Assessment of the Epstein Files Transparency Act II

H.R. 9694 (119th Cong., 2d Sess.) and companion S. 5005 — drafting assessment and recommended modifications

To	**The sponsors and cosponsors of H.R. 9694 and S. 5005, and their staff**
Date	September 20, 2026; updated through October 30, 2026
Subject	What the bill gets right, where it fails, and fourteen specific modifications
Texts assessed	H.R. 9694 IH and S. 5005 IS, as introduced July 15, 2026, amending the Epstein Files Transparency Act (EFTA), Pub. L. No. 119-38, 139 Stat. 656 (2025). Bill provisions are cited bare (§ 4(d)); provisions of the enacted Act as EFTA § 2(c) or by context.

BLUF — Bottom Line Up Front

EFTA II supplies an enforcement mechanism: the Act contains no cause of action, penalty, or deadline consequence of its own,[1] leaving compliance to the Department absent outside judicial enforcement. The bill's three most important provisions — the privilege bar (§ 2(b)(2)), the per-redaction justification (§ 2(d)), and the state-officer access-and-enforcement provisions (§ 4(a), (c)) — are the right architecture (M-3, M-4, and M-9 qualify them). Four changes would materially improve it:

1. **Do not repeal the Act's only classified-accounting trigger** — striking § 2(c)(1)(E) orphans the unclassified-summary duty, while § 2(c)(4)'s Federal Register log misses the classification actions in the production. This is the highest-priority low-cost repair because it preserves enacted accountability without M-14's expansion and classified-handling system (M-1). Intelligence-community holdings are the separate § 2(a) possession question (M-14).
2. **Nothing self-executes** — every consequence requires a plaintiff and a favorable ruling (M-2).
3. **The monetary remedies have no sovereign-immunity waiver** (M-3).
4. **The production mandates are not reconciled with the other law governing the same records** (M-4).

In this memo. *Part I* identifies eight strengths. *Part II* ranks and details fourteen modifications in its opening table. *Part III* states open questions and prior conclusions; *Part IV* gives eight technical corrections; *Position* closes with the assessment and its basis.

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[1] General routes have contested thresholds: 5 U.S.C. §§ 702, 704, 706; 28 U.S.C. § 1361. *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55 (2004): § 706(1) compels discrete, legally required acts. EFTA § 2(a)'s production duty fits that rule; § 2(c)(2)'s justification thresholds remain contested. Separately, § 704 supplies the finality and adequate-remedy gateway; § 706(2), review and remedy. *Phang v. Blanche*, No. 26-1417 (EGS), Mem. Op., ECF No. 16, pp. 18–19, 48 (D.D.C. June 25, 2026), grants preliminary relief with finality conceded at that stage, not a categorical holding that every EFTA omission is final agency action.

Part I — What the bill gets right

1. The common-law privilege bar, § 2(b)(2) — the highest-value line in the bill. None of EFTA § 2(c)(1)'s five withholding bases is a privilege, yet the Department of Justice (DOJ) redacted or withheld roughly 200,000 pages on privilege grounds — its own figure[2] — arguing Congress had not clearly abrogated the common law. Section 2(b)(2) forecloses that argument by name; adding "law enforcement privilege" anticipates the next one. (Its trailing subsection-(c) clause needs the Part IV, item 3 fix.)

2. "Each redaction," § 2(d). Enacted § 2(c)(2)'s "[a]ll redactions must be accompanied by a written justification" admits a reading where one aggregate notice covers an entire production. "Each" removes it.

3. Independent causes of action with fee-shifting — state officers (§ 4(a)(1)), victims (§ 4(a)(1) and, differently drafted, § 4(b)(3) — see Part IV, item 5), Members (§ 4(e)(2)). Fee-shifting makes the rights real for plaintiffs without institutional resources. One gap: only § 4(a)(2) and § 4(b)(3)(B) carry expedite instructions; § 4(e), the most time-sensitive route, has none (M-11).

4. Displacing the Touhy regulations, § 4(a)(4) — 28 C.F.R. §§ 16.21–16.29 would otherwise have swallowed the state-officer access rights (limits at M-4; reconcile with § 4(a)(5) per Part IV, item 1).

5. Barring in-camera-only production, § 4(c)(4) — forecloses the look-but-not-keep containment move. The caveat is ours, not the bill's: the bar cannot lawfully extend to child sexual abuse material (see M-4).[3]

6. Retroactivity to pending investigations, § 4(a)(6) — drafted emphatically enough to be hard to litigate around.

7. Redaction as evidence of victim status, § 4(g)(1)(A)(i) — a person cannot ordinarily prove they appear in a file they may not see; the concealment becomes the qualifying evidence.

8. Enforcement by state sovereigns — the structural innovation, and the part we would not have thought of. Our prior analysis produced seven reform proposals, none of which enlists a state sovereign.[4] Where the executive controls the information, oversight runs through bargaining in which escalation carries visible political risk for Congress;[5] a state attorney general sits outside that bargain — no floor time, no comity with the Department, an electoral base of their own in the 43 States that elect the office,[6] and an independent criminal docket that gives the records a use. Two structural expectations of ours, stated so they can fail: no attorney-general filing in the first year after enactment falsifies the supply claim, and the pace from § 4(a) suit to enforceable order measures the leverage claim. The supply of willing challengers should also covary with party alignment — under unified government the likeliest plaintiffs are opposition-party attorneys general — though covariation alone cannot distinguish this

[2] Department of Justice, Office of the Deputy Attorney General (ODAG), EFTA compliance letters to the Judiciary Committees: December 19, 2025 (stating the clear-abrogation argument for the common-law privileges; restated in the Department's Section 3 Report, February 14, 2026, at 3), and January 30, 2026 (stating the ~200,000-page privilege figure at 4; miscited as "January 29" in the Section 3 Report).

[3] 18 U.S.C. § 3509(m) ("in any criminal proceeding"; material remains "in the care, custody, and control of either the Government or the court"; reproduction denied where inspection is afforded); 18 U.S.C. §§ 2252–2252A.

[4] Alan ElSheshai, *National Security Power and Constitutional Imbalance: Executive Powers, Congressional Oversight, and Democratic Trust* (Constitutional Imbalance research paper, v8.20.3, 2026), § Recommendations, proposals 1–7.

[5] ElSheshai, *National Security Power and Constitutional Imbalance*, v8.20.3, §§ Conceptual Framework, Hypothesised Preconditions, Table 3, and Implications. (Table 3, incentive misalignment: "Oversight of secret domains yields limited political reward, while escalation yields visible political risk.")

[6] National Association of Attorneys General, "Attorneys General," updated January 5, 2021, under "How attorneys general get their positions," https://www.naag.org/attorneys-general/ (page record captured October 30, 2026): the attorney general is popularly elected in 43 States.

account from partisan selection. The victim route (§ 4(b)) is a comparator, not an alignment-independent control: eligibility, standing, resources, and representation differ. Record eligible claims, standing dismissals, access to counsel, filings, and time to order for both routes; no AG filing tests supply, not its cause. This changes leverage, not immunity from influence: a state attorney general must still win and enforce a federal judgment.

Part II — Recommended modifications

#	Modification	Consequence	Difficulty	Depends on
M-1	Retarget § 2(c)(3) after the (E) repeal; widen § 2(c)(4); settle § 4(d)'s referent	**Critical**	Low	—
M-4	Reconcile with Rule 6(e), § 3509(m), CIPA, sealing orders	**Critical**	Medium	—
M-12	Retrospective conformity: designate and re-justify the existing production	**Critical**	Medium	M-2, M-5
M-3	Sovereign-immunity waiver + fixed damages	High	Low	—
M-5	Machine-readable text + withholding index	High	Low, conditional on field availability and reconstruction effort	—
M-7	§ 3 accounting, certification, GAO validation, takedown log	High	Medium	—
M-2	Deemed waiver on missed justification	High	Low	M-5, M-7
M-13	Appropriations conditioned on the M-7 certification	High	Medium	M-7
M-9	Standing per plaintiff route	High	Low	—
M-8	§ 4(d) court-supervised process + clearances	Medium	Medium	M-1
M-10	§ 4(f) predicates + non-DOJ consequences	Medium	Low	—
M-11	Smaller items (incl. § 2(c)(1)(C); chambers)	Medium	Low	—

#	Modification	Consequence	Difficulty	Depends on
M-6	Analytical capacity outside the executive chain	Medium	High	—
M-14A	Standardized intelligence-element certification	Medium	Medium	—
M-14B	Conditional extension to intelligence-community holdings	High if the material exists	High	M-1, M-14A

If only three changes are possible: M-1, M-4, M-5. Repair operability, reconcile legal collisions, then build the index M-12 requires, regardless of cost. M-12 is Critical but depends on M-5, which works independently. The table ranks consequence; this selection ranks dependency; the BLUF identifies four improvements to the bill outright.

