arguments that Plaintiff’s motion fails

¹ Plaintiff stated that it was still within the window for amending its complaint as a matter of course. *See* Fed. R. Civ. P. 15(a)(1). Plaintiff nonetheless moved the Court for leave to file the Amended Complaint, reasoning that it was “submitting [a] Motion . . . because of the swift timeline in the matter.” ECF No. 18. Plaintiff did not explain how moving the Court for leave to file something that it could file as a matter of course was consistent with its asserted “swift timeline.” *See id.* As of the date of this filing, the Court has not acted on Plaintiff’s motion.

to connect the records requested to the harm alleged, Defs.’ Opp’n at 17-19, and requests processing on an impracticable timeline, *see id.* at 25-26. And Plaintiff’s reply also raised new arguments for the first time—namely that Plaintiff’s FOIA request meets the standard for expedited processing, Pl.’s Reply at 20-24, and that Plaintiff was entitled to a writ of mandamus, *id.* at 24-25. The following business day, the Court issued a minute order observing that Plaintiff had filed an amended complaint and a reply “raising arguments not raised in [Plaintiff’s] Emergency Motion,” and directing Defendant to file a sur-reply. *See* Min. Order (Oct. 19, 2026).

ARGUMENT

I. The Filing of an Amended Complaint Moots the Pending Motion for Preliminary Injunction.

As an initial matter, Plaintiff’s motion for preliminary injunction is based on the original complaint. *See* Pl.’s Mot. at 1 (“Plaintiff respectfully moves the Court to grant emergency relief . . . to produce the records and information requested in the underlying complaint.”). On October 15, 2026, Plaintiff filed an Amended Complaint (ECF No. 18). The filing of the amended complaint moots the pending motion for emergency relief. *See, e.g., Nat’l Indus. for the Blind v. Dep’t of Veterans Affs.*, Civ. A. No. 17-0992 (KBJ), 2019 WL 11322787, *2 (D.D.C. Aug. 12, 2019). The Court should deny Plaintiff’s motion on that basis alone.

II. The Court Should Not Consider Arguments Newly Raised by Plaintiff in Its Reply.

“It is well established that issues not raised until the reply brief are forfeited.” *Jones Lang LaSalle America, Inc. v. NLRB*, 128 F. 4th 1288, 1296 (D.C. Cir. 2025) (citation omitted). This rule applies equally to motions for preliminary relief, as it does to other motions. *See, e.g., Mdewakanton Sioux Indians of Minnesota v. Zinke*, 255 F. Supp. 3d 48, 55 (D.D.C. 2017) (“Plaintiffs also briefly attempt to introduce a new irreparable injury. However, because this argument is new in Plaintiffs’ reply, the Court will not consider it” (internal citations omitted));

Strobos v. RxBio, Inc., 221 F. Supp. 3d 21, 23 (D.D.C. 2016); *see also Morgan Drexen, Inc. v. CFPB*, 785 F.3d 684, 695 n.3 (D.C. Cir. 2015) (refusing to consider new arguments for irreparable injury in movant’s reply brief).

In its October 6, 2026, Minute Order setting a briefing schedule for Plaintiff’s motion, the Court invited Plaintiff to “address why it did not seek expedited processing of its FOIA request, or [] engage with the governing standards for the extraordinary relief that it seeks (i.e., a mandatory preliminary injunction in a FOIA case).” The Court, however, did not invite Plaintiff to offer argument on why it *should* be entitled to expedited processing, notwithstanding its failure to seek it from CRT. *See id.* And the Court likewise did not invite Plaintiff to offer new arguments not first raised in its motion. *See id.* But in its reply, Plaintiff has done just that: Plaintiff newly argues that its FOIA request meets the standard for expedited processing, *id.* at 20-24, and that it is entitled to a writ of mandamus, *id.* at 24-25. Because neither of these arguments was raised in its motion, “it [was] improper” for Plaintiff to raise them in its reply and the Court should not consider them. *Performance Contracting, Inc. v. Rapid Response Constr., Inc.*, 267 F.R.D. 422, 425 (D.D.C. 2010).

III. Plaintiff’s New Arguments Raised in Its Reply Are Unavailing.

Notwithstanding, to the extent the Court considers the new arguments raised for the first time in Plaintiff’s reply, it should reject them.

A. Plaintiff Fails to Demonstrate that Its FOIA Request Meets the Standard for Expedited Processing

As explained in Defendants’ opposition, Plaintiff failed to make any expedited processing request to DOJ in accordance with the agency’s regulations and, instead, has sought to circumvent that process by raising the issue for the first time in litigation. Accordingly, the issue of whether Plaintiff’s request should be expedited is not properly before the Court and the motion for

emergency relief should be denied on that basis. *See Howell v. Dept. of Homeland Sec.*, Civ. A. No. 24-2791 (JMC), 2024 WL 4582978, at *4 (D.D.C. Oct. 25, 2024).

