
No. 21-5254

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DONALD J. TRUMP, in his capacity as
The 45th President of the United States,

Plaintiff-Appellant,

v.

BENNIE G. THOMPSON, in his official capacity as Chairman of the United States House Select Committee to Investigate the January 6th Attack on the United States Capitol; THE UNITED STATES HOUSE SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6th ATTACK ON THE UNITED STATES CAPITOL; DAVID S. FERRIERO, in his official capacity as Archivist of the United States; and THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION,

Defendant-Appellees.

On Appeal from the United States District Court
for the District of Columbia

JOINT APPENDIX

Jesse R. Binnall
BINNALL LAW GROUP, PLLC
717 King Street, Suite 200
Alexandria, VA 22314
Tel: (703) 888-1943
Fax: (703) 888-1930
jesse@binnall.com

Justin R. Clark
ELECTIONS, LLC
1050 Connecticut Avenue, NE, Suite 500
Washington, D.C. 20036
(202) 987-9944
justin.clark@electionlawllc.com

COUNSEL FOR PRESIDENT DONALD J. TRUMP

TABLE OF CONTENTS

RELEVANT DOCKET ENTRIES FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA	3
COMPLAINT AND EXHIBITS.....	6
DECLARATION OF B. JOHN LASTER AND EXHIBITS.....	120
MEMORANDUM OPINION	177
ORDER DENYING PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION	216
NOTICE OF APPEAL	217
TRANSCRIPT OF PROCEEDINGS.....	219
ORDER DENYING PLAINTIFF'S EMERGENCY MOTION FOR A PRELIMINARY INJUNCTION PENDING APPEAL OR AN ADMINISTRATIVE INJUNCTION ...	281
CERTIFICATE OF SERVICE	287

**RELEVANT DOCKET ENTRIES FROM
THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA**

Date Filed	#	Docket Text
10/18/2021	1	COMPLAINT against All Defendants (Filing fee \$ 402 receipt number ADCDC-8807324) filed by DONALD J. TRUMP. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Summons, # 11 Summons, # 12 Summons, # 13 Summons) (Binnall, Jesse) (Entered: 10/18/2021)
10/19/2021	5	MOTION for Preliminary Injunction <i>and Request for Expedited Hearing</i> by DONALD J. TRUMP. (Attachments: # 1 Memorandum in Support, # 2 Declaration, # 3 Text of Proposed Order) (Binnall, Jesse) (Entered: 10/19/2021)
10/29/2021	19	Memorandum in opposition to re 5 MOTION for Preliminary Injunction <i>and Request for Expedited Hearing</i> filed by BENNIE G. THOMPSON, UNITED STATES HOUSE SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6TH ATTACK ON THE UNITED STATES CAPITOL. (Attachments: # 1 Text of Proposed Order)(Letter, Douglas) (Entered: 10/29/2021)
10/29/2021	25	AMICUS BRIEF by FORMER MEMBERS OF CONGRESS. (znmw) (Entered: 11/01/2021)
10/30/2021	21	RESPONSE re 5 MOTION for Preliminary Injunction <i>and Request for Expedited Hearing</i> filed by DAVID S. FERRIERO, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION. (Attachments: # 1 Exhibit, # 2 Proposed Order)(Shapiro, Elizabeth) (Entered: 10/30/2021)

- 10/30/2021 23 AMICUS BRIEF *in Opposition to Plaintiff's Motion for a Preliminary Injunction* by LOUIS FISHER, GOVERNMENT INFORMATION WATCH, NATIONAL SECURITY COUNSELORS, GOVERNMENT ACCOUNTABILITY PROJECT, JASON BARON, NORMAN EISEN, HEIDI KITROSSER, MARK J. ROZELL, MITCHEL A. SOLLENBERGER. (McClanahan, Kelly) (Entered: 10/31/2021)
- 11/03/2021 33 Amended REPLY to opposition to motion re 5 MOTION for Preliminary Injunction *and Request for Expedited Hearing* filed by DONALD J. TRUMP. (znmw) (Entered: 11/04/2021)
- 11/08/2021 34 Emergency MOTION for Preliminary Injunction *Pending Appeal, or Administrative Injunction* by DONALD J. TRUMP. (Attachments: # 1 Memorandum in Support, # 2 Text of Proposed Order)(Binnall, Jesse) (Entered: 11/08/2021)
- 11/09/2021 35 MEMORANDUM AND OPINION re Plaintiff's 5 Motion for Preliminary Injunction. Signed by Judge Tanya S. Chutkan on 11/09/2021. (lcwk) (Entered: 11/09/2021)
- 11/09/2021 36 ORDER denying 5 Motion for Preliminary Injunction. Signed by Judge Tanya S. Chutkan on 11/09/2021. (lcwk) (Entered: 11/09/2021)
- 11/09/2021 37 NOTICE OF APPEAL TO DC CIRCUIT COURT as to 36 Order on Motion for Preliminary Injunction by DONALD J. TRUMP. Filing fee \$ 505, receipt number BDCDC-8856622. Fee Status: Fee Paid. Parties have been notified. (Binnall, Jesse) (Entered: 11/09/2021)
- 11/10/2021 38 Emergency MOTION for Preliminary Injunction *Pending Appeal or Administrative Injunction (Renewed)* by DONALD J. TRUMP. (Attachments: # 1 Memorandum in Support, # 2 Text of Proposed Order)(Binnall, Jesse) (Entered: 11/10/2021)

- 11/10/2021 40 RESPONSE re 38 Emergency MOTION for Preliminary Injunction *Pending Appeal or Administrative Injunction (Renewed)* filed by DAVID S. FERRIERO, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION. (Attachments: # 1 Proposed Order)(Shapiro, Elizabeth) (Entered: 11/10/2021)
- 11/10/2021 41 TRANSCRIPT OF PROCEEDINGS before Judge Tanya S. Chutkan held on 11/04/2021; Page Numbers: 1-62. Date of Issuance: 11/10/2021. Court Reporter: Sara Wick, telephone number 202-354-3284.
- 11/10/2021 42 Memorandum in opposition to re 38 Emergency MOTION for Preliminary Injunction Pending Appeal or Administrative Injunction (Renewed) filed by BENNIE G. THOMPSON, UNITED STATES HOUSE SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6TH ATTACK ON THE UNITED STATES CAPITOL. (Attachments: # 1 Text of Proposed Order) (Letter, Douglas) (Entered: 11/10/2021)
- 11/10/2021 43 ORDER denying 38 Motion for Preliminary Injunction Pending Appeal or Administrative Injunction. Signed by Judge Tanya S. Chutkan on 11/10/2021. (lcwk) (Entered: 11/10/2021)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DONALD J. TRUMP, in his capacity as
the 45th President of the United States,
The Mar-A-Lago Club
1100 S. Ocean Blvd.
Palm Beach, FL 33480,

Plaintiff,

v.

BENNIE G. THOMPSON, in his official
capacity as Chairman of the United States
House Select Committee to Investigate
the January 6th Attack on the United
States Capitol,
2466 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515,

THE UNITED STATES HOUSE SELECT
COMMITTEE TO INVESTIGATE THE
JANUARY 6TH ATTACK ON THE
UNITED STATES CAPITOL,
U.S. House of Representatives
Washington, D.C. 20515,

DAVID S. FERRIERO, in his official
capacity as Archivist of the United States,
National Archives and Records
Administration
700 Pennsylvania Avenue, NW
Washington, D.C. 20408, and

THE NATIONAL ARCHIVES
AND RECORDS ADMINISTRATION,
700 Pennsylvania Avenue, NW
Washington, D.C. 20408,

Defendants.

Civil Action No. 21-2769

COMPLAINT

1. Plaintiff President Donald J. Trump brings this civil action seeking declaratory and injunctive relief under the Presidential Records Act, 44 U.S.C. §§ 2201–2209 (“PRA”), 36 C.F.R. § 1270.44(f)(3), the Declaratory Judgment Act, 28 U.S.C. § 2201, Executive Order No. 13489, and the Constitution of the United States.

INTRODUCTION

2. The United States House Select Committee to Investigate the January 6th Attack on the United States Capitol (the “Committee”) has decided to harass President Trump and senior members of his administration (among others) by sending an illegal, unfounded, and overbroad records request to the Archivist of the United States. This self-described “sweeping”¹ request is almost limitless in scope and effectively seeks every presidential record and communication that could tenuously relate to events that occurred on January 6, 2021. The request also seeks records with no reasonable connection to the events of that day. In a political ploy to accommodate his partisan allies, President Biden has refused to assert executive privilege over numerous clearly privileged documents requested by the Committee. The Committee’s request amounts to nothing less than a vexatious, illegal fishing expedition openly endorsed by Biden and designed to unconstitutionally investigate

¹ See *Select Committee Issues Sweeping Demand for Executive Branch Records*, United States House Select Committee to Investigate the January 6th Attack on the United States Capitol (Aug. 25, 2021), <https://january6th.house.gov/news/press-releases/select-committee-issues-sweeping-demand-executive-branch-records>.

President Trump and his administration. Our laws do not permit such an impulsive, egregious action against a former President and his close advisors.

3. On August 25, 2021, the Committee sent sweeping requests for documents and records to the Archivist of the United States seeking information from the Executive Office of the President (“EOP”) and the Office of the Vice President (“OVP”). *See* Letter from Bennie G. Thompson to David S. Ferriero (Aug. 25, 2021) (attached hereto as Exhibit 1). These requests were signed by Chairman of the Committee Bennie G. Thompson. Among many other items, these requests reiterated the requests made in the March 25, 2021, correspondence from multiple committees of the House of Representatives to the White House and the Archivist. *See* Letter from Congressional Committees to Ron Klain and David S. Ferriero (Mar. 25, 2021) (attached hereto as Exhibit 2).

4. The Committee’s requests are unprecedented in their breadth and scope and are untethered from any legitimate legislative purpose.

5. The Committee’s boundless requests included over fifty individual requests for documents and information, and mentioned more than thirty individuals, including those working inside and outside government during the unreasonably overbroad time period covered by the request. Aside from being overly broad and seeking records protected by numerous legal privileges, these requests are also unduly burdensome because of the substantial time required to conduct an adequate review of the voluminous records sought by the Committee.

6. For example, among the myriad other documents requested, the Committee has asked for:

[a]ll documents and communications relating in any way to remarks made by Donald Trump or any other persons on January 6, including Donald Trump's and other speakers' public remarks at the rally on the morning of January 6, and Donald Trump's Twitter messages throughout the day.

Similarly, and even more invasive, the Committee requested, “[f]rom November 3, 2020, through January 20, 2021, all documents and communications related to prepared public remarks and actual public remarks of Donald Trump.” Issued public statements are one thing, but the notion that Congress is somehow entitled to ask for and review any and all private conversations, remarks, or drafts of public statements considered by the President of the United States and his close advisors, without limitations on (among other things) subject matter, would destroy the very fabric of our constitutional separation of powers and invade fundamental privileges designed to maintain the autonomy and functioning of the Executive Branch. *See Trump v. Mazars USA, LLP*, 140 S.Ct. 2019, 2032 (2020) (“[Executive] privilege safeguards the public interest in candid, confidential deliberations within the Executive Branch; it is ‘fundamental to the operation of Government.’”) (quoting *United States v. Nixon*, 418 U.S. 683, 708 (1974)).

7. The Committee has also asked for “[a]ll documents and communications within the White House on January 6, 2021 relating in any way to,” among others, the President, the Vice President, over two dozen of the highest-ranking officials in the Federal government (including the National Security Advisor and his Deputy,

and the White House Counsel and his Deputy), any Member of Congress or congressional staff, or the Department of Defense, the Department of Justice, the Department of Homeland Security, the Department of the Interior, or any element of the National Guard. This single request demands access to any number of records to which the Committee is in no way entitled. Such records have nothing to do with the events of January 6th, the scope of the Committee's authority as defined in H.R. 503, or any conceivable legislative purpose, and many of the records are clearly protected by executive privilege and other privileges. *See* H.R. 503, 117th Cong. (2021) (attached hereto as Exhibit 3). Those records seek documents and communications that could include, but are not limited to, conversations with (or about) foreign leaders, attorney work product, the most sensitive of national security secrets, along with any and all privileged communications among a pool of potentially hundreds of people.

8. The Committee's request also asks for "[a]ll schedules for any individuals identified . . . above on January 6, 2021, and all documents relating to such meetings, including memoranda, read-aheads, and summaries of such meetings." Again, the idea that the Committee should be free to review *any and all* materials related to any and all presidential communications, deliberative-process conversations or documents, or meetings involving national security and foreign affairs, the vast majority of which do not relate to the Committee's charter, makes a mockery of our tri-partite government of checks and balances.

9. The Committee further seeks access to other vast swaths of information, including all documents and communications related to the 2020 election, from April 1, 2020, through January 20, 2021, among the President, his private counsel, his Chief of Staff, his Campaign Managers, other senior campaign officials, and over forty other advisors. Such requests have no reasonable connection to the Committee's charter or to any legitimate legislative purpose.

10. The Committee also requested information about personnel changes in the Departments of Defense and Justice, the FBI, the CIA, and the Department of Homeland Security, despite the fact that any and all members of these departments and agencies serve at the pleasure of the President, and any personnel changes in these Departments are at the sole discretion of the Executive and his designees.

11. Plaintiff first challenges as contrary to law the Committee's self-assumed authority to ignore the constitutional limits on Congress's power to investigate. Article I of the Constitution does not contain an "Investigations Clause" or an "Oversight Clause." It gives Congress the power to enact certain legislation. Accordingly, investigations are permissible only insofar as they further some legitimate legislative purpose. As the Supreme Court recognized in shooting down another congressional fishing expedition directed at President Trump's records, such legitimate legislative purposes do not include "law enforcement" powers "assigned under our Constitution to the Executive and the Judiciary," inquiry into private affairs, or "to expose for the sake of exposure." *Mazars*, 140 S.Ct. at 2032. Although congressional investigations are due significant deference from the courts, *McGrain*

v. Daugherty, 273 U.S. 135, 178 (1927), that deference has limits. In *Watkins v. United States*, 354 U.S. 178 (1957), the Supreme Court held that, while “[t]he public is of course entitled to be informed concerning the workings of government, [t]hat cannot be inflated into a general power to expose.” *Id.* at 200. Similarly, this Court later held that if a congressional subpoena “is issued solely for sake of exposure or intimidation, then it exceeds the legislative function of Congress.” *Hentoff v. Ichord*, 318 F. Supp. 1175, 1182 (D.D.C. 1970). Inquiries, like the one Congress is engaged in here, conducted “for the personal aggrandizement of the investigators or to punish those investigated are indefensible.” *Mazars*, 140 S.Ct. at 2032.

12. No investigation can be an end in itself; there is nothing in the overwhelming majority of the records sought that could reasonably be justified as a means of facilitating the legislative task of enacting, amending, or repealing laws. The “informing function” that Congress possesses under Article I “is that of informing itself about subjects susceptible to legislation, not that of informing the public.” *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 531 (9th Cir. 1983) (citing *Hutchinson v. Proxmire*, 443 U.S. 111, 132-33 (1979)).

13. Nevertheless, the Committee has requested an extremely broad set of potentially millions of presidential records, which assuredly include information within the scope of various components of executive privilege, including but not limited to the presidential-communications, deliberative-process, attorney-client, and attorney-work-product privileges, and which include law enforcement information, national security information, and information relating to sensitive intelligence

sources and methods. Condoning such requests would allow Congress to “exert an imperious controul over the Executive Branch and aggrandize itself at the President’s expense, just as the Framers feared.” *Mazars*, 140 S. Ct. at 2034.

14. Ultimately, the Committee is attempting to damage the republic itself, and the citizens of the United States, for executive privilege “safeguards the public interest in candid, confidential deliberations within the Executive Branch; it is ‘fundamental to the operation of Government.’” *Id.* at 2032 (quoting *Nixon*, 418 U.S. at 708). Courts have “recognized a ‘great public interest’ in preserving ‘the confidentiality of conversations that take place in the President’s performance of his official duties’ because such confidentiality is needed to protect ‘the effectiveness of the executive decision-making process.’” *In re Sealed Case (Espy)*, 121 F.3d 729, 742 (D.C. Cir. 1997). For this reason, presidential conversations “are presumptively privileged.” *Nixon v. Sirica*, 487 F.2d 700, 716 (D.C. Cir. 1973)). Because the Committee’s requests seek to expose confidential and privileged information while lacking “a legitimate legislative purpose,” this Court has the power to declare the requests invalid and to enjoin their enforcement. Plaintiff is entitled to that relief.

15. On September 24, 2021, during the pendency of good-faith discussions between Plaintiff’s counsel and the Biden Administration concerning the potential for reasonable accommodations to the Committee, the Biden White House made public statements that it would not object to the production of certain records created during the Trump Administration that are unquestionably subject to constitutionally protected privileges. *See* The White House, Press Briefing by Press Secretary Jen

Psaki and Secretary of Homeland Security Alejandro Mayorkas, Sept. 24, 2021, <https://www.whitehouse.gov/briefing-room/press-briefings/2021/09/24/press-briefing-by-press-secretary-jen-psaki-and-secretary-of-homeland-security-alejandro-mayorkas-september-24-2021/>. On October 8, 2021, the Biden White House notified the Archivist that it would not be asserting executive privilege over certain documents identified as responsive to the Committee's request. *See* Letter from Dana A. Remus to David S. Ferriero (Oct. 8, 2021) (attached hereto as Exhibit 4). That same day, pursuant to the PRA, associated regulations, and Executive Order No. 13489 (the "Executive Order"), President Trump notified the Archivist that he has made a formal assertion of executive privilege with respect to a limited number of documents as well as a protective assertion of executive privilege over any additional materials that may be requested by the Committee. *See* Letter from President Donald J. Trump to the Archivist of the United States (Oct. 8, 2021) (attached hereto as Exhibit 5). Then, the Biden White House notified the Archivist the same day that it would not assert executive privilege over the documents identified in President Trump's October 8 letter and instructed the Archivist to provide the privileged documents to the Committee "absent any intervening court order" thirty days after notifying President Trump. *See* Letter from Dana A. Remus to David S. Ferriero (Oct. 8, 2021) (attached hereto as Exhibit 6).

16. On October 13, 2021, the Archivist notified President Trump that, "[a]fter consultation with Counsel to the President and the Acting Assistant Attorney General for the Office of Legal Counsel, and as instructed by President Biden" the

Archivist has “determined to disclose to the Select Committee” all responsive records that President Trump determined were subject to executive privilege on November 12, 2021 “absent any intervening court order.” *See* Letter from David S. Ferriero to Donald J. Trump (Oct 13, 2021) (attached hereto as Exhibit 7).

17. Notably, the Biden Administration’s waiver of executive privilege is a myopic, political maneuver designed to maintain the support of its political rivals and is not based on any discernable legal principle. In fact, the Biden administration’s unprincipled political accommodation is directly contrary to long-standing Supreme Court precedent that “information subject to executive privilege deserves ‘the greatest protection consistent with the fair administration of justice.’” *Mazars*, 140 S. Ct. at 2024 (quoting *Nixon*, 418 U.S. at 715). Nevertheless, this waiver is irrelevant insofar as the Committee’s request serves no valid legislative purpose and is thus unconstitutional.

18. As it relates to any materials being sought in situations like this, where fundamental privileges and constitutional issues are at stake and where a committee has declined to grant sufficient time to conduct a full review, there is a longstanding bipartisan tradition of protective assertions of executive privilege designed to ensure the ability to make a final assertion, if necessary, over some or all of the requested material. *See Protective Assertion of Executive Privilege Regarding White House Counsel’s Office Documents*, 20 Op. O.L.C. 1 (1996) (opinion of Attorney General Janet Reno). In the event this Court does not declare the requests invalid and unconstitutional, this protective assertion will ensure President Trump’s ability to

decide whether to make any further conclusive assertions of privilege following a full review of all of the requested materials. *See* Letter from William P. Barr, Attorney General, to President Donald J. Trump, at 1-2 (May 8, 2019) (attached hereto as Exhibit 8).

19. In sum, Plaintiff files this action requesting that the Court invalidate the Committee's requests and enjoin the Archivist from turning over the records in question. At a bare minimum, the Court should enjoin the Archivist from producing any potentially privileged records until President Trump is able to conduct a full privilege review of all of the requested materials.

PARTIES

20. Plaintiff Donald J. Trump is the 45th President of the United States. President Trump brings this suit solely in his official capacity as a former President under the PRA, associated regulations, the Executive Order, the Declaratory Judgment Act, and the Constitution of the United States.

21. Defendant Bennie G. Thompson is the Chairman of the United States House Select Committee to Investigate the January 6th Attack on the United States Capitol. He is sued in his official capacity.

22. Defendant United States House Select Committee to Investigate the January 6th Attack on the United States Capitol is a select committee of the United States House of Representatives. After the 2020 election, the Democratic Party controlled Congress and created the Committee pursuant to House Resolution 503 to investigate and report upon the facts, circumstances, and causes relating to the

events of January 6, 2021, at the United States Capitol. The Committee is sued in its official capacity.

23. Defendant David S. Ferriero is the Archivist of the United States. He is sued in his official capacity.

24. Defendant National Archives and Records Administration is the federal government agency that stores documents and materials created in the course of business conducted by the United States federal government.

JURISDICTION AND VENUE

25. This Court has subject-matter jurisdiction because this case arises under the Constitution and laws of the United States. 28 U.S.C. § 1331. This Court has jurisdiction to grant both declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202. This Court also has jurisdiction pursuant to 44 U.S.C. § 2204(e) and 28 U.S.C. § 2201(a).

26. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claim have occurred, and are occurring, in this District. Venue is also proper pursuant to 44 U.S.C. § 2204(e).

FACTUAL BACKGROUND

27. After the 2020 election, the Democrats in Congress created the Committee pursuant to House Resolution 503 in a misguided attempt to intimidate and harass President Trump and his supporters under the guise of investigating the events of January 6, 2021. House Resolution 503 provides the Committee with the

power to investigate the activities of intelligence agencies, law enforcement agencies, and the Armed Forces surrounding January 6th, and provides that the Committee will issue a final report on its activities. *See* Exh. 3. Notably, this resolution never discusses the EOP nor does the Committee's charter permit an investigation into the Executive Office of the President's deliberations and response to the events that occurred on January 6th. *Id.*

28. It would make no sense for the Committee's charter to encompass such an investigation. As has been widely reported, the FBI has *not* found evidence supporting the Democrats' contention that the events at the Capitol on January 6 were part of some organized plot to overturn the results of the 2020 election.² Likewise, as has been reported, the FBI has "so far found no evidence" that former President Donald Trump or "people directly around him were involved in organizing the violence." *Id.* If anything, the FBI *has* found that a small group of individuals planned to breach the Capitol prior to January 6. A subsequent joint report by the Senate Homeland Security and Rules Committees blamed "intelligence and security failures," not the President or any of his advisers, for what happened at the Capitol that day.³ And Congress has already conducted a thorough investigation of this entire matter during its failed impeachment effort.

² Mark Hosenball and Sarah N. Lynch, *Exclusive: FBI finds scant evidence U.S. Capitol attack was coordinated – sources*, Reuters (Aug. 20, 2021, 10:43 PM), <https://www.reuters.com/world/us/exclusive-fbi-finds-scant-evidence-us-capitol-attack-was-coordinated-sources-2021-08-20/>.

³ Staff of S. Comm. On Homeland Security and Governmental Affairs and S. Committee on Rules and Administration, *117th Cong., Examining the U.S. Capitol Attack: A review of the Security, Planning, and Response Failures on January 6*,

29. The Committee’s *ultra vires* request purports to be made “pursuant to the Presidential Records Act (44 U.S.C. § 2205(2)(C)),” *see* Exh. 1. The Presidential Records Act (“PRA”) of 1978, 44 U.S.C. §§ 2201-2209, governs the official records of Presidents and Vice Presidents. The Archivist and the National Archives and Records Administration (“NARA”) are charged with working with the President to administer and store presidential records after the President leaves office. *See generally* 44 U.S.C. §§ 2202-2208.

30. The PRA defines “presidential records” as follows:

documentary materials, or any reasonably segregable portion thereof, created or received by the President, the President’s immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise or assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President.

44 U.S.C. § 2202. Prior to the end of his term of office, President Trump specified that access to his presidential records would remain restricted for a period of twelve years, as permitted by law. 44 U.S.C. § 2204.

31. Section 2205(2)(C), the portion of the PRA cited by the Committee in issuing its records request to the Archivist, provides one of three exceptions to the PRA’s access restrictions. It provides that “Presidential records shall be made

<https://www.rules.senate.gov/imo/media/doc/Jan%206%20HSGAC%20Rules%20Report.pdf> (last visited Oct. 18, 2021). It is indisputable that during the President’s speech at the Ellipse on January 6 the President stated that his supporters should “peacefully and patriotically make [their] voices heard.” Nonetheless Committee members have claimed that the President’s speech is what incited the violence on January 6th.

available . . . (C) to either House of Congress, or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof if such records contain information that is needed for the conduct of its business and that is not otherwise available.” 44 U.S.C. § 2205(2)(C). Importantly, while Congress has purportedly arrogated to itself the power to request documents in certain instances under the statute, all congressional requests must still comply with the United States Constitution, the separation of powers principles contained in that governing document, and have “valid legislative purpose.”

32. The PRA gives the Archivist the power to promulgate regulations to administer the statute. 44 U.S.C. § 2206. Pursuant to those regulations, the Archivist must promptly notify the President of a records request for records made during his term of office as well as the incumbent President. 36 C.F.R. § 1270.44. Once the Archivist notifies the former and incumbent Presidents of the Archivist’s intent to disclose records, either President may assert a claim of constitutionally based privilege against disclosing the record within thirty calendar days after the date of the Archivist’s notice. *Id.* The incumbent or former President must personally make any decision to assert a claim of constitutionally based privilege against disclosing a Presidential record or a reasonably segregable portion of it. *Id.*

33. If a former President asserts the privilege claim, the Archivist consults with the incumbent President, as soon as practicable and within thirty calendar days from the date that the Archivist receives notice of the claim, to determine whether the incumbent President will uphold the claim. *Id.* If the incumbent President

upholds the claim asserted by the former President, the Archivist does not disclose the presidential record unless the incumbent withdraws his decision or a court directs the Archivist to disclose the record. *Id.* If the incumbent President does not uphold the claim asserted by the former President, the Archivist discloses the Presidential record sixty calendar days after the Archivist received notification of the claim unless a court order in an action in any federal court directs the Archivist to withhold the record. *Id.* Finally, the Executive Order provides that the Archivist shall notify the incumbent and former Presidents of his determination to release certain records at least thirty days prior to disclosure of the records, unless a shorter time-period is required in the circumstances set forth in section 1270.44 of the NARA regulations. Exec. Order No. 13489.

34. Pursuant to this regulatory and statutory framework, the Archivist notified President Trump on August 30, 2021, that he intended to produce certain documents in response to the Committee's expansive request. On October 8, 2021, the Biden White House notified the Archivist that it would not be asserting executive privilege over certain documents identified as responsive to the Committee's request. *See* Exh. 4. That same day, pursuant to the PRA, associated regulations, and the Executive Order, President Trump notified the Archivist that he has made a formal assertion of executive privilege with respect to a small subset of documents as well as a protective assertion of executive privilege over any additional materials that may be requested by the Committee. *See* Exh. 5. Then, the Biden White House notified the Archivist the same day that it would not assert executive privilege over the

documents identified in President Trump's October 8 letter and instructed the Archivist to turn the records over to the Committee thirty days from the date of notifying President Trump of Biden's decision, subject to a determination by this Court pursuant to 44 U.S.C. § 2204(e). *See* Exh. 6. On October 13, 2021, the Archivist notified President Trump that, "[a]fter consultation with Counsel to the President and the Acting Assistant Attorney General for the Office of Legal Counsel, and as instructed by President Biden" the Archivist has "determined to disclose to the Select Committee" all responsive records that President Trump determined were subject to executive privilege on November 12, 2021, "absent any intervening court order." *See* Exh. 7.

35. Plaintiff has identified numerous, insurmountable challenges with the process of reviewing presidential records supplied to him by the Archivist. Often, documents are not unitized and are provided out of sequence. This results in the reviewer being unable to determine whether certain documents are part of a single record or are otherwise unrelated and could lead to substantial confusion by members of the Committee and its staff and inadvertent production of non-responsive records. Similarly, the identified custodian and/or author of certain records may be materially different from the actual author or custodian of the record. Given the short time periods for review under the PRA, it is unlikely that Plaintiff and his staff will be able to ensure that the records being produced to the Committee are what they purport to be. This could lead to inadvertent disclosure of records subject to privileges for which the document was not reviewed. Therefore, unless there is an opportunity for a

complete review of all records determined to be responsive by NARA, Plaintiff will suffer additional irreparable harm.

36. The current President's decision to waive executive privilege for his own political benefit will undoubtedly cause sustainable injury and irreparable harm to future presidential administrations.

37. President Trump now commences this lawsuit seeking to enjoin the Committee's records request and prevent the Defendants from enforcing or complying with the request with respect to the privileged documents and any additional documents the Archivist seeks to turn over to the Committee.