M-1. The repeal strips the trigger from the Act's only classified-accounting duties

Problem. EFTA publishes unclassified records (§ 2(a)), permits redaction of **segregable portions**, including classified passages (§ 2(c)(1)(E)), and requires accounting: § 2(c)(3) compels maximum possible declassification and an unclassified summary for each classified item withheld or redacted; § 2(c)(4) requires Federal Register publication of classification decisions, dates, authorities, and unclassified justifications.

Striking (E) leaves § 4(d)(5) cross-referencing § 2(c)(3) for public release of classified information, with three problems. *(1)* Nothing expressly retargets § 2(c)(3)'s declassify-or-summarize duty after its trigger disappears.[7] *(2)* § 2(c)(4) reaches decisions "to classify" after July 1, 2025, excluding sustained classifications and § 2(c)(3) determinations. The 2025 review kept three documents classified and declassified three (Bates EFTA01730036); neither action is a decision "to classify."[8] *(3)* § 4(d)(1) orders access to "classified records **described in section 2(a)**," although § 2(a) describes unclassified records. If this means classified portions of covered records, say so rather than leave the referent to litigation.

Recommendation.

- **Retarget § 2(c)(3).** Attach declassify-or-summarize duties to any classified material withheld or redacted from covered records, whatever the basis; conform §§ 2(c)(3)–(4). Add a deadline, named duty-holder, and § 4-enforceable consequence. M-2 excludes classification waiver; M-8 explains why deemed declassification cannot substitute. Require the Attorney General to post the default and responsible official on DOJ's public EFTA webpage and notify both Judiciary Committees within five calendar days. Make that deadline enforceable under § 4(a)(1) without asking a court to declassify anything.

[7] That §§ 2(c)(3)–(4) presuppose classified material is within the Act's contemplation is the premise of this section rather than a difficulty for it: neither provision has work to do unless a covered record can contain classified passages. The counter-reading — that repealing (E) implicitly leaves § 2(c)(3) attached to any classified withholding, whatever its basis — reaches the right result, but by implication; the conforming amendment recommended here states it, so no court has to infer it.

[8] References of the form EFTA######## (eight digits, e.g., EFTA01730036) are Bates numbers in the DOJ production under the Epstein Files Transparency Act. Federal Bureau of Investigation, Epstein Transparency Project operational record, DOJ EFTA production, Bates EFTA01730036 (three documents kept classified, three declassified in the 2025 review). The NSA and CIA neither-confirm-nor-deny letters are cited in full at the Position's notes, below.

- **Open § 2(c)(4) to every classification action** on covered records — classify, sustain, and § 2(c)(3) determinations — with a named official and unclassified justification; strike the date qualifier. The summary and signed justification attribute each withholding to an official and date.
- **Settle § 4(d)(1)'s referent:** classified information within § 2(a) records, so § 4(d) and M-8 operate without litigating whether the described category exists.

M-2. Make something self-execute

Problem. Section 4(e)(1)'s 7- and 30-day deadlines merely enable suit. Enforcement depends on plaintiffs' time and budgets against the Department's resources, without a deadline consequence.

Recommendation. Deemed waiver. If a redaction's § 2(c)(2) justification is not both published in the Federal Register and submitted to Congress within a fixed period, deem its EFTA withholding basis waived. Never waive § 2(c)(1)(A), (B), or (D) protections — victim privacy, child sexual abuse material, death-or-injury imagery — for a reporting default. Reach (C), the Department's discretionary assessment, and other EFTA-supplied bases, but not external constraints: classification decisions, grand-jury secrecy, court orders, or another statute's prohibition. Require the Department to state those bases or move the governing court (M-4). EFTA's declassify-or-summarize duties retain M-1's backstop. Timely publication with late congressional submission gets a short cure period. Waiver changes legal status without an assessor; a court is needed only against refusal to release material with no remaining basis. M-7's submission log exposes defaults. A daily civil penalty does not self-execute: it needs an assessor, rate, notice, contest, and collection path; even the Clean Water Act assigns penalty-setting to a court.[9] Supply that machinery or drop it.

M-3. The monetary remedies have no sovereign-immunity waiver

Problem. §§ 4(a)(1) and 4(b)(3) authorize "monetary relief" against the Attorney General in an official capacity — a suit against the United States, which requires an unequivocal express waiver of sovereign immunity. The Administrative Procedure Act (APA) waiver excludes money damages, and the Supreme Court requires waivers reaching money to be unambiguous.[10] The bill identifies no liable sovereign, waives no immunity, defines no damages measure, names no payment source, and sets no limitations period. The counterargument — that authorizing "monetary relief" is itself the waiver, with *Bowen v. Massachusetts* reading the "money damages" exclusion narrowly — is precisely the litigation an express waiver forecloses.

Recommendation. Keep equitable and declaratory relief under the APA waiver. For official-capacity money relief, **draft an express waiver and fixed per-violation damages**, deleting "monetary relief" only if sponsors decline to supply them. Draft the individual official's personal-capacity penalty separately (M-10). Add "disgorgement" only if the bill identifies recoverable gains.

M-4. Reconcile the access provisions with the law governing the same records

Problem. § 4(c) requires production of, and *copies* of, material withheld under every § 2(c)(1) basis; § 4(e)(1)(A) grants unredacted access "notwithstanding … any other provision of law." Neither is reconciled with:

- **Rule 6(e)** — the interaction is now litigated: after denying the government's mid-2025 unsealing motions on Rule 6(e) grounds, both districts granted renewed motions in December 2025, each

[9] Clean Water Act, 33 U.S.C. § 1319(d) (court determines civil-penalty amount); § 1365 (citizen suits).

[10] 5 U.S.C. § 702 (waiver limited to "relief other than money damages"); *United States v. Nordic Village, Inc.*, 503 U.S. 30 (1992); *Lane v. Peña*, 518 U.S. 187 (1996); but see *Bowen v. Massachusetts*, 487 U.S. 879 (1988).

treating the Act as superseding Rule 6(e) for the covered materials.[11] A later-enacted, specific production mandate can displace Rule 6(e), but it took five months of litigation, through the court, on a proper motion. Draft that interaction rather than assume or override it: direct the Attorney General to move under Rule 6(e)(3)(E)(i) for any remaining grand-jury material on a deadline, and report each disposition to the Judiciary Committees.

- **18 U.S.C. § 3509(m) and §§ 2252–2252A** — § 3509(m), governing "any criminal proceeding," confines child sexual abuse material to government custody for inspection only; whether it binds a *civil* regime is untested, but the §§ 2252–2252A possession prohibitions do not depend on the forum, and the bill writes no carve-out for the copies § 4(c)(1) mandates.[12]
- **The Classified Information Procedures Act (CIPA) and E.O. 13526** — § 4(d) grants unredacted classified review to state officers and counsel with no clearance requirement, need-to-know standard, or storage rule beyond "a secure facility." A court cannot grant a clearance; CIPA holds the template procedures and goes unnamed.[13]
- **The Privacy Act (5 U.S.C. § 552a(b)), existing sealing and protective orders, and the Crime Victims' Rights Act (18 U.S.C. § 3771).** § 4(c)(2)'s "subject to any protective order" is conditional on an order existing; it requires none.

Recommendation. State, per regime, whether EFTA II displaces it, is subject to it, or needs a court order reconciling the two. Codify the grand-jury path per the bullet above. Carve § 2(c)(1)(B) material into § 3509(m) inspection, and extend § 4(c)(3)'s carve-back beyond victim personal information to the (B) and (D) material. Make a protective order a precondition of § 4(c) production, and make § 4(b)(2)(A)'s victim-identity redaction mandatory ("shall"), not permissive. Supply eligibility, clearance, storage, and handling rules for § 4(d), borrowing CIPA's named procedures — incorporation by reference alone supplies no eligibility or clearance apparatus. Narrow § 4(e)'s "notwithstanding" clause so it does not silently override grand-jury secrecy and victim-identity protection.

M-5. Require a usable production format and a withholding log

Problem. EFTA § 2(a) requires "a searchable and downloadable format." Of roughly 1.39 million documents in our catalogue, as queried October 30, 2026, 968,683 carry a native text layer and 424,234 do not (421,931 of them PDFs)[14] — roughly 30% silently invisible to text search.