Nevertheless, in its reply, Plaintiff now contends that it meets the criteria for expedited processing and that the Court should overlook Plaintiff's failure to first raise its purported expedited-processing eligibility with DOJ. *See* Pl.'s Reply at 20-24. FOIA provides that, "in cases in which [a requester] demonstrates a compelling need," the request may be afforded expedited processing, and, further, defines "compelling need" as meaning "(I) that a failure to obtain requested records on an expedited basis . . . could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or (II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E).² This is a "stringent test for obtaining special treatment," *Harrington v. FDA*, 581 F. Supp. 3d 145, 151 (D.D.C. 2022), and "immense public importance" is not enough, *Democracy Forward Found. v. Off. of Mgmt. & Budget*, 780 F. Supp. 3d 61, 66 (D.D.C. 2025). Plaintiff contends in its reply that it meets the second basis—i.e., that it is "primarily engaged in disseminating information" and that there is an "urgency to inform the public concerning actual or alleged Federal Government activity." Pl.'s Reply at 21-24. But such assertion is without merit and the Court should reject Plaintiff's belated claim of compelling need.

² DOJ's regulations also allow for expedited processing upon a showing that a request involves "[c]ircumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; . . . [t]he loss of substantial due process rights; or [a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence. 28 C.F.R. § 16.5(e)(i), (iii), (iv). Plaintiff asserts none of these additional bases in its reply and, in any event, none exist. *See generally* Pl.'s Reply.

1. Plaintiff Is Not Primarily Engaged in Disseminating Information

“Courts in this district have . . . emphasize[d] that they ‘must be cautious in deeming non-media organizations as persons primarily engaged in information dissemination.’” *Energy Policy Advocates v. Dep’t of the Interior*, Civ. A. No. 21-1247 (JEB), 2021 WL 4306079 (D.D.C. Sept. 22, 2021) (quoting *Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270, 275-76 (D.D.C. 2012))). “Although courts in this Circuit and elsewhere have routinely held that media organizations and newspapers qualify under this category, in light of the pertinent legislative history, other types of organizations have been held to not qualify, unless information dissemination is also their main activity, and not merely incidental to other activities that are their actual, core purpose.” *Progress v. Consumer Fin. Prot. Bureau*, Civ. A. No. 17-0686 (CKK), 2017 WL 1750263, at *4 (D.D.C. May 4, 2017). “A contrary reading of the statutory requirement would allow nearly any organization with a website, newsletter, or other information distribution channel to qualify as primarily engaged in disseminating information.” *Landmark*, 910 F. Supp. at 276. DOJ’s regulations are consistent with this case law, requiring that non-media requesters seeking expedited processing on the basis of “[a]n urgency to inform the public” establish, among other things, “that . . . [their] primary professional activity or occupation is information dissemination.” 28 C.F.R. § 16.5(e)(3).

Here, Plaintiff has not, and cannot, carry its burden of demonstrating that it is primarily engaged in disseminating information. In its FOIA request to CRT, Plaintiff summarily stated it “regularly and systematically disseminates information to the public.” *See* Ex. A to Compl. (NAACP FOIA Request) (ECF No. 1-1). However, the information Plaintiff has provided in support of that assertion, at best, reflects only that information dissemination is one aspect of Plaintiff’s operations—not that information dissemination is its “main activity” as required to establish a “compelling need.” *See Progress*, 2017 WL 1750263, at *4. To wit, Plaintiff’s FOIA

request included no further detail on its information-dissemination activities. *See* Ex. A to Compl. Importantly, requests for expedited processing are considered on the record before the agency, not a new record established in court. 5 U.S.C. § 552(a)(6)(E)(iii); *Al-Fayed v. CIA*, 254 F.3d 300, 304, 308 (D.C. Cir. 2001). That standard assumes a request for expedited processing actually was made at the administrative level, which is another reason why Plaintiff’s attempt to circumvent the administrative process should be rejected.

In any event, Plaintiff’s reply only indicates that information dissemination is, at best, merely one of its numerous activities, providing that Plaintiff is “committed to protecting and expanding voting rights, ensuring the integrity of our elections, and educating voters” and “utilizes a combination of research, litigation and advocacy to advance its mission.” Pl.’s Reply at 22. Indeed, although Plaintiff’s reply spends several pages contending that there is an urgency to inform the public, *see id.* at 22-24, it does not directly address how it qualifies as “person primarily engaged in disseminating information.” *See generally id.*

2. Urgency to Inform

As Plaintiff notes, *see* Pl.’s Reply at 22, “[i]n determining whether requestors have demonstrated ‘urgency to inform,’ . . . courts must consider at least three factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity.” *Al-Fayed*, 254 F.3d at 310. Defendants do not dispute that the third factor is met, but Plaintiff fails to show that either the first or second factor exists here.