LEGAL BACKGROUND AND CLAIM FOR JUDICIAL DETERMINATION AND DECLARATORY JUDGMENT

38. Most fundamentally, the Committee's request lacks a valid legislative purpose and thus violates the Constitution and separation of powers. The Supreme Court in *Mazars* set forth a four-part, non-exclusive balancing test to analyze the constitutional propriety of congressional requests directed to presidential records. Satisfaction of the *Mazars* standard is a threshold issue that the Committee cannot overcome. First, the Supreme Court cautions courts to "carefully assess whether the asserted legislative purpose warrants the significant step of involving the President and his papers." *Mazars*, 140 S.Ct. at 2035-36. Further, the Court noted that "Congress may not rely on the President's information if other sources could reasonably provide Congress the information it needs in light of its particular legislative objective. The President's unique constitutional position means that Congress may not look to him as a 'case study' for general legislation." *Id.*

Importantly, 44 U.S.C. § 2205(2)(C) generally mirrors these requirements and provides that presidential records “shall be made available . . . (C) to either House of Congress, or, *to the extent of matter within its jurisdiction*, to any committee or subcommittee thereof if such records contain information that is *needed for the conduct of its business* and that is *not otherwise available*.” (emphasis added). Likewise, 36 C.F.R. § 1270.44 effectively repeats and mirrors these requirements. Indeed, the Committee’s requests fails to satisfy the relevant constitutional, statutory, and regulatory frameworks.

39. The “legitimate legislative purpose” requirement stems directly from the Constitution. “The powers of Congress . . . are dependent solely on the Constitution,” and no express power in that instrument allows Congress to investigate individuals or to issue compulsory process. *Kilbourn v. Thompson*, 103 U.S. 168, 182-89 (1880). The Constitution instead permits Congress to enact certain kinds of legislation. *See, e.g.*, Art. I, § 8. Thus, Congress’s power to investigate “is justified solely as an adjunct to the legislative process.” *Watkins v. United States*, 354 U.S. 178, 197 (1957).

40. “Oversight” and “transparency,” in a vacuum, are not legitimate legislative purposes. “[T]here is no congressional power to expose for the sake of exposure.” *Id.* at 200. “No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress.” *Id.* at 187.

41. Second, the Supreme Court in *Mazars* noted “courts should insist on a subpoena no broader than reasonably necessary to support Congress’s legislative objective.” 140 S.Ct. at 2036. Thus, the Supreme Court has noted that where, as here,

a plaintiff issues broad requests that “ask for everything under the sky,” the burden should not be placed on the President of “critiquing the unacceptable discovery requests line by line.” *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 387-88 (2004). Courts should therefore be wary of requiring the President even to assert the executive privilege in response to broad requests. *Id.*

42. Third, “courts should be attentive to the nature of the evidence offered by Congress to establish that a subpoena advances a valid legislative purpose.” *Mazars*, 140 S.Ct. at 2036. Where Congress contemplates legislation that “raises sensitive constitutional issues, such as legislation concerning the Presidency . . . it is impossible to conclude that a subpoena is designed to advance a valid legislative purpose unless Congress adequately identifies its aims and explains why the President’s information will advance its consideration of the possible legislation.” *Id.*

43. The Committee has utterly failed to come forward with such evidence here to satisfy the standard; there is no specific legislative need for the privileged documents and materials requested, much less a “demonstrably critical” one. *Senate Select Comm.*, 498 F.2d at 731.

44. What the Committee appears to seek here is a “precise reconstruction of past events,” not because there are “specific legislative decisions that cannot responsibly be made without” it, but simply for the sake of the information itself. *Id.* at 732-33. That purpose does not clear the high bar required to overcome an assertion of executive privilege. The “informing function” Congress possesses under Article I “is that of informing itself about subjects susceptible to legislation, not that of

informing the public.” *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 531 (9th Cir. 1983) (citing *Hutchinson v. Proxmire*, 443 U.S. 111, 132-33 (1979)); *see also Assertion of Executive Privilege Concerning the Dismissal and Replacement of U.S. Attorneys*, 31 Op. O.L.C. 1, 8 (2007) (“Broad, generalized assertions that the requested materials are of public import are simply insufficient under the ‘demonstrably critical’ standard.”). The Committee has not identified any “specific legislative decisions that cannot responsibly be made without access” to the privileged materials. *Senate Select Comm.*, 498 F.2d at 733.

45. Additionally, because Congress must have a legitimate legislative purpose, it cannot exercise “any of the powers of law enforcement.” *Quinn v. United States*, 349 U.S. 155, 161 (1955). Those powers “are assigned under our Constitution to the Executive and the Judiciary.” *Id.* Put simply, Congress is not “a law enforcement or trial agency,” and congressional investigations conducted “for the personal aggrandizement of the investigators” or “to punish those investigated” are “indefensible.” *Watkins*, 354 U.S. at 187. Our tripartite system of separated powers requires that “any one of the[] branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other.” *Kilbourn*, 103 U.S. at 190-91.

46. Further, when a request for information is issued by a single committee, a legislative purpose is not legitimate unless it falls within that committee’s jurisdiction. “The theory of a committee inquiry is that the committee members are

serving as the representatives of the parent assembly in collecting information for a legislative purpose.” *Watkins*, 354 U.S. at 200. Congress therefore must “spell out that group’s jurisdiction and purpose with sufficient particularity . . . in the authorizing resolution,” which “is the committee’s charter.” *Id.* at 201. The committee “must conform strictly to the resolution.” *Exxon Corp. v. FTC*, 589 F.2d 582, 592 (D.C. Cir. 1978). And when an investigation is “novel” or “expansive,” courts will construe the committee’s jurisdiction “narrowly.” *Tobin v. United States*, 306 F.2d 270, 275 (D.C. Cir. 1962).

47. By contrast, the Committee has read its own charter— “to investigate and report upon the facts, circumstances, and causes relating to the events of January 6, 2021, at the United States Capitol”— expansively, and apparently believes it has been given a free pass to request a sweeping set of documents and records, which unquestionably contain information protected from disclosure by the executive and other privileges, including but not limited to the presidential-communications, deliberative-process, and attorney-client privileges.

48. Finally, the *Mazars* court instructed that “burdens imposed by a congressional subpoena should be carefully scrutinized, for they stem from a rival political branch that has an ongoing relationship with the President and incentives to use subpoenas for institutional advantage.” *Mazars*, 140 S.Ct. at 2036. These burdens are not sufficiently diminished by the fact that the President is no longer in office. The Supreme Court has “reject[ed] the argument that only an incumbent

President may assert” separation-of-powers claims. *Nixon v. Administrator of Gen. Servs.*, 433 U.S. 425, 439 (1977).

49. Executive privilege “safeguards the public interest in candid, confidential deliberations within the Executive Branch; it is ‘fundamental to the operation of Government.’ As a result, information subject to executive privilege deserves ‘the greatest protection consistent with the fair administration of justice.’” *Id.* at 2032 (quoting *Nixon*, 418 U. S., at 708, 713). “Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process.” *Nixon*, 418 U.S. at 705. As the Supreme Court has recognized, “[a] President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way that many would be unwilling to express except privately.” *Id.* at 708.

50. The President has identified a limited number of records allegedly responsive to the Committee’s request that are covered by numerous privileges, including the presidential communications privilege, and the deliberative process privilege, among others. Moreover, the request seeks documents protected by the attorney-client privilege and the attorney work-product doctrine. The Committee has failed to explain or even articulate any need for the information it has requested, much less a demonstrated, specific one worthy of piercing executive privilege and other privileges. And nothing in the Committee’s request meets the high bar of

explaining how or why the requested information is demonstrably critical to a legislative purpose. Thus, the Court should invalidate the Committee's request.

51. The Committee has instructed the Archivist to provide all of the requested information no later than September 9, 2021, but the Archivist has indicated that he will provide the privileged requested documents by November 12, 2021, subject to a court order. This Court should intervene, invalidate the requests, and require the Committee to narrow its search prior to burdening the President with a line-by-line critique. *See Cheney*, 542 U.S. at 389-390. The process of obtaining and reviewing documents from NARA in such a truncated time frame is unbelievably burdensome. The default time frame provided in the PRA protects records from political vicissitudes and also gives the Archivist time to properly process the records. Given these substantial burdens, the Court should intervene and invalidate the requests.

52. Further, in cases like this, where a committee has declined to grant sufficient time to conduct a full review, there is a longstanding bipartisan tradition of protective assertions of executive privilege designed to ensure the ability of the Executive to make a final assertion, if necessary, over some or all of the requested material. *See Protective Assertion of Executive Privilege Regarding White House Counsel's Office Documents*, 20 Op. O.L.C. 1 (1996) (opinion of Attorney General Janet Reno). In the event this Court does not declare the requests invalid and unconstitutional, this protective assertion will ensure President Trump's ability to

decide whether to make a conclusive assertion of executive privilege following a full review of the requested materials. *See* Exh. 8.

53. If the PRA is read so broadly as to allow an incumbent President unfettered discretion to waive the previous President's executive privilege, mere months following an administration change, then it would render the act unconstitutional. As has been reaffirmed by the Supreme Court, the executive privilege "safeguards the public interest in candid, confidential deliberations within the Executive Branch; it is fundamental to the 'operation of Government.'" *Mazars*, 140 S.Ct. at 2032 (quoting *United States v. Nixon*, 418 U.S. 683, 708 (1974)).

CLAIM FOR RELIEF

54. Plaintiff incorporates all prior allegations.

WHEREFORE, Plaintiff asks this Court to enter judgment in his favor and to provide the following relief:

- a. A declaratory judgment that the Committee's requests are invalid and unenforceable under the Constitution and laws of the United States;
- b. In the alternative, a declaration that the Presidential Records Act is an unconstitutional violation of separation of powers and is void *ab initio*;
- c. A preliminary and permanent injunction enjoining the Committee including Chairman Thompson from taking any actions to enforce the requests, from imposing sanctions for noncompliance with the requests, and from inspecting, using, maintaining, or disclosing any information obtained as a result of the requests;

d. A preliminary and permanent injunction enjoining the Archivist and NARA from producing the requested information;

e. In the alternative to the above, a preliminary injunction enjoining the Archivist and NARA from producing the requested information, and enjoining the Committee and Chairman Thompson from taking any actions to enforce the requests, until President Trump has had sufficient opportunity to conduct a comprehensive review of all records the Archivist intends to produce before any presidential record is produced to the Committee;

f. Plaintiff's reasonable costs and expenses, including attorneys' fees, as permitted by law; and

g. Such other and further relief as the Court may deem just proper.

Dated: October 18, 2021

Respectfully submitted,

/s/ Jesse R. Binnall

Jesse R. Binnall (VA022)
BINNALL LAW GROUP, PLLC
717 King Street, Suite 200
Alexandria, Virginia 22314
Phone: (703) 888-1943
Fax: (703) 888-1930
Email: jesse@binnall.com

Attorney for Plaintiff

EXHIBIT 1

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN

ZOE LOFGREN, CALIFORNIA
ADAM B. SCHIFF, CALIFORNIA
PETE AGUILAR, CALIFORNIA
STEPHANIE MURPHY, FLORIDA
JAMIE RASKIN, MARYLAND
ELAINE G. LURIA, VIRGINIA
LIZ CHENEY, WYOMING
ADAM KINZINGER, ILLINOIS



U.S. House of Representatives
Washington, DC 20515
january6th.house.gov
(202) 225-7800

One Hundred Seventeenth Congress

Select Committee to Investigate the January 6th Attack on the United States Capitol

August 25, 2021

The Honorable David S. Ferriero
Archivist of the United States
U.S. National Archives and Records Administration
700 Pennsylvania Avenue, NW
Washington, DC 20408

Dear Mr. Ferriero:

The Select Committee to Investigate the January 6th Attack on the United States Capitol is examining the facts, circumstances, and causes of the January 6th attack. Our Constitution provides for a peaceful transfer of power, and this investigation seeks to evaluate threats to that process, identify lessons learned, and recommend laws, policies, procedures, rules, or regulations necessary to protect our Republic in the future. Pursuant to the Presidential Records Act (44 U.S.C. § 2205(2)(C)), and House Resolution 503, the Select Committee requests that you produce the documents described in the attached schedule from the Executive Office of the President (EOP) and the Office of the Vice President (OVP) in your custody, control, or possession.

Given the urgent nature of our request, we ask that you expedite your consultation and processing times pursuant to your authority under 36 C.F.R. § 1270.44(g). We have some concern about the delay in producing documents requested this past March, and we want to assist your prompt production of materials. We look forward to discussing ways in which we can do that. Toward that end, we request that NARA meet expeditiously with Select Committee investigative staff to discuss production priorities.

This is our first request for materials, and we anticipate additional requests as our investigation continues. Please produce this information to the Select Committee no later than September 9, 2021. An attachment to this letter provides additional instructions for responding to the Select Committee's request.

If you have questions, please contact Select Committee investigative staff at 202-225-7800.

Sincerely,

Bennie G. Thompson
Chairman

DOCUMENT SCHEDULE

Pending Requests

The Select Committee reiterates the requests made in the March 25, 2021,¹ correspondence from multiple committees of the House of Representatives, which the Select Committee subsequently joined, for documents and communications received, prepared, or sent between December 1, 2020, and January 20, 2021, relating to the counting of the electoral college vote on January 6, 2021, the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021, and the events or aftermath of January 6, 2021.

Those March 25, 2021, requests include but are not limited to:

1. All documents and communications relating in any way to remarks made by Donald Trump or any other persons on January 6, including Donald Trump's and other speakers' public remarks at the rally on the morning of January 6, and Donald Trump's Twitter messages throughout the day.
2. All calendars, schedules, and movement logs regarding meetings or events attended by President Trump, including the identity of any individuals in attendance, whether virtual or in-person, on January 6, 2021.
3. All documents and communications regarding the movements and protection of Vice President Pence on January 6, 2021.
4. All video communications recorded of the President speaking on January 6, 2021, and all documents and communications related thereto, including communications involving the President or any other officials or employees in the Executive Office of the President or the Office of the Vice President. This request specifically includes videos of communications released to the public and communications recorded but not released to the public, any documents or other communications identifying or discussing the content of those videos.
5. All photographs, videos, or other media, including any digital time stamps for such media, taken or recorded within the White House on January 6, 2021, or taken of the crowd assembled for the rally on the morning of January 6, and all communications or other documents related to that media.

¹ Letter from Chairwoman Carolyn B. Maloney, House Committee on Oversight and Reform, et al., to David Ferriero, Archivist, National Archives (March 25, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-03-25.House%20Committees%20to%20Agencies%20re%20Jan%206%20Attack.pdf>).

6. All photographs, videos, or other media, including any digital time stamps for such media, taken or recorded of Vice President Mike Pence or any individuals accompanying him, on January 6, 2021.
7. All documents and communications within the White House on January 6, 2021, relating in any way to the following:
 - the January 6, 2021, rally;
 - the January 6, 2021, march to the Capitol;
 - the January 6, 2021, violence at the Capitol;
 - any aspect of the Joint Session where Congress was counting electoral votes;
 - any legal, political, or other strategy regarding the counting of electoral votes;
 - Donald J. Trump;
 - Vice President Pence;
 - the President's tweets, speech, any other public communications on that date;
 - the President's recording of video for release on that date and any outtakes;
 - reactions, summaries, or characterizations of any public speeches or other communications by Donald Trump or other public speakers on that date;
 - efforts to persuade the President to deliver any particular message to people at or near the Capitol;
 - Sarah Matthews;
 - Hope Hicks;
 - Mark Meadows;
 - Dan Scavino;
 - Pat Cipollone;
 - Marc Short;
 - Patrick Philbin;
 - Eric Herschmann;
 - Stephan Miller;
 - Greg Jacob;
 - Matthew Pottinger;
 - Keith Kellogg;
 - Robert O'Brien;
 - Peter Navarro;
 - Ben Williamson;
 - Cassidy Hutchinson;
 - Molly Michael;
 - Nicholas "Nick" Luna;
 - Judd Deere;
 - Kayleigh McEnany;

- Ivanka Trump;
 - Eric Trump;
 - Lara Trump;
 - Donald Trump, Jr.;
 - Jared Kushner;
 - Melania Trump;
 - Kimberly Guilfoyle;
 - Steve Bannon;
 - Michael Flynn;
 - Rudolph “Rudy” Giuliani;
 - Roger Stone;
 - any Member of Congress or congressional staff; or
 - the Department of Defense, the Department of Justice, the Department of Homeland Security, the Department of the Interior, or any element of the National Guard.
8. All White House visitor records on January 6, 2021.
9. All documents and communications regarding the movement of the President on January 6, 2021.
10. All call logs and telephone records identifying calls placed to or from any individuals identified in (7) above.
11. All schedules for any individuals identified in (7) above on January 6, 2021, and all documents relating to such meetings, including memoranda, read-aheads, and summaries of such meetings.
12. All documents and communications received, prepared, or sent by any official within the White House Situation Room and the White House Operations Center on January 6, 2021, including but not limited to any communication logs, situation reports, and watch officer notes.

Additional Requests

In addition, to the extent not included in the scope of the March 25, 2021, request, and as a supplement to the requests previously made on March 25, 2021, we hereby make the following additional requests.

(a) Planning by the White House and Others for Legal or Other Strategies to Delay, Halt, or Otherwise Impede the Electoral Count

1. From April 1, 2020, through January 20, 2021, all documents and communications related to efforts, plans, or proposals to contest the 2020 Presidential election results.
2. From April 1, 2020, through January 20, 2021, all documents and communications related to plans, efforts, or discussions regarding the electoral count (including plans, efforts, or discussions regarding delaying or impeding the electoral count).
3. All documents and communications concerning the role of the Vice President as the Presiding Officer in the certification of the votes of the electoral college.
4. From November 3, 2020, through January 20, 2021, all documents and communications referring or relating to the 2020 election results between White House officials and officials of State Governments. This includes, but is not limited to, communications with the following individuals and their staff and subordinates:
 - Doug Ducey,
 - Brian Kemp,
 - Brad Raffensperger,
 - Ken Paxton,
 - Frances Watson,
 - Mike Shirkey,
 - Lee Chatfield, or
 - Monica Palmer.
5. From April 1, 2020, through January 20, 2021, all documents and communications related to the 2020 election results, to or from one or more of the following individuals: Rudolph “Rudy” Giuliani, Justin Clark, Matt Morgan, Sidney Powell, Kurt Olsen, or Cleta Mitchell.
6. From April 1, 2020, through January 20, 2021, all documents and communications related to the 2020 Presidential election, including forecasting, polling, or results, and which are authored, presented by, or related in any way to the following individuals: Anthony “Tony” Fabrizio, Brad Parscale, Bill Stepien, Corey Lewandowski, or Jason Miller.
7. All documents and communications to or from David Bossie relating to questioning the validity of the 2020 election results.
8. All documents and communications referring or relating to court decisions, deliberations, or processes involving challenges to the 2020 Presidential election.

9. From November 3, 2020, through January 20, 2021, all documents and communications relating to the State of Texas and litigation concerning the 2020 Presidential election.
10. From November 3, 2020, through December 31, 2020, all documents and communications relating to an amicus brief concerning litigation involving the State of Texas.
11. All documents and communications relating to decisions of the United States Supreme Court issued on December 8, 2020, and December 11, 2020.
12. From November 3, 2020, through January 20, 2021, all documents and communications relating to Justin Riemer and the electoral count or litigation concerning the 2020 Presidential election.
13. All documents and communications referring or relating to QAnon, the Proud Boys, Stop the Steal, Oath Keepers, or Three Percenters concerning the 2020 election results, or the counting of the electoral college vote on January 6, 2021.
14. Any documents and communications relating to election machinery or software used in the 2020 election, including but not limited to communications relating to Dominion Voting Systems Corporation.
15. From November 3, 2020, through January 19, 2021, all documents and communications concerning the resignation of any White House personnel or any politically appointed personnel of any Federal department or agency (including the resignation of any member of the President's Cabinet) and mentioning the 2020 Presidential election or the events of January 6, 2021.
16. All documents and communications concerning prepared remarks for a speech by Donald Trump on November 3, 2020, or November 4, 2020.
17. All documents and communications to or from John Eastman from November 3, 2020, through January 20, 2021.
18. All documents and communications relating to allegations of election fraud or to challenging, overturning, or questioning the validity of the 2020 Presidential election, and involving personnel of the Department of Justice, including any one or more of the following individuals: Jeffrey Rosen, Richard Donoghue, Steven Engel, Jeffrey Wall, Patrick Hovakimian, Byung J. "BJay" Pak, Bobby Christine, or Jeffrey Clark.

19. All documents and communications relating to allegations of election fraud or to challenging, overturning, or questioning the validity of the 2020 Presidential election and Chris Christie.
20. All documents and communications relating to the results of the 2020 Presidential election and Peter Navarro.
21. All documents and communications relating to challenging, overturning, or questioning the validity of the 2020 Presidential election and William Barr.

(b) Recruitment, Planning, Coordination, and Other Preparations for the Rallies Leading up to and Including January 6th and the Violence on January 6th

1. All documents and communications relating to planned protests, marches, public assemblies, rallies, or speeches in Washington, DC, on November 14, 2020, December 12, 2020, January 5, 2021, and January 6, 2021.
2. All documents and communications related to security of the Capitol or other Federal facilities on January 5, 2021, and January 6, 2021.
3. All documents and communications concerning Donald Trump's statement on September 29, 2020, for the Proud Boys to "stand back and stand by."
4. From December 1, 2020, through January 20, 2021, any documents and communications involving White House personnel and any Member of Congress, referring or relating to (a) civil unrest, violence, or attacks at the Capitol; (b) challenging, overturning, or questioning the validity of the 2020 election results; (c) the counting of the electoral college vote on January 6, 2021; or (d) appealing the decisions of courts related to the 2020 Presidential election.
5. All documents and communications related to social media information monitored, gathered, reviewed, shared, or analyzed by White House personnel on January 6, 2021.
6. All documents and communications related to any plan for the President to march or walk to the Capitol on January 6, 2021. This request includes any such documents or communications related to a decision not to march or walk to the Capitol on January 6, 2021.
7. From April 1, 2020, through January 20, 2021, all documents and communications concerning the 2020 election and relating to the following individuals:
 - Cindy Chafian,

- Greg Locke,
- Robert Patrick Lewis,
- Chris Lippe,
- Tracy Diaz,
- Alex Phillips,
- Bianca Gracia,
- Ali Alexander,
- Brandon Straka,
- Rose Tennet,
- Ed Martin,
- Vernon Jones,
- Cordie Williams,
- Michael Flynn,
- Alex Jones,
- Owen Schroyer,
- Karyn Turk,
- Scott Presler,
- Rogan O’Handley,
- Christie Hutcherson,
- Gina Loudon,
- Jack Posobiec,
- Bryson Grey,
- Angela Stanton King,
- Brian Gibson,
- George Papadopoulos,
- Julio Gonzalez,
- Bernard Kerik,
- Mark Burns,
- Roger Stone,
- George Flynn,
- Tom Van Flein,
- Doug Logan,
- Katrina Pierson,
- Amy Kremer,
- Dustin Stockton,
- Enrique Tarrio,
- Kenneth Harrelson,
- Caroline Wren, or
- Michael Coudrey.

(c) Information Donald Trump Received Following the Election Regarding the Election Outcome, and What He Told the American People About the Election

1. From November 3, 2020, to January 20, 2021, all documents and communications reporting, summarizing, or detailing the voting returns and election results of the 2020 Presidential election.
2. All documents and communications related to Donald Trump's response to the election results of the 2020 Presidential election, including but not limited to any planned public remarks.
3. All documents and communications regarding a November 9, 2020, memorandum from Attorney General William Barr concerning investigation of voter fraud allegations.
4. All documents and communications relating to voting machines or software used in the 2020 election and their control or manipulation through thermostats.
5. From April 1, 2020, through January 20, 2021, all documents and communications relating to challenging the validity of the 2020 election, to, from, or mentioning Mike Lindell.
6. From April 1, 2020, through January 20, 2021, all documents and communications relating to challenging the validity of the 2020 election, to, from, or mentioning Doug Logan.
7. From November 3, 2020, through January 20, 2021, all documents and communications related to prepared public remarks and actual public remarks of Donald Trump.

(d) What the President Knew About the Election's Likely Outcome Before the Election Results and How He Characterized the Validity of the Nation's Election System

1. From April 1, 2020, through November 3, 2021, all documents and communications provided to Donald Trump or Mark Meadows containing information predicting that Donald Trump would or might lose the 2020 Presidential election.
2. From April 1, 2020, through January 20, 2021, all documents and communications provided to Donald Trump or Mark Meadows relating to mail-in ballots and their effect or predicted effect on results of the election or the timing of election-related news or decisions.
3. From November 3, 2020, through November 5, 2020, all documents and communications provided to Donald Trump or Mark Meadows relating to projected election results of the 2020 Presidential election.

4. From April 1, 2020, through January 20, 2021, all documents provided to Donald Trump or Mark Meadows reviewing, assessing, or reporting on the security of election systems in the United States.
5. From April 1, 2020, through January 20, 2021, all documents and communications provided to Donald Trump or Mark Meadows regarding purported election irregularities, election-related fraud, or other election-related malfeasance.
6. From April 1, 2020, through January 20, 2021, all documents and communications provided to Donald Trump or Mark Meadows referring to a stolen election, stealing the election, or a “rigged” election.

(e) Responsibilities in the Transfer of Power and the Obligation to Follow the Rule of Law

1. All documents and communications relating to legal advice or legal analysis of, or compliance with, the constitutional process for certifying the electoral vote. This includes, but is not limited to, communications with and from the following individuals:
 - Pat Cipollone,
 - Patrick Philbin,
 - Eric Herschmann,
 - John Eastman, or
 - Greg Jacobs.
2. All documents and communications on January 6, 2021, related to Mark Milley, Christopher Miller, Kashyap “Kash” Patel, or Ryan McCarthy.
3. From January 6, 2021, through January 20, 2021, all documents and communications related to the events of January 6, 2021, and Mark Milley, Christopher Miller, Kashyap “Kash” Patel, or Ryan McCarthy.
4. From November 3, 2020, through January 20, 2021, all documents and communications concerning the potential or actual changes in personnel at the following departments and agencies:
 - The Department of Defense, within the Office of the Secretary and the Joint Chiefs of Staff. This should include, but is not limited to, such documents and communications concerning the following individuals:
 - Mark Esper,
 - Mark Milley,
 - Christopher Miller,

- Kashyap “Kash” Patel,
 - James Anderson,
 - Anthony Tata,
 - Ezra Cohen-Watnick,
 - Joseph Kernan, or
 - John McEntee
 - The Department of Justice. This should include, but is not limited to, such documents and communications concerning the following individuals:
 - Jeffrey Rosen,
 - Richard Donoghue,
 - Jeffrey Clark, or
 - John McEntee
 - The Federal Bureau of Investigation. This should include, but is not limited to, such documents and communications concerning the following individuals:
 - Kashyap “Kash” Patel,
 - Christopher Wray, or
 - John McEntee.
 - The Central Intelligence Agency. This should include, but is not limited to, such documents and communications concerning the following individuals:
 - Kashyap “Kash” Patel,
 - Gina Haspel,
 - Vaughn Bishop, or
 - John McEntee.
 - The Department of Homeland Security (including the United States Secret Service). This should include, but is not limited to, such documents and communications concerning the following individuals:
 - Chad Wolf, or
 - John McEntee.
5. From November 3, 2020, through January 20, 2021, all documents and communications relating to Jeffrey Clark.
 6. From November 3, 2020, through January 20, 2021, all documents and communications related to the Twenty-Fifth Amendment to the U.S. Constitution.

7. From January 6, 2021, through January 20, 2021, all documents and communications related to the mental stability of Donald Trump or his fitness for office.
8. Any documents and communications relating to instructions to stop or delay preparation for the transition of administrations.
9. All communications between White House personnel and General Services Administration (GSA) Administrator Emily Murphy or other GSA officials relating to “ascertainment” under the Presidential Transition Act. This includes but is not limited to communications discussing the recognition of Joseph Biden as the winner of the 2020 Presidential election.
10. All documents and communications concerning the potential invocation of the Insurrection Act.
11. From November 3, 2020, through January 20, 2021, all documents and communications related to martial law.
12. All documents and communications concerning the use of Federal law enforcement or military personnel during voting in the 2020 Presidential election.
13. From November 3, 2020, through January 20, 2021, all documents and communications related to Kashyap “Kash” Patel.
14. From November 3, 2020, through January 20, 2021, all documents and communications related to John McEntee.

(f) Other Materials Relevant to the Challenges to a Peaceful Transfer of Power

1. Any documents and communications relating to foreign influence in the United States 2020 Presidential election through social media narratives and disinformation.
2. All documents and communications related to the January 3, 2021, letter from 10 former Defense Secretaries warning of use of the military in election disputes.

EXHIBIT 2

Congress of the United States
Washington, DC 20515

March 25, 2021

The Honorable Ronald A. Klain
Chief of Staff
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

The Honorable David S. Ferriero
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Avenue, N.W.
Washington, D.C. 20408

Dear Mr. Klain and Mr. Ferriero:

Our Committees are requesting records relating to the January 6, 2021, assault on the U.S. Capitol, which killed five people and injured hundreds more. Pursuant to the Presidential Records Act, specifically 44 U.S.C. § 2205(2)(C), the Committees request that you produce the following documents from the Executive Office of the President (EOP) and the Office of the Vice President (OVP) in your custody, control, or possession by April 8, 2021:

1. Documents and communications received, prepared, or sent between December 1, 2020, and January 4, 2021, by employees or officials of EOP, OVP or any of their components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021;
2. Documents and communications received, prepared, or sent between January 5, 2021, and January 7, 2021, by employees or officials of EOP, OVP or any of their components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the events of January 6, 2021; and
3. Documents and communications received, prepared, or sent between January 8, 2021, and January 20, 2021, by employees or officials of EOP, OVP or any of their components, offices, or directorates, relating to the events or aftermath of January 6, 2021.