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[11] Fed. R. Crim. P. 6(e). *United States v. Epstein*, No. 1:19-cr-00490 (S.D.N.Y.): government motion to unseal grand-jury transcripts, July 18, 2025 (ECF No. 61); Decision & Order denying it, August 20, 2025 (ECF No. 77) (Berman, J.); renewed government motion, November 24, 2025 (ECF No. 85); Decision & Order granting it, December 10, 2025 (ECF No. 92) (Berman, J.) (holding the Act supersedes Rule 6(e) as to the covered materials), cross-citing *United States v. Maxwell*, No. 1:20-cr-00330 (S.D.N.Y.), order of December 9, 2025 (ECF No. 820). *In re Grand Jury 05-02 (WPB) & 07-103 (WPB)*, No. 9:25-mc-80920 (S.D. Fla.): Order Denying Petition to Unseal, July 23, 2025 (ECF No. 4) (Rosenberg, J.); Order granting renewed motion to unseal, December 5, 2025 (ECF No. 8) (Smith, J.) (reasoning that the later-enacted, specific Act prevails over Rule 6's prohibition). Docket exports from CourtListener/RECAP dated October 29, 2026: the S.D.N.Y. docket's last entry is February 5, 2026 (ECF No. 105), and the S.D. Fla. docket's is December 5, 2025 (ECF No. 8).

[12] 18 U.S.C. § 3509(m)(1) (the quoted custody language); §§ 2252–2252A.

[13] Classified Information Procedures Act, 18 U.S.C. app.; Exec. Order No. 13,526, 75 Fed. Reg. 707 (Jan. 5, 2010) (§ 4.1: access eligibility is an executive determination).

[14] Author analysis of the Department's EFTA production metadata in the catalogue database file `efta-metadata.db` (last modified September 7, 2026), queried October 30, 2026. Exact read-only query: `SELECT COUNT(*), SUM(has_text_layer=1), SUM(has_text_layer=0), SUM(has_text_layer=0 AND kind='pdf'), SUM(needs_ocr=1) FROM documents;` Result: `1392917|968683|424234|421931|1409` — respectively total cataloged documents; native text layer present; absent; PDFs among the absent; and flagged for optical character recognition. These count rows in the catalogue's documents table, with flags as stored. No reproducible July 30 catalogue state was located in the records checked.

Recommendation. Require machine-readable text throughout — agency optical character recognition (OCR) where needed, validated against a stated accuracy floor — and a **structured document-level index** linking date, custodian, Bates range, stable identifier, and § 2(c)(1) basis per redaction. The index enables audit, M-12's cure, and M-2's waiver. Existing review infrastructure may reduce implementation cost; the Low difficulty rating assumes consistent exportable fields and limited reconstruction effort. Assess field availability and estimate reconstruction effort before treating those assumptions as established: the January 30 letter confirms a document management system, not those fields or costs.[15] Cover **audio, video, and image redactions** expressly in the index and § 2(c)(2): blurs, bleeps, and crops need legal bases. The January 30 letter reports more than 2,000 videos and 180,000 images and describes a victim-protection rationale for redacting videos and images. But the reporting documents examined — the February 14 Section 3 Report and the December 19 and January 30 compliance letters — provide no item-level media-redaction ledger tying each edit to its asserted legal basis.[see n. 15]

M-6. Fund the capacity to read what the bill gives access to

Problem. § 4(e)(1)(A) gives a Member unredacted access within 7 days to a production our catalogue counts at roughly 1.39 million documents (M-5), and § 4(c)–(d) give state officers comparable access; neither the Member nor the officer has any funded capacity to process it — reproducing the executive's advantage one level down.

Recommendation. Authorize and fund an analytical capability outside the executive review chain — housed in the legislative branch, or contracted under transparency-of-method rules (provenance to the source record, reproducible retrieval, human adjudication of adverse claims) — able to ingest a production and deliver structured cross-document analysis within statutory deadlines. **Disclosure:** this restates a proposal in our earlier research paper[16] (see Part III, prior conclusions).

M-7. Reach the § 3 compliance report

Problem. The bill leaves § 3 untouched: the Department writes and validates its own compliance report, decides when the release is "complete" (which is § 3's own trigger), and owes only a category-level listing of withheld records (§ 3(1)) — no Bates ranges, no per-document withholding basis.

Two measurements from our corpus audit illustrate the gap. Among 2,670 documents selected by redaction-phrase queries, 569 — 21.31%, a share fixed by the query design, not a prevalence — carry visible legacy-framework markers; a visible marker does not prove the Department's operative basis.[17] And the Department's own figures leave roughly 2.5 million pages unaccounted for between its more-than-6-million-page potentially-responsive pool and its released production — a gap in an over-collected pool, not established withheld responsive material.[18] Require public accounting to reconcile both gaps.

[15] ODAG compliance letter, January 30, 2026 (cited in full above), pp. 2 (more than 2,000 videos and 180,000 images), 5 (loading and formatting in a document management system), and 6, "Sexually Explicit Materials" (victim-protection rationale for redacting females in videos and images). The February 14 Section 3 Report and December 19 compliance letter, cited above, likewise supply no item-level media-redaction ledger; the January 30 explanation does not address audio.

[16] ElSheshai, *National Security Power and Constitutional Imbalance*, v8.20.3, § Recommendations, proposal 6 ("Congressional analytical capacity with governed access").

[17] ElSheshai, *National Security Power and Constitutional Imbalance*, v8.20.3, app. A.3.3, Justification Analysis, Table 12 (Document Set A classifier assignments) and the paragraph beginning "The inherited-marker count is fixed by the query design": Set A, 569 of 2,670 phrase-query documents (21.31%), a share that measures the query design, not prevalence. These are classifier counts, not operative legal bases.

[18] ODAG compliance letter, January 30, 2026 (cited in full above), at 1–2: more than 6 million potentially responsive pages, with duplication and non-responsiveness caveats, against the nearly 3.5 million responsive pages produced in total — a difference of roughly 2.5 million, more if the pool exceeds its 6-million floor; in her May 29, 2026 transcribed interview the former Attorney General gave the figures in round numbers: "Six million were reviewed" and "approximately 3 million" released (Committee on Oversight and Government Reform, U.S. House of Representatives, *Interview of Pamela J. Bondi*, May 29, 2026, 30, 98,

A bipartisan Senate request models independent validation. On March 11, 2026, Senators Merkley, Murkowski, Luján, and Durbin asked the Government Accountability Office (GAO), a legislative auditor, twelve questions about DOJ redaction protocols: staffing, divergent victim/"possible abusers and co-conspirators" directives, software, contractors, and approval chains. GAO has accepted the request.[19] Citing contemporaneous reporting, the letter asserts DOJ removed thousands of published records, not only those identifying victims, with "no apparent explanation."[20] If the letter is right, silent withdrawals destabilize even accurate § 3 reports.

Recommendation. Amend § 3 to require:

- withheld-record accounting by Bates range, with the § 2(c)(1) subparagraph per range and the distribution of cited bases reported, so boilerplate justification is visible on its face;
- a submission log recording each § 2(c)(2) justification's Federal Register publication and transmittal to Congress, the duties underlying M-2's waiver;
- certification of complete and accurate accounting by a named official, under penalty of perjury, quarterly and on completion, to the Judiciary Committees and GAO by the fifteenth day after the reporting period ends. The first reporting quarter is the first full calendar quarter beginning after enactment; its certificate also accounts for the intervening enactment-to-quarter-start period. Absent qualification or withdrawal, M-13 preserves initial availability until that deadline. Thereafter the preceding valid certificate remains effective through the fifteenth day after quarter-end; test the new certificate beginning the next day. Nonfiling then suspends future obligations; a qualified filing or public withdrawal suspends them immediately, including during the quarter. An unqualified filing or signed correction identifying the defect restores availability prospectively, never curing obligations incurred while funds were unavailable; lateness remains recorded. Apply these qualification, withdrawal, and correction rules to completion certificates too. Materially false certifications feed M-10's referral-and-report device; extend it to certifications and § 2(c)(2) justifications, since § 4(e)(3)(C) reaches only paragraph (1)(B) justifications;
- **GAO validation, named in statute, with a mandated report and publication deadline** — anchoring the March 11 request rather than duplicating it. Draft GAO's access expressly: its general audit-access authority has failed in court before,[21] the twelve questions reach internal process records the Department will resist on deliberative-process grounds — extend § 2(b)(2)'s

https://oversight.house.gov/wp-content/uploads/2026/06/Final-Bondi-Transcript.pdf).

[19] Senators Jeffrey A. Merkley, Lisa Murkowski, Ben Ray Luján, and Richard J. Durbin, letter to Orice Williams Brown, Acting Comptroller General, U.S. Government Accountability Office, March 11, 2026, https://www.lujan.senate.gov/wp-content/uploads/2026/03/GAO-Epstein-Files-Redactions-Review-Letter.pdf; Senator Jeff Merkley, "At Merkley's Request, Independent Government Watchdog Launches Investigation into Trump DOJ's Handling of the Epstein Files," press release, April 28, 2026, https://www.merkley.senate.gov/at-merkleys-request-independent-government-watchdog-launches-investigation-into-trump-dojs-handling-of-the-epstein-files/ (reporting GAO's acceptance of the request).