Plaintiff’s sole argument for requesting expedited processing for the requested records is to allow “the American public—both voters and local election officials—to know the specifics of [CRT’s] unprecedented deployment of over a thousand DOJ lawyers and criminal law enforcement

personnel to polling locations across the country on Election Day.” Pl.’s Reply at 22. But Plaintiff’s request belies this alleged reasoning. The broad, twenty-category request seeks information, in part, relating to past activities—e.g., “any and all complaints from [] the Governor of Wyoming,” “[a]ll complaints received by [DOJ] that led to the deployment of election monitors in any of the locations from the 2026 midterm primary elections.” Ex. A to Compl. at 3. Plaintiff does not, and cannot, contend that information concerning past actions is needed to allow the public “to know the specifics” regarding future events.

Moreover, as explained in Defendant’s opposition, Plaintiff delayed in submitting its FOIA request and did not even seek expedited processing in it, thus further undermining its assertion of urgency now. *See* Defs.’ Opp’n at 19-22; *see also Morales v. Sec’y, U.S. Dep’t of State*, 220 F. Supp. 3d 1, 5 (D.D.C. 2016) (“Moreover, as Plaintiffs concede, they did not seek expedited processing of their FOIA request from the agencies at issue. Plaintiffs’ characterization of their request in this case as an ‘emergency’ is accordingly placed in doubt.”); *Heritage Found. v. CIA*, Civ. A. No. 23-3810 (TJK), 2025 WL 485406, at *4 (D.D.C. Feb. 13, 2025) (“Plaintiffs did not satisfy the certification requirement when they requested expedited processing based on compelling need, so they were not entitled to that processing.”). Plaintiff cannot now assert a “current exigency” and the potential “compromise [of] a significant recognized interest” where its prior actions demonstrate otherwise.

Further, “[c]ourts often look to objective markers like the volume of news articles and media reports to discern whether there is a current exigency.” *Democracy Forward*, 780 F. Supp. 3d at 73. But Plaintiff’s reply fails to cite a single news article or media report in support of its assertion of urgency to inform. *See* Pl.’s Reply at 20-24. The total absence of any such citation belies Plaintiff’s assertion of “current exigency to the American public.” *See Citizens for Resp. &*

Ethics in Wash. v. DOGE Serv., 769 F. Supp. 3d 8, 27 (D.D.C. 2025) (recognizing “at least fifty [articles], by the Court’s count” cited in the opinion and parties’ briefings “concern[ed] a matter of current urgency”).

Finally, Plaintiff’s purported urgency is also undermined by its position in this litigation. Upon filing its motion, undersigned counsel immediately reached out to Plaintiff to ascertain whether there were any portions of Plaintiff’s broad request that it would like DOJ to prioritize, to potentially accommodate its requested timeline. *See* Ex. A (emails between counsel). In response, counsel for Plaintiff related that it “believes all twenty items” in its request “are necessary” and declined to specify any prioritized records for processing. *See id.* Demonstrating an “urgency to inform” is a “tall order” and “FOIA plaintiffs clear [this] hurdle only rarely.” *Org. of Am. Historians v. OMB*, 834 F. Supp. 3d 105, 110 (D.D.C. 2026). Indeed, the Government arguably “performs lots of ‘activity’ that is ‘of current exigency to the American public.’” *Id.* (citation omitted). Plaintiff cannot maintain that its purported “urgency to inform” applies to the entirety of its expansive request; “[e]xpedition would lose all practical meaning if most FOIA requests”—here, the entirety of an exceedingly broad FOIA request—“could claim priority.”

In light of the foregoing, there can be neither a “current exigency to the American public” nor a “compromise[d] . . . significant recognized interest,” and thus no “urgency to inform.” *See Al-Fayed*, 254 F.3d at 310. For these reasons, Plaintiff cannot demonstrate a compelling need for the requested records, to warrant expedited processing.

B. Plaintiff Is Not Entitled to a Writ of Mandamus

In addition, in its reply, Plaintiff newly argues that it is entitled to a writ of mandamus. Pl.’s Reply at 24-25. This argument fails for two reasons.