In responding to this request, we ask you to prioritize: (1) communications with federal agencies and state and local government entities; (2) documents relating to any threat assessments, information reports, intelligence assessments, after-action reports, response timelines, or operational summaries; (3) documents relating to any requests or offers for security assistance or other mitigation measures; (4) documents regarding participation in the events of January 6, 2021, by any EOP or OVP employee or official, as well as any disciplinary measures

The Honorable Ronald A. Klain
The Honorable David S. Ferriero
Page 2

considered or taken; and (5) communications, if any, with participants in the events of January 6, 2021, or other individuals associated with groups participating in the events of January 6, 2021.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional instructions for responding to the Committees' request. Please contact Committee staff at (202) 225-5051 if you have any questions about this request.

Sincerely,



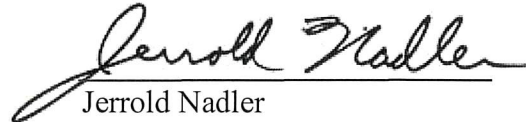
Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



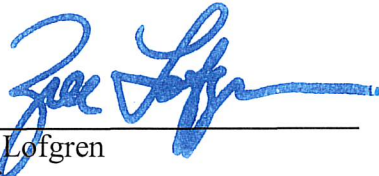
Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence



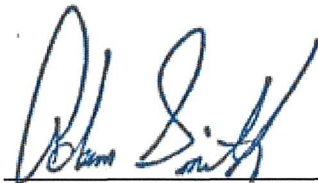
Bennie G. Thompson
Chairman
Committee on Homeland Security



Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairperson
Committee on House Administration



Adam Smith
Chairman
Committee on Armed Services

Enclosure

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable Ronald A. Klain
The Honorable David S. Ferriero
Page 3

The Honorable John Katko, Ranking Member
Committee on Homeland Security

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

The Honorable Rodney Davis, Ranking Member
Committee on House Administration

The Honorable Mike Rogers, Ranking Member
Committee on Armed Services

Congress of the United States
Washington, DC 20515

March 25, 2021

The Honorable Merrick B. Garland
Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Garland:

Our Committees are requesting information relating to the January 6, 2021, assault on the U.S. Capitol, which killed five people and injured hundreds more. Specifically, the Committees request that you produce the following documents in your custody, control, or possession by April 8, 2021:

1. Documents and communications received, prepared, or sent between December 1, 2020, and January 4, 2021, by employees or officials of the Department or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021;
2. Documents and communications received, prepared, or sent between January 5, 2021, and January 7, 2021, by employees or officials of the Department or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the events of January 6, 2021; and
3. Documents and communications received, prepared, or sent between January 8, 2021, and January 20, 2021, by employees or officials of the Department or any of its components, offices, or directorates, relating to the events or aftermath of January 6, 2021.


In responding to this request, we ask you to prioritize: (1) communications with the White House, federal agencies, and state and local government entities; (2) documents relating to any threat assessments, information reports, intelligence assessments, after-action reports, response timelines, or operational summaries; (3) documents relating to any requests or offers for security assistance or other mitigation measures; (4) documents regarding participation in the attacks on January 6, 2021, by any Department employee or official, as well as any disciplinary measures considered or taken; and (5) communications, if any, with participants in the attacks on January 6, 2021, or other individuals associated with groups participating in the attacks on January 6, 2021.


We understand that the Department continues to investigate and prosecute individuals involved in the events on January 6, 2021. We are happy to work with you to ensure that the document requests in this letter do not interfere with ongoing investigations and prosecutions.


The Honorable Merrick B. Garland
Page 2

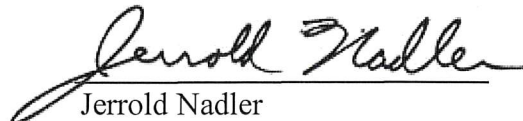
The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. An attachment to this letter provides additional instructions for responding to the Committees’ request. Please contact Committee staff at (202) 225-5051 if you have any questions about this request.


Sincerely,

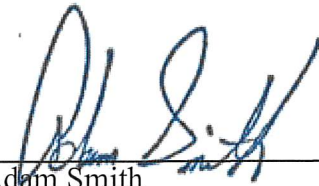

Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform


Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence


Bennie G. Thompson
Chairman
Committee on Homeland Security


Jerrold Nadler
Chairman
Committee on the Judiciary


Zoe Lofgren
Chairperson
Committee on House Administration


Adam Smith
Chairman
Committee on Armed Services

Enclosure

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable John Katko, Ranking Member
Committee on Homeland Security

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

The Honorable Merrick B. Garland
Page 3

The Honorable Rodney Davis, Ranking Member
Committee on House Administration

The Honorable Mike Rogers, Ranking Member
Committee on Armed Services

Congress of the United States
Washington, DC 20515

March 25, 2021

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Director Wray:

Our Committees are requesting information relating to the January 6, 2021, assault on the U.S. Capitol, which killed five people and injured hundreds more. Specifically, the Committees request that you produce the following documents in your custody, control, or possession by April 8, 2021:

1. Documents and communications received, prepared, or sent between December 1, 2020, and January 4, 2021, by employees or officials of the FBI or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021;
2. Documents and communications received, prepared, or sent between January 5, 2021, and January 7, 2021, by employees or officials of the FBI or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the events of January 6, 2021; and
3. Documents and communications received, prepared, or sent between January 8, 2021, and January 20, 2021, by employees or officials of the FBI or any of its components, offices, or directorates, relating to the events or aftermath of January 6, 2021.

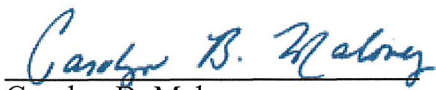
In responding to this request, we ask you to prioritize: (1) communications with the White House, federal agencies, and state and local government entities; (2) documents relating to any threat assessments, information reports, intelligence assessments, after-action reports, response timelines, or operational summaries; (3) documents relating to any requests or offers for security assistance or other mitigation measures; (4) documents regarding participation in the attacks on January 6, 2021, by any FBI employee or official, as well as any disciplinary measures considered or taken; and (5) communications, if any, with participants in the attacks on January 6, 2021, or other individuals associated with groups participating in the attacks on January 6, 2021.

The Honorable Christopher A. Wray
Page 2

We understand that the FBI continues to investigate the events on January 6, 2021. We are happy to work with you to ensure that the document requests in this letter do not interfere with ongoing investigations and prosecutions.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional instructions for responding to the Committees' request. Please contact Committee staff at (202) 225-5051 if you have any questions about this request.

Sincerely,



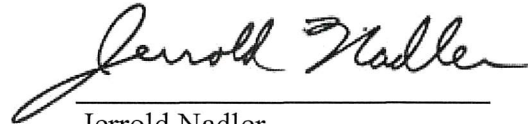
Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence



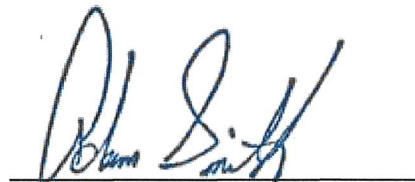
Bennie G. Thompson
Chairman
Committee on Homeland Security



Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairperson
Committee on House Administration



Adam Smith
Chairman
Committee on Armed Services

Enclosure

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable John Katko, Ranking Member
Committee on Homeland Security

The Honorable Christopher A. Wray
Page 3

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

The Honorable Rodney Davis, Ranking Member
Committee on House Administration

The Honorable Mike Rogers, Ranking Member
Committee on Armed Services

Congress of the United States
Washington, DC 20515

March 25, 2021

The Honorable Lloyd J. Austin III
Secretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, D.C. 20528

Dear Secretary Austin:

Our Committees are requesting information relating to the January 6, 2021, assault on the U.S. Capitol, which killed five people and injured hundreds more. Specifically, the Committees request that you produce the following documents in your custody, control, or possession by April 8, 2021:

1. Documents and communications received, prepared, or sent between December 1, 2020, and January 4, 2021, by employees or officials of the Department or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021;
2. Documents and communications received, prepared, or sent between January 5, 2021, and January 7, 2021, by employees or officials of the Department or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the events of January 6, 2021; and
3. Documents and communications received, prepared, or sent between January 8, 2021, and January 20, 2021, by employees or officials of the Department or any of its components, offices, or directorates, relating to the events or aftermath of January 6, 2021.

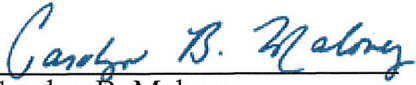
In responding to this request, we ask you to prioritize: (1) communications with the White House, federal agencies, and state and local government entities; (2) documents relating to any threat assessments, information reports, intelligence assessments, after-action reports, response timelines, or operational summaries; (3) documents relating to any requests or offers for security assistance or other mitigation measures; (4) documents regarding participation in the attacks on January 6, 2021, by any Department employee or official, as well as any disciplinary measures considered or taken; and (5) communications, if any, with participants in the attacks on January 6, 2021, or other individuals associated with groups participating in the attacks on January 6, 2021.


The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. An attachment to this letter provides additional instructions for responding to the


The Honorable Lloyd J. Austin III
Page 2

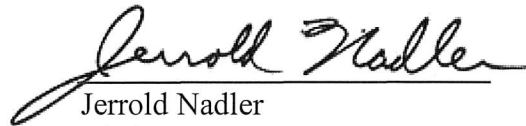
Committees' request. Please contact Committee staff at (202) 225-5051 if you have any questions about this request.

Sincerely,

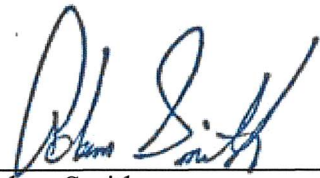

Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence


Bennie G. Thompson
Chairman
Committee on Homeland Security


Jerrold Nadler
Chairman
Committee on the Judiciary


Zoe Lofgren
Chairperson
Committee on House Administration


Adam Smith
Chairman
Committee on Armed Services


Betty McCollum
Chair
Committee on Appropriations
Subcommittee on Defense

Enclosure

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable Lloyd J. Austin III
Page 3

The Honorable John Katko, Ranking Member
Committee on Homeland Security

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

The Honorable Rodney Davis, Ranking Member
Committee on House Administration

The Honorable Mike Rogers, Ranking Member
Committee on Armed Services

The Honorable Ken Calvert, Ranking Member
Committee on Appropriations
Subcommittee on Defense

Congress of the United States
Washington, DC 20515

March 25, 2021

General Daniel R. Hokanson
Chief
National Guard Bureau
1636 Defense Pentagon
Washington, D.C. 20301

Dear General Hokanson:

Our Committees are requesting information relating to the January 6, 2021, assault on the U.S. Capitol, which killed five people and injured hundreds more. Specifically, the Committees request that you produce the following documents in your custody, control, or possession by April 8, 2021:

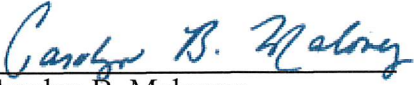
1. Documents and communications received, prepared, or sent between December 1, 2020, and January 4, 2021, by employees or officials of the National Guard Bureau or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021;
2. Documents and communications received, prepared, or sent between January 5, 2021, and January 7, 2021, by employees or officials of the National Guard Bureau or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the events of January 6, 2021; and
3. Documents and communications received, prepared, or sent between January 8, 2021, and January 20, 2021, by employees or officials of the National Guard Bureau or any of its components, offices, or directorates, relating to the events or aftermath of January 6, 2021.


In responding to this request, we ask you to prioritize: (1) communications with the White House, federal agencies, and state and local government entities; (2) documents relating to any threat assessments, information reports, intelligence assessments, after-action reports, response timelines, or operational summaries; (3) documents relating to any requests or offers for security assistance or other mitigation measures; (4) documents regarding participation in the attacks on January 6, 2021, by any National Guard Bureau employee or official, as well as any disciplinary measures considered or taken; and (5) communications, if any, with participants in the attacks on January 6, 2021, or other individuals associated with groups participating in the attacks on January 6, 2021.


General Daniel R. Hokanson
Page 2

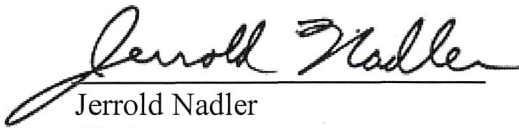
The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional instructions for responding to the Committees' request. Please contact Committee staff at (202) 225-5051 if you have any questions about this request.

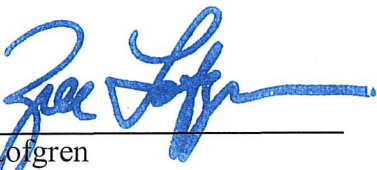
Sincerely,

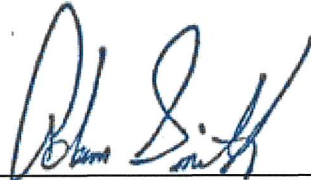

Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence


Bennie G. Thompson
Chairman
Committee on Homeland Security


Jerrold Nadler
Chairman
Committee on the Judiciary


Zoe Lofgren
Chairperson
Committee on House Administration


Adam Smith
Chairman
Committee on Armed Services


Betty McCollum
Chair
Committee on Appropriations
Subcommittee on Defense

Enclosure

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

General Daniel R. Hokanson
Page 3

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable John Katko, Ranking Member
Committee on Homeland Security

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

The Honorable Rodney Davis, Ranking Member
Committee on House Administration

The Honorable Mike Rogers, Ranking Member
Committee on Armed Services

The Honorable Ken Calvert, Ranking Member
Committee on Appropriations
Subcommittee on Defense

Congress of the United States
Washington, DC 20515

March 25, 2021

The Honorable Alejandro N. Mayorkas
Secretary
Department of Homeland Security
3801 Nebraska Avenue, N.W.
Washington, D.C. 20016

Dear Secretary Mayorkas:

Our Committees are requesting information relating to the January 6, 2021, assault on the U.S. Capitol, which killed five people and injured hundreds more. Specifically, the Committees request that you produce the following documents in your custody, control, or possession by April 8, 2021:

1. Documents and communications received, prepared, or sent between December 1, 2020, and January 4, 2021, by employees or officials of the Department or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021;
2. Documents and communications received, prepared, or sent between January 5, 2021, and January 7, 2021, by employees or officials of the Department or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the events of January 6, 2021; and
3. Documents and communications received, prepared, or sent between January 8, 2021, and January 20, 2021, by employees or officials of the Department or any of its components, offices, or directorates, relating to the events or aftermath of January 6, 2021.


In responding to this request, we ask you to prioritize: (1) communications with the White House, federal agencies, and state and local government entities; (2) documents relating to any threat assessments, information reports, intelligence assessments, after-action reports, response timelines, or operational summaries; (3) documents relating to any requests or offers for security assistance or other mitigation measures; (4) documents regarding participation in the attacks on January 6, 2021, by any Department employee or official, as well as any disciplinary measures considered or taken; and (5) communications, if any, with participants in the attacks on January 6, 2021, or other individuals associated with groups participating in the attacks on January 6, 2021.


The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. An attachment to this letter provides additional instructions for responding to the


The Honorable Alejandro N. Mayorkas
Page 2

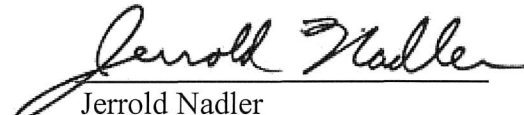
Committees' request. Please contact Committee staff at (202) 225-5051 if you have any questions about this request.


Sincerely,

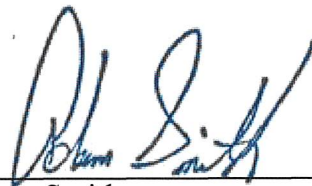

Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform


Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence


Bennie G. Thompson
Chairman
Committee on Homeland Security


Jerrold Nadler
Chairman
Committee on the Judiciary


Zoe Lofgren
Chairperson
Committee on House Administration


Adam Smith
Chairman
Committee on Armed Services

Enclosure

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable John Katko, Ranking Member
Committee on Homeland Security

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

The Honorable Rodney Davis, Ranking Member
Committee on House Administration

The Honorable Alejandro N. Mayorkas
Page 3

The Honorable Mike Rogers, Ranking Member
Committee on Armed Services

Congress of the United States
Washington, DC 20515

March 25, 2021

The Honorable Avril Haines
Director of National Intelligence
Office of the Director of National Intelligence
1500 Tysons McLean Drive
McLean, VA 22102

Dear Director Haines:

Our Committees are requesting information relating to the January 6, 2021, assault on the U.S. Capitol, which killed five people and injured hundreds more. Specifically, the Committees request that you produce the following documents in your custody, control, or possession by April 8, 2021:

1. Documents and communications received, prepared, or sent between December 1, 2020, and January 4, 2021, by employees or officials in the Office of the Director of National Intelligence (ODNI) or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021;
2. Documents and communications received, prepared, or sent between January 5, 2021, and January 7, 2021, by employees or officials at ODNI or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the events of January 6, 2021; and
3. Documents and communications received, prepared, or sent between January 8, 2021, and January 20, 2021, by employees or officials at ODNI or any of its components, offices, or directorates, relating to the events or aftermath of January 6, 2021.

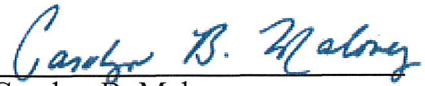
In responding to this request, we ask you to prioritize: (1) communications with the White House, federal agencies, and state and local government entities; (2) documents relating to any threat assessments, information reports, intelligence assessments, after-action reports, response timelines, or operational summaries; (3) documents relating to any requests or offers for security assistance or other mitigation measures; (4) documents regarding participation in the events of January 6, 2021, by any ODNI employee or official, as well as any disciplinary measures considered or taken; and (5) communications, if any, with participants in the events of January 6, 2021, or other individuals associated with groups participating in the events of January 6, 2021.

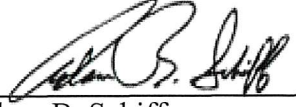
The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under


The Honorable Avril Haines
Page 2

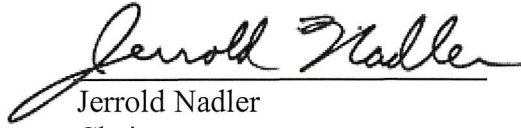
House Rule X. An attachment to this letter provides additional instructions for responding to the Committees' request. Please contact Committee staff at (202) 225-5051 if you have any questions about this request.

Sincerely,

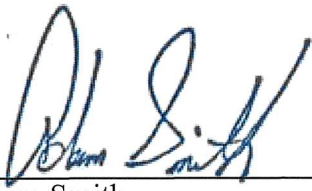

Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence


Bennie G. Thompson
Chairman
Committee on Homeland Security


Jerrold Nadler
Chairman
Committee on the Judiciary


Zoe Lofgren
Chairperson
Committee on House Administration


Adam Smith
Chairman
Committee on Armed Services


Betty McCollum
Chair
Committee on Appropriations
Subcommittee on Defense

Enclosure

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable Avril Haines
Page 3

The Honorable John Katko, Ranking Member
Committee on Homeland Security

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

The Honorable Rodney Davis, Ranking Member
Committee on House Administration

The Honorable Mike Rogers, Ranking Member
Committee on Armed Services

The Honorable Ken Calvert, Ranking Member
Committee on Appropriations
Subcommittee on Defense

Congress of the United States
Washington, DC 20515

March 25, 2021

The Honorable Deb Haaland
Secretary
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Haaland:

Our Committees are requesting information relating to the January 6, 2021, assault on the U.S. Capitol, which killed five people and injured hundreds more. Specifically, the Committees request that you produce the following documents in your custody, control, or possession by April 8, 2021:

1. Documents and communications received, prepared, or sent between December 1, 2020, and January 4, 2021, by employees or officials of the Department or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021;
2. Documents and communications received, prepared, or sent between January 5, 2021, and January 7, 2021, by employees or officials of the Department or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the events of January 6, 2021; and
3. Documents and communications received, prepared, or sent between January 8, 2021, and January 20, 2021, by employees or officials of the Department or any of its components, offices, or directorates, relating to the events or aftermath of January 6, 2021.

In responding to this request, we ask you to prioritize: (1) communications with the White House, federal agencies, and state and local government entities; (2) documents relating to any threat assessments, information reports, intelligence assessments, after-action reports, response timelines, or operational summaries; (3) documents relating to any requests or offers for security assistance or other mitigation measures; (4) documents regarding participation in the attacks on January 6, 2021, by any Department employee or official, as well as any disciplinary measures considered or taken; and (5) communications, if any, with participants in the attacks on January 6, 2021, or other individuals associated with groups participating in the attacks on January 6, 2021.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under

The Honorable Deb Haaland
Page 2

House Rule X. An attachment to this letter provides additional instructions for responding to the Committees' request. Please contact Committee staff at (202) 225-5051 if you have any questions about this request.

Sincerely,



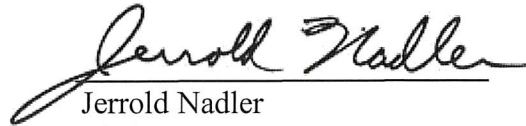
Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



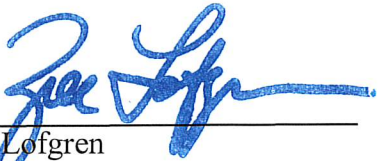
Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence



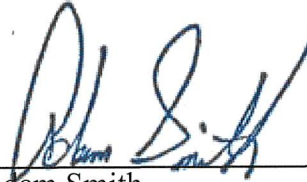
Bennie G. Thompson
Chairman
Committee on Homeland Security



Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairperson
Committee on House Administration



Adam Smith
Chairman
Committee on Armed Services



Chellie Pingree
Chair
Committee on Appropriations
Subcommittee on Interior, Environment
and Related Agencies

Enclosure

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Deb Haaland
Page 3

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable John Katko, Ranking Member
Committee on Homeland Security

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

The Honorable Rodney Davis, Ranking Member
Committee on House Administration

The Honorable Mike Rogers, Ranking Member
Committee on Armed Serves

The Honorable David Joyce, Ranking Member
Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies

Congress of the United States
Washington, DC 20515

March 25, 2021

Ms. Pamela A. Smith
Chief
U.S. Park Police
1100 Ohio Drive, S.W.
Washington, D.C. 20242

Dear Chief Smith:

Our Committees are requesting information relating to the January 6, 2021, assault on the U.S. Capitol, which killed five people and injured hundreds more. Specifically, the Committees request that you produce the following documents in your custody, control, or possession by April 8, 2021:

1. Documents and communications received, prepared, or sent between December 1, 2020, and January 4, 2021, by U.S. Park Police employees or officials or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021;
2. Documents and communications received, prepared, or sent between January 5, 2021, and January 7, 2021, by U.S. Park Police employees or officials or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the events of January 6, 2021; and
3. Documents and communications received, prepared, or sent between January 8, 2021, and January 20, 2021, by U.S. Park Police employees or officials or any of its components, offices, or directorates, relating to the events or aftermath of January 6, 2021.


In responding to this request, we ask you to prioritize: (1) communications with the White House, federal agencies, and state and local government entities; (2) documents relating to any threat assessments, information reports, intelligence assessments, after-action reports, response timelines, or operational summaries; (3) documents relating to any requests or offers for security assistance or other mitigation measures; (4) documents regarding participation in the attacks on January 6, 2021, by any U.S. Park Police employee or official, as well as any disciplinary measures considered or taken; and (5) communications, if any, with participants in the attacks on January 6, 2021, or other individuals associated with groups participating in the attacks on January 6, 2021.


The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under


Chief Pamela A. Smith
Page 2

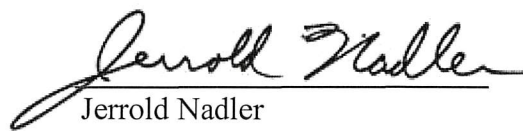
House Rule X. An attachment to this letter provides additional instructions for responding to the Committees' request. Please contact Committee staff at (202) 225-5051 if you have any questions about this request.


Sincerely,

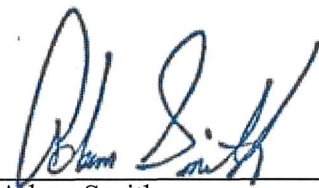

Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform


Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence


Bennie G. Thompson
Chairman
Committee on Homeland Security


Jerrold Nadler
Chairman
Committee on the Judiciary


Zoe Lofgren
Chairperson
Committee on House Administration


Adam Smith
Chairman
Committee on Armed Services


Chellie Pingree
Chair
Committee on Appropriations
Subcommittee on Interior, Environment
and Related Agencies

Enclosure

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

Chief Pamela A. Smith
Page 3

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable John Katko, Ranking Member
Committee on Homeland Security

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

The Honorable Rodney Davis, Ranking Member
Committee on House Administration

The Honorable Mike Rogers, Ranking Member
Committee on Armed Services

The Honorable David Joyce, Ranking Member
Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies

Congress of the United States
Washington, DC 20515

March 25, 2021

The Honorable Muriel Bowser
Mayor
District of Columbia
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Mayor Bowser:

Our Committees are requesting information relating to the January 6, 2021, assault on the U.S. Capitol, which killed five people and injured hundreds more. Specifically, the Committees request that you produce the following documents in your custody, control, or possession by April 8, 2021:

1. Documents and communications received, prepared, or sent between December 1, 2020, and January 4, 2021, by employees or officials in the Office of the Mayor or any of its components, offices, or directorates, including the Homeland Security and Emergency Management Agency, relating to the counting of the Electoral College vote on January 6, 2021, or the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021;
2. Documents and communications received, prepared, or sent between January 5, 2021, and January 7, 2021, by employees or officials in the Office of the Mayor or any of its components, offices, or directorates, including the Homeland Security and Emergency Management Agency, relating to the counting of the Electoral College vote on January 6, 2021, or the events of January 6, 2021; and
3. Documents and communications received, prepared, or sent between January 8, 2021, and January 20, 2021, by employees or officials in the Office of the Mayor or any of its components, offices, or directorates, including the Homeland Security and Emergency Management Agency, relating to the events or aftermath of January 6, 2021.

In responding to this request, we ask you to prioritize: (1) communications with the White House, federal agencies, and state and local government entities; (2) documents relating to any threat assessments, information reports, intelligence assessments, after-action reports, response timelines, or operational summaries; (3) documents relating to any requests or offers for security assistance or other mitigation measures; (4) documents regarding participation in the attacks on January 6, 2021, by any employee or official in the Office of the Mayor, as well as any disciplinary measures considered or taken; and (5) communications, if any, with participants in the attacks on January 6, 2021, or other individuals associated with groups participating in the attacks on January 6, 2021.

The Honorable Muriel Bowser
Page 2

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. An attachment to this letter provides additional instructions for responding to the Committees’ request. Please contact Committee staff at (202) 225-5051 if you have any questions about this request.

Sincerely,



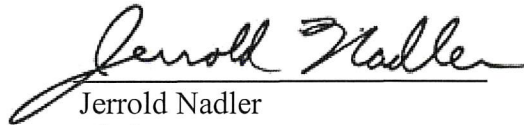
Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



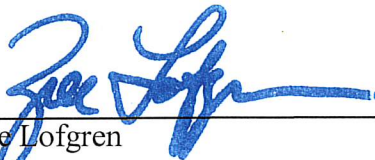
Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence



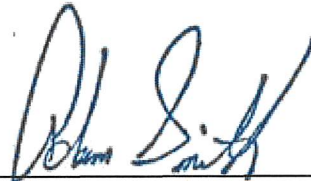
Bennie G. Thompson
Chairman
Committee on Homeland Security



Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairperson
Committee on House Administration



Adam Smith
Chairman
Committee on Armed Services

Enclosure

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable John Katko, Ranking Member
Committee on Homeland Security

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

The Honorable Muriel Bowser
Page 3

The Honorable Rodney Davis, Ranking Member
Committee on House Administration

The Honorable Mike Rogers, Ranking Member
Committee on Armed Services

Congress of the United States
Washington, DC 20515

March 25, 2021

Mr. Robert J. Contee III
Acting Chief
Metropolitan Police Department
District of Columbia
300 Indiana Avenue, N.W.
Washington, D.C. 20001

Dear Acting Chief Contee:

Our Committees are requesting information relating to the January 6, 2021, assault on the U.S. Capitol, which killed five people and injured hundreds more. Specifically, the Committees request that you produce the following documents in your custody, control, or possession by April 8, 2021:


1. Documents and communications received, prepared, or sent between December 1, 2020, and January 4, 2021, by employees or officials of the Metropolitan Police Department or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021;
2. Documents and communications received, prepared, or sent between January 5, 2021, and January 7, 2021, by employees or officials of the Metropolitan Police Department or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the events of January 6, 2021; and
3. Documents and communications received, prepared, or sent between January 8, 2021, and January 20, 2021, by employees or officials of the Metropolitan Police Department or any of its components, offices, or directorates, relating to the events or aftermath of January 6, 2021.