[20] GAO letter (cited in full above), at 1 and questions 11–12. The letter says the removed records were "not merely records that inappropriately identify victims," and footnotes its "no apparent explanation" claim to Edith Olmsted, "DOJ Scrubs Record of Interviews With Trump Accuser From Epstein Files," *The New Republic*, February 19, 2026, which reports that records of FBI interviews with one woman "appear to have been removed from public viewing"; that article gives no figure of thousands and does not use the letter's phrase. Of the articles held, only Jessica Rawnsley, "Thousands of Epstein Documents Taken Down After Victims Identified," BBC, February 4, 2026, gives that figure for removals, and it gives a reason: victims said their identities had been compromised, and the Department attributed the mistakes to "technical or human error." The letter cites it, with MJ Lee, CNN, February 2, 2026, at note 1 for the exposure of victims' information, not for the removals sentence. The letter's other press citations are Dareh Gregorian, NBC News, February 14, 2026, and Hailey Fuchs, *Politico*, February 9, 2026. Known through the letter; no copy of the *Politico* article held for this edition.

[21] 31 U.S.C. § 716 (GAO record access); *Walker v. Cheney*, 230 F. Supp. 2d 51 (D.D.C. 2002) (Comptroller General lacked standing to enforce it).

privilege bar to review-process records — and record-level validation otherwise meets the Rule 6(e) and § 3509(m) walls mapped at M-4;

- a public **takedown log** within two calendar days of removal: Bates range, non-identifying legal category, accountable official, and republication path. A missed entry is a compliance default, never a protection waiver. Apply M-2's savings and M-4's reconciliation. By day seven, the Attorney General must log or cure the default, screen for victim-identifying information, child sexual abuse material, death-or-injury imagery, classification, external-law restrictions and court orders, and restore the lawfully releasable version. By then, file contested protected portions for expedited in camera review in an available authorized proceeding: a pending § 4 action or the court supervising the governing order; seek necessary modification. Otherwise issue a signed, reasoned protected-withholding determination stating that no judicial vehicle is available, preserve the material, and publish a non-identifying determination or summary in the takedown log by day seven. Retain protected reasons securely; supply them only through legally authorized channels. Never publish protected identities. Eligible claimants may challenge the determination under § 4. Require a disposition within 30 calendar days after proper filing in a court with jurisdiction; extensions require a court order recorded by the Attorney General. The Attorney General must record an overdue disposition as an unresolved review default; protected portions remain withheld, never automatically released. In camera handling creates no Article III controversy. The Attorney General must publish missed determination, publication, screening or review deadlines as § 4-enforceable compliance defaults, subject to plaintiff eligibility and Article III;
- a statutory definition of "completion" or a fixed outside date.

M-8. § 4(d) classified access — reframe procedurally, then supply the apparatus

Problem. Section 4(d)(3)'s bar on objections "on the grounds that the material is classified" invites an Article II challenge. M-1 must first settle its referent. *Egan*'s holding is statutory: its judicial-deference rule applies "unless Congress specifically has provided otherwise."[22] Its statement that classification power "exists quite apart from any explicit congressional grant" is answered partly by M-14's JFK precedent, but that Act retained a presidential withholding valve; a provision leaving none carries greater exposure. Bush's signing statement also objected to congressional access,[23] supporting the proposed security apparatus for § 4(e) Member access. Reframing cannot supply a clearance: courts cannot grant one (E.O. 13526 § 4.1, cited at M-4).

Recommendation. Make § 4(d) a **court-supervised access process**: classification governs handling, not refusal. Move § 4(d)(5)'s construction rule first; supply eligibility, clearances, storage, and filing rules using CIPA's named procedures. Route § 4(e)(1)(A)'s seven-day unredacted Member access through

[22] *Department of the Navy v. Egan*, 484 U.S. 518 (1988) (Article II discussion at 527; the "unless Congress specifically has provided otherwise" qualifier, addressed to judicial deference, at 530).

[23] President John F. Kennedy Assassination Records Collection Act of 1992, Pub. L. No. 102-526, 106 Stat. 3443. The Act mandated disclosure of classified records with per-document postponement review by the independent Assassination Records Review Board, backstopped by presidential certification. President Bush signed it while objecting on constitutional grounds: "My authority to protect these categories of information comes from the Constitution and cannot be limited by statute" (George H. W. Bush, "Statement on Signing the President John F. Kennedy Assassination Records Collection Act of 1992," October 26, 1992, in *Public Papers of the Presidents of the United States: George Bush, 1992–1993*, bk. 2, p. 2004, https://www.govinfo.gov/content/pkg/PPP-1992-book2/pdf/PPP-1992-book2-doc-pg2004-2.pdf). The same statement separately objected to the Act's congressional-access provision (§ 7(l)) (Bush, "Statement on Signing," pp. 2004–05) — the objection M-8 draws on. The Act has been litigated: in *Mary Ferrell Foundation, Inc. v. National Archives and Records Administration*, No. 3:22-cv-06176 (N.D. Cal.) (claims against the first-named defendant, President Biden, dismissed), plaintiffs pressed disclosure under it; the Archives' partial-summary-judgment motion (DE 117) was granted February 13, 2026 (DE 164). Statute structure at Pub. L. 102-526 §§ 5(c), 9(c)–(d).

committee secure facilities under chamber rules: its "notwithstanding section 2(c) or any other provision of law" language reaches every § 2(a) record, more plainly still with M-14. Otherwise exclude classified records from that route and use § 4(d). Cite *Egan*'s statutory frame in the section-by-section.

M-9. Standing — draft per plaintiff route

Problem. A State suing "on behalf of … the residents thereof" (§ 4(a)(1)) acts as *parens patriae*, protector of residents rather than an injured party. *Massachusetts v. Mellon* bars that route against the United States, as restated in 2023;[24] its application here remains open.[25] Own-injury State suits are distinct and stronger. Define whether district attorneys represent "the State." Victims are the strongest route. Institutional authorization and injury must match: *McGahn*'s committee had standing to seek enforcement of a full-House-authorized subpoena; *Bethune-Hill*'s chamber lacked authority to represent the State and injury of its own.[26] Individual Members face *Raines v. Byrd*: statutory permission to sue did not suffice.[see n. 26] Congress can make concrete harms actionable, but injury in law is not injury in fact.[27] *TransUnion*'s public-disclosure distinction favors the bill's proximity to *FEC v. Akins*. Several § 4(a)(3) harms supply the required downstream consequences; purely informational items still need concreteness.[28]

Phang v. Blanche supplies preliminary, plaintiff-specific APA relief. Finality was conceded for that injunction; the Department has since pleaded that there is no final agency action and moved for judgment on the pleadings, and the appeals remained pending when the D.C. Circuit denied a stay on October 28, 2026. Content questions remain unresolved; an order is not completed public production. This relief does not supply all proposed EFTA remedies: express plaintiff routes and fees, M-2's litigation-reducing defaults, and M-3's damages waiver.[29]

Recommendation. Separate own-injury State suits from resident-representative suits, tying relief to an active State investigation and the State's own injury. Authorize a suit by a committee authorized by its chamber to vindicate a specified institutional information or subpoena injury. Neither committee

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[24] *Massachusetts v. Mellon*, 262 U.S. 447 (1923); *Haaland v. Brackeen*, 599 U.S. 255 (2023).

[25] *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592 (1982); *Massachusetts v. EPA*, 549 U.S. 497 (2007).

[26] *Raines v. Byrd*, 521 U.S. 811, 829–30 (1997) (individual legislators alleged an abstract, dispersed institutional injury and lacked chamber authorization); *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658 (2019), slip op. pp. 4–12 (no authority to represent Virginia and no distinct injury to the chamber); *Committee on the Judiciary v. McGahn*, 968 F.3d 755 (D.C. Cir. 2020) (en banc), slip op. pp. 4, 16–18, 38 (full-House-authorized subpoena and concrete information injury; Senate joinder unnecessary; cause of action and immunity reserved).

[27] *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016); *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021).

[28] *TransUnion*, 594 U.S. 413 (public-disclosure distinction); *FEC v. Akins*, 524 U.S. 11 (1998); *Public Citizen v. U.S. Department of Justice*, 491 U.S. 440 (1989).