First, the Court cannot grant preliminary relief on a claim not pleaded in the Complaint (or the Amended Complaint) because courts may issue a preliminary injunction only “of the same

character as that which may be granted finally.” *De Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945); *see, e.g., Steele v. United States*, Civ. A. No. 14-1523 (RCL), 2020 WL 7123100, at *7 (D.D.C. Dec. 4, 2020) (finding that because a “court’s equitable power lies only over the merits of the case or controversy before it,” the court “must deny [the plaintiff’s] preliminary injunction motion because it cannot grant preliminary relief on claims not pleaded in the complaint” (citation omitted)); Min. Order, *Macutkiewicz v. Rubio*, Civ. A. No. 25-0522 (AHA) (D.D.C. Dec. 2, 2025) (“Here, there is a preliminary issue: the bases Plaintiff asserts for preliminary relief are not part of Plaintiff’s operative complaint.”); *N.Y. Times Co. v. Def. Health Agency*, Civ. A. No. 21-0566 (BAH), 2021 WL 1614817, at *4 n.6 (D.D.C. Apr. 25, 2021) (“[P]laintiff can show no likelihood of success on a claim that is not even asserted.”). Here, the Complaint (and, again, the Amended Complaint) asserts a single claim: “Failure to make a determination on the records requested in violation of FOIA.” Compl. ¶¶ 31-38; *see also* Am. Compl. ¶¶ 32-39. Although the Complaint requests that the Court issue a writ of mandamus in its Prayer for Relief, *see* Compl. ¶ 57, it does not assert an independent claim under the Mandamus Act, 28 U.S.C. § 1361, or make any argument for issuance. *See generally* Compl. Thus, because Plaintiff’s mandamus claim does not appear in Plaintiff’s pleadings, the Court should deny Plaintiff’s reply argument for mandamus.

Second, Plaintiff’s mandamus claim fails on the merits. The “remedy of mandamus is a drastic one, to be invoked only in extraordinary circumstances.” *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 34 (1980). Mandamus is available only if: “(1) the plaintiff has a clear right to relief; (2) the defendant has a clear duty to act; and (3) there is no other adequate remedy available to plaintiff.” *Northern States Power Co. v. Dep’t of Energy*, 128 F.3d 754, 758 (D.C. Cir. 1997) (citation omitted). And the party seeking mandamus “has the burden of showing that ‘its right to

issuance of the writ is clear and indisputable.” *Id.* at 758 (quoting *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988)). Here, Plaintiff fails on at least the third element. “In this action, plaintiff demands the release of records maintained by [CRT], and an adequate remedy for a request of this nature exists pursuant to the FOIA.” *Strunk v. Dep’t of State*, 693 F. Supp. 2d 112, 113 n.1 (D.D.C. 2010); *see, e.g., Nat’l Sec. Couns. v. CIA*, 898 F. Supp. 2d 233, 268 (D.D.C. 2012) (“FOIA itself is the source of what plaintiff views as CIA’s clear duties to act and plaintiff’s clear rights to relief Thus, to the extent a remedy would be available to plaintiff under the Mandamus Act, an identical and adequate injunctive remedy would be available to the plaintiff under the FOIA.”); *ExxonMobil Corp. v. Dep’t of Commerce*, 828 F. Supp. 2d 97, 109 (D.D.C. 2011) (dismissing mandamus claim on ground that plaintiff “has an adequate remedy under FOIA”); *Taitz v. Obama*, 707 F. Supp. 2d 1, 5 (D.D.C. 2010); *see also Pickering–George v. Registration Unit, DEA/DOJ*, 553 F. Supp. 2d 3, 4 (D.D.C. 2008) (“The exclusive nature of the FOIA precludes mandamus relief.”).³

³ Plaintiff also alleges that factual developments during briefing warrant granting its motion. Pl.’s Reply at 18-20. In particular, Plaintiff contends that the federal government “has dramatically increased the scale and the scope of [its] purported plans to deploy ‘election monitors’ for the November 3, 2026, midterm general election,” and references “newly released information generated public reporting that the monitors would be sent to all 50 states, and the criminal prosecutors and an FBI agent were present at the Arizona polling locations as part of [CRT’s] election monitoring activities.” *Id.* at 19-20. Notably, Plaintiff does not cite to any of the public reporting it references. Notwithstanding, such reporting would not constitute a new development. As Defendants noted in their opposition, reporting in mid-August publicly indicated that election monitors would be sent “throughout the U.S.” Defs.’ Opp’n at 21-22 (citing CBS News, *Justice Department to send a record 1,000 monitors to polling places in midterm elections* (Aug. 18, 2026), <https://perma.cc/4R4Y-VSQC>). And Plaintiff’s motion itself alleged that criminal prosecutors and FBI staff would be present at polls during 2026 election season. Pl.’s Mot. at 3. As such, Plaintiffs’ reply fails to offer any new facts that, if considered, would demonstrate its entitlement to preliminary relief.

CONCLUSION

For the reasons set forth above and in Defendants' opposition, the Court should deny NAACP's motion for emergency relief.

Dated: October 21, 2026

Respectfully submitted,

JEANINE FERRIS PIRRO
United States Attorney

By: /s/ William Thanhauser
WILLIAM THANHAUSER, D.C. Bar #1737034
DIMITAR P. GEORGIEV
Assistant United States Attorneys
601 D Street, NW
Washington, DC 20530
(202) 252-7706

Attorneys for the United States of America