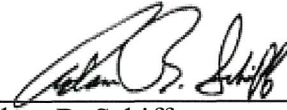
In responding to this request, we ask you to prioritize: (1) communications with the White House, federal agencies, and state and local government entities; (2) documents relating to any threat assessments, information reports, intelligence assessments, after-action reports, response timelines, or operational summaries; (3) documents relating to any requests or offers for security assistance or other mitigation measures; (4) documents regarding participation in the attacks on January 6, 2021, by any Metropolitan Police Department employee or official, as well as any disciplinary measures considered or taken; and (5) communications, if any, with participants in the attacks on January 6, 2021, or other individuals associated with groups participating in the attacks on January 6, 2021.


Acting Chief Robert J. Contee III
Page 2

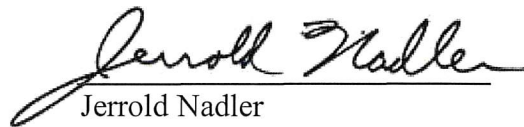
The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional instructions for responding to the Committees' request. Please contact Committee staff at (202) 225-5051 if you have any questions about this request.

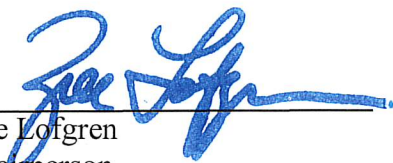
Sincerely,

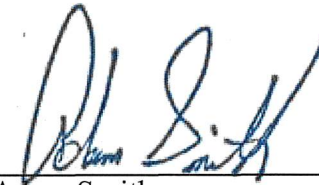

Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform


Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence


Bennie G. Thompson
Chairman
Committee on Homeland Security


Jerrold Nadler
Chairman
Committee on the Judiciary


Zoe Lofgren
Chairperson
Committee on House Administration


Adam Smith
Chairman
Committee on Armed Services

Enclosure

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable John Katko, Ranking Member
Committee on Homeland Security

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

Acting Chief Robert J. Contee III
Page 3

The Honorable Rodney Davis, Ranking Member
Committee on House Administration

The Honorable Mike Rogers, Ranking Member
Committee on Armed Services

Congress of the United States
Washington, DC 20515

March 25, 2021

The Honorable J. Brett Blanton
Architect of the Capitol
U.S. Capitol, Room SB-15
Washington, D.C. 20515

Dear Mr. Blanton:

Our Committees are requesting information relating to the January 6, 2021, assault on the U.S. Capitol, which killed five people and injured hundreds more. Specifically, the Committees request that you produce the following documents in your custody, control, or possession by April 8, 2021:

1. Documents and communications received, prepared, or sent between December 1, 2020, and January 4, 2021, by Architect of the Capitol employees or officials or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021;
2. Documents and communications received, prepared, or sent between January 5, 2021, and January 7, 2021, by Architect of the Capitol employees or officials or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the events of January 6, 2021; and
3. Documents and communications received, prepared, or sent between January 8, 2021, and January 20, 2021, by Architect of the Capitol employees or officials or any of its components, offices, or directorates, relating to the events or aftermath of January 6, 2021.

In responding to this request, we ask you to prioritize: (1) communications with the White House, federal agencies, and state and local government entities; (2) documents relating to any threat assessments, information reports, intelligence assessments, after-action reports, response timelines, or operational summaries; (3) documents relating to any requests or offers for security assistance or other mitigation measures; (4) documents regarding participation in the attacks on January 6, 2021, by any Architect of the Capitol employee or official, as well as any disciplinary measures considered or taken; and (5) communications, if any, with participants in the attacks on January 6, 2021, or other individuals associated with groups participating in the attacks on January 6, 2021.

The Honorable J. Brett Blanton
Page 2

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional instructions for responding to the Committees' request. Please contact Committee staff at (202) 225-5051 if you have any questions about this request.

Sincerely,



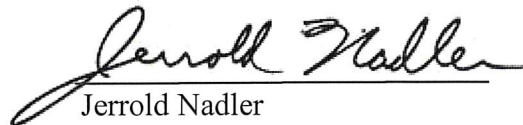
Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence



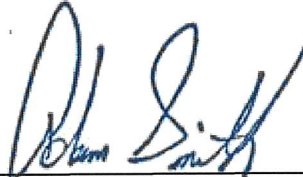
Bennie G. Thompson
Chairman
Committee on Homeland Security



Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairperson
Committee on House Administration



Adam Smith
Chairman
Committee on Armed Services



Tim Ryan
Chairman
Subcommittee on the Legislative Branch
Committee on Appropriations

Enclosure

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable J. Brett Blanton
Page 3

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable John Katko, Ranking Member
Committee on Homeland Security

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

The Honorable Rodney Davis, Ranking Member
Committee on House Administration

The Honorable Mike Rogers, Ranking Member
Committee on Armed Services

The Honorable Jaime Herrera Beutler, Ranking Member
Subcommittee on the Legislative Branch
Committee on Appropriations

Congress of the United States
Washington, DC 20515

March 25, 2021

The Honorable Timothy P. Blodgett
Acting Sergeant at Arms
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Blodgett:

Our Committees are requesting information relating to the January 6, 2021, assault on the U.S. Capitol, which killed five people and injured hundreds more. Specifically, the Committees request that you produce the following documents in your custody, control, or possession by April 8, 2021:


1. Documents and communications received, prepared, or sent between December 1, 2020, and January 4, 2021, by House Sergeant at Arms employees or officials or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021;
2. Documents and communications received, prepared, or sent between January 5, 2021, and January 7, 2021, by House Sergeant at Arms employees or officials or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the events of January 6, 2021; and
3. Documents and communications received, prepared, or sent between January 8, 2021, and January 20, 2021, by House Sergeant at Arms employees or officials or any of its components, offices, or directorates, relating to the events or aftermath of January 6, 2021.


In responding to this request, we ask you to prioritize: (1) communications with the White House, federal agencies, and state and local government entities; (2) documents relating to any threat assessments, information reports, intelligence assessments, after-action reports, response timelines, or operational summaries; (3) documents relating to any requests or offers for security assistance or other mitigation measures; (4) documents regarding participation in the attacks on January 6, 2021, by any House Sergeant at Arms employee or official, as well as any disciplinary measures considered or taken; and (5) communications, if any, with participants in the attacks on January 6, 2021, or other individuals associated with groups participating in the attacks on January 6, 2021.


The Honorable Timothy P. Blodgett
Page 2

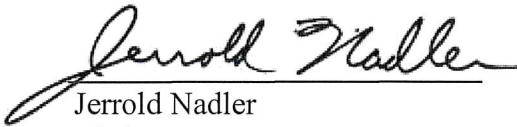
The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional instructions for responding to the Committees' request. Please contact Committee staff at (202) 225-5051 if you have any questions about this request.


Sincerely,

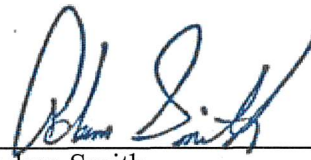

Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform


Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence


Bennie G. Thompson
Chairman
Committee on Homeland Security


Jerrold Nadler
Chairman
Committee on the Judiciary


Zoe Lofgren
Chairperson
Committee on House Administration


Adam Smith
Chairman
Committee on Armed Services


Tim Ryan
Chairman
Subcommittee on the Legislative Branch
Committee on Appropriations

Enclosure

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Timothy P. Blodgett
Page 3

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable John Katko, Ranking Member
Committee on Homeland Security

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

The Honorable Rodney Davis, Ranking Member
Committee on House Administration

The Honorable Mike Rogers, Ranking Member
Committee on Armed Services

The Honorable Jaime Herrera Beutler, Ranking Member
Subcommittee on the Legislative Branch
Committee on Appropriations

Congress of the United States
Washington, DC 20515

March 25, 2021

The Honorable Karen Gibson
Sergeant at Arms and Doorkeeper
U.S. Senate
Washington, D.C. 20510

Dear Ms. Gibson:

The Committees are requesting information relating to the January 6, 2021, assault on the U.S. Capitol, which killed five people and injured hundreds more. Specifically, the Committees request that you produce the following documents in your custody, control, or possession by April 8, 2021:

1. Documents and communications received, prepared, or sent between December 1, 2020, and January 4, 2021, by Senate Sergeant at Arms employees or officials or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021;
2. Documents and communications received, prepared, or sent between January 5, 2021, and January 7, 2021, by Senate Sergeant at Arms employees or officials or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the events of January 6, 2021; and
3. Documents and communications received, prepared, or sent between January 8, 2021, and January 20, 2021, by Senate Sergeant at Arms employees or officials or any of its components, offices, or directorates, relating to the events or aftermath of January 6, 2021.

In responding to this request, we ask you to prioritize: (1) communications with the White House, federal agencies, and state and local government entities; (2) documents relating to any threat assessments, information reports, intelligence assessments, after-action reports, response timelines, or operational summaries; (3) documents relating to any requests or offers for security assistance or other mitigation measures; (4) documents regarding participation in the attacks on January 6, 2021, by any Senate Sergeant at Arms employee or official, as well as any disciplinary measures considered or taken; and (5) communications, if any, with participants in the attacks on January 6, 2021, or other individuals associated with groups participating in the attacks on January 6, 2021.

The Honorable Karen Gibson
Page 2

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional instructions for responding to the Committees' request. Please contact Committee staff at (202) 225-5051 if you have any questions about this request.

Sincerely,



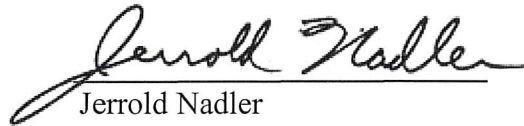
Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence



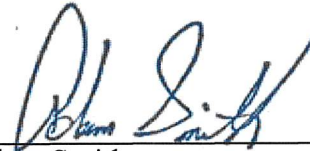
Bennie G. Thompson
Chairman
Committee on Homeland Security



Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairperson
Committee on House Administration



Adam Smith
Chairman
Committee on Armed Services



Tim Ryan
Chairman
Subcommittee on the Legislative Branch
Committee on Appropriations

Enclosure

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Karen Gibson
Page 3

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable John Katko, Ranking Member
Committee on Homeland Security

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

The Honorable Rodney Davis, Ranking Member
Committee on House Administration

The Honorable Mike Rogers, Ranking Member
Committee on Armed Services

The Honorable Jaime Herrera Beutler, Ranking Member
Subcommittee on the Legislative Branch
Committee on Appropriations

Congress of the United States
Washington, DC 20515

March 25, 2021

Ms. Yogananda D. Pittman
Acting Chief
U.S. Capitol Police
119 D Street, N.E.
Washington, D.C. 20510

Dear Acting Chief Pittman:

Our Committees are requesting information relating to the January 6, 2021, assault on the U.S. Capitol, which killed five people and injured hundreds more. Specifically, the Committees request that you produce the following documents in your custody, control, or possession by April 8, 2021:

1. Documents and communications received, prepared, or sent between December 1, 2020, and January 4, 2021, by U.S. Capitol Police employees or officials or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021;
2. Documents and communications received, prepared, or sent between January 5, 2021, and January 7, 2021, by U.S. Capitol Police employees or officials or any of its components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the events of January 6, 2021; and
3. Documents and communications received, prepared, or sent between January 8, 2021, and January 20, 2021, by U.S. Capitol Police employees or officials or any of its components, offices, or directorates, relating to the events or aftermath of January 6, 2021.

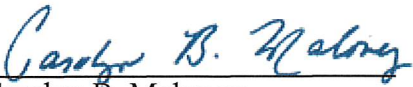
In responding to this request, we ask you to prioritize: (1) communications with the White House, federal agencies, and state and local government entities; (2) documents relating to any threat assessments, information reports, intelligence assessments, after-action reports, response timelines, or operational summaries; (3) documents relating to any requests or offers for security assistance or other mitigation measures; (4) documents regarding participation in the attacks on January 6, 2021, by any U.S. Capitol Police employee or official, as well as any disciplinary measures considered or taken; and (5) communications, if any, with participants in the attacks on January 6, 2021, or other individuals associated with groups participating in the attacks on January 6, 2021.

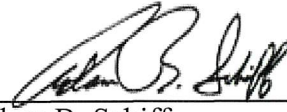
The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under


Acting Chief Yogananda D. Pittman
Page 2

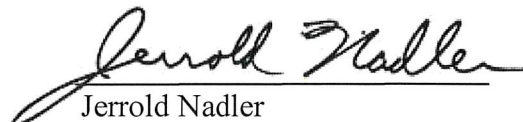
House Rule X. An attachment to this letter provides additional instructions for responding to the Committees' request. Please contact Committee staff at (202) 225-5051 if you have any questions about this request.

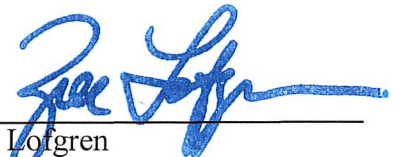
Sincerely,

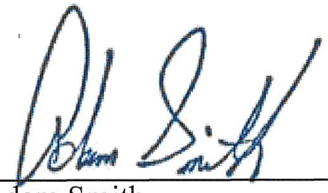

Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform


Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence


Bennie G. Thompson
Chairman
Committee on Homeland Security


Jerrold Nadler
Chairman
Committee on the Judiciary


Zoe Lofgren
Chairperson
Committee on House Administration


Adam Smith
Chairman
Committee on Armed Services


Tim Ryan
Chairman
Subcommittee on the Legislative Branch
Committee on Appropriations

Enclosure

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

Acting Chief Yogananda D. Pittman
Page 3

The Honorable John Katko, Ranking Member
Committee on Homeland Security

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

The Honorable Rodney Davis, Ranking Member
Committee on House Administration

The Honorable Mike Rogers, Ranking Member
Committee on Armed Services

The Honorable Jaime Herrera Beutler, Ranking Member
Subcommittee on the Legislative Branch
Committee on Appropriations

EXHIBIT 3

H. Res. 503

In the House of Representatives, U. S.,

June 30, 2021.

Whereas January 6, 2021, was one of the darkest days of our democracy, during which insurrectionists attempted to impede Congress's Constitutional mandate to validate the presidential election and launched an assault on the United States Capitol Complex that resulted in multiple deaths, physical harm to over 140 members of law enforcement, and terror and trauma among staff, institutional employees, press, and Members;

Whereas, on January 27, 2021, the Department of Homeland Security issued a National Terrorism Advisory System Bulletin that due to the “heightened threat environment across the United States,” in which “[S]ome ideologically-motivated violent extremists with objections to the exercise of governmental authority and the presidential transition, as well as other perceived grievances fueled by false narratives, could continue to mobilize to incite or commit violence.” The Bulletin also stated that—

(1) “DHS is concerned these same drivers to violence will remain through early 2021 and some DVEs [domestic violent extremists] may be emboldened by the January 6, 2021 breach of the U.S. Capitol Building in Washington, D.C. to target elected officials and government facilities.”; and

(2) “Threats of violence against critical infrastructure, including the electric, telecommunications and healthcare sectors, increased in 2020 with violent extremists citing misinformation and conspiracy theories about COVID–19 for their actions”;

Whereas, on September 24, 2020, Director of the Federal Bureau of Investigation Christopher Wray testified before the Committee on Homeland Security of the House of Representatives that—

(1) “[T]he underlying drivers for domestic violent extremism – such as perceptions of government or law enforcement overreach, sociopolitical conditions, racism, anti-Semitism, Islamophobia, misogyny, and reactions to legislative actions – remain constant.”;

(2) “[W]ithin the domestic terrorism bucket category as a whole, racially-motivated violent extremism is, I think, the biggest bucket within the larger group. And within the racially-motivated violent extremists bucket, people subscribing to some kind of white supremacist-type ideology is certainly the biggest chunk of that.”; and

(3) “More deaths were caused by DVEs than international terrorists in recent years. In fact, 2019 was the deadliest year for domestic extremist violence since the Oklahoma City bombing in 1995”;

Whereas, on April 15, 2021, Michael Bolton, the Inspector General for the United States Capitol Police, testified to the Committee on House Administration of the House of Representatives that—

(1) “The Department lacked adequate guidance for operational planning. USCP did not have policy and procedures in place that communicated which personnel were responsible for operational planning, what type of oper-

ational planning documents its personnel should prepare, nor when its personnel should prepare operational planning documents.”; and

(2) “USCP failed to disseminate relevant information obtained from outside sources, lacked consensus on interpretation of threat analyses, and disseminated conflicting intelligence information regarding planned events for January 6, 2021.”; and

Whereas the security leadership of the Congress under-prepared for the events of January 6th, with United States Capitol Police Inspector General Michael Bolton testifying again on June 15, 2021, that—

(1) “USCP did not have adequate policies and procedures for FRU (First Responder Unit) defining its overall operations. Additionally, FRU lacked resources and training for properly completing its mission.”;

(2) “The Department did not have adequate policies and procedures for securing ballistic helmets and vests strategically stored around the Capitol Complex.”; and

(3) “FRU did not have the proper resources to complete its mission.”: Now, therefore, be it

Resolved,

SECTION 1. ESTABLISHMENT.

There is hereby established the Select Committee to Investigate the January 6th Attack on the United States Capitol (hereinafter referred to as the “Select Committee”).

SEC. 2. COMPOSITION.

(a) APPOINTMENT OF MEMBERS.—The Speaker shall appoint 13 Members to the Select Committee, 5 of whom shall be appointed after consultation with the minority leader.

•HRES 503 EH

(b) DESIGNATION OF CHAIR.—The Speaker shall designate one Member to serve as chair of the Select Committee.

(c) VACANCIES.—Any vacancy in the Select Committee shall be filled in the same manner as the original appointment.

SEC. 3. PURPOSES.

Consistent with the functions described in section 4, the purposes of the Select Committee are the following:

(1) To investigate and report upon the facts, circumstances, and causes relating to the January 6, 2021, domestic terrorist attack upon the United States Capitol Complex (hereafter referred to as the “domestic terrorist attack on the Capitol”) and relating to the interference with the peaceful transfer of power, including facts and causes relating to the preparedness and response of the United States Capitol Police and other Federal, State, and local law enforcement agencies in the National Capital Region and other instrumentalities of government, as well as the influencing factors that fomented such an attack on American representative democracy while engaged in a constitutional process.

(2) To examine and evaluate evidence developed by relevant Federal, State, and local governmental agencies regarding the facts and circumstances surrounding the domestic terrorist attack on the Capitol and targeted vi-

olence and domestic terrorism relevant to such terrorist attack.

(3) To build upon the investigations of other entities and avoid unnecessary duplication of efforts by reviewing the investigations, findings, conclusions, and recommendations of other executive branch, congressional, or independent bipartisan or nonpartisan commission investigations into the domestic terrorist attack on the Capitol, including investigations into influencing factors related to such attack.

SEC. 4. FUNCTIONS.

(a) **FUNCTIONS.**—The functions of the Select Committee are to—

(1) investigate the facts, circumstances, and causes relating to the domestic terrorist attack on the Capitol, including facts and circumstances relating to—

(A) activities of intelligence agencies, law enforcement agencies, and the Armed Forces, including with respect to intelligence collection, analysis, and dissemination and information sharing among the branches and other instrumentalities of government;

(B) influencing factors that contributed to the domestic terrorist attack on the Capitol and how technology, including online platforms, financing,

and malign foreign influence operations and campaigns may have factored into the motivation, organization, and execution of the domestic terrorist attack on the Capitol; and

(C) other entities of the public and private sector as determined relevant by the Select Committee for such investigation;

(2) identify, review, and evaluate the causes of and the lessons learned from the domestic terrorist attack on the Capitol regarding—

(A) the command, control, and communications of the United States Capitol Police, the Armed Forces, the National Guard, the Metropolitan Police Department of the District of Columbia, and other Federal, State, and local law enforcement agencies in the National Capital Region on or before January 6, 2021;

(B) the structure, coordination, operational plans, policies, and procedures of the Federal Government, including as such relate to State and local governments and nongovernmental entities, and particularly with respect to detecting, preventing, preparing for, and responding to targeted violence and domestic terrorism;

(C) the structure, authorities, training, manpower utilization, equipment, operational planning, and use of force policies of the United States Capitol Police;

(D) the policies, protocols, processes, procedures, and systems for the sharing of intelligence and other information by Federal, State, and local agencies with the United States Capitol Police, the Sergeants at Arms of the House of Representatives and Senate, the Government of the District of Columbia, including the Metropolitan Police Department of the District of Columbia, the National Guard, and other Federal, State, and local law enforcement agencies in the National Capital Region on or before January 6, 2021, and the related policies, protocols, processes, procedures, and systems for monitoring, assessing, disseminating, and acting on intelligence and other information, including elevating the security posture of the United States Capitol Complex, derived from instrumentalities of government, open sources, and online platforms; and

(E) the policies, protocols, processes, procedures, and systems for interoperability between the United States Capitol Police and the National

Guard, the Metropolitan Police Department of the District of Columbia, and other Federal, State, and local law enforcement agencies in the National Capital Region on or before January 6, 2021; and

(3) issue a final report to the House containing such findings, conclusions, and recommendations for corrective measures described in subsection (c) as it may deem necessary.

(b) REPORTS.—

(1) INTERIM REPORTS.—In addition to the final report addressing the matters in subsection (a) and section 3, the Select Committee may report to the House or any committee of the House from time to time the results of its investigations, together with such detailed findings and legislative recommendations as it may deem advisable.

(2) TREATMENT OF CLASSIFIED OR LAW ENFORCEMENT-SENSITIVE MATTER.—Any report issued by the Select Committee shall be issued in unclassified form but may include a classified annex, a law enforcement-sensitive annex, or both.

(c) CORRECTIVE MEASURES DESCRIBED.—The corrective measures described in this subsection may include changes in law, policy, procedures, rules, or regulations that could be taken—

(1) to prevent future acts of violence, domestic terrorism, and domestic violent extremism, including acts targeted at American democratic institutions;

(2) to improve the security posture of the United States Capitol Complex while preserving accessibility of the Capitol Complex for all Americans; and

(3) to strengthen the security and resilience of the United States and American democratic institutions against violence, domestic terrorism, and domestic violent extremism.

(d) NO MARKUP OF LEGISLATION PERMITTED.—The Select Committee may not hold a markup of legislation.

SEC. 5. PROCEDURE.

(a) ACCESS TO INFORMATION FROM INTELLIGENCE COMMUNITY.—Notwithstanding clause 3(m) of rule X of the Rules of the House of Representatives, the Select Committee is authorized to study the sources and methods of entities described in clause 11(b)(1)(A) of rule X insofar as such study is related to the matters described in sections 3 and 4.

(b) TREATMENT OF CLASSIFIED INFORMATION.—Clause 11(b)(4), clause 11(e), and the first sentence of clause 11(f) of rule X of the Rules of the House of Representatives shall apply to the Select Committee.

(c) APPLICABILITY OF RULES GOVERNING PROCEDURES OF COMMITTEES.—Rule XI of the Rules of the House of

Representatives shall apply to the Select Committee except as follows:

(1) Clause 2(a) of rule XI shall not apply to the Select Committee.

(2) Clause 2(g)(2)(D) of rule XI shall apply to the Select Committee in the same manner as it applies to the Permanent Select Committee on Intelligence.

(3) Pursuant to clause 2(h) of rule XI, two Members of the Select Committee shall constitute a quorum for taking testimony or receiving evidence and one-third of the Members of the Select Committee shall constitute a quorum for taking any action other than one for which the presence of a majority of the Select Committee is required.

(4) The chair of the Select Committee may authorize and issue subpoenas pursuant to clause 2(m) of rule XI in the investigation and study conducted pursuant to sections 3 and 4 of this resolution, including for the purpose of taking depositions.

(5) The chair of the Select Committee is authorized to compel by subpoena the furnishing of information by interrogatory.

(6)(A) The chair of the Select Committee, upon consultation with the ranking minority member, may order the taking of depositions, including pursuant to

subpoena, by a Member or counsel of the Select Committee, in the same manner as a standing committee pursuant to section 3(b)(1) of House Resolution 8, One Hundred Seventeenth Congress.

(B) Depositions taken under the authority prescribed in this paragraph shall be governed by the procedures submitted by the chair of the Committee on Rules for printing in the Congressional Record on January 4, 2021.

(7) Subpoenas authorized pursuant to this resolution may be signed by the chair of the Select Committee or a designee.

(8) The chair of the Select Committee may, after consultation with the ranking minority member, recognize—

(A) Members of the Select Committee to question a witness for periods longer than five minutes as though pursuant to clause 2(j)(2)(B) of rule XI; and

(B) staff of the Select Committee to question a witness as though pursuant to clause 2(j)(2)(C) of rule XI.

(9) The chair of the Select Committee may postpone further proceedings when a record vote is ordered on questions referenced in clause 2(h)(4) of rule XI, and

may resume proceedings on such postponed questions at any time after reasonable notice. Notwithstanding any intervening order for the previous question, an underlying proposition shall remain subject to further debate or amendment to the same extent as when the question was postponed.

(10) The provisions of paragraphs (f)(1) through (f)(12) of clause 4 of rule XI shall apply to the Select Committee.

SEC. 6. RECORDS; STAFF; TRAVEL; FUNDING.

(a) SHARING RECORDS OF COMMITTEES.—Any committee of the House of Representatives having custody of records in any form relating to the matters described in sections 3 and 4 shall provide copies of such records to the Select Committee not later than 14 days of the adoption of this resolution or receipt of such records. Such records shall become the records of the Select Committee.

(b) STAFF.—The appointment and the compensation of staff for the Select Committee shall be subject to regulations issued by the Committee on House Administration.

(c) DETAIL OF STAFF OF OTHER OFFICES.—Staff of employing entities of the House or a joint committee may be detailed to the Select Committee to carry out this resolution and shall be deemed to be staff of the Select Committee.

(d) USE OF CONSULTANTS PERMITTED.—Section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 4301(i)) shall apply with respect to the Select Committee in the same manner as such section applies with respect to a standing committee of the House of Representatives.

(e) TRAVEL.—Clauses 8(a), (b), and (c) of rule X of the Rules of the House of Representatives shall apply to the Select Committee.

(f) FUNDING; PAYMENTS.—There shall be paid out of the applicable accounts of the House of Representatives such sums as may be necessary for the expenses of the Select Committee. Such payments shall be made on vouchers signed by the chair of the Select Committee and approved in the manner directed by the Committee on House Administration. Amounts made available under this subsection shall be expended in accordance with regulations prescribed by the Committee on House Administration.

SEC. 7. TERMINATION AND DISPOSITION OF RECORDS.

(a) TERMINATION.—The Select Committee shall terminate 30 days after filing the final report under section 4.

(b) DISPOSITION OF RECORDS.—Upon termination of the Select Committee—

(1) the records of the Select Committee shall become the records of such committee or committees designated by the Speaker; and

14

(2) the copies of records provided to the Select Committee by a committee of the House under section 6(a) shall be returned to the committee.

Attest:

Clerk.

EXHIBIT 4

BRIEFING ROOM

Letter from Dana A. Remus, Counsel to the President, to David Ferriero, Archivist of the United States, dated October 8, 2021

OCTOBER 12, 2021 • STATEMENTS AND RELEASES

October 8, 2021

David Ferriero
Archivist of the United States
National Archives and Records Administration 700 Pennsylvania Ave., N.W.
Washington, D.C., 20408

Dear Mr. Ferriero,

I write in response to your notification of September 8, 2021, regarding a set of documents requested by the House Select Committee to Investigate the January 6th Attack on the United States Capitol (the “Documents”), and provided to the White House for review pursuant to the Presidential Records Act. After my consultations with the Office of Legal Counsel at the Department of Justice, President Biden has determined that an assertion of executive privilege is not in the best interests of the United States, and therefore is not justified as to any of the Documents.

As President Biden has stated, the insurrection that took place on January 6, and the extraordinary events surrounding it, must be subject to a full accounting to ensure nothing similar ever happens again. Congress has a compelling need in service of its legislative functions to understand the circumstances that led to these horrific events. The available evidence to date establishes a sufficient factual predicate for the Select Committee’s investigation: an unprecedented effort to obstruct the peaceful transfer of power, threatening not only the safety of Congress and others present at the Capitol, but also the principles of democracy enshrined in our history and our Constitution. The Documents shed light on events within the White House on and about January 6 and bear on the Select Committee’s need to understand the facts underlying the most serious attack on the operations of the Federal Government since the Civil War.

These are unique and extraordinary circumstances. Congress is examining an assault on our Constitution and democratic institutions provoked and fanned by those sworn to protect them, and the conduct under investigation extends far beyond typical deliberations concerning the proper discharge of the President's constitutional responsibilities. The constitutional protections of executive privilege should not be used to shield, from Congress or the public, information that reflects a clear and apparent effort to subvert the Constitution itself.

The President's determination applies solely to the Documents as described herein, which were provided to the White House on September 8, 2021. We continue to review materials you provided to the White House after that date and will respond at an appropriate time.

We understand that the former President believes that executive privilege should be asserted with respect to a subset of the Documents. When you notify us of such an assertion, we will respond accordingly.

Sincerely,

Dana A. Remus
Counsel to the President

EXHIBIT 5



DONALD J. TRUMP
October 8, 2021

The Honorable David S. Ferriero
Archivist of the United States
National Archives and Records Administration
Washington, D.C.