[29] *Phang*, Mem. Op., ECF No. 16, pp. 19, 36 (for the preliminary injunction, finality conceded and unopposed merits arguments treated as conceded), pp. 21–35 (likely standing and no adequate FOIA remedy, independently analyzed), p. 48 (preliminary relief). The Department has since answered that there is no final agency action (Answer, ECF No. 50, p. 11, D.D.C. Sept. 24, 2026) and moved for judgment on the pleadings, contesting right of action, standing, the APA standard for compelling action, redactions, foreign-language production, reporting, ultra vires, and declaratory relief (ECF Nos. 52, 52-1, D.D.C. Oct. 1, 2026). Mem. Op. & Order, ECF No. 43, pp. 9–20 (D.D.C. Sept. 16, 2026), preserves supported victim redactions, orders further in camera submissions and foreign-language review, and discharges the § 2(c)(2) show-cause order without deciding whether the § 3 report satisfies § 2(c)(2). Mem. Op. & Order, ECF No. 42, pp. 4–5, 8 (D.D.C. Sept. 16, 2026); Notices of Appeal, ECF No. 35 (Aug. 24, 2026) and ECF No. 44 (Sept. 17, 2026). Order, ECF No. 49, pp. 4–5 (D.D.C. Sept. 21, 2026) (denying the requested partial stay but temporarily staying foreign-language review/production and the September 24 review notice pending the D.C. Circuit stay process; joint notice due within three days after circuit resolution of the stay motion). The Department submitted materials for in camera review on September 24 (ECF Nos. 54; 57, pp. 1–2); neither ordered submissions nor review establish completed public production. *Phang v. Blanche*, No. 26-5299 and No. 26-5334, consolidation order (D.C. Cir. Sept. 21, 2026); per curiam order (Oct. 28, 2026) (denying the stay pending appeal; referring Phang's motion to dismiss the appeals to the merits panel). No appellate merits determination appears in the dockets retrieved October 30, 2026, and the district docket as retrieved shows no order lifting the temporary stay.

designation nor concurrent authorization substitutes for institutional injury; a standing holding supplies neither a cause of action nor an answer on immunity. Keep § 4(a)(3), enumerating the concrete-consequence harms as the pleading hook, citing *TransUnion* and *Akins*.

M-10. § 4(f) criminal penalties — restructure or remove

Problem. § 4(f) attaches liability under 18 U.S.C. §§ 1001, 1505, 1519, and 2071 to officers of the Department, the FBI, and the U.S. Attorneys' offices, naming the Attorney General and FBI Director — statutes only the Department of Justice can charge. This risks under-enforcement, not legal unenforceability. The four offenses have different act, custody, proceeding, and materiality elements; "as applicable" does not map them to conduct. The bill preserves their intent elements, and § 4(f)(2)–(3) closes only part of §§ 1505 and 1519.

In Iran-Contra, **accountability failed on durability, not initiation**: prosecutions for withholding from Congress produced pleas and convictions, but pardon or reversal undid all except Secord's result.[30] Reversal, classification procedure, charging discretion, and pardon each limit durable accountability.

Recommendation. Map each prohibited act to a specific predicate with its retained elements. Then add two consequences that need no charging decision. First, a **civil penalty against the individual official**, drafted as its own personal-capacity claim with service, defenses, and collection machinery; the bill's existing actions are official-capacity and cannot carry it (see M-3). Second, **mandatory referral-and-report**: a § 4(e)(3)(C) finding that a justification was materially false is transmitted to the Judiciary Committees and published, and the Department must report whether it opened an investigation and, if not, why. Congress cannot compel prosecution; it can make declination visible. The private-prosecutor route is not a template: *Young v. United States ex rel. Vuitton* concerns contempt of a court's own order, not statutory offenses.[31]

M-11. Smaller items

- **Tighten § 2(c)(1)(C), the widest remaining door.** With (E) struck and privileges barred, (A), (B), and (D) protect narrow, objectively checkable categories; **(C) does not**. DOJ assesses "narrowly tailored and temporary" without an outer limit. Require identification of the specific investigation per document in M-7 accounting, non-publicly if necessary, an outside limit with affirmatively justified renewal, and automatic release within a fixed period after closure to the extent no independently applicable withholding basis remains, after M-2/M-4 screening. Closure ends (C), never (A), (B), (D), classification, or a governing court order.
- **§ 4(e) expedite.** Add an expedite instruction — concrete scheduling deadlines in days, not § 4(a)(2)'s "to the greatest extent practicable," which sets no deadline a party could enforce. Conform § 4(a)(2) and § 4(b)(3)(B) to the same form.
- **Response deadlines.** None attach to § 4(b), § 4(c), or § 4(d) access; a "delay" cause of action needs a date from which delay is measured.
- **§ 4(d)(2)'s court.** "Approved by the court" — which court, on what application, with what jurisdiction, burden, appeal route, and secure-facility funding, is unstated, including where the requester has no pending case.
- **Gate the § 4(g)(1)(A)(iii) affidavit route.** Victim status by unreviewed sworn declaration unlocks unredacted investigative files (§ 4(b)(1)); the § 4(g)(1)(B) exclusion operates only after

[30] Lawrence E. Walsh, *Final Report of the Independent Counsel for Iran/Contra Matters*, vol. 1 (Washington, DC, 1993), pp. xxiii–xxv (outcomes and complete pardon list), 32 (congressional immunity). Richard Secord's surviving guilty plea to false statements to Congress drew two years' probation, no custody; he was not on the pardon list. Classification procedure separately ended *United States v. Fernandez*, 913 F.2d 148, 151, 164 (4th Cir. 1990), when the Attorney General's CIPA § 6(e) affidavit barred disclosures necessary to the defense; Walsh, *Final Report*, vol. 1, p. xxv.

[31] *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787 (1987).

the fact. Require an expedited in camera determination — review by the judge in chambers, not in open court — in the district court where the § 4(b)(3) action would lie, before unredacted production on this route. Routes (i) and (ii) rest on existing records and need no gate.

- **Inspectors general.** *Trump v. Slaughter* (June 29, 2026) overruled *Humphrey's Executor*;[32] building a validator on removal protection is no longer sound drafting. Inspectors general already serve at pleasure — under 5 U.S.C. § 403(b), removal requires 30 days' advance notice to Congress with stated reasons, not cause — so do not attempt for-cause protection: build on the notice-and-reasons model, and route independence through GAO (M-7), a legislative-branch office the doctrine does not reach.
- **Foreign-language and technically incompatible material.** The Department's January 30, 2026 letter states that foreign-language pages were withheld without a responsiveness determination — "those pages have not been produced" — and reports a second category, materials its review platform could not load, withheld the same way; neither ground appears in § 2(c)(1).[33] Require review or translation on a deadline, a language-coded line in the M-7 accounting, and a rule that impracticability of review is not a withholding basis: unproduced covered material is identified by category and volume, with its asserted ground stated.
- **Severability.** § 4(d)(3), the (E) repeal, and M-13's limitation are the likeliest provisions to fall; there is no severability clause. Add one.
- **Reconcile the chamber texts before markup.** A provision-by-provision comparison finds 14 changed provisions, or 12 if the three title and heading changes count as one. Three change or clarify operative text; a fourth, the Senate's narrower title, is substantive only if framing counts.[34] House § 4(e)(2)'s broken enumeration degrades the materially-false-justification trigger supporting M-10; adopt the Senate's clean enumeration. House § 4(a)(6) leaves which Act's enactment date controls ambiguous, affecting Part I's retroactivity point; adopt the Senate date form. House § 4(a)(1)'s "any district court located in the State" omits the "United States" that § 4(b)(3)(A) carries, inviting an argument for federal-officer suit in state court and affecting M-3 and M-9; adopt the Senate's "any United States district court." The Senate narrows the title to state-AG enforcement despite retaining victim, congressional-access, and penalty provisions; restore the fuller title.

M-12. Cure the existing production — retrospective conformity

Problem. § 2(d)'s per-redaction duty is prospective, and the released production does not comply with it: a pre-enactment FBI instruction directed reviewers to apply bare boxes ("Do not add any exemptions; just redaction boxes"), and material from four inherited record or redaction groupings kept its original redactions, under no § 2(c) re-check the record discloses.[35] The consequence: no outside party can tell an authorized victim-privacy redaction from one shielding a person the statute forbids protecting. (Enacted §

[32] *Trump v. Slaughter*, No. 25-332 (U.S. June 29, 2026) (overruling *Humphrey's Executor v. United States*, 295 U.S. 602 (1935)); 5 U.S.C. § 403(b); *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477 (2010); *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. 197 (2020).

[33] ODAG compliance letter, January 30, 2026 (cited in full above), at 5 ("Because it was not practicable for a first-level reviewer to determine the responsiveness of a foreign-language document, those pages have not been produced"; technically incompatible materials "could not be reviewed for responsiveness and have not been produced"); ElSheshai, *National Security Power and Constitutional Imbalance*, v8.20.3, § Contemporary Congruence Assessment: EFTA, Self-defined Compliance #3 — Disputed privilege construction, and app. C, Table C.2 (Bases for redaction or non-production that DOJ applied and § 2(c)(1) does not list), foreign-language records and technically incompatible files rows (the former rationale rejected; the latter not adjudicated).