Dear Mr. Ferriero,

I write concerning requests for documents and records sent to your office on March 25, 2021 and August 25, 2021 by the Select Committee to Investigate the January 6th Attack on the United States Capitol (the "Committee"). The Committee requested an extremely broad set of documents and records, potentially numbering in the millions, which unquestionably contain information protected from disclosure by the executive and other privileges, including but not limited to the presidential communications, deliberative process, and attorney-client privileges.

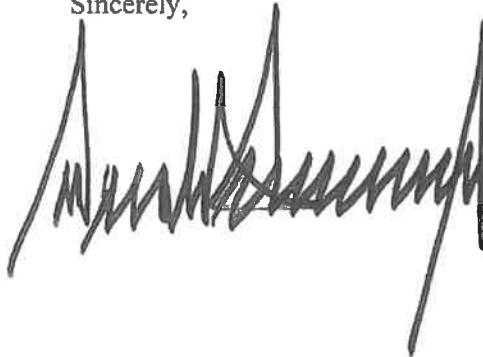
On August 30, 2021, the National Archives and Records Administration noticed the first set of records for review (P00001 – P00136) (the "First Tranche"). Following a review of such records, pursuant to the Presidential Records Act, 44 U.S.C. § 2208(b), Executive Order 13489, and 36 CFR 1270.44, I have determined that the following records contain information subject to executive privilege, including the presidential communications and deliberative process privileges, and I hereby formally assert executive privilege over these records:

P00001
P00002
P00004
P00005
P00006
P00007 – P00009
P00010
P00011 – P00012
P00013 – P00014
P00015
P00016
P00017
P00045 – P00049
P00051
P00053 – P00058
P00060
P00061
P00115 – P00120
P00121 – P00122
P00123 – P00128
P00131 – P00132

Further, pursuant to the Presidential Records Act, 44 U.S.C. § 2208(b), Executive Order 13489, and 36 CFR 1270.44, I hereby make a protective assertion of constitutionally based privilege with respect to all additional records following the First Tranche. In cases like this, where Congress has declined to grant sufficient time to conduct a full review, there is a longstanding bipartisan tradition of protective assertions of executive privilege designed to ensure the ability to make a final privilege assertion, if necessary, over some or all of the requested material. See *Protective Assertion of Executive Privilege Regarding White House Counsel's Office Documents*, 20 Op. O.L.C. 1 (1996) (opinion of Attorney General Janet Reno). This protective assertion is intended to ensure that I have the ability to make a final assertion of executive privilege, if necessary and appropriate, following a full review of the requested materials. See *Letter for the President from William P. Barr, Attorney General*, at 1-2 (May 8, 2019).

Should the Committee persist in seeking other privileged information, I will take all necessary and appropriate steps to defend the Office of the Presidency.

Sincerely,

A handwritten signature in black ink, appearing to be "Donald Trump", written in a cursive, stylized script.

cc: U.S. House Committee on Oversight & Reform
2157 Rayburn House Office Building
Washington, DC 20515

U.S. Senate Committee on Homeland Security & Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC, 20510

EXHIBIT 6

BRIEFING ROOM

Second Letter from Dana A. Remus, Counsel to the President, to David Ferriero, Archivist of the United States, dated October 8, 2021

OCTOBER 13, 2021 • STATEMENTS AND RELEASES

October 8, 2021

David Ferriero
Archivist of the United States
National Archives and Records Administration 700 Pennsylvania Ave., N.W.
Washington, D.C., 20408

Dear Mr. Ferriero,

I write in response to your communication of October 8, 2021, informing us that former President Trump has asserted executive privilege with regard to a subset of documents requested by the House Select Committee to Investigate the January 6th Attack on the United States Capitol, and requesting President Biden's views. President Biden has considered the former President's assertion, and I have engaged in additional consultations with the Office of Legal Counsel at the Department of Justice. For the same reasons described in my earlier letter, the President maintains his conclusion that an assertion of executive privilege is not in the best interests of the United States, and therefore is not justified as to any of the documents provided to the White House on September 8, 2021. Accordingly, President Biden does not uphold the former President's assertion of privilege.

The President instructs you, in accord with Section 4(b) of Executive Order 13489, to provide the pages identified as privileged by the former President to the Select Committee. In light of the urgency of the Select Committee's need for the information, the President further instructs you to provide those pages 30 days after your notification to the former President, absent any intervening court order.

Sincerely,

Dana A. Remus Counsel to
the President

EXHIBIT 7



Archivist of the
United States

October 13, 2021

The Honorable Donald J. Trump

Dear President Trump:

After consultation with the Counsel to the President and the Acting Assistant Attorney General for the Office of Legal Counsel, and as instructed by President Biden, I have determined to disclose to the Select Committee the pages below, which you identified as privileged in your letter of October 8, 2021. Pursuant to President Biden's subsequent instruction and my authority under 36 C.F.R. 1270.44(g), I will deliver these pages to the Select Committee in 30 days (on November 12, 2021), absent any intervening court order:

- P00001
- P00002
- P00005
- P00006
- P00007-P00009
- P00010
- P00011-P00012
- P00013-P00014
- P00015
- P00016
- P00017
- P00045-P00049
- P00051
- P00053-P00058

- P00060
- P00061
- P00121-P00122
- P00123-P00128
- P00131-P00132

Please note that pages P0004 and P00115-P00120 are not responsive to the Select Committee's request, and therefore I will not provide them to the Select Committee. The remaining 90 pages covered by our August 30, 2021 notification are not subject to any assertion of privilege, and therefore I intend to provide them to the Select Committee today.

Sincerely,

A handwritten signature in dark ink, appearing to read "David S. Ferriero", with a long horizontal flourish extending to the right.

DAVID S. FERRIERO
Archivist of the United States

EXHIBIT 8



The Attorney General
Washington, D.C.

May 8, 2019

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I am writing to request that you make a protective assertion of executive privilege with respect to Department of Justice documents recently subpoenaed by the Committee on the Judiciary of the House of Representatives. In cases like this where a committee has declined to grant sufficient time to conduct a full review, the President may make a protective assertion of privilege to protect the interests of the Executive Branch pending a final determination about whether to assert privilege. *See Protective Assertion of Executive Privilege Regarding White House Counsel's Office Documents*, 20 Op. O.L.C. 1 (1996) (opinion of Attorney General Janet Reno). The Committee has demanded that I produce the "complete and unredacted version" of the report submitted to me on March 22, 2019, by Special Counsel Robert S. Mueller, III, regarding his investigation of Russian interference in the 2016 presidential election. The Committee also seeks "[a]ll documents referenced in the Report" and "[a]ll documents obtained and investigative materials created by the Special Counsel's Office." The Committee therefore demands all of the Special Counsel's investigative files, which consist of millions of pages of classified and unclassified documents bearing upon more than two dozen criminal cases and investigations, many of which are ongoing. These materials include law enforcement information, information about sensitive intelligence sources and methods, and grand-jury information that the Department is prohibited from disclosing by law.

Consistent with paragraph 5 of President Reagan's 1982 memorandum about assertions of executive privilege, the Department requested that the Chairman of the Committee hold the subpoena in abeyance and delay any vote recommending that the House of Representatives approve a resolution finding me in contempt of Congress for failing to comply with the subpoena, pending a final presidential decision on whether to invoke executive privilege. *See Memorandum for the Heads of Executive Departments and Agencies, Re: Procedures Governing Responses to Congressional Requests for Information* at 2 (Nov. 4, 1982). The Department made this request because, although the subpoenaed materials assuredly include categories of information within the scope of executive privilege, the Committee's abrupt resort to a contempt vote—notwithstanding ongoing negotiations about appropriate accommodations—has not allowed sufficient time for you to consider fully whether to make a conclusive assertion of executive privilege. The Chairman, however, has indicated that he intends to proceed with the markup session scheduled at 10 a.m. today on a resolution recommending a finding of contempt against me for failing to produce the requested materials.

In these circumstances, you may properly assert executive privilege with respect to the entirety of the Department of Justice materials that the Committee has demanded, pending a final decision on the matter. As with President Clinton's assertion in 1996, you would be making only a preliminary, protective assertion of executive privilege designed to ensure your ability to make a final assertion, if necessary, over some or all of the subpoenaed materials. *See Protective Assertion of Executive Privilege*, 20 Op. O.L.C. at 1. As the Attorney General and head of the Department of Justice, I hereby respectfully request that you do so.

Sincerely,

A handwritten signature in black ink, appearing to read 'WP Barr', with a stylized, cursive script.

William P. Barr
Attorney General

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

DONALD J. TRUMP, in his capacity as
former President of the United States,

Plaintiff,

v.

BENNIE G. THOMPSON, in his official
capacity as Chairman of the Select
Committee to Investigate the January 6th
Attack on the United States Capitol, United
States House of Representatives, *et al.*,

Defendants.

No. 1:21-cv-2679 (TSC)

DECLARATION OF B. JOHN LASTER

I, B. John Laster, under 28 U.S.C. § 1746, hereby declare and state as follows:

1. I currently serve as the Director of the White House Liaison Division of the Office of Legislative Archives, Presidential Libraries, and Museum Services in the National Archives and Records Administration (NARA). I have held this position since February 2020. Prior to this, I was the Director of the Presidential Materials Division of NARA for seven years. During my 25-year career with NARA, I have worked exclusively with Presidential and Vice Presidential records. I hold a master's degree in history from Auburn University and a bachelor's degree in communications from Georgia Southern University.
2. I am responsible for administering all access requests for Presidential records that have been transferred into NARA's custody in accordance with the Presidential Records Act (PRA), as amended, 44 U.S.C. §§ 2201-2209.

3. The statements contained in this declaration are based upon my personal knowledge, upon information furnished to me in the course of my official duties, and upon conclusions and determinations reached and made in accordance therewith.

The Presidential Records Act

4. The PRA established U.S. Government ownership of all Presidential records, and requires that such records shall be transferred into NARA's custody and control when the President leaves office. 44 U.S.C. § 2203(g). In general, access outside NARA to the Presidential records of a former President is restricted (that is to say, not permitted) for five years following their transfer to NARA, or until NARA completes their processing and organization, whichever is earlier. 44 U.S.C. § 2204(b)(2). In addition, the outgoing President may specify that access to records in one or more of six statutorily defined categories may be restricted for up to twelve years from the end of his administration. *Id.* § 2204(a). Restrictions under 44 U.S.C. § 2204(a) and (b) work in concert with eight of the nine Freedom of Information Act (FOIA) exemptions to limit public access to the records. *Id.* § 2204(c). Former President Trump applied the 12-year restrictions to each of the six PRA-defined categories prior to leaving office.
5. Section 2205 of the PRA, entitled "Exceptions to Restricted Access," provides that "[p]residential records shall be made available" under certain circumstances specified in section 2205, "[n]otwithstanding any restrictions on access" imposed under section 2204. As relevant here, section 2205 directs NARA to make Presidential records available "to either House of Congress, or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof if such records contain information that is needed for the conduct of its business and that is not otherwise available," 44 U.S.C. § 2205(2)(C), "subject to any rights,

defenses, or privileges which the United States or any agency or person may invoke,” *id.*

§ 2205(2). NARA refers to section 2205 requests as “special access requests,” as distinct from “public access requests,” which remain subject to the restrictions imposed under section 2204.

6. Upon receiving a special access request from a congressional committee or subcommittee under section 2205 and identifying records that NARA believes are responsive, NARA then notifies, in accordance with its regulations, at 36 C.F.R. § 1270.44, and Executive Order 13489, the representatives of the former and incumbent Presidents (collectively, the PRA Representatives) of its intent to disclose the records to the requesting committee. NARA furnishes copies of the responsive records to the PRA Representatives of the incumbent and former Presidents, so that they can review the records and consider whether the incumbent or former President, respectively, should assert a constitutionally based privilege, such as executive privilege, against disclosure. NARA maintains the records in the same order and manner of organization as they were transmitted to NARA by the outgoing administration. To the extent practicable and necessary, NARA informs the PRA Representatives where the responsive records came from, such as from a staff member’s office files.
7. NARA follows a separate notification process when releasing Presidential records to the public in accordance with section 2204. That process is governed by section 2208 of the PRA, and the records are also subject to the restrictions in section 2204.
8. The notification to the PRA Representatives includes a time period for the review, which is typically 30 calendar days, although NARA’s regulations state that “[t]he Archivist [of the United States] may adjust any time period or deadline under this subpart, as appropriate, to

accommodate records requested under this section.” 36 C.F.R. § 1270.44(g). NARA first notifies the representatives of the former President, and then notifies the representative of the incumbent President approximately one week later, which means that the representatives of the former President can continue their review while the incumbent review is still ongoing. Depending on the volume and complexity of the records and the need and expectations of the requesting committee, the time period allowed for review by either or both PRA Representatives may be extended beyond the prescribed time period, as part of an informal accommodations process. In addition, under section 2(b) of Executive Order 13489, the incumbent President or his designee may instruct the Archivist “to extend the time period for a time certain[.]”

9. Depending on the complexity of the search and the volume of responsive records, NARA may provide notifications to the PRA Representatives on a rolling basis (as it is doing in this case). Similarly, as part of the accommodation process NARA may allow the PRA Representatives to conduct their review of records subject to a notification in subsets, allowing NARA to make rolling disclosures to the requesting committee, while the PRA Representatives continue to review the remaining records.
10. In the course of their review, the PRA Representatives also may seek clarification from NARA on whether specific records are responsive to a request. Upon receipt of such a request, NARA will examine the record(s), considering the issues raised by the PRA Representatives. If NARA agrees that a record is not responsive, the record is withdrawn from the notification process and is not provided to the committee.
11. On occasion PRA Representatives may also inquire regarding the identity of the authors or custodians of particular records when they are not apparent from either the faces of the

records or the surrounding files with which they were produced. (As noted above, to the extent practicable, NARA informs the PRA Representatives which files responsive records came from.) When it receives inquiries of this kind, NARA attempts to answer them as best it can with the information available to it.

12. Prior to this case, no former or incumbent President has asserted a constitutionally based privilege with respect to records requested under section 2205 of the PRA. In the past, concerns raised by PRA Representatives of the incumbent or former President about the sensitivity of responsive records, or the scope of a request, have always been addressed and resolved through the accommodation process. For example, committees have on occasion agreed to narrow the scope of their requests, and have also agreed to restrictions on the type of access provided – e.g., read-only access or committee-confidential restrictions. Such accommodations can be negotiated with the committee by NARA or by the PRA Representatives directly.

The January 6th Committee's Request

13. On March 25, 2021, NARA received a special access request from the House Committee on Oversight and Reform and five other Committees seeking Trump Presidential records related to the events of January 6, 2021 (Maloney Request). Attachment A. On August 25, 2021, NARA received a request from the House Select Committee to Investigate the January 6th Attack on the United States Capitol (January 6th Committee) that subsumed the March 25, 2021, Maloney Request, and made additional requests (Thompson Request). Attachment B.
14. In response to these requests, NARA conducted searches of the Trump Presidential records in its custody and control. Although the Trump Presidential records came into NARA's legal custody on January 20, 2021, due to the complex technical work needed to transfer hundreds

of terabytes of electronic records, coupled with the limitations on advanced planning that are endemic to a one-term transition, it took until August 2021 for NARA to receive the vast majority of the electronic Trump Presidential records, with a few outstanding data sets still waiting to be transferred. While these electronic records were being prepared for transfer to NARA, the records remained on servers controlled by the Executive Office of the President (EOP). Accordingly, even though NARA has now received the vast majority of the electronic Trump Presidential records, NARA began its search for records responsive to the Thompson Request with the hard-copy records in our custody that we could initially identify as possibly containing responsive records.

15. During this interim period when the electronic Trump Presidential records remained on EOP's servers, NARA requested that the EOP perform a search for email records responsive to this request, which identified several hundred thousand potentially responsive records (out of a corpus of approximately 100 million emails). NARA is now beginning to review that set of records to de-duplicate them and determine responsiveness.

Notifications of Responsive Documents Issued to Date

The First Notification

16. On August 30, 2021, NARA provided the first notification to the PRA representatives of former President Trump of its intent to disclose approximately 136 pages of records responsive to the Thompson Request, and on September 8, 2021, NARA notified the PRA representative of President Biden of its intent to disclose the same records (together, the First Notification). NARA subsequently withdrew seven pages of records as non-responsive to the request.

17. On October 8, 2021, former President Trump informed the Archivist, David S. Ferriero, that he was asserting a constitutionally based privilege over 39 pages of responsive records subject to the First Notification. President Trump's letter also asserted privilege over the seven pages of non-responsive records that had been withdrawn from the notification. Attachment C.
18. On October 8, 2021, the Counsel to President Biden informed the Archivist that President Biden would not uphold former President Trump's privilege claim and was not asserting a claim of privilege on any other records subject to the First Notification. Attachment D. Also on October 8, 2021, the Counsel to the President sent a second letter to the Archivist instructing him to provide the pages identified as privileged by former President Trump to the January 6th Committee 30 days after informing the former President, absent any intervening court order. Attachment E.
19. On October 13, 2021, the Archivist responded to former President Trump, informing him that, after consultation with the Counsel to the President and the Acting Assistant Attorney General for the Office of Legal Counsel, and as instructed by President Biden, NARA would disclose the records in the First Notification subject to former President Trump's claim of privilege to the January 6th Committee in 30 calendar days (that is, on November 12, 2021) per 36 C.F.R. 1270.44(g), absent any intervening court order. Attachment F. The Archivist's letter further noted that the seven pages NARA had deemed non-responsive would not be provided.
20. On October 13, 2021, NARA disclosed to the January 6th Committee the 90 pages of records in the First Notification that were not subject to any claim of privilege.

The Second and Third Notifications

21. On September 9, 2021, NARA provided the second notification to the PRA Representatives of former President Trump of its intent to disclose approximately 742 pages of records responsive to the Thompson Request, and on September 16, 2021, NARA notified the PRA Representatives of President Biden of its intent to disclose the same records (together, the Second Notification).
22. On September 16, 2021, NARA provided a third notification to the PRA Representatives of former President Trump of its intent to disclose approximately 146 pages of records responsive to the Thompson Request, and on September 23, 2021, NARA notified the PRA Representatives of President Biden of its intent to disclose the same records (together, the Third Notification).
23. On October 17, 2021, the Counsel to the President – as the incumbent President’s designee – instructed the Archivist to extend the incumbent’s review period for the Second Notification by one week to coincide with the end of the review period for the Third Notification, and the PRA Representatives of former President Trump were afforded the same extension of time to complete their review of records under the Second Notification.
24. On October 22, 2021, former President Trump informed the Archivist that he was asserting a constitutionally based privilege over 724 of the 885 pages of responsive records subject to the Second and Third Notifications. Attachment G. (NARA had previously withdrawn three pages from the Second Notification, because they were not Presidential records.)

25. On October 25, 2021, the Counsel to President Biden informed the Archivist that President Biden would not uphold former President Trump's privilege claim and was not asserting a claim of privilege on any records subject to the Second and Third Notifications and instructing him to provide the pages identified as privileged by former President Trump to the January 6th Committee 30 days after informing the former President, absent any intervening court order. Attachment H. The Counsel to President Biden further explained that, in the course of an accommodation process between Congress and the Executive Branch, the Select Committee had agreed to defer its request for 50 pages of responsive records.
26. On October 27, 2021, the Archivist responded to former President Trump, informing him that, after consultation with the Counsel to the President and the Acting Assistant Attorney General for the Office of Legal Counsel, and as instructed by President Biden, NARA would disclose the records in the Second and Third Notifications subject to former President Trump's claim of privilege to the January 6th Committee in 30 calendar days (that is, on November 26, 2021), per 36 C.F.R. 1270.44(g), absent any intervening court order. Attachment I.

Further Notifications

27. On October 15, 2021, NARA provided the fourth notification to the PRA Representatives of former President Trump of its intent to disclose 551 pages of records responsive to the Thompson Request, and on October 22, 2021, NARA notified the PRA Representatives of President Biden of its intent to disclose the same records (together, the Fourth Notification).

28. NARA anticipates providing multiple additional notifications for electronic records, including email, digital photographs, and additional hard copy records, on a rolling basis as it is able to locate responsive records.

General Nature of the Responsive Records Identified To Date

29. I discuss below the general categories of records included in the First, Second, and Third Notifications over which former President Trump has made particularized assertions of executive privilege. The following is not intended as a detailed description of these records on a page-by-page or even document-by-document basis.

30. First Notification: The First Notification includes 136 pages of records transferred to NARA from (i) the files of Chief of Staff Mark Meadows, (ii) the files of Senior Advisor to the President Stephen Miller, (iii) the files of Deputy Counsel to the President Patrick Philbin, (iv) the White House Daily Diary, which is a chronological record of the President's movements, phone calls, trips, briefings, meetings, and activities, (v) the White House Office of Records Management, and (vi) the files of Brian de Guzman, Director of White House Information Services.

31. President Trump made particularized assertions of executive privilege over 46 of these 136 pages of records (including seven pages of records that, as noted above, had been removed as non-responsive). He asserted privilege over: (i) daily presidential diaries, schedules, appointment information showing visitors to the White House, activity logs, call logs, and switchboard shift-change checklists showing calls to the President and Vice President, all specifically for or encompassing January 6, 2021 (30 pages); (ii) drafts of speeches, remarks, and correspondence concerning the events of January 6, 2021 (13 pages); and (iii) three handwritten notes concerning the events of January 6 from Mr. Meadows' files (3 pages).

32. Second Notification: The Second Notification includes 742 pages of records transferred to NARA from: (i) the files of Chief of Staff Mark Meadows; (ii) the White House Office of the Executive Clerk; (iii) files from the White House Oval Office Operations; (iv) the files of White House Press Secretary Kayleigh McEnany; and (v) Senior Advisor to the President Stephen Miller.
33. President Trump made particularized assertions of executive privilege over 656 of these 742 pages of records. He asserted privilege over: (i) pages from multiple binders containing proposed talking points for the Press Secretary, interspersed with a relatively small number of related statements and documents, principally relating to allegations of voter fraud, election security, and other topics concerning the 2020 election (629 pages); (ii) presidential activity calendars and a related handwritten note for January 6, 2021, and for January 2021 generally, including January 6 (11 pages); (iii) draft text of a presidential speech for the January 6, 2021, Save America March (10 pages); (iv) a handwritten note from former Chief of Staff Mark Meadows' files listing potential or scheduled briefings and telephone calls concerning the January 6 certification and other election issues (2 pages); and (v) a draft Executive Order on the topic of election integrity (4 pages).
34. Third Notification: The Third Notification includes 146 pages of records transferred to NARA from (i) the White House Office of the Executive Clerk and (ii) the files of Deputy White House Counsel Patrick Philbin.
35. President Trump made particularized assertions of executive privilege over 68 of these 146 pages of records. He asserted privilege over: (i) a draft proclamation honoring the Capitol Police and deceased officers Brian Sicknick and Howard Liebengood, and related emails

from the files of the Office of the Executive Clerk (53 pages); and (ii) records from the files of Deputy White House Counsel Patrick Philbin, including a memorandum apparently originating outside the White House regarding a potential lawsuit by the United States against several states President Biden won (4 pages), an email chain originating from a state official regarding election-related issues (3 pages), talking points on alleged election irregularities in one Michigan county (3 pages), a document containing presidential findings concerning the security of the 2020 presidential election and ordering various actions (3 pages), and notes apparently indicating from whom some of the foregoing were sent (2 pages).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of October, 2021

BILLY LASTER Digitally signed by BILLY LASTER
Date: 2021.10.29 19:46:23 -04'00'

B. JOHN LASTER

ATTACHMENT A

Congress of the United States
Washington, DC 20515

March 25, 2021

The Honorable Ronald A. Klain
Chief of Staff
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

The Honorable David S. Ferriero
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Avenue, N.W.
Washington, D.C. 20408

Dear Mr. Klain and Mr. Ferriero:

Our Committees are requesting records relating to the January 6, 2021, assault on the U.S. Capitol, which killed five people and injured hundreds more. Pursuant to the Presidential Records Act, specifically 44 U.S.C. § 2205(2)(C), the Committees request that you produce the following documents from the Executive Office of the President (EOP) and the Office of the Vice President (OVP) in your custody, control, or possession by April 8, 2021:

1. Documents and communications received, prepared, or sent between December 1, 2020, and January 4, 2021, by employees or officials of EOP, OVP or any of their components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021;
2. Documents and communications received, prepared, or sent between January 5, 2021, and January 7, 2021, by employees or officials of EOP, OVP or any of their components, offices, or directorates, relating to the counting of the Electoral College vote on January 6, 2021, or the events of January 6, 2021; and
3. Documents and communications received, prepared, or sent between January 8, 2021, and January 20, 2021, by employees or officials of EOP, OVP or any of their components, offices, or directorates, relating to the events or aftermath of January 6, 2021.

In responding to this request, we ask you to prioritize: (1) communications with federal agencies and state and local government entities; (2) documents relating to any threat assessments, information reports, intelligence assessments, after-action reports, response timelines, or operational summaries; (3) documents relating to any requests or offers for security assistance or other mitigation measures; (4) documents regarding participation in the events of January 6, 2021, by any EOP or OVP employee or official, as well as any disciplinary measures

The Honorable Ronald A. Klain
The Honorable David S. Ferriero
Page 2

considered or taken; and (5) communications, if any, with participants in the events of January 6, 2021, or other individuals associated with groups participating in the events of January 6, 2021.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional instructions for responding to the Committees' request. Please contact Committee staff at (202) 225-5051 if you have any questions about this request.

Sincerely,



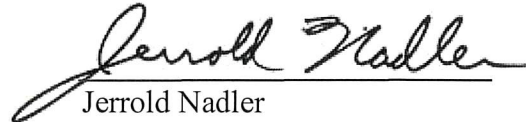
Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence



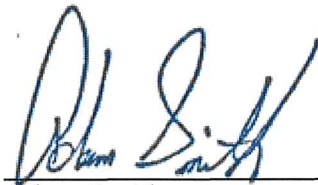
Bennie G. Thompson
Chairman
Committee on Homeland Security



Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairperson
Committee on House Administration



Adam Smith
Chairman
Committee on Armed Services

Enclosure

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable Ronald A. Klain
The Honorable David S. Ferriero
Page 3

The Honorable John Katko, Ranking Member
Committee on Homeland Security

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary

The Honorable Rodney Davis, Ranking Member
Committee on House Administration

The Honorable Mike Rogers, Ranking Member
Committee on Armed Services

ATTACHMENT B

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN

ZOE LOFGREN, CALIFORNIA
ADAM B. SCHIFF, CALIFORNIA
PETE AGUILAR, CALIFORNIA
STEPHANIE MURPHY, FLORIDA
JAMIE RASKIN, MARYLAND
ELAINE G. LURIA, VIRGINIA
LIZ CHENEY, WYOMING
ADAM KINZINGER, ILLINOIS



U.S. House of Representatives
Washington, DC 20515
january6th.house.gov
(202) 225-7800

One Hundred Seventeenth Congress

Select Committee to Investigate the January 6th Attack on the United States Capitol

August 25, 2021

The Honorable David S. Ferriero
Archivist of the United States
U.S. National Archives and Records Administration
700 Pennsylvania Avenue, NW
Washington, DC 20408

Dear Mr. Ferriero:

The Select Committee to Investigate the January 6th Attack on the United States Capitol is examining the facts, circumstances, and causes of the January 6th attack. Our Constitution provides for a peaceful transfer of power, and this investigation seeks to evaluate threats to that process, identify lessons learned, and recommend laws, policies, procedures, rules, or regulations necessary to protect our Republic in the future. Pursuant to the Presidential Records Act (44 U.S.C. § 2205(2)(C)), and House Resolution 503, the Select Committee requests that you produce the documents described in the attached schedule from the Executive Office of the President (EOP) and the Office of the Vice President (OVP) in your custody, control, or possession.

Given the urgent nature of our request, we ask that you expedite your consultation and processing times pursuant to your authority under 36 C.F.R. § 1270.44(g). We have some concern about the delay in producing documents requested this past March, and we want to assist your prompt production of materials. We look forward to discussing ways in which we can do that. Toward that end, we request that NARA meet expeditiously with Select Committee investigative staff to discuss production priorities.

This is our first request for materials, and we anticipate additional requests as our investigation continues. Please produce this information to the Select Committee no later than September 9, 2021. An attachment to this letter provides additional instructions for responding to the Select Committee's request.

If you have questions, please contact Select Committee investigative staff at 202-225-7800.

Sincerely,

Bennie G. Thompson
Chairman

The Honorable David Ferriero

Page 2

DOCUMENT SCHEDULE

Pending Requests

The Select Committee reiterates the requests made in the March 25, 2021,¹ correspondence from multiple committees of the House of Representatives, which the Select Committee subsequently joined, for documents and communications received, prepared, or sent between December 1, 2020, and January 20, 2021, relating to the counting of the electoral college vote on January 6, 2021, the potential for demonstrations, violence, or attacks in the National Capital Region on or around January 6, 2021, and the events or aftermath of January 6, 2021.

Those March 25, 2021, requests include but are not limited to:

1. All documents and communications relating in any way to remarks made by Donald Trump or any other persons on January 6, including Donald Trump's and other speakers' public remarks at the rally on the morning of January 6, and Donald Trump's Twitter messages throughout the day.
2. All calendars, schedules, and movement logs regarding meetings or events attended by President Trump, including the identity of any individuals in attendance, whether virtual or in-person, on January 6, 2021.
3. All documents and communications regarding the movements and protection of Vice President Pence on January 6, 2021.
4. All video communications recorded of the President speaking on January 6, 2021, and all documents and communications related thereto, including communications involving the President or any other officials or employees in the Executive Office of the President or the Office of the Vice President. This request specifically includes videos of communications released to the public and communications recorded but not released to the public, any documents or other communications identifying or discussing the content of those videos.
5. All photographs, videos, or other media, including any digital time stamps for such media, taken or recorded within the White House on January 6, 2021, or taken of the crowd assembled for the rally on the morning of January 6, and all communications or other documents related to that media.