[34] Author provision-by-provision comparison of H.R. 9694 IH and S. 5005 IS, from the official congress.gov XML texts, July 2026, repeated October 30, 2026. One row per changed provision; the corresponding outer withholding amendments form one row. "Substantive" means a change to operative scope or a material clarification of operative ambiguity: § 4(a)(1) venue, § 4(a)(6) enactment date, and the § 4(e)(2) enumeration. Classifying headings and grammatical repairs is a judgment; ours treats the title change as framing, not operative text.

2(c)(2) already required justifications at release, so this cures a documented default rather than imposing a new retroactive burden; an express retroactivity clause raises no serious *Landgraf* problem.[36])

Recommendation. Require **retrospective conformity**: the M-5 index and signed completion certificate within 90 days of enactment, then a 180-day conformity period from certified completion to designate each (A), (B), or (D) redaction and re-justify every redaction under § 2(c)(2). Publish through the index with a Federal Register availability notice; enforce the index deadline separately. For undesignated-and-unjustified redactions, waive only waivable EFTA bases at conformity expiry. For designated-but-unjustified redactions, by that same outside date the Attorney General must file for expedited in camera review in an available authorized proceeding under M-7 on M-11's affidavit-gate model; otherwise issue M-7's signed protected-withholding determination, preserve the material, and publish its non-identifying determination or summary in the M-7 log, cross-linked in the M-5 index. This administrative deadline is independent of M-7's court clock: 30 calendar days after proper filing in a court with jurisdiction. Waive only waivable bases at the applicable determination, judicial disposition, or missed administrative or judicial deadline. The Attorney General must release the lawful remainder within 30 days of the first applicable event; no judicial disposition is required where no proceeding exists. Preserve M-2's savings and M-4's reconciliation: no default waives (A), (B), (D), classification, external law or governing orders. Before re-release, apply M-7's screen; release only the lawfully releasable version. Log results in the M-5 index and M-7 report. Missing designation, justification, determination, publication, screening or review deadlines remains a published, § 4-enforceable default subject to plaintiff eligibility and Article III. For court-ordered redactions, require the Attorney General to move the issuing court within the conformity period on M-4's December 2025 template. M-7's basis distribution exposes boilerplate justifications.

M-13. Condition appropriations on certified compliance

Problem. The bill depends on plaintiffs and courts; § 4(f) also needs DOJ charging. The *Constitutional Imbalance* research paper treats criminal contempt, civil litigation, and appropriations as routes with different dependencies, and records private judicial compulsion.[37] Contempt depends on an executive prosecutor; Congress controls appropriations, which this bill leaves untouched.

Recommendation. Make a defined percentage of a named Department account — administrative and leadership-office funds, never investigations, prosecutions, victim services, or § 2 review — unavailable for future obligations when M-7's certification condition fails. Apply M-7's first-quarter transition and fifteenth-day window: the preceding valid certificate survives through the deadline; test the new one the next day. Nonfiling, qualification, or withdrawal suspends future obligations; qualification and withdrawal operate immediately, including mid-quarter. A compliant filing or correction restores availability prospectively, never curing obligations incurred during unavailability. Knowingly false certification incurs M-7's perjury exposure and M-10's referral-and-report duty. Require the Comptroller General to transmit an adverse GAO report to both Judiciary Committees and both Appropriations Committees within seven days of issuance, recommending expedited consideration. Transmission

[35] Federal Bureau of Investigation, "IMD Processing Guidance," March 21, 2025, DOJ EFTA production, Bates EFTA00172446 (the quoted instruction at EFTA00172451: "Do not add any exemptions; just redaction boxes"); ElSheshai, *National Security Power and Constitutional Imbalance*, v8.20.3, § Contemporary Congruence Assessment: EFTA, Self-defined Compliance #1 — Earlier processing instructions and #2 — Inherited markings, and app. A.3.3, Justification Analysis, Table 12 (569 inherited-framework assignments and 314 common-law-privilege assignments in 2,670 phrase-query documents; the combined 883 are framework-language assignments, not verified basis-citing documents).

[36] *Landgraf v. USI Film Products*, 511 U.S. 244 (1994). The Department published its category-level report dated February 14, 2026 in the Federal Register on August 27, 2026, stating that it did so pursuant to Section 2 of the Act (91 Fed. Reg. 55356).

[37] ElSheshai, *National Security Power and Constitutional Imbalance*, v8.20.3, §§ Conceptual Framework, Hypothesised Preconditions, Table 3 (Weak enforcement capacity), and Contemporary Congruence Assessment: EFTA, The Congressional and Judicial Response; app. C, Tables C.3 (Congress's routes for enforcing a subpoena against an executive officer) and C.5 (Consequences that attach without a court).

compels neither committee action nor a floor vote. Unavailability stays tied to certification; GAO informs, since legislative control of execution violates *Bowsher v. Synar*.[38] Unavailable funds cannot lawfully be obligated without a plaintiff or judgment; the Antideficiency Act, 31 U.S.C. § 1341, is the sanction backdrop. Define restricted offices by office and function, never individuals; name the account and add severability (M-11). Removing the standing limitation requires express language in a later appropriations act, making reversal visible and attributable.

M-14. Extending the Act to intelligence-community holdings

Problem. EFTA § 2(a) requires unclassified records in DOJ possession. The possession limit excludes otherwise responsive intelligence-community records not in DOJ possession, even if "unclassified" is struck; otherwise covered records already in DOJ possession remain within the Act.[39] The National Security Agency (NSA) neither-confirm-nor-deny response on intelligence material (EFTA00606101) and Central Intelligence Agency (CIA) response (EFTA01089565) establish neither responsive classified holdings nor a service relationship. CIA reported no located records in its acknowledged-affiliation search (November 5, 1999–July 25, 2011), separately neither confirming nor denying a classified connection.[40] Holdings beyond DOJ are our disclosed assessment, not established fact; M-14A tests for them before M-14B expands scope.

Recommendation. Split M-14 into independently enacted stages.

- **M-14A — enact the search and sampling floor.** Enact identifiers, coverage, counts, sampling, materiality, cure, and status rules; all days are calendar days. The Director of National Intelligence (DNI) must send the intelligence committees an identifier schedule and validation plan by day 15 after enactment. The statutory minimum operates on day 30 even if DNI issues nothing; a plan may add, never narrow, requirements. Cover Epstein, Maxwell, known aliases, aircraft, account, and entity identifiers reasonably likely to return responsive records; all dates through the common day-30 records date; and every reasonably likely repository. Committee recommendations received by day 23 require DNI's written adoption or explanation within seven days, never approval. Later expansions adopted by DNI or directed by the executive validator require a signed supplemental return within 30 days, without resetting the records date.
- **Preserve the diagnostic record from enactment.** Element heads must retain potentially responsive records, search-defining inventories, and search and validation logs through validation, cure, and supplemental work; document authorized transfers and losses. Only the Inspector General may lift a completed element's or record set's hold by reasoned determination after 30 days' secure notice to its head, DNI, and both intelligence committees, plus non-sensitive public notice. Outstanding work bars release; reopening reimposes the hold. Diagnostic completion does not release located responsive records or their evidentiary audit package: retain secure copies for a **retention interval** of one year after the final required transmission. The Inspector General may extend it on the intelligence committees' written request. Stage B must continue preservation under a successor duty. Existing retention duties remain. Notice enables scrutiny, not committee approval; neither hold nor retention expands disclosure.

[38] *Bowsher v. Synar*, 478 U.S. 714 (1986); 31 U.S.C. § 703(e)(1)(B) (removal by joint resolution); 31 U.S.C. § 1341 (Antideficiency Act).

[39] EFTA § 2(a), 139 Stat. 656 (DOJ possession, expressly including FBI records); 50 U.S.C. § 3003(4)(H) (FBI and Drug Enforcement Administration intelligence elements).

[40] National Security Agency, final response on administrative appeal, declining to confirm or deny intelligence records, to a Freedom of Information Act request made on Epstein's behalf by counsel Darren K. Indyke, July 30, 2014, DOJ EFTA production, Bates EFTA00606101; Central Intelligence Agency, response to a Freedom of Information Act/Privacy Act request made on his behalf by counsel Martin G. Weinberg, July 29, 2011, DOJ EFTA production, Bates EFTA01089565 (no records located in the files it searched; neither confirming nor denying a classified connection).