¹ Letter from Chairwoman Carolyn B. Maloney, House Committee on Oversight and Reform, et al., to David Ferriero, Archivist, National Archives (March 25, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-03-25.House%20Committees%20to%20Agencies%20re%20Jan%206%20Attack.pdf>).

6. All photographs, videos, or other media, including any digital time stamps for such media, taken or recorded of Vice President Mike Pence or any individuals accompanying him, on January 6, 2021.
7. All documents and communications within the White House on January 6, 2021, relating in any way to the following:
 - the January 6, 2021, rally;
 - the January 6, 2021, march to the Capitol;
 - the January 6, 2021, violence at the Capitol;
 - any aspect of the Joint Session where Congress was counting electoral votes;
 - any legal, political, or other strategy regarding the counting of electoral votes;
 - Donald J. Trump;
 - Vice President Pence;
 - the President's tweets, speech, any other public communications on that date;
 - the President's recording of video for release on that date and any outtakes;
 - reactions, summaries, or characterizations of any public speeches or other communications by Donald Trump or other public speakers on that date;
 - efforts to persuade the President to deliver any particular message to people at or near the Capitol;
 - Sarah Matthews;
 - Hope Hicks;
 - Mark Meadows;
 - Dan Scavino;
 - Pat Cipollone;
 - Marc Short;
 - Patrick Philbin;
 - Eric Herschmann;
 - Stephan Miller;
 - Greg Jacob;
 - Matthew Pottinger;
 - Keith Kellogg;
 - Robert O'Brien;
 - Peter Navarro;
 - Ben Williamson;
 - Cassidy Hutchinson;
 - Molly Michael;
 - Nicholas "Nick" Luna;
 - Judd Deere;
 - Kayleigh McEnany;

The Honorable David Ferriero

Page 4

- Ivanka Trump;
 - Eric Trump;
 - Lara Trump;
 - Donald Trump, Jr.;
 - Jared Kushner;
 - Melania Trump;
 - Kimberly Guilfoyle;
 - Steve Bannon;
 - Michael Flynn;
 - Rudolph “Rudy” Giuliani;
 - Roger Stone;
 - any Member of Congress or congressional staff; or
 - the Department of Defense, the Department of Justice, the Department of Homeland Security, the Department of the Interior, or any element of the National Guard.
8. All White House visitor records on January 6, 2021.
9. All documents and communications regarding the movement of the President on January 6, 2021.
10. All call logs and telephone records identifying calls placed to or from any individuals identified in (7) above.
11. All schedules for any individuals identified in (7) above on January 6, 2021, and all documents relating to such meetings, including memoranda, read-aheads, and summaries of such meetings.
12. All documents and communications received, prepared, or sent by any official within the White House Situation Room and the White House Operations Center on January 6, 2021, including but not limited to any communication logs, situation reports, and watch officer notes.

Additional Requests

In addition, to the extent not included in the scope of the March 25, 2021, request, and as a supplement to the requests previously made on March 25, 2021, we hereby make the following additional requests.

(a) Planning by the White House and Others for Legal or Other Strategies to Delay, Halt, or Otherwise Impede the Electoral Count

1. From April 1, 2020, through January 20, 2021, all documents and communications related to efforts, plans, or proposals to contest the 2020 Presidential election results.
2. From April 1, 2020, through January 20, 2021, all documents and communications related to plans, efforts, or discussions regarding the electoral count (including plans, efforts, or discussions regarding delaying or impeding the electoral count).
3. All documents and communications concerning the role of the Vice President as the Presiding Officer in the certification of the votes of the electoral college.
4. From November 3, 2020, through January 20, 2021, all documents and communications referring or relating to the 2020 election results between White House officials and officials of State Governments. This includes, but is not limited to, communications with the following individuals and their staff and subordinates:
 - Doug Ducey,
 - Brian Kemp,
 - Brad Raffensperger,
 - Ken Paxton,
 - Frances Watson,
 - Mike Shirkey,
 - Lee Chatfield, or
 - Monica Palmer.
5. From April 1, 2020, through January 20, 2021, all documents and communications related to the 2020 election results, to or from one or more of the following individuals: Rudolph “Rudy” Giuliani, Justin Clark, Matt Morgan, Sidney Powell, Kurt Olsen, or Cleta Mitchell.
6. From April 1, 2020, through January 20, 2021, all documents and communications related to the 2020 Presidential election, including forecasting, polling, or results, and which are authored, presented by, or related in any way to the following individuals: Anthony “Tony” Fabrizio, Brad Parscale, Bill Stepien, Corey Lewandowski, or Jason Miller.
7. All documents and communications to or from David Bossie relating to questioning the validity of the 2020 election results.
8. All documents and communications referring or relating to court decisions, deliberations, or processes involving challenges to the 2020 Presidential election.

9. From November 3, 2020, through January 20, 2021, all documents and communications relating to the State of Texas and litigation concerning the 2020 Presidential election.
10. From November 3, 2020, through December 31, 2020, all documents and communications relating to an amicus brief concerning litigation involving the State of Texas.
11. All documents and communications relating to decisions of the United States Supreme Court issued on December 8, 2020, and December 11, 2020.
12. From November 3, 2020, through January 20, 2021, all documents and communications relating to Justin Riemer and the electoral count or litigation concerning the 2020 Presidential election.
13. All documents and communications referring or relating to QAnon, the Proud Boys, Stop the Steal, Oath Keepers, or Three Percenters concerning the 2020 election results, or the counting of the electoral college vote on January 6, 2021.
14. Any documents and communications relating to election machinery or software used in the 2020 election, including but not limited to communications relating to Dominion Voting Systems Corporation.
15. From November 3, 2020, through January 19, 2021, all documents and communications concerning the resignation of any White House personnel or any politically appointed personnel of any Federal department or agency (including the resignation of any member of the President's Cabinet) and mentioning the 2020 Presidential election or the events of January 6, 2021.
16. All documents and communications concerning prepared remarks for a speech by Donald Trump on November 3, 2020, or November 4, 2020.
17. All documents and communications to or from John Eastman from November 3, 2020, through January 20, 2021.
18. All documents and communications relating to allegations of election fraud or to challenging, overturning, or questioning the validity of the 2020 Presidential election, and involving personnel of the Department of Justice, including any one or more of the following individuals: Jeffrey Rosen, Richard Donoghue, Steven Engel, Jeffrey Wall, Patrick Hovakimian, Byung J. "BJay" Pak, Bobby Christine, or Jeffrey Clark.

19. All documents and communications relating to allegations of election fraud or to challenging, overturning, or questioning the validity of the 2020 Presidential election and Chris Christie.
20. All documents and communications relating to the results of the 2020 Presidential election and Peter Navarro.
21. All documents and communications relating to challenging, overturning, or questioning the validity of the 2020 Presidential election and William Barr.

(b) Recruitment, Planning, Coordination, and Other Preparations for the Rallies Leading up to and Including January 6th and the Violence on January 6th

1. All documents and communications relating to planned protests, marches, public assemblies, rallies, or speeches in Washington, DC, on November 14, 2020, December 12, 2020, January 5, 2021, and January 6, 2021.
2. All documents and communications related to security of the Capitol or other Federal facilities on January 5, 2021, and January 6, 2021.
3. All documents and communications concerning Donald Trump's statement on September 29, 2020, for the Proud Boys to "stand back and stand by."
4. From December 1, 2020, through January 20, 2021, any documents and communications involving White House personnel and any Member of Congress, referring or relating to (a) civil unrest, violence, or attacks at the Capitol; (b) challenging, overturning, or questioning the validity of the 2020 election results; (c) the counting of the electoral college vote on January 6, 2021; or (d) appealing the decisions of courts related to the 2020 Presidential election.
5. All documents and communications related to social media information monitored, gathered, reviewed, shared, or analyzed by White House personnel on January 6, 2021.
6. All documents and communications related to any plan for the President to march or walk to the Capitol on January 6, 2021. This request includes any such documents or communications related to a decision not to march or walk to the Capitol on January 6, 2021.
7. From April 1, 2020, through January 20, 2021, all documents and communications concerning the 2020 election and relating to the following individuals:
 - Cindy Chafian,

- Greg Locke,
- Robert Patrick Lewis,
- Chris Lippe,
- Tracy Diaz,
- Alex Phillips,
- Bianca Gracia,
- Ali Alexander,
- Brandon Straka,
- Rose Tennet,
- Ed Martin,
- Vernon Jones,
- Cordie Williams,
- Michael Flynn,
- Alex Jones,
- Owen Schroyer,
- Karyn Turk,
- Scott Presler,
- Rogan O’Handley,
- Christie Hutcherson,
- Gina Loudon,
- Jack Posobiec,
- Bryson Grey,
- Angela Stanton King,
- Brian Gibson,
- George Papadopoulos,
- Julio Gonzalez,
- Bernard Kerik,
- Mark Burns,
- Roger Stone,
- George Flynn,
- Tom Van Flein,
- Doug Logan,
- Katrina Pierson,
- Amy Kremer,
- Dustin Stockton,
- Enrique Tarrio,
- Kenneth Harrelson,
- Caroline Wren, or
- Michael Coudrey.

(c) Information Donald Trump Received Following the Election Regarding the Election Outcome, and What He Told the American People About the Election

1. From November 3, 2020, to January 20, 2021, all documents and communications reporting, summarizing, or detailing the voting returns and election results of the 2020 Presidential election.
2. All documents and communications related to Donald Trump's response to the election results of the 2020 Presidential election, including but not limited to any planned public remarks.
3. All documents and communications regarding a November 9, 2020, memorandum from Attorney General William Barr concerning investigation of voter fraud allegations.
4. All documents and communications relating to voting machines or software used in the 2020 election and their control or manipulation through thermostats.
5. From April 1, 2020, through January 20, 2021, all documents and communications relating to challenging the validity of the 2020 election, to, from, or mentioning Mike Lindell.
6. From April 1, 2020, through January 20, 2021, all documents and communications relating to challenging the validity of the 2020 election, to, from, or mentioning Doug Logan.
7. From November 3, 2020, through January 20, 2021, all documents and communications related to prepared public remarks and actual public remarks of Donald Trump.

(d) What the President Knew About the Election's Likely Outcome Before the Election Results and How He Characterized the Validity of the Nation's Election System

1. From April 1, 2020, through November 3, 2021, all documents and communications provided to Donald Trump or Mark Meadows containing information predicting that Donald Trump would or might lose the 2020 Presidential election.
2. From April 1, 2020, through January 20, 2021, all documents and communications provided to Donald Trump or Mark Meadows relating to mail-in ballots and their effect or predicted effect on results of the election or the timing of election-related news or decisions.
3. From November 3, 2020, through November 5, 2020, all documents and communications provided to Donald Trump or Mark Meadows relating to projected election results of the 2020 Presidential election.

4. From April 1, 2020, through January 20, 2021, all documents provided to Donald Trump or Mark Meadows reviewing, assessing, or reporting on the security of election systems in the United States.
5. From April 1, 2020, through January 20, 2021, all documents and communications provided to Donald Trump or Mark Meadows regarding purported election irregularities, election-related fraud, or other election-related malfeasance.
6. From April 1, 2020, through January 20, 2021, all documents and communications provided to Donald Trump or Mark Meadows referring to a stolen election, stealing the election, or a “rigged” election.

(e) Responsibilities in the Transfer of Power and the Obligation to Follow the Rule of Law

1. All documents and communications relating to legal advice or legal analysis of, or compliance with, the constitutional process for certifying the electoral vote. This includes, but is not limited to, communications with and from the following individuals:
 - Pat Cipollone,
 - Patrick Philbin,
 - Eric Herschmann,
 - John Eastman, or
 - Greg Jacobs.
2. All documents and communications on January 6, 2021, related to Mark Milley, Christopher Miller, Kashyap “Kash” Patel, or Ryan McCarthy.
3. From January 6, 2021, through January 20, 2021, all documents and communications related to the events of January 6, 2021, and Mark Milley, Christopher Miller, Kashyap “Kash” Patel, or Ryan McCarthy.
4. From November 3, 2020, through January 20, 2021, all documents and communications concerning the potential or actual changes in personnel at the following departments and agencies:
 - The Department of Defense, within the Office of the Secretary and the Joint Chiefs of Staff. This should include, but is not limited to, such documents and communications concerning the following individuals:
 - Mark Esper,
 - Mark Milley,
 - Christopher Miller,

- Kashyap “Kash” Patel,
 - James Anderson,
 - Anthony Tata,
 - Ezra Cohen-Watnick,
 - Joseph Kernan, or
 - John McEntee
 - The Department of Justice. This should include, but is not limited to, such documents and communications concerning the following individuals:
 - Jeffrey Rosen,
 - Richard Donoghue,
 - Jeffrey Clark, or
 - John McEntee
 - The Federal Bureau of Investigation. This should include, but is not limited to, such documents and communications concerning the following individuals:
 - Kashyap “Kash” Patel,
 - Christopher Wray, or
 - John McEntee.
 - The Central Intelligence Agency. This should include, but is not limited to, such documents and communications concerning the following individuals:
 - Kashyap “Kash” Patel,
 - Gina Haspel,
 - Vaughn Bishop, or
 - John McEntee.
 - The Department of Homeland Security (including the United States Secret Service). This should include, but is not limited to, such documents and communications concerning the following individuals:
 - Chad Wolf, or
 - John McEntee.
5. From November 3, 2020, through January 20, 2021, all documents and communications relating to Jeffrey Clark.
6. From November 3, 2020, through January 20, 2021, all documents and communications related to the Twenty-Fifth Amendment to the U.S. Constitution.

7. From January 6, 2021, through January 20, 2021, all documents and communications related to the mental stability of Donald Trump or his fitness for office.
8. Any documents and communications relating to instructions to stop or delay preparation for the transition of administrations.
9. All communications between White House personnel and General Services Administration (GSA) Administrator Emily Murphy or other GSA officials relating to “ascertainment” under the Presidential Transition Act. This includes but is not limited to communications discussing the recognition of Joseph Biden as the winner of the 2020 Presidential election.
10. All documents and communications concerning the potential invocation of the Insurrection Act.
11. From November 3, 2020, through January 20, 2021, all documents and communications related to martial law.
12. All documents and communications concerning the use of Federal law enforcement or military personnel during voting in the 2020 Presidential election.
13. From November 3, 2020, through January 20, 2021, all documents and communications related to Kashyap “Kash” Patel.
14. From November 3, 2020, through January 20, 2021, all documents and communications related to John McEntee.

(f) Other Materials Relevant to the Challenges to a Peaceful Transfer of Power

1. Any documents and communications relating to foreign influence in the United States 2020 Presidential election through social media narratives and disinformation.
2. All documents and communications related to the January 3, 2021, letter from 10 former Defense Secretaries warning of use of the military in election disputes.

Responding to the Select Committee to Investigate the January 6th Attack on the United States Capitol's Document Requests

1. In complying with this request, produce all responsive documents, regardless of classification level, that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Select Committee to Investigate the January 6th Attack on the United States Capitol ("Committee").
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in a protected electronic form (i.e., password protected CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions. With specific reference to classified material, you will coordinate with the Committee's Security Officer to arrange for the appropriate transfer of such information to the Committee. This includes but is not necessarily limited to: a) identifying the classification level of the responsive document(s); and b) coordinating for the appropriate transfer of any classified responsive document(s).
5. Electronic document productions should be prepared according to the following standards:
 - a. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - b. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
9. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
10. The pendency of or potential for litigation shall not be a basis to withhold any information.
11. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
12. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
13. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production, as well as a date certain as to when full production will be satisfied.
14. In the event that a document is withheld on any basis, provide a log containing the following information concerning any such document: (a) the reason it is being withheld, including, if applicable, the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the withholding.
15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control. Additionally, identify where the responsive document can now be found including name, location, and contact information of the entity or entities now in possession of the responsive document(s).

16. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.
17. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
18. All documents shall be Bates-stamped sequentially and produced sequentially.
19. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and
(2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of classification level, how recorded, or how stored/displayed (e.g. on a social media platform) and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, computer or mobile device screenshots/screen captures, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, through a social media or online platform, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, assignee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.

ATTACHMENT C



DONALD J. TRUMP
October 8, 2021

The Honorable David S. Ferriero
Archivist of the United States
National Archives and Records Administration
Washington, D.C.

Dear Mr. Ferriero,

I write concerning requests for documents and records sent to your office on March 25, 2021 and August 25, 2021 by the Select Committee to Investigate the January 6th Attack on the United States Capitol (the "Committee"). The Committee requested an extremely broad set of documents and records, potentially numbering in the millions, which unquestionably contain information protected from disclosure by the executive and other privileges, including but not limited to the presidential communications, deliberative process, and attorney-client privileges.

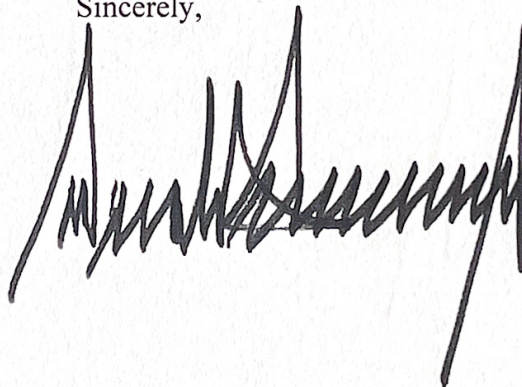
On August 30, 2021, the National Archives and Records Administration noticed the first set of records for review (P00001 – P00136) (the "First Tranche"). Following a review of such records, pursuant to the Presidential Records Act, 44 U.S.C. § 2208(b), Executive Order 13489, and 36 CFR 1270.44, I have determined that the following records contain information subject to executive privilege, including the presidential communications and deliberative process privileges, and I hereby formally assert executive privilege over these records:

P00001
P00002
P00004
P00005
P00006
P00007 – P00009
P00010
P00011 – P00012
P00013 – P00014
P00015
P00016
P00017
P00045 – P00049
P00051
P00053 – P00058
P00060
P00061
P00115 – P00120
P00121 – P00122
P00123 – P00128
P00131 – P00132

Further, pursuant to the Presidential Records Act, 44 U.S.C. § 2208(b), Executive Order 13489, and 36 CFR 1270.44, I hereby make a protective assertion of constitutionally based privilege with respect to all additional records following the First Tranche. In cases like this, where Congress has declined to grant sufficient time to conduct a full review, there is a longstanding bipartisan tradition of protective assertions of executive privilege designed to ensure the ability to make a final privilege assertion, if necessary, over some or all of the requested material. See *Protective Assertion of Executive Privilege Regarding White House Counsel's Office Documents*, 20 Op. O.L.C. 1 (1996) (opinion of Attorney General Janet Reno). This protective assertion is intended to ensure that I have the ability to make a final assertion of executive privilege, if necessary and appropriate, following a full review of the requested materials. See *Letter for the President from William P. Barr, Attorney General*, at 1-2 (May 8, 2019).

Should the Committee persist in seeking other privileged information, I will take all necessary and appropriate steps to defend the Office of the Presidency.

Sincerely,

A handwritten signature in black ink, appearing to be "Donald Trump", written in a stylized, cursive script.

cc: U.S. House Committee on Oversight & Reform
2157 Rayburn House Office Building
Washington, DC 20515

U.S. Senate Committee on Homeland Security & Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC, 20510

ATTACHMENT D



THE WHITE HOUSE
WASHINGTON

October 8, 2021

David Ferriero
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Ave., N.W.
Washington, D.C., 20408

Dear Mr. Ferriero,

I write in response to your notification of September 8, 2021, regarding a set of documents requested by the House Select Committee to Investigate the January 6th Attack on the United States Capitol (the "Documents"), and provided to the White House for review pursuant to the Presidential Records Act. After my consultations with the Office of Legal Counsel at the Department of Justice, President Biden has determined that an assertion of executive privilege is not in the best interests of the United States, and therefore is not justified as to any of the Documents.

As President Biden has stated, the insurrection that took place on January 6, and the extraordinary events surrounding it, must be subject to a full accounting to ensure nothing similar ever happens again. Congress has a compelling need in service of its legislative functions to understand the circumstances that led to these horrific events. The available evidence to date establishes a sufficient factual predicate for the Select Committee's investigation: an unprecedented effort to obstruct the peaceful transfer of power, threatening not only the safety of Congress and others present at the Capitol, but also the principles of democracy enshrined in our history and our Constitution. The Documents shed light on events within the White House on and about January 6 and bear on the Select Committee's need to understand the facts underlying the most serious attack on the operations of the Federal Government since the Civil War.

These are unique and extraordinary circumstances. Congress is examining an assault on our Constitution and democratic institutions provoked and fanned by those sworn to protect them, and the conduct under investigation extends far beyond typical deliberations concerning the proper discharge of the President's constitutional responsibilities. The constitutional protections of executive privilege should not be used to shield, from Congress or the public, information that reflects a clear and apparent effort to subvert the Constitution itself.

The President's determination applies solely to the Documents as described herein, which were provided to the White House on September 8, 2021. We continue to review materials you provided to the White House after that date and will respond at an appropriate time.

We understand that the former President believes that executive privilege should be asserted with respect to a subset of the Documents. When you notify us of such an assertion, we will respond accordingly.

Sincerely,

A handwritten signature in black ink, appearing to read "Dana Remus", with a stylized, flowing script.

Dana A. Remus
Counsel to the President

ATTACHMENT E



THE WHITE HOUSE
WASHINGTON

October 8, 2021

David Ferriero
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Ave., N.W.
Washington, D.C., 20408

Dear Mr. Ferriero,

I write in response to your communication of October 8, 2021, informing us that former President Trump has asserted executive privilege with regard to a subset of documents requested by the House Select Committee to Investigate the January 6th Attack on the United States Capitol, and requesting President Biden's views. President Biden has considered the former President's assertion, and I have engaged in additional consultations with the Office of Legal Counsel at the Department of Justice. For the same reasons described in my earlier letter, the President maintains his conclusion that an assertion of executive privilege is not in the best interests of the United States, and therefore is not justified as to any of the documents provided to the White House on September 8, 2021. Accordingly, President Biden does not uphold the former President's assertion of privilege.

The President instructs you, in accord with Section 4(b) of Executive Order 13489, to provide the pages identified as privileged by the former President to the Select Committee. In light of the urgency of the Select Committee's need for the information, the President further instructs you to provide those pages 30 days after your notification to the former President, absent any intervening court order.

Sincerely,

Dana A. Remus
Counsel to the President

ATTACHMENT F



Archivist of the
United States

October 13, 2021

The Honorable Donald J. Trump

Dear President Trump:

After consultation with the Counsel to the President and the Acting Assistant Attorney General for the Office of Legal Counsel, and as instructed by President Biden, I have determined to disclose to the Select Committee the pages below, which you identified as privileged in your letter of October 8, 2021. Pursuant to President Biden's subsequent instruction and my authority under 36 C.F.R. 1270.44(g), I will deliver these pages to the Select Committee in 30 days (on November 12, 2021), absent any intervening court order:

- P00001
- P00002
- P00005
- P00006
- P00007-P00009
- P00010
- P00011-P00012
- P00013-P00014
- P00015
- P00016
- P00017
- P00045-P00049
- P00051
- P00053-P00058

- P00060
- P00061
- P00121-P00122
- P00123-P00128
- P00131-P00132

Please note that pages P0004 and P00115-P00120 are not responsive to the Select Committee's request, and therefore I will not provide them to the Select Committee. The remaining 90 pages covered by our August 30, 2021 notification are not subject to any assertion of privilege, and therefore I intend to provide them to the Select Committee today.

Sincerely,

A handwritten signature in dark ink, appearing to read "David S. Ferriero", with a long horizontal flourish extending to the right.

DAVID S. FERRIERO
Archivist of the United States

ATTACHMENT G



DONALD J. TRUMP

October 21, 2021

The Honorable David S. Ferriero
Archivist of the United States
U.S. National Archives and Records Administration
700 Pennsylvania Avenue, NW
Washington, DC 20408

Mr. Ferriero:

I write concerning requests for documents and records sent to the National Archives and Records Administration (“NARA”) on March 25, 2021 and August 25, 2021 by the Select Committee to Investigate the January 6th Attack on the United States Capitol (the “Committee”). The Committee requested an extremely broad set of documents and records, potentially numbering in the millions, which unquestionably contain information protected from disclosure by the executive and other privileges, including but not limited to the presidential communications, deliberative process, and attorney-client privileges.

On September 9, 2021, NARA the noticed the second set of records for review (P000137 – P000878) (the “Second Notification”). Following a review of such records, pursuant to the Presidential Records Act, Executive Order 13489, and 36 CFR 1270.44, I have determined that the following records contain information subject to executive privilege, including the presidential communications and deliberative process privileges, and I hereby formally assert executive privilege over these records:

P000137 – P000140
P000141 – P000142
P000180
P000181
P000182 – P000191
P000192 – P000198
P000199 – P000201
P000202 – P000204
P000205 – P000207
P000208 – P000210
P000211 – P000213
P000214
P000215
P000216
P000217 – P000219

P000220 – P000222
P000223 – P000227
P000228 – P000229
P000230 – P000235
P000253 – P000256
P000257 – P000260
P000261 – P000264
P000265 – P000268
P000269 – P000274
P000275 – P000277
P000278 – P000286
P000287 – P000290
P000291 – P000292
P000293 – P000297
P000298 – P000303
P000304 – P000306
P000307 – P000315
P000316 – P000318
P000319 – P000320
P000321 – P000325
P000326 – P000327
P000328 – P000333
P000334 – P000339
P000342 – P000343
P000344 – P000347
P000348 – P000353
P000354 – P000355
P000356 – P000358
P000359 – P000362
P000363 – P000366
P000367 – P000372
P000373 – P000374
P000375
P000376 – P000377
P000378 – P000381
P000382 – P000387
P000388 – P000391
P000392 – P000395
P000396 – P000397
P000399 – P000405
P000406 – P000407

P000408 – P000411
P000412 – P000413
P000414 – P000416
P000417 – P000420
P000421 – P000422
P000423 – P000424
P000425 – P000426
P000427 – P000432
P000433 – P000435
P000436 – P000442
P000446 – P000447
P000448
P000449 – P000450
P000451 – P000454
P000455 – P000461
P000462 – P000463
P000464 – P000467
P000468 – P000475
P000476 – P000479
P000480 – P000486
P000487 – P000489
P000490 – P000496
P000497 – P000499
P000500 – P000503
P000504 – P000510
P000511 – P000512
P000513 – P000516
P000517 – P000523
P000524 – P000529
P000530 – P000531
P000532 – P000535
P000536 – P000542
P000543 – P000544
P000545 – P000548
P000549 – P000555
P000556 – P000560
P000561 – P000562
P000563 – P000565
P000566 – P000572
P000573 – P000574
P000575 – P000580

P000581 – P000583
P000584 – P000586
P000587 – P000588
P000589 – P000591
P000592 – P000595
P000596 – P000598
P000599 – P000600
P000601
P000602
P000603
P000604 – P000605
P000606 – P000611
P000612
P000613 – P000620
P000621 – P000622
P000623 – P000630
P000631 – P000632
P000633 – P000635
P000636 – P000644
P000645 – P000648
P000649 – P000651
P000652 – P000656
P000657 – P000663
P000664 – P000671
P000672 – P000673
P000674 – P000675
P000676 – P000684
P000685 – P000686
P000687 – P000688
P000689 – P000690
P000691 – P000696
P000697 – P000704
P000705 – P000706
P000707 – P000708
P000709 – P000716
P000717 – P000718
P000719 – P000726
P000727 – P000728
P000729 – P000731
P000732 – P000741
P000742 – P000745

P000746 – P000750
P000751 – P000753
P000754 – P000756
P000757 – P000758
P000759 – P000762
P000763 – P000764
P000765 – P000773
P000774 – P000775
P000776 – P000783
P000784 – P000785
P000786 – P000789
P000790 – P000798
P000799 – P000801
P000802 – P000807
P000808 – P000811
P000812 – P000817
P000818 – P000822
P000823 – P000827
P000828 – P000836
P000837 – P000839
P000840 – P000844
P000845 – P000850
P000851 – P000852

It is my understanding that NARA has determined that records numbered P000443 – P000445 are not Presidential Records and thus have been removed from the Second Notification and will not be produced to the Committee.

On September 16, 2021, NARA noticed the third set of records for review (P000879 – P001024) (the “Third Notification”). Following a review of such records, pursuant to the Presidential Records Act, Executive Order 13489, and 36 CFR 1270.44, I have determined that the following records contain information subject to executive privilege, including the presidential communications and deliberative process privileges, and I hereby formally assert executive privilege over these records:

P000891 – P000901
P000902 – P000903
P000904 – P000926
P000927
P000935 – P000950
P000951 – P000955
P000956 – P000959

P000960 – P000962
P000986 – P000988

It is my understanding that the Committee has deferred their request for the records identified below. Although no decision with respect to executive or other privileges needs to be made now, I hereby reserve my right to make a formal assertion of executive or other privileges over these records at the appropriate time.