- **Require signed element returns by day 120.** Each 50 U.S.C. § 3003(4) element head signs; DNI coordinates but cannot substitute its signature. For every EFTA § 2(a) category report positive count, zero, or unable to determine. Count the lowest separately retrievable record; separate series counts and bounded estimates; assign multicategory records to the first applicable category and flag others; report within-element duplicates and DNI's gross and estimated-unique cross-element totals. Identify claimed nondisclosure, operational-file, search, review, transfer, liaison, and publication authorities and designations. Require a signed exhaustive inventory of systems, record sets, custodians, operational files, legacy stores, contractor holdings, transferred repositories, and liaison or compartmented holdings reasonably likely to contain responsive records; identify exclusions and reasons. Zero returns require exact terms, date coverage, and limitations.
- **Specify receipt and secure handling.** Send the unclassified certificate to both intelligence committees and both Judiciary Committees; send the classified annex only to the intelligence committees defined in 50 U.S.C. § 3003(7). Judiciary receives only the unclassified certificate under this section. Make committee submission a lawful demand within 18 U.S.C. § 798(c). Require secure transmission and storage, appropriate staff clearance and compartment eligibility, and controlled onward disclosure under chamber and originator rules. Give the executive validator secure access to the complete product; protected inventory details belong in the annex.[41]
- **Assign executive validation with congressional scrutiny.** Make cross-element M-14A validation an express statutory responsibility of the Inspector General of the Intelligence Community, an internal executive validator under DNI supervision, subject to independent congressional scrutiny.[42] Provide expressly that 50 U.S.C. § 3033(f) cannot suspend this validation, its required secure access, or issuance of its determination. Retain secure handling and protection against public disclosure; the exception leaves other § 3033(f) work untouched and does not settle M-8's residual Article II question. Give the Inspector General access to enterprise inventories, exact query syntax, logs, complete returns, and candidate records, and power to order searches of additional qualifying repositories. Cleared intelligence-committee staff may access the same material, observe and rerun searches, select candidates, test samples, record findings, and recommend expansions. Committees retain oversight, subpoenas, and legislation; their directions and signatures cannot change executive duties or status. The Inspector General must adopt supported staff findings or explain rejection. Review all syntax and returns; sample, partly randomly and partly by risk, at least 25 log entries per system when available and 25 candidate records or all if fewer; expand for anomalies. Record random-selection procedure, risk criteria, population sizes, and achieved coverage in the plan and signed determination. A defect is material if it could change status, omit a required category, custodian, term, or date range, change a count by at least five percent, or prevent rerunning; an omitted qualifying repository is automatically material.
- **Enact defaults and bounded cure.** On day 121 an unfiled certificate becomes unable to determine by operation of law. A late or qualified filing, or withdrawal received by DNI or the Inspector General, has that status immediately. Validate by the earlier of 45 days after initial

[41] 50 U.S.C. § 3003(7) (Senate Select Committee on Intelligence and House Permanent Select Committee on Intelligence); 18 U.S.C. § 798(c) (furnishing information on lawful demand to a regularly constituted congressional committee). Neither provision authorizes unrestricted public disclosure.

[42] *Metropolitan Washington Airports Authority v. Citizens for the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 276 (1991) (an agent of Congress cannot exercise executive power, and legislative action must satisfy bicameralism and presentment); *Bowsher v. Synar*, 478 U.S. 714, 726, 732–35 (1986) (Congress may not retain control over execution through an officer accountable to it). 50 U.S.C. § 3033(c)(1), (3) provides presidential appointment with Senate consent and DNI supervision; § 3033(f)(1) permits DNI to prohibit an audit, inspection, or investigation to protect vital national-security interests, with reasons to the intelligence committees within seven days and Inspector General comments under (f)(2)–(4). Subsection (g)(2)(A) expressly remains subject to (f); (g)(2)(B)–(D) provides employee and responsibility-linked records access. M-14A proposes a narrow statutory exception, not executive insulation.

filing or day 165 after enactment; nonfiling never removes the outside date. Issue a reasoned validated-positive, validated-all-zero, or qualified-unable-to-determine decision; denied or incomplete access or a material uncured defect requires qualification. Missing the decision deadline produces qualified-unable-to-determine status by operation of law the next day. The first default, qualified filing or determination, withdrawal, or signed defect notice starts one 30-day cure period per element; later defects, refilings, or withdrawals restart neither cure nor validation. Decide on cure within 15 days after its receipt or due date, whichever is earlier. Only cure ordered before the original validation deadline permits one signed, reasoned extension of at most 30 days; the original deadline plus 30 days or day 195, whichever is earlier, controls despite a later cure. No extension follows validator nonaction. The executive decides contested search facts; only a compliant determination can remove a default prospectively. These statuses describe unresolved compliance, never proof of holdings. Record reasons for staff disagreement, separating search/access defects from interpretive or policy dissent; dissent is not affirmative evidence of holdings.

- **Reopen and validate supplements.** From a material expansion order until validation, mark the affected element reopened/pending and retain its prior status and compliance history. The element head signs the supplemental return; the Inspector General must determine its status within 30 days after that return is due. Initial deadlines remain unchanged; supplemental determinations receive no extension. Missed return or determination deadlines produce qualified-unable-to-determine status by operation of law the next day. Apply the single per-element cure: a first default starts it; supplements never erase a missed initial deadline or restart or extend cure. A validated new positive triggers the seven-day transmission duty below; an unresolved supplemental default or qualification triggers it after the existing cure expires, immediately if already expired. Publish each reopening, return, deadline default, and determination under the seven-day protected-field rule below. A later all-zero determination must cover the combined original and supplemental search and resolves the element only when all required work and material defects are resolved; publish and transmit the correction within seven days to the same recipients. It neither erases an earlier default nor cancels an accrued transmission duty, and program closure still requires every element's validation.
- **Publish compliance and transmit unresolved results.** Supply full status and basis through the specified secure committee and validator channels. Element heads may substitute "protected field" for protected statuses, counts, or other fields, including inferential aggregates in unclassified certificates and public extracts, supplying both intelligence committees and the validator signed, authority-specific reasons. Withholding changes no substantive status; filing, cure, and validation compliance remain publishable.[see n. 40] Within seven days of the filing deadline and each filing, default, withdrawal, determination, or cure, DNI must publish aggregate and element extracts: element, filing date, selected status, qualification, cure and validation status, and non-sensitive legal categories, subject to those protections. Retain the unclassified committee certificate. Nonpublication suspends no default, cure clock, or trigger. DNI must transmit a validated positive within seven days of validation, without awaiting cure. For an unresolved default or qualification, DNI must transmit within seven days after the element's cure period expires; if that period has already expired, within seven days after the new default or qualification arises. Both transmissions go to all four committees through the specified channels, recommending expedited consideration of M-14B. Transmission starts the preservation bullet's retention interval; later required transmissions extend its endpoint. This duty neither enacts M-14B, compels committee action or a floor vote, nor expands custody. All-zero validation resolves only that element; program closure requires validated all-zero findings for every element and category, without outstanding material defects or supplements. Congress may legislate or consider recorded dissent.

- **M-14B — enact any extension separately.** Create independent EFTA duties to search, review, preserve, transfer securely, and publish as authorized, notwithstanding every applicable nondisclosure, operational-file, search, review, transfer, liaison, and publication restriction. Enumerate the known authorities nonexclusively — at least 50 U.S.C. §§ 3024(h), 3507, 3605, 3141–3144, and 3146, and 10 U.S.C. §§ 424 and 457 — and use the element-by-element crosswalk.[43] Specifically modify every operational-files anti-supersession clause; a general notwithstanding phrase is not enough. Each element head owns search, preservation, classification review, secure transfer, and M-1's § 2(c)(3) account; DNI coordinates deduplication and deadlines; and the Attorney General publishes when custody cannot transfer.
- **Create the referral duty the new process needs.** The bill must create its own originator-referral duty, modeled on the procedure in Exec. Order No. 13,526, § 3.6(b), and expressly apply it to M-14 review; the order itself limits that procedure to named request regimes. Protect foreign-government information and marked originator controls under §§ 4.1(h)–(i). Unresolved liaison or originator objections yield a classified explanation and an unclassified summary where possible, not automatic publication or a categorical bar. Keep M-14 severable from M-1.

The President John F. Kennedy Assassination Records Collection Act of 1992 is precedent, not a clean analogy: it let the President certify postponement instead of defying the statute.[see n. 23] An extension without that valve invites the confrontation the Act avoided; retain a protective valve and independent congressional scrutiny of the internal executive validator, subject to M-8's residual exposure.