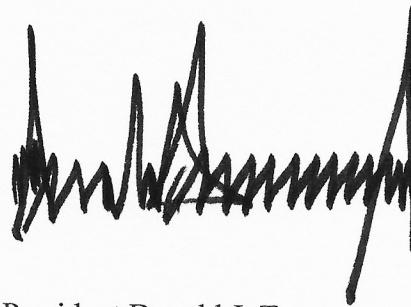
P000143 – P000179
P000398
P000879 – P000890

Additionally, certain documents included in the Second Notification and/or Third Notification may be subject to additional privileges, including without limitation the attorney-client and work-product privileges. Those records also are subject to executive privilege. To the extent required, any attorney-client or other privilege is not waived and a further review may be required depending on the outcome of the process provided for under the Presidential Records Act, 36 CFR 1270.44, and Executive Order 13489.

Remainder of Page Intentionally Left Blank

Finally, to the Presidential Records Act, Executive Order 13489, and 36 CFR 1270.44, I hereby make a protective assertion of constitutionally based privilege with respect to all additional records following the Third Notification. In cases like this, where Congress has declined to grant sufficient time to conduct a full review, there is a longstanding bipartisan tradition of protective assertions of executive privilege designed to ensure the ability to make a final privilege assertion, if necessary, over some or all of the requested material. *See Protective Assertion of Executive Privilege Regarding White House Counsel's Office Documents*, 20 Op. O.L.C. 1 (1996) (opinion of Attorney General Janet Reno). This protective assertion is intended to ensure that I have the ability to make a final assertion of executive privilege, if necessary and appropriate, following a full review of the requested materials. *See Letter for the President from William P. Barr, Attorney General*, at 1-2 (May 8, 2019).

Sincerely,

A handwritten signature in black ink, appearing to read 'Donald Trump', with a long, sweeping horizontal stroke across the middle.

President Donald J. Trump

ATTACHMENT H



THE WHITE HOUSE
WASHINGTON

October 25, 2021

David Ferriero
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Ave., N.W.
Washington, D.C. 20408

Dear Mr. Ferriero,

I write in response to your communication of October 22, 2021, informing us that former President Trump has asserted executive privilege with regard to a subset of documents requested by the House Select Committee to Investigate the January 6th Attack on the United States Capitol (the "Select Committee"), and requesting President Biden's views. President Biden has considered the former President's assertion, and I have engaged in consultations with the Office of Legal Counsel at the Department of Justice. President Biden has determined that an assertion of executive privilege is not in the best interests of the United States, and therefore is not justified, as to the documents provided to the White House on September 16, 2021, and September 23, 2021. Accordingly, President Biden does not uphold the former President's assertion of privilege.

As I wrote in my letter to you on October 8, 2021:

[T]he insurrection that took place on January 6, and the extraordinary events surrounding it, must be subject to a full accounting to ensure nothing similar ever happens again. Congress has a compelling need in service of its legislative functions to understand the circumstances that led to . . . the most serious attack on the operations of the Federal Government since the Civil War. . . . Constitutional protections of executive privilege should not be used to shield, from Congress or the public, information that reflects a clear and apparent effort to subvert the Constitution itself.

President Biden instructs you, in accord with Section 4(b) of Executive Order 13489, to provide to the Select Committee the pages identified as privileged by the former President. In light of the urgency of the Select Committee's need for the information, President Biden further instructs you to provide those pages 30 days after your notification to the former President, absent any intervening court order.

In the course of an accommodation process between Congress and the Executive Branch, the Select Committee has deferred its request for the following responsive records: Bates Numbers 000143-000179; 000398; 000879-000890. In addition, your staff has informed the White House that a record found at Bates Numbers 000443-000445 is not a presidential record and therefore falls outside the scope of the Select Committee's request. No decision on executive privilege is required for these records.

You should provide to the Select Committee as soon as possible any pages not identified in the preceding paragraph as to which the former President has not asserted privilege. Where appropriate, non-responsive content within responsive records should be redacted.

Sincerely,



Dana A. Remus
Counsel to the President

ATTACHMENT I



Archivist of the
United States

October 27, 2021

The Honorable Donald J. Trump

Dear President Trump:

After consultation with the Counsel to the President and the Acting Assistant Attorney General for the Office of Legal Counsel, and as instructed by President Biden, I have determined to disclose to the House Select Committee to Investigate the January 6th Attack on the United States Capital ("Select Committee") the 724 pages from the Second and Third Notifications that you identified as privileged in your letter of October 21, 2021. Pursuant to President Biden's subsequent instruction and my authority under 36 C.F.R. 1270.44(g), I will deliver these pages to the Select Committee 30 days from today (November 26, 2021), absent any intervening court order.

As your letter notes, NARA has determined that the pages numbered P000443-P000445 are not Presidential records, and we have therefore withdrawn these pages from the Second Notification. As your letter further notes, the pages numbered P000143-P000179, P000398, and P000879-P000890 have been deferred from final consideration and thus will not be provided to the Select Committee at this time. I will provide to the Select Committee in short order the remaining 111 pages that are not subject to an assertion of privilege.

Sincerely,

DAVID S. FERRIERO
Archivist of the United States

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

DONALD J. TRUMP,

Plaintiff,

V.

Civil Action No. 21-cv-2769 (TSC)

BENNIE G. THOMPSON, *in his official capacity as Chairman of the United States House Select Committee to Investigate the January 6th Attack on the United States Capitol, et al.,*

Defendants.

MEMORANDUM OPINION

On January 6, 2021, hundreds of rioters converged on the U.S. Capitol. They scaled walls, demolished barricades, and smashed windows in a violent attempt to gain control of the building and stop the certification of the 2020 presidential election results. This unprecedented attempt to prevent the lawful transfer of power from one administration to the next caused property damage, injuries, and death, and for the first time since the election of 1860, the transfer of executive power was distinctly not peaceful.

The question of how that day’s events came about and who was responsible for them is not before the court. Instead, the present dispute involves purely legal questions that, though difficult and important to our government’s functioning, are comparatively narrow in scope. Plaintiff—former President Donald J. Trump—challenges the legality of a U.S. House of Representatives Select Committee’s requests for certain records maintained by the National

Archives and Records Administration (“NARA”) pursuant to the Presidential Records Act. Plaintiff argues that the Committee’s requests are impermissible because at least some of the records sought are shielded by executive privilege and because the requests exceed Congress’ constitutional power. He seeks an injunction prohibiting Defendants—the House Select Committee, the Chairman of the House Select Committee, NARA, and the Archivist of NARA—from enforcing or complying with the Committee’s requests. For the reasons explained below, the court will deny Plaintiff’s requested relief.

I. BACKGROUND

A. The 2020 Presidential Election and January 6, 2021

While not material to the outcome, some factual background on the events leading up to and including January 6, 2021, offers context for the legal dispute here. In the months preceding the 2020 presidential election, Plaintiff declared that the only way he could lose would be if the election were “rigged.” *See, e.g.*, Donald J. Trump, Speech at Republican National Convention Nomination Vote at 22:08 (Aug. 24, 2020) *in* C-SPAN, <https://www.c-span.org/video/?475000-103/president-trump-speaks-2020-republican-national-convention-vote>. In the months after losing the election, he repeatedly claimed that the election was rigged, stolen, and fraudulent. For example, in a December 2 speech, he alleged “tremendous voter fraud and irregularities” resulting from a late-night “massive dump” of votes. *See* President Donald J. Trump, Statement on 2020 Election Results at 0:39, 7:26 (Dec. 2, 2020) *in* C-SPAN, <https://www.c-span.org/video/?506975-1/president-trump-statement-2020-election-results>. He also claimed that certain votes were “counted in foreign countries,” that “millions of votes were cast illegally

in the swing states alone,” and that it was “statistically impossible” he lost. *Id.* at 12:00, 14:22, 19:00.

After losing the election, Plaintiff and his supporters filed a plethora of unsuccessful lawsuits seeking to overturn the results. *See, e.g., Current Litigation*, AMERICAN BAR ASSOCIATION: STANDING COMMITTEE ON ELECTION LAW, Apr. 30, 2021, https://www.americanbar.org/groups/public_interest/election_law/litigation/. The United States Supreme Court also denied numerous emergency applications aimed at overturning the results. *Id.* In response, Plaintiff tweeted that the Court was “totally incompetent and weak on the massive Election Fraud that took place in the 2020 Presidential Election.” Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 26, 2020, 1:51 PM), <https://www.presidency.ucsb.edu/documents/tweets-december-26-2020>.¹ He continued his claim that “We won the Presidential Election, by a lot,” and implored Republicans to “FIGHT FOR IT. Don’t let them take it away.” *Id.* (Dec. 18, 2020, 2:14 PM), <https://www.presidency.ucsb.edu/documents/tweets-december-18-2020>.

A Joint Session of Congress was scheduled to convene on January 6, 2021, to count the electoral votes of the 2020 presidential election and to officially announce the elected President, as required by the Twelfth Amendment to the U.S. Constitution and the Electoral Count Act, 3

¹ Plaintiff was permanently suspended from Twitter on January 8, 2021. *See* Press Release, Twitter, Inc., Permanent Suspension of @realDonaldTrump (Jan. 8, 2021), https://blog.twitter.com/en_us/topics/company/2020/suspension. As a result, Plaintiff’s tweets are permanently unavailable in their original form. *See* Quint Forgey, *National Archives can’t resurrect Trump’s tweets, Twitter says*, POLITICO (Apr. 7, 2021), <https://www.politico.com/news/2021/04/07/twitter-national-archives-realdonaldtrump-479743>. The court has relied on the University of California, Santa Barbara’s *The American Presidency Project* for archived tweets. *See* John Wolley & Gerhard Peters, THE AMERICAN PRESIDENCY PROJECT, <https://www.presidency.ucsb.edu/>.

U.S.C. § 15. In the days leading up to January 6, Plaintiff began promoting a protest rally to take place hours before the Joint Session convened. On December 19, 2020, he tweeted “Statistically impossible to have lost the 2020 Election. Big protest in D.C. on January 6th. Be there, will be wild!” Donald J. Trump (@realDonaldTrump), TWITTER (December 19, 2020, 6:42am), <https://www.presidency.ucsb.edu/documents/tweets-december-19-2020>. During a rally, he warned that “Democrats are trying to steal the White House . . . you can’t let that happen. You can’t let it happen,” and promised that “[w]e’re going to fight like hell, I’ll tell you right now.” See Donald J. Trump, Remarks at Georgia U.S. Senate Campaign Event at 8:40, 14:19 (Jan. 4, 2021) in *Campaign 2020*, C-SPAN, <https://www.c-span.org/video/?507634-1/president-trump-campaigns-republican-senate-candidates-georgia>.

On January 6, Plaintiff spoke at the rally at the Ellipse, during which he (1) repeated claims, rejected by numerous courts, that the election was “rigged” and “stolen”; (2) urged then-Vice President Pence, who was preparing to convene Congress to tally the electoral votes, “to do the right thing” by rejecting certain states’ electors and declining to certify the election for President Joseph R. Biden; and (3) told protesters to “walk down to the Capitol” to “give them the kind of pride and boldness that they need to take back our country,” “we fight. We fight like hell. And if you don’t fight like hell, you’re not going to have a country anymore,” and “you’ll never take back our country with weakness.” See Donald J. Trump, Rally on Electoral College Vote Certification at 3:33:04, 3:33:36, 3:37:20, 3:47:02, 3:47:22, 4:42:26, 4:41:27 (Jan. 6, 2021) in *Campaign 2020*, C-SPAN, <https://www.c-span.org/video/?507744-1/rally-electoral-college-vote-certification>.

Shortly thereafter, the crowds surged from the rally, marched along Constitution Avenue, and commenced their siege of the Capitol.

B. The Select Committee and its Presidential Records Act Request

On June 30, 2021, the U.S. House of Representatives passed House Resolution 503, creating the Select Committee. ECF No. 5, Pl. Mot., Ex. 3, H.R. 503, § 3, 117th Cong. (2021). H.R. 503 empowers the Select Committee to (1) “investigate the facts, circumstances, and causes relating to” the January 6 attack; (2) “identify, review, and evaluate the causes of and the lessons learned from” the attack; and (3) “issue a final report to the House containing such findings, conclusions, and recommendations for corrective measures . . . as it may deem necessary.” *Id.* § 4(a). Such corrective measures may include:

[C]hanges in law, policy, procedures, rules, or regulations that could be taken—
(1) to prevent future acts of violence, domestic terrorism, and domestic violent extremism, including acts targeted at American democratic institutions; (2) to improve the security posture of the United States Capitol Complex while preserving accessibility of the Capitol Complex for all Americans; and (3) to strengthen the security and resilience of the United States and American democratic institutions against violence, domestic terrorism, and domestic violent extremism.

Id. § 4(c). The resolution also authorizes the Select Committee to publish interim reports, which may include “legislative recommendations as it may deem advisable.” *Id.* § 4(b).

The Select Committee is authorized “to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of books, records, correspondence, memoranda, papers, and documents as it considers necessary.” 47 Rule XI.2(m)(1)(B), Rules of the U.S. House of Rep., 117th Cong. (2021) (“House Rules”); *see also* H.R. 503, § 5(c) (unless otherwise specified, Rule XI applies to the Select Committee). Under House Rule XI:

Subpoenas for documents or testimony may be issued to any person or entity, whether governmental, public, or private, within the United States, including, but

not limited to, the President, and the Vice President, whether current or former, in a personal or official capacity, as well as the White House, the Office of the President, the Executive Office of the President, and any individual currently or formerly employed in the White House, Office of the President, or Executive Office of the President.

House Rule XI.2(m)(3)(D).

On August 25, 2021, pursuant to section 2205(2)(C) of the Presidential Records Act (“PRA”), the Committee issued a document request to NARA seeking several categories of records from the Executive Office of the President and the Office of the Vice President. Compl., Ex. 1. Specifically, the Select Committee sought written communications, calendar entries, videos, photographs, or other media relating to Plaintiff’s January 6 speech, the January 6 rally and subsequent march, the violence at the Capitol, and the response within the White House. *See id.* at 2-4. The Committee also requested materials from specific time periods relating to any planning by the White House and others regarding the January 6 electoral count, *id.* at 4-7; preparations for rallies leading up to the January 6 violence, *id.* at 7-8; information Plaintiff received regarding the election outcome, *id.* at 9-10; Plaintiff’s public remarks regarding the election outcome and the validity of the election system more broadly, *id.*; and for a specified timeframe surrounding the 2020 election, documents and communications of the Plaintiff and certain of his advisors relating to the transfer of power and obligation to follow the rule of law, including with respect to actual or potential changes in personnel at certain executive branch agencies, and relating to foreign influence in that election, *id.* at 10-12. These requests are the subject of this lawsuit.

C. Presidential Records in the Nixon Era

In the wake of its investigation of presidential wrongdoing in the Watergate scandal, Congress passed two laws relating to presidential records. The first was the Presidential Recordings and Materials Preservation Act of 1974 (“PRMPA”), enacted after former President Richard Nixon indicated that he intended to destroy certain tape recordings of his conversations while in office.

Four years later, after the Supreme Court’s ruling in *Nixon v. Adm’r of Gen. Servs.* (*Nixon v. GSA*), 433 U.S. 425, 448 (1977),² Congress passed the PRA, which changed the legal ownership of the President’s official records from private to public, and established a new statutory scheme under which Presidents, and NARA, must manage the records of their Administrations. In passing the PRA, Congress sought a balance between, on the one hand, “encourag[ing] the free flow of ideas within the executive branch” by allowing a President to restrict access to their Presidential records for up to twelve years after their tenure ends, and on the other hand, permitting Congress to access any records it needs to conduct its business before the twelve-year clock runs. *See, e.g.*, 95 Cong. Rec. H34895 (daily ed. Oct. 10, 1978) (statement of Rep. Brademas); *see also* 95 Cong. Rec. S36845 (daily ed. Oct. 13, 1978) (statement of Sen. Nelson) (explaining that the legislation was “carefully drawn” to strike a balance between the confidentiality of the President’s decision-making process and the public interest in preservation of the records).

The PRA defines “Presidential records” as records reflecting “the activities, deliberations, decisions, and policies” of the Presidency. 44 U.S.C. § 2203(a). Under the Act, when a

² *See* discussion *infra* at § III.A.1.ii.a.

President leaves office, the Archivist “assume[s] responsibility for the custody, control, and preservation of, and access to” the Presidential records of the departing administration. *Id.* § 2203(g)(1). The Archivist must make Presidential records available to the public under the Freedom of Information Act five years after the President leaves office. *Id.* § 2204(b)(2), (c)(1); *see also* 36 C.F.R. § 1270.38. However, the outgoing President can restrict access to especially sensitive materials for a period of up to 12 years. 44 U.S.C. § 2204(a); *see also* 36 C.F.R. § 1270.40(a). One exception is that “Presidential records shall be made available . . . to either House of Congress, or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof if such records contain information that is needed for the conduct of its business and that is not otherwise available.” 44 U.S.C. § 2205(2)(C).

The PRA gives the Archivist the power to promulgate regulations to administer the statute. 44 U.S.C. § 2206. Pursuant to those regulations, the Archivist must promptly notify both the former President as well as the incumbent President of a request for the former President’s records. *See* 36 C.F.R. § 1270.44(c). Either the former or incumbent President “may assert a claim of constitutionally based privilege” against disclosure within thirty calendar days after the date of the Archivist’s notice. *Id.* § 1270.44(d). If a former President asserts the claim, the Archivist consults with the incumbent President as soon as practicable and within 30 calendar days from the date that the Archivist receives notice of the claim to determine whether the incumbent President will uphold the claim. *Id.* § 1270.44(f)(1). If the incumbent President does not uphold the former President’s claim, the Archivist must disclose the Presidential records 60 calendar days after receiving notification of the claim unless a federal court order directs the Archivist to withhold the records. *Id.* § 1270.44(f)(3); *see also* Exec. Order No. 13489, § 4(b)

(providing that the Archivist shall abide by the incumbent President's determination as to a privilege assertion by a former President unless otherwise directed by a final court order). The Archivist may also "adjust any time period or deadline . . . to accommodate records requested." 36 C.F.R. § 1270.44(g).

D. Response to Select Committee's Request

On August 30, 2021, after receiving the Select Committee's requests, the Archivist notified Plaintiff that NARA intended to produce a first tranche of approximately 136 pages of records responsive to the Committee's requests. ECF No. 21, NARA Br. at 11.

On October 8, 2021, White House Counsel notified the Archivist that President Biden would not be asserting executive privilege over the first tranche of Presidential records because doing so "is not in the best interests of the United States." Pl. Mot., Ex. 4 at 1. Counsel further explained the President's position:

Congress has a compelling need in service of its legislative functions to understand the circumstances that led to these horrific events. . . . The Documents shed light on events within the White House on and about January 6 and bear on the Select Committee's need to understand the facts underlying the most serious attack on the operations of the Federal Government since the Civil War. These are unique and extraordinary circumstances. . . . The constitutional protections of executive privilege should not be used to shield, from Congress or the public, information that reflects a clear and apparent effort to subvert the Constitution itself.

Id. at 1-2.

That same day, Plaintiff notified the Archivist that he was asserting executive privilege with respect to thirty-nine pages of records in the first tranche, and seven pages of records that were subsequently withdrawn from the first tranche as non-responsive. NARA Br. at 11.

Plaintiff also made a "protective assertion of constitutionally based privilege with respect to all additional records following the First Tranche." Pl. Mot., Ex. 5 at 2.

White House Counsel then notified the Archivist that President Biden “does not uphold the former President’s assertion of privilege.” Pl. Mot., Ex. 6. Counsel further instructed the Archivist to turn the requested records over to the Committee thirty days after the Archivist notified Plaintiff, absent an intervening court order, “in light of the urgency of the Select Committee’s need” for the requested records. *Id.*

On October 13, 2021, the Archivist notified Plaintiff that, “[a]fter consultation with Counsel to the President and the Acting Assistant Attorney General for the Office of Legal Counsel, and as instructed by President Biden,” the Archivist “determined to disclose to the Select Committee,” on November 12, 2021, all responsive records that President Trump determined were subject to executive privilege, absent an intervening court order. *Id.*, Ex. 7.³

The review and submission process for additional tranches of records is proceeding on staggered timelines. Regarding the second and third tranches of records, NARA notified Plaintiff and President Biden on September 9 and 16 that it was planning to disclose 888 pages of additional records, three of which NARA later withdrew because they were not Presidential records. NARA Br. at 11-12. Plaintiff asserted privilege over 724 pages. *Id.* at 12. President Biden again responded that he would not uphold the privilege. *Id.* NARA notified Plaintiff and President Biden that it would turn over the 724 pages to the Committee on November 26 absent an intervening court order. *Id.* On October 15, NARA sent notification of its intent to disclose a fourth tranche of 551 pages of responsive records. *Id.* The review period for the fourth tranche

³ On the same date, the Archivist produced to the Select Committee the ninety pages of records in the first tranche that were both responsive to the Committee’s requests and not subject to Plaintiff’s assertions of privilege. NARA Br., Laster Decl. ¶ 20.

is ongoing, and NARA anticipates that it will identify additional tranches of responsive records on a rolling basis. *Id.*

E. Procedural History

On October 18, Plaintiff filed this action, seeking a declaratory judgment that the Select Committee's requests are invalid and unenforceable, an injunction against the Congressional Defendants' enforcement of the requests or use of any information obtained via the requests, and an injunction preventing the Archivist and NARA's production of the requested information. *See* ECF No. 1, Compl. at 25-26. The following day, Plaintiff moved for a preliminary injunction "prohibiting Defendants from enforcing or complying with the Committee's request." Pl. Mot. at 3. At the parties' request, the court set an accelerated briefing schedule and heard argument on the motion on November 4, 2021. *See* Min. Order (Oct. 22, 2021).

On November 8, 2021, Plaintiff filed a preemptive emergency motion requesting an injunction pending appeal, or an administrative injunction, "should the court refuse" to grant his requested relief. ECF No. 34, at 1. The court denied Plaintiff's emergency motion without prejudice as premature and stated that the court would consider a motion for a stay from the non-prevailing party following its ruling. *See* Min. Order (Nov. 9, 2021) (citing Fed. R. Civ. P. 62(d)).

II. LEGAL STANDARD

A preliminary injunction is an "extraordinary" remedy that "should be granted only when the party seeking the relief, by a clear showing, carries the burden of persuasion." *Cobell v. Norton*, 391 F.3d 251, 258 (D.C. Cir. 2004). To prevail on a motion for preliminary injunction, the movant bears the burden of showing that: (1) "he is likely to succeed on the merits"; (2) "he

is likely to suffer irreparable harm in the absence of preliminary relief”; (3) “the balance of equities tips in his favor”; and (4) “an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Where the federal government is the opposing party, the balance of equities and public interest factors merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). In the past, courts in this jurisdiction have evaluated the four preliminary injunction factors on a “sliding scale”—a particularly strong showing in one factor could outweigh weakness in another. *Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011). However, it is unclear if this approach has survived the Supreme Court’s decision in *Winter*. *See, e.g., Banks v. Booth*, 459 F. Supp. 3d 143, 149-50 (D.D.C. 2020) (citing *Sherley*, 644 F.3d at 393 (D.C. Cir. 2011)). Despite this uncertainty, each factor must still be present. Thus, if a party makes no showing of irreparable injury, the court may deny the motion for injunctive relief on that basis alone. *See Save Jobs USA v. U.S. Dep’t of Homeland Sec.*, 105 F. Supp. 3d 108, 112 (D.D.C. 2015) (citing *CityFed Fin. Corp. v. Off. of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995)).

III. ANALYSIS

A. Likelihood of Success on the Merits

1. Executive Privilege

This case presents the first instance since enactment of the PRA in which a former President asserts executive privilege over records for which the sitting President has refused to assert executive privilege. Plaintiff argues that at least some of the requested records reflect his decision-making and deliberations, as well as the decision-making of executive officials generally, and that those records should remain confidential. Specifically, Plaintiff claims such

records fall within two constitutionally recognized categories of executive privilege—the presidential communications privilege and deliberative process privilege—and that he can prevent their disclosure. He argues that his power to do so extends beyond his tenure in Office, in perpetuity, and that his assertion of privilege is binding on the current executive branch. Plaintiff also argues that to the extent the PRA constrains his ability to assert executive privilege, the Act is unconstitutional. In the alternative, he contends that when a former President and current President disagree about whether to assert privilege, a court must examine each disputed document and decide whether it is privileged.

Defendants acknowledge that executive privilege may extend beyond a President’s tenure in office, but they emphasize that the privilege exists to protect the executive branch, not an individual. Therefore, they argue, the incumbent President—not a former President—is best positioned to evaluate the long-term interests of the executive branch and to balance the benefits of disclosure against any effect on the on the ability of future executive branch advisors to provide full and frank advice. The court agrees.

i. The Executive Power and the Origins of Executive Privilege

The Constitution vests all “executive Power” in the President, who “must ‘take Care that the Laws be faithfully executed.’” *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2191 (2020) (quoting U.S. Const. art. II, § 1, cl. 1 & § 3)). Only the “incumbent is charged with performance of the executive duty under the Constitution.” *Nixon v. GSA*, 433 U.S. at 448. It is the incumbent President who is best situated to protect executive branch interests; the incumbent has “the information and attendant duty of executing the laws in the light of current facts and circumstances.” *Dellums v. Powell*, 561 F.2d 242, 247 (D.C. Cir. 1977). And

only the incumbent remains subject to “political checks against . . . abuse” of that power. *Nixon v. GSA*, 433 U.S. at 448.

The Constitution does not expressly define a President’s right to confidential communications. The executive privilege “derives from the supremacy of the Executive Branch within its assigned area of constitutional responsibility.” *Id.* at 447. Indeed, as far back as George Washington’s presidency, it has been established that Presidents may “exercise a discretion” over disclosures to Congress, “communicat[ing] such papers as the public good would permit” and “refus[ing]” the rest. *Trump v. Mazars USA, LLP (Mazars)*, 140 S. Ct. 2019, 2029-30 (2020) (quoting 1 Writings of Thomas Jefferson 189-90 (P. Ford ed. 1892)). The notion of executive privilege is “inextricably rooted in the separation of powers under the Constitution,” and is meant to protect the President’s ability to have full and unfettered discussions with advisors, liberated by the veil of confidentiality. *United States v. Nixon*, 418 U.S. 683, 708 (1974). The privilege “belongs to the Government and must be asserted by it: it can neither be claimed nor waived by a private party.” *United States v. Reynolds*, 345 U.S. 1, 7 (1953).

Presidential conversations are presumptively privileged, but the privilege is not absolute. *Nixon v. GSA*, 433 U.S. at 447. It exists for the benefit of the Republic, not any individual, and accordingly, the presumption can be overcome by an appropriate showing of public need by the judicial or legislative branch. *See, e.g., Nixon v. GSA*, 433 U.S. at 447, 449; *Nixon*, 418 U.S. at 707; *Senate Select Committee on Presidential Campaign Activities v. Nixon (Senate Select Committee)*, 498 F.2d 725, 730 (D.C. Cir. 1974).

a) Senate Select Committee

In 1973, a special committee of the Senate was formed to investigate “illegal, improper or unethical activities” occurring in connection with then-President Nixon’s presidential campaign and election of 1972. *Senate Select Comm.*, 498 F.2d at 726. The committee issued a subpoena to Nixon for tape recordings of his conversations with White House Counsel; in response, Nixon invoked executive privilege. *See id.* at 727. The D.C. Circuit noted that presidential conversations are presumptively privileged, and that the “presumption can be overcome only by an appropriate showing of public need.” *Id.* at 730. Weighing these two principles, the court held that the committee had not overcome the presumption of privilege because it had not shown that the tapes were “demonstrably critical” to its investigation. *Id.* at 731. The court explained that because the House Committee on the Judiciary already had access to copies of the tapes, the special committee’s stated interest was “merely cumulative” and not sufficient to overcome the presumption favoring confidentiality. *Id.* at 732.

ii. Former President’s Ability to Assert Privilege

a) Nixon v. GSA

In 1974, shortly after he resigned from office, former President Nixon indicated that he intended to destroy tape recordings he made during his presidency. *See Nixon v. GSA*, 433 U.S. at 432. The legislative and executive branches, recognizing the public interest in such materials, intervened. Congress enacted, and President Ford signed, the PRMPA, to give custody of Nixon’s records to the National Archives and to prohibit the destruction of the tapes or any other presidential materials. *See H.R. Rep. No. 95-1487 at 5 (1978)*. Nixon sued, arguing that the PRMPA violated the separation of powers, presidential privilege, and several personal rights.

Nixon v. GSA, 433 U.S. at 439-55. The Supreme Court rejected each of his arguments, holding that the PRMPA was constitutional on its face. As to the separation of powers, the Court noted that the “Executive Branch became a party to the Act’s regulation when President Ford signed the Act into law, and the administration of President Carter . . . vigorously supports . . . sustaining its constitutionality.” *Id.* at 441. The Court further explained that “in determining whether the Act disrupts the proper balance between the coordinate branches, the proper inquiry focuses on the extent to which it prevents the Executive Branch from accomplishing its constitutionally assigned functions.” *Id.* at 443 (citing *Nixon*, 418 U.S. at 711-12).

The Supreme Court also examined whether Nixon could assert privilege over his presidential records and prevent their disclosure to the Archivist. It found, as a threshold matter, that the privilege survives the end of a President’s tenure in office. *Id.* at 449. The Court explained that the basis for the privilege—to allow the President and his advisors the assurance of confidentiality in order to have full and frank discussions—“cannot be measured by the few months or years between the submission of the information and the end of the President’s tenure.” *Id.* It concluded that the privilege exists for the benefit of the Republic and is not tied to any one individual, and therefore survives the end of a President’s term. *Id.*

But the Court also found that “to the extent that the privilege serves as a shield for executive officials against burdensome requests for information which might interfere with the proper performance of their duties, . . . a former President is in less need of it than an incumbent.” *Id.* at 448. Consequently, the fact that neither former President Ford nor then-President Carter supported Nixon’s contention that the PRMPA undermined the presidential communications privilege “detract[ed] from the weight” of Nixon’s argument. *Id.* at 449. The

Court found that while the privilege may extend beyond the term of any one President, “the incumbent President is . . . vitally concerned with and in the best position to assess the present and future needs of the executive branch, and to support invocation of the privilege accordingly.”

Id.

The Court further held that Nixon’s claim of privilege was outweighed by Congress’ intent in enacting the PRMPA, noting that Congress had “substantial public interests” in enacting the statute, including Congress’ “need to understand how [the] political processes [leading to former President Nixon’s resignation] had in fact operated in order to gauge the necessity for remedial legislation.” *Id.* at 453. The Court also observed that the “expectation of the confidentiality of executive communications . . . has always been limited and subject to erosion over time after an administration leaves office.” *Id.* at 451.

b) The Presidential Records Act

In the aftermath of *Nixon v. GSA*, Congress and the Executive established a framework under which a former President can assert privilege over Presidential records. As explained above, the Act permits an outgoing President to shield certain Presidential records for up to twelve years, with an exception for records that a House or Senate committee or subcommittee needs “for the conduct of its business and that is not otherwise available.” 44 U.S.C. § 2205(2)(C).

iii. President Biden’s Privilege Determination Outweighs that of Plaintiff

At bottom, this is a dispute between a former and incumbent President. And the Supreme Court has already made clear that in such circumstances, the incumbent’s view is accorded greater weight. This principle is grounded in “the fact that the privilege is seen as inhering in the

institution of the Presidency, and not in the President personally.” *Dellums*, 561 F.2d at 247 n.14 (citing *Nixon v. Adm’r of Gen. Servs.*, 408 F. Supp. 321, 343 (D.D.C. 1976), *aff’d*, 433 U.S. 425 (1977)). Only “the incumbent is charged with performance of the executive duty under the Constitution.” *Nixon v. GSA*, 433 U.S. at 448. And it is the incumbent who is “in the best position to assess the present and future needs of the Executive Branch, and to support invocation of the privilege accordingly.” *Id.* at 449.

Plaintiff does not acknowledge the deference owed to the incumbent President’s judgment. His position that he may override the express will of the executive branch appears to be premised on the notion that his executive power “exists in perpetuity.” Hearing Tr. at 19:21-22. But Presidents are not kings, and Plaintiff is not President. He retains the right to assert that his records are privileged, but the incumbent President “is not constitutionally obliged to honor” that assertion. *Public Citizen v. Burke*, 843 F.2d 1473, 1479 (D.C. Cir. 1988).⁴ That is because

⁴ Plaintiff also retains the right to assert his own personal “rights or privileges,” if any. 44 U.S.C. § 2204; *see also Nixon v. GSA*, 433 U.S. at 455-83 (analyzing former President Nixon’s assertion of personal rights, including privacy and First Amendment associational rights). Plaintiff, however, does not do so here. He makes conclusory assertions of attorney-client privilege and attorney work product, but he appears to do so as a species of executive privilege. *See, e.g.,* Pl.’s Mot. at 3 (referring indiscriminately to “various privileges,” including “conversations with (or about) foreign leaders, attorney work product, the most sensitive national security secrets, along with a litany of privileged communications among a pool of potentially hundreds of people”); *id.* at 5 (referring without elaboration to “executive privilege and attorney-client privilege”); *id.* at 30 (referring to deliberative process privilege and attorney-client privilege in the same discussion relating to “the President”).

In any event, Plaintiff does not elaborate on these claims with sufficient detail for this court to assess them, nor would any such claim be convincing, because the records maintained by the Archivist, by definition, only include those records reflecting the “activities, deliberations, decisions, and policies” of the Presidency, 44 U.S.C. § 2203(a), and not private communications. Plaintiff offers no evidence that the records contain anything of a personal nature; in fact, he concedes that the responsive records do not involve private conversations between him and a personal attorney. *See* Hearing Tr. at 60:21-61:6. The court need not credit Plaintiff’s concern

Plaintiff is no longer situated to protect executive branch interests with “the information and attendant duty of executing the laws in the light of current facts and circumstances.” *Dellums*, 561 F.2d at 247. And he no longer remains subject to political checks against potential abuse of that power. *Nixon v. GSA*, 433 U.S. at 448.

Moreover, contrary to Plaintiff’s assertion that President Biden’s decision not to invoke executive privilege is “unprecedented,” Pl. Mot. at 2, history is replete with examples of past Presidents declining to assert the privilege. From President Nixon permitting the unrestricted congressional testimony of present and former White House staff members,⁵ to President Ronald Reagan’s decision to authorize testimony and the production of documents related to the Iran-Contra affair, including information about his communications and decision-making process,⁶ to President George W. Bush’s decision to sit for an interview with the 9/11 Commission to answer questions about his decision-making process in the wake of the attack,⁷ past Presidents have balanced the executive branch’s interest in maintaining confidential communications against the public’s interest in the requested information. The Supreme Court noted that this tradition of

in the abstract. *See Barenblatt v. United States*, 360 U.S. 109, 112 (1959) (the congressional “power [of inquiry] and the right of resistance to it are to be judged in the concrete, not on the basis of abstractions.”).

⁵ *See* Letter Responding to the Senate Select Committee on Presidential Campaign Activities Request for Presidential Testimony and Access to Presidential Papers (July 7, 1973), *Pub. Papers of Pres. Richard Nixon* 636, 637 (1973).

⁶ *See* Report of the Congressional Committees Investigating the Iran-Contra Affair, H.R. Rep. No. 100-433, S. Rep. No. 100-216, at xvi (1987).

⁷ *See* Philip Shenon & David E. Sanger, *Bush and Cheney Tell 9/11 Panel of ’01 Warnings*, N.Y. TIMES, Apr. 30, 2004, at A1, <https://www.nytimes.com/2004/04/30/us/threats-responses-investigation-bush-cheney-tell-9-11-panel-01-warnings.html>.

negotiation and compromise between the legislative and executive branches extends back to the administrations of Washington and Jefferson. *See Mazars*, 140 S. Ct. at 2029-31. President Biden’s decision not to assert executive privilege because “Congress has a compelling need in service of its legislative functions to understand the circumstances” surrounding the events of January 6, *see* Pl. Mot., Exs. 4, 6, is consistent with historical practice and his constitutional power.

Plaintiff appears to view the dispute as resulting in some sort of equipoise, and asks the court to act as a tiebreaker, reviewing each disputed record *in camera*. The court, however, is not best situated to determine executive branch interests, and declines to intrude upon the executive function in this manner. It must presume that the incumbent is best suited to make those decisions on behalf of the executive branch. *See Nixon v. GSA*, 433 U.S. at 449. As the Supreme Court noted in *Mazars*, decisions about whether to accommodate congressional requests for information are best “hashed out in the ‘hurly-burly, the give-and-take of the political process between the legislative and the executive.’” *Mazars*, 140 S. Ct. at 2029 (quoting Hearings on S. 2170 et al. before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations, 94th Cong., 1st Sess., 87 (1975) (A. Scalia, Assistant Attorney General, Office of Legal Counsel)). When the legislative and executive branches agree that the nation’s interest is best served by a disclosure to Congress, as they do here, then the court has a “duty of care to ensure that [it] does not needlessly disturb ‘the compromises and working arrangements that [those] branches . . . themselves have reached.’” *Mazars*, 140 S. Ct. at 2031 (quoting *NLRB v. Noel Canning*, 573 U.S. 513, 524-26 (2014)). Plaintiff has pointed to no legal authority mandating a different outcome.

The court therefore holds that Plaintiff's assertion of privilege is outweighed by President Biden's decision not to uphold the privilege, and the court will not second guess that decision by undertaking a document-by-document review that would require it to engage in a function reserved squarely for the Executive.

iv. Plaintiff's Constitutional Challenge to the Presidential Records Act

Plaintiff's argument that the PRA strips him of his constitutional rights is unavailing. The Act establishes a framework under which a former President may assert executive privilege, subject to the incumbent's decision on whether to uphold the privilege, which is consistent with the constitutional principle explained by the Court in *Nixon v. GSA*. Compare *Nixon v. GSA*, 433 U.S. at 449 (explaining that the incumbent President is best positioned "to assess the present and future needs of the Executive Branch, and to support invocation of the privilege accordingly"), with 44 U.S.C. § 2208(c)(1) (establishing that when a former President makes a privilege assertion, the Archivist shall then "determine whether the incumbent President will uphold the claim asserted by the former President"). And because the PRA applies only to "Presidential records," defined as records reflecting "the activities, deliberations, decisions, and policies" of the Presidency, Plaintiff's personal records, such as those reflecting conversations with a personal attorney or campaign staff, would not be subject to preservation or disclosure by the PRA. 44 U.S.C. § 2203(a); see also Hearing Tr. at 57:1-13 (counsel for NARA explaining that records relating to the president's own election, campaign activity, or strictly personal matters are not "Presidential records" and are thus sorted out during an accommodation process). Accordingly, the concerns at issue in *Mazars*, that Congress may attempt "to harass" the President about matters of a personal nature, are plainly not present here, where the records to be

produced are confined to Plaintiff's activities, deliberations, and decision making in his capacity as President. *Mazars*, 140 S. Ct. at 2034.

Nor does the Act disrupt the balance between the branches of government. "Congress and the President have an ongoing institutional relationship as the 'opposite and rival' political branches." *Mazars*, 140 S. Ct. at 2033 (quoting THE FEDERALIST NO. 51, at 349 (James Madison)). It is assumed that these two branches, guided by ambition, will act in furtherance and preservation of their own constitutional power, helping to ensure a balance of power between them. *See* THE FEDERALIST NO. 51, at 349. The executive branch became a party to the PRA's regulations over forty years ago when President Carter signed the Act into law. As President Carter said at the time, the PRA was enacted to "make the Presidency a more open institution," and to "ensure that Presidential papers remain public property after the expiration of a President's term." Presidential Statement on Signing the Presidential Records Act of 1978, 14 Weekly Comp. Pres. Doc. 39, 1965 (Nov. 6, 1978). President Carter's decision to sign the Act into law, and each subsequent President's—including Plaintiff's—acquiescence to its framework, demonstrates that the PRA does not prevent the executive branch from accomplishing its constitutionally assigned functions. Each "branch of Government has the duty initially to interpret the Constitution for itself, and that interpretation of its powers is due great respect from the other branches." *Nixon v. GSA*, 433 U.S. at 442-43 (citing *Nixon*, 418 U.S. at 708). *Cf. Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-637 (1952) (Jackson, J., concurring) ("When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. . . . If his act is held unconstitutional under these

circumstances, it usually means that the Federal Government as an undivided whole lacks power.”) (footnote omitted). And finally, by interpreting the PRA’s framework as consistent with *Nixon v. GSA*’s constitutional principle, the court adheres to the canon of constitutional avoidance. *See Close v. Glenwood Cemetery*, 107 U.S. 466, 475 (1883) (“Every legislative act is to be presumed to be a constitutional exercise of legislative power until the contrary is clearly established.”).

Applying these principles, the court rejects Plaintiff’s constitutional challenge to the PRA.

1. Congress’ Power to Request Presidential Records

Plaintiff argues that the Select Committee has ventured beyond its constitutionally allotted “legislative Powers” by requesting records that are unrelated to the events of January 6, and by failing to articulate any valid legislative purpose that could be served by its requests. *See* Pl. Mot. at 15-19. He further argues that the court must scrutinize the Select Committee’s requests either by using the D.C. Circuit’s balancing test in *Senate Select Committee*, 498 F.2d 725 (D.C. Cir. 1974), or the four-factor evaluation articulated by the Supreme Court in *Trump v. Mazars*, 140 S. Ct. 2019 (2020), and that the Committee’s requests, having no valid legislative purpose, cannot survive such scrutiny.

Defendants counter that the Select Committee’s legislative purpose is legitimate and compelling. Specifically, they contend that the Select Committee is investigating the facts, circumstances, and causes of the events of January 6, 2021, and that the requests are intended to support remedial legislation. *See* ECF No. 19, Comm. Br. at 18-22; NARA Br. at 15-27.

Defendants also maintain that neither the *Senate Select Committee* balancing test nor the four-factor *Mazars* test apply.

i. Legislative Powers

Article I of the Constitution grants Congress all “legislative Powers,” U.S. Const. art. I, § 1, encompassed in which is the power to secure “needed information.” *McGrain v. Daugherty*, 273 U.S. 135, 161 (1927). Indeed, the power to secure “needed information” is deeply rooted in the nation’s history: “It was so regarded in the British Parliament and in the colonial Legislatures before the American Revolution, and a like view has prevailed and been carried into effect in both houses of Congress and in most of the state Legislatures.” *Id.* While the powers of the British Parliament and Congress are clearly not the same, there is “no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation.” *Quinn v. United States*, 349 U.S. 155, 160 (1955).

That power permits “Congress to inquire into and publicize corruption, maladministration or inefficiency in agencies of the Government.” *Watkins v. United States*, 354 U.S. 178, 200 n.33 (1957). “From the earliest times in its history, the Congress has assiduously performed an ‘informing function’ of this nature.” *Id.* (citing James M. Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 HARV. L. REV. 153, 168–194 (1926)). In the words of one former President—words later adopted by the Supreme Court:

It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand

and direct. The informing function of Congress should be preferred even to its legislative function.

United States v. Rumely, 345 U.S. 41, 43 (1953) (quoting Woodrow Wilson, *Congressional Government: A Study in American Politics*, 303 (1913)). Thus, the “power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.” *Mazars*, 140 S. Ct. at 2031 (quoting *McGrain*, 273 U.S. at 161). It is a “critical responsibility uniquely granted to Congress under Article I.” *Trump v. Comm. on Oversight and Reform*, 380 F. Supp. 3d 76, 91 (D.D.C. 2019). To ensure that Congress is able to properly carry out that critical responsibility, its power to obtain information is necessarily “‘broad’ and ‘indispensable.’” *Mazars*, 140 S. Ct. at 2031 (quoting *Watkins*, 354 U.S. at 187). It “encompasses inquiries into the administration of existing laws, studies of proposed laws, and ‘surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them.’” *Id.* In short, “[t]he scope of the power of inquiry . . . is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.” *Barenblatt*, 360 U.S. at 111.

Congress’ power to obtain information, however, is not without limit. A congressional subpoena “must serve a valid legislative purpose; it must concern a subject on which legislation could be had.” *Mazars*, 140 S. Ct. at 2031 (cleaned up). Consequently, a congressional request for information that extends “to an area in which Congress is forbidden to legislate,” is out of bounds. For example, “Congress may not use subpoenas to try someone before a committee for any crime or wrongdoing,” because “such powers are assigned under our Constitution to the Executive and Judiciary.” *Id.* (cleaned up). Nor is there a “congressional power to expose for the sake of exposure.” *Watkins*, 354 U.S. at 200. “Investigations conducted solely for the

personal aggrandizement of the investigators or to ‘punish’ those investigated are indefensible.”

Id. at 187. On the other hand, an inquiry is not illegitimate simply because it calls for information that is private or confidential, might be embarrassing, or could have law enforcement implications. *See, e.g., id.* at 198; *Townsend v. United States*, 95 F.2d 352, 361 (D.C. Cir. 1938) (the fact that a congressional inquiry might seem “incompetent, irrelevant,” “embarrass[ing],” or even “impertinent” is generally immaterial).

When a court is asked to decide whether Congress has used its investigative power improperly, its analysis must be highly deferential to the legislative branch. Courts “are bound to presume that the action of the legislative body was with a legitimate object, if it is capable of being so construed.” *McGrain*, 273 U.S. at 178. *See also Barry v. U.S. ex rel. Cunningham*, 279 U.S. 597, 619 (1929) (holding that “the proceedings of the houses of Congress, when acting upon matters within their constitutional authority” are entitled to a “presumption in favor of regularity”). Moreover, the Supreme Court has repeatedly held that courts may not “test[] the motives of committee members” to negate an otherwise facially valid legislative purpose. *Watkins*, 354 U.S. at 200; *see also Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 508 (1975) (“Our cases make clear that in determining the legitimacy of a congressional act we do not look to the motives alleged to have prompted it.”). Accordingly, it is not this court’s role to decide whether Congress is motivated to aid legislation or exact political retribution; rather, the key factor is whether there is some discernable legislative purpose. *See Watkins*, 354 U.S. at 200.

ii. The Select Committee's Requests Serve a Valid Legislative Purpose

The Supreme Court considers congressional resolutions a primary source from which to determine whether information “was sought . . . in aid of the legislative function.” *McGrain*, 273 U.S. at 176; *see also Shelton v. United States*, 404 F.2d 1292, 1297 (D.C. Cir. 1968) (observing that relevant sources of evidence to “ascertain whether [an inquiry] is within the broad investigative authority of Congress” include “the resolution authorizing the inquiry”). Accordingly, the court begins its inquiry with the resolution stating the Select Committee’s intended purpose. H.R. 503, which established the Select Committee and the subject matter within its purview, outlines several purposes and functions of the Select Committee, including:

- Obtaining information and reporting on (1) “the facts, circumstances, and causes relating to” the January 6 attack and “the interference with the peaceful transfer of power”; (2) the “activities of intelligence agencies, law enforcement agencies, and the Armed Forces, . . . with respect to intelligence collection, analysis, and dissemination” surrounding the attack; and (3) the “influencing factors that contributed to the” attack, including how “online platforms, financing, and . . . campaigns may have factored into [its] motivation, organization, and execution,” *id.* §§ 3, 4(a)(1);
- Identifying, reviewing, and evaluating “the causes of and the lessons learned from the” January 6 attack, including as to “the command, control, and communications of” law enforcement and the coordination and planning of the Federal Government, *id.* § 4(a)(2); and
- Issuing “a final report to the House” with “recommendations for . . . changes in law, policy, [or] procedures . . . that could be taken[] to prevent future acts of violence, domestic terrorism, and domestic violent extremism, including acts targeted at American democratic institutions” . . . and “strengthen the security and resilience of” American democratic institutions, *id.* § 4(a)(3), (c).

Defendants argue that, as set forth in H.R. 503, the Select Committee’s August 25 requests are in furtherance of an effort to understand the facts and circumstances that led to the events of January 6, inform its final report, and make recommendations for legislative changes. The Committee Defendants contend that they have questions and concerns about election

integrity, coordination of law enforcement, use of executive resources to pressure Department of Justice and state officials regarding the election outcome, and building safety, and that their investigation into these areas for legislative purposes is legitimate. *See id.*

Plaintiff concedes that the statements in H.R. 503 concerning “safety and election integrity are topics on which legislation theoretically ‘could be had.’” Pl. Mot. at 19. He argues however, that the Committee does not “explain with any specificity how this information will in fact assist the Committee in evaluating the proposed legislation” and that the requested information is not “reasonably related” to its investigation. *Id.* at 17, 19.

Plaintiff contends that the Select Committee “fails to identify a single piece of legislation [] the Committee is considering.” This claim is a straw man. Congress need not (and usually does not) identify specific legislation within the context of a request for documents or testimony, nor must it do so when establishing a select committee or when that committee requests documents. For instance, the Supreme Court has upheld the validity of a select committee subpoena even though the Senate’s “resolution directing the investigation d[id] not in terms avow that it is intended to be in aid of legislation.” *McGrain*, 273 U.S. at 177; *see also In re Chapman*, 166 U.S. 661, 669-70 (1897) (“[I]t was certainly not necessary that the resolutions should declare in advance what the [S]enate meditated doing when the investigation was concluded.”). The Court found the subpoena valid because the investigation’s subject “was one on which legislation *could be had* and would be materially aided by the information which the investigation was calculated to elicit.” *McGrain*, 273 U.S. at 177 (emphasis added).

The court has no difficulty discerning multiple subjects on which legislation “could be had” from the Select Committee’s requests. *Id.* at 177. Some examples include enacting or

amending criminal laws to deter and punish violent conduct targeted at the institutions of democracy, enacting measures for future executive enforcement of Section 3 of the Fourteenth Amendment against any Member of Congress or Officer of the United States who engaged in “insurrection or rebellion,” or gave “aid or comfort to the enemies thereof,” U.S. Const. amend. XIV, § 3, imposing structural reforms on executive branch agencies to prevent their abuse for antidemocratic ends, amending the Electoral Count Act, and reallocating resources and modifying processes for intelligence sharing by federal agencies charged with detecting, and interdicting, foreign and domestic threats to the security and integrity of our electoral processes. *See* Comm. Br. at 20; NARA Br. at 18; ECF No. 25, Amicus Br. by Former Members of Congress at 7. These are just a few examples of potential reforms that Congress might, as a result of the Select Committee’s work, conclude are necessary or appropriate to securing democratic processes, deterring violent extremism, protecting fair elections, and ensuring the peaceful transition of power. Of course, other forms of legislation not currently imagined may also follow. The critical fact is that Congress reasonably might consider the requested records in deciding whether to legislate in a host of legitimate areas.

To be sure, the Committee has cast a wide net. While some of the requests pertain to Plaintiff’s communications and actions, the former Vice President, and other former executive officials on January 6, 2021, other requests more broadly seek information regarding events leading up to January 6, including communications concerning the election, conversations between Plaintiff and Department of Justice and state government officials regarding Plaintiff’s allegations that the election was “rigged,” records relating to the recruitment, planning, and preparation for rallies leading up to and including January 6, and conversations regarding the

process for transferring power to the incumbent. For example, one of the Committee's requests is for all documents and communications from April 1, 2020, through January 20, 2021, related to the 2020 presidential election, including forecasting, polling, or results, which were authored or presented by, or relate in any way to one of five specific individuals who the Committee presumably believes were involved in strategies to delay, halt, or otherwise impede the electoral count. Pl. Mot., Ex. 1 at 5. Another similarly broad request seeks all documents and communications concerning the 2020 election and relating to any of one of forty named individuals who the Committee presumably believes participated in the recruitment, planning, and preparations for rallies on days leading up to and including January 6. *Id.* at 7-8.

While broad, these requests, and each of the other requests made by the Committee, do not exceed the Committee's legislative powers. Three facts undergird this conclusion.

First, the court again notes that the Committee's requests pertain only to "Presidential records," which by statute are limited to records reflecting "the activities, deliberations, decisions, and policies" of the Presidency. 44 U.S.C. § 2203(a). Accordingly, there is a natural, statutory limit on the types of records that will ultimately be maintained in the Archives and produced to the Select Committee in response to its requests. For example, although the Select Committee has requested certain records, such as polling data, concerning the 2020 election dating back to April 2020, those records, by their very nature, are not Presidential records under the statute, and would not be included in any responsive document tranches sent to the Committee. The same goes for any personal papers or communications.

Second, while some of the Select Committee's requests are indeed broad, so too is Congress' power to obtain information. *See Watkins*, 354 U.S. at 187. The Select Committee

appears to be operating under the theory that January 6 did not take place in a vacuum, and instead was the result of a months-long groundswell. *See* Hearing Tr. at 41:4-7; 42:22-23. Defendants argue that to identify effective reforms, Congress must first understand the circumstances leading up to January 6 and how the actions of Plaintiff, his advisors, and other government officials contributed or responded to that groundswell. NARA Br. at 18. The court notes that the Select Committee reasonably could find it necessary to investigate the extent to which the January 6 attack on the Capitol may have been an outgrowth of a sustained effort to overturn the 2020 election results, involving individuals both in and outside government. But the “very nature of the investigative function—like any research—is that it takes the searchers up some ‘blind alleys’ and into nonproductive enterprises. To be a valid legislative inquiry there need be no predictable end result.” *Eastland*, 421 U.S. at 509. In fact, the Committee need not enact any legislation at all. *Trump v. Mazars USA, LLP*, 940 F.3d 710, 727 (D.C. Cir. 2019) (explaining that the “House is under no obligation to enact legislation after every investigation”). Nor is it problematic that some requests might ultimately return records that are “irrelevant,” or “impertinent” to its stated goals. *Townsend*, 95 F.2d at 361. It is not for this court to decide whether the Select Committee’s objective is prudent or their motives pure. *See Watkins*, 354 U.S. at 200; *Eastland*, 421 U.S. at 508. Instead, the pertinent question is whether Congress could legitimately legislate in these areas, and, as explained above, it can.

Third, President Biden’s decision not to assert the privilege alleviates any remaining concern that the requests are overly broad. In cases such as *Mazars*, which involved separation of powers concerns, limitations on the breadth of a congressional inquiries serve as “important safeguards against unnecessary intrusion into the operation of the Office of the President.”

Mazars, 140 S. Ct. at 2036. Plaintiff argues that the requests at issue here are burdensome because they are “unbelievably broad” and that their breadth is “striking” because they could “be read to include every single e-mail sent in the White House” on January 6. *See* Pl. Mot. at 21-24. But upon whom is the burden imposed? President Biden has determined that the requests are not so intrusive or burdensome on the Office of the President as to outweigh Congress’ “compelling need in service of its legislative functions.” Pl. Mot., Ex. 4 at 1-2. Unlike the circumstances presented in *Mazars*, here, the legislative and executive branches are in harmony and agree that the requests are not unduly intrusive, thus extinguishing any lingering concerns about the breadth of the requests.

iii. *The Alternative Mazars Standard Results in the Same Outcome*

Plaintiff urges the court to apply either the balancing test from *Senate Select Committee*, 498 F.2d 725 (1974), or the four-factor standard from *Trump v. Mazars*, 140 S. Ct. 2019 (2020). In the alternative, Plaintiff argues that the court could apply a “*Mazars* lite” test by applying the four *Mazars* factors, but using “reduced judicial scrutiny,” “cognizant of the fact that this case now involves a subpoena directed at a former President.” *Trump v. Mazars, USA, LLP*, No. 19-cv-01136, 2021 WL 3602683, at *13 (D.D.C. Aug. 11, 2021), *appeal pending*, No. 21-5176 (D.C. Cir.).

Defendants argue that neither the *Senate Select Committee* or *Mazars* standards apply because both cases involved Congressional requests for information from a sitting President, and therefore presented separation of powers concerns arising from a “clash between rival branches of government.” *Mazars*, 140 S. Ct. at 2034. Defendants contend that the “*Mazars* lite” approach is inappropriate because, unlike the situation when *Mazars* was decided on remand,

“the executive branch has agreed to provide the requested documents under the PRA, and compulsory process is not at issue.” NARA Br. at 23.

The court agrees that the stringent balancing test of *Senate Select Committee* does not apply because, for reasons already stated, the requested records are not privileged. Indeed, at oral argument, Plaintiff’s counsel did not mention this test and instead asserted only that the *Mazars* four-factor test is appropriate. *See* Hearing Tr. at 8:12-16. The court also agrees with Defendants that Plaintiff’s status as a former President, and the fact that the legislative and executive branches agree that the records should be produced, reduces the import of the *Mazars* test. Each of Plaintiff’s arguments about why *Mazars* is applicable assumes separation of powers concerns that have little, if any, force here. Nonetheless, because this is a matter of first impression, the court will apply the four *Mazars* factors, conscious of the fact that Plaintiff is a former President.

Under the first *Mazars* factor, “the asserted legislative purpose” must warrant “the significant step of involving the President and his papers.” *Id.* at 2035. “Congress may not rely on the President’s information if other sources could reasonably provide” the information Congress needs in light of its legislative objective. *Id.* at 2035–36. The court starts with the obvious: the concerns raised by the “significant step” in *Mazars* are plainly not present here, where Plaintiff is no longer President, and the incumbent President has decided that Congress’ legislative purpose warrants production. *See* Pl. Mot., Ex. 4. Moreover, the Select Committee has demonstrated that its asserted legislative purpose is indeed significant. It seeks to learn about what, if anything, Plaintiff, his advisors, other government officials, and those close to him knew about efforts to obfuscate or reverse the results of the 2020 election, recruitment, planning, and

coordination of the January 6 rally, the likelihood of the protest turning violent, and what actions they took in response. *See* Pl. Mot., Ex. 1. Plaintiff has not identified any source from which the Select Committee could gain answers to these questions other than the Presidential records they seek. *See* Pl. Mot. at 19 (offering only the conclusory statement that the Select Committee “could obtain any and all of the information it seeks” from non-privileged sources); Hearing Tr. at 16:10-13 (suggesting without evidence or explanation that non-privilege documents should be sufficient). Accordingly, the Select Committee clears the first hurdle.

Second, under *Mazars*, the congressional inquiry should be “no broader than reasonably necessary to support Congress’ legislative objective.” *Id.* This limitation is necessary, the Court explained, to “safeguard against unnecessary intrusion into the operation of the Office of the President.” *Id.* (cleaned up); *see also Nixon v. GSA*, 433 U.S. at 