Part III — Open questions and prior conclusions

Open questions. None must be resolved before drafting:

- **May a State sue the United States on behalf of its residents (§ 4(a)(1))?** How *Mellon* and the later quasi-sovereign-interest cases apply to this bill remains a question for the court hearing a State suit. M-9 drafts around it.
- **Does presidential criminal immunity shelter subordinate principal officers?** *Trump v. United States* decides the President's criminal immunity, not an Attorney General's or FBI Director's. *Harlow* and *Butz* concern civil-damages immunity, generally qualified with function-specific absolute exceptions; neither supplies qualified immunity against a federal criminal charge or settles defenses to a new statutory civil penalty.[44] The criminal issue remains for a court presented with it. It need not prevent enacting independent civil and reporting duties, while the civil cause of action must specify its own defenses.
- **Does § 4(a)(3)'s harm definition satisfy Article III concreteness?** *TransUnion* requires a case-specific inquiry; the court must assess the pleaded injury under this bill on a motion to dismiss. M-9 adds independent tethers.

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[43] Authority crosswalk: every 50 U.S.C. § 3003(4) element is subject to 50 U.S.C. § 3024(h), Exec. Order No. 13,526, and each authority its M-14A certificate identifies. CIA adds 50 U.S.C. §§ 3507 and 3141; NSA adds 50 U.S.C. §§ 3605 and 3144; NGA adds 50 U.S.C. § 3142 and 10 U.S.C. § 457(a); NRO adds 50 U.S.C. § 3143; ODNI adds 50 U.S.C. § 3146. At the public-product stage, DIA, NRO, and NGA also add 10 U.S.C. § 424; its subsection (c) congressional carveout leaves M-14A receipt intact. Other elements add the host and element-specific authorities reported under M-14A. The bill must individually cite and modify the anti-supersession rules in 50 U.S.C. § 3141(e); 50 U.S.C. § 3142(a)(5); 50 U.S.C. § 3143(a)(5); 50 U.S.C. § 3144(e); and 50 U.S.C. § 3146(e), solely for the new EFTA duties and without disturbing non-EFTA operations.

[44] *Trump v. United States*, 603 U.S. 593 (2024), slip op. pp. 6–9, 14–15 (absolute criminal immunity within exclusive presidential constitutional authority, at least presumptive immunity for other official acts, none for unofficial acts); *Harlow v. Fitzgerald*, 457 U.S. 800, 807–08, 818–19 & n.34 (1982) (civil damages, functional exceptions, express reservation of injunctive or declaratory relief); *Butz v. Economou*, 438 U.S. 478, 507, 511–17 (1978) (qualified immunity for discretionary executive conduct in constitutional damages suits; absolute protection for specified adjudicative and prosecutorial functions).

- **Does the *Egan* objection to § 4(d)(3) succeed?** *Egan*'s holding is statutory, and its deference qualifier reserves the case where Congress "specifically has provided otherwise". Whether this bill supplies that direction and survives the remaining Article II objection is for the reviewing court. M-8's restructure narrows the exposed surface.
- **May Congress direct a private-prosecutor appointment by statute?** Left open deliberately: *Young* reaches only contempt of a court's own orders, *Morrison v. Olson* upheld a court-appointed prosecutor on foundations since eroded,[45] and the memo does not recommend the device, so nothing turns on the answer.
- **Which appropriations account should M-13's limitation name?** Open because account structure is an Appropriations Committee and Legislative Counsel determination; the memo specifies the incidence — administrative and leadership offices, never enforcement, victim-service, or review functions — and leaves the account line to drafting.

Prior conclusions, disclosed. M-6 restates proposal 6 of our earlier work;[see n. 16] other recommendations do not depend on it. Ranking intelligence-adjacent material outside DOJ possession as the most consequential excluded category is our inference from the companion research note's evidence review, not a ranking either work makes. M-14A tests whether covered holdings can be located; their significance and the intelligence-adjacent assessment require examining the records. Stage A is independently useful; Congress separately decides M-14B. No other recommendation depends on the inference.

Part IV — Technical corrections

1. **§ 4(a)(4) vs § 4(a)(5).** "Exclusive procedural framework" conflicts with "cumulative" remedies. State which controls, for which plaintiffs and which routes.
2. **§ 4(f)(1).** The bill specifies fines or imprisonment under 18 U.S.C. §§ 1001, 1505, 1519, and 2071, as applicable, retaining their required mental states. Clarify how each listed act maps onto those offenses and their remaining elements, as M-10 recommends.[46]
3. **§ 2(b)(2).** "Except as expressly permitted under subsection (c)" permits nothing — subsection (c) creates no privilege basis. Strike the clause, or say what it permits.
4. **EFTA § 2(a).** "Subject to subsection (b)" should also name subsection (c), where the withholding rules live.
5. **§ 4(a)(1) / § 4(b)(3).** Victims hold two differently drafted causes of action, with different scope and predicate acts. Relief is materially identical; venue is identical in the Senate text but differs inside the House's — § 4(a)(1) drops the "United States" that § 4(b)(3)(A) carries (the divergence M-11 reconciles). Merge the routes, or state how they interact.
6. **Undefined terms.** Section 4(g) defines the bill's named terms for § 4 only. Define Act-wide "completion," "other authorized State officer," "unlawful withholding," "materially false," "temporary," and the reach of "that relate to"; item 8 separately states the substantive scope instruction for that last phrase.
7. **Affirmative segregability, EFTA § 2(c)(1).** The enacted paragraph permits withholding or redaction of segregable portions under (A)–(E). Add, after the subparagraph list and before paragraph (2): "The Attorney General shall release every reasonably segregable portion not authorized to be withheld under this Act." Conform this added duty to M-4's reconciled protections alongside § 2(a). Capitalize "General" in paragraph (1)'s opening sentence.[47]

[45] *Morrison v. Olson*, 487 U.S. 654 (1988).

[46] H.R. 9694, 119th Cong., 2d Sess. § 2(a) (2026), proposed § 4(f)(1)–(3); S. 5005, 119th Cong., 2d Sess. § 2(a) (2026), proposed § 4(f)(1)–(3) (both incorporate the four Title 18 offenses, their applicable penalties, and their required mental states).

8. **"That relate to," EFTA § 2(a).** The Act's widest scope phrase, and undefined. The fix runs toward disclosure, not away from it: define what connection to the investigations suffices — in an Act-wide definitions provision, since § 4(g) is scoped to § 4 — rather than leaving the Department to read the phrase for itself.

Position

Our document-level research ranks **intelligence-adjacent material outside DOJ possession** as the most consequential excluded category; otherwise covered intelligence records in DOJ possession remain within the Act. Classification is a separate withholding question; DOJ reports never invoking that basis.[48] The NSA and CIA letters, EFTA00606101 and EFTA01089565, neither establish responsive classified holdings nor a service relationship; CIA's negative acknowledged-affiliation search is distinct from its classified-connection non-confirmation.[see n. 40] The *Constitutional Imbalance* research paper rests its EFTA analysis on executive custody of records, not on any intelligence operation in the underlying matter. Its separate research note on the intelligence-network evidence documents arranged contacts, a private financing structure, and a former NSA officer's attributed public assessment, not declassified official identification; it assigns no aggregate probability and finds that these records do not establish a service-directed intelligence operation.[49] The reviewed record contains neither formal state-service documentation nor independent foreign-government acknowledgment. The first is disclosure-reachable if held in the United States; records outside DOJ possession need M-14's expansion, while classification separately requires protected handling. The second remains beyond any United States disclosure statute. M-14A tests whether covered holdings can be located; their significance and the underlying assessment require examining them. The diagnostic is independently useful; Congress separately decides M-14B. The drafting rule applied throughout Part II: **resolve every ambiguity toward forcing covered material into the open, or forcing a named official to refuse it on the record** — under a stated legal basis, on a stated date, subject to independent congressional scrutiny, with M-14A's operative findings assigned to an internal executive validator.

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[47] Epstein Files Transparency Act, Pub. L. No. 119-38, § 2(c)(1), 139 Stat. 656, 657 (2025). The proposed affirmative sentence is an addition after the surviving subparagraph list, accounting for the bill's deletion of (E).

[48] ODAG compliance letters (cited in full above); the January 30, 2026 letter states at p. 4 that the Department did not use the § 2(c)(1)(E) classified basis.

[49] ElSheshai, *National Security Power and Constitutional Imbalance*, v8.20.3, § Contemporary Congruence Assessment: EFTA ("Its inclusion rests on executive custody of records and control of the initial release process, not on any intelligence operation in the underlying matter."); ElSheshai, *Research Note: Intelligence-Network Underlay* (unpublished research note, September 30, 2026), appendix introduction ("withdraws the aggregate numeric/WEP calibration"; "The records do not establish that the Epstein-Maxwell enterprise was a service-directed intelligence operation"); C.1, Methodology ("The former mandatory/additive distinction and elevation rule are withdrawn"); C.2, criteria 1, 5, 6, 7, and 10; and C.3, Conclusion ("Repeated carriers and derivative commentary do not create independent corroboration").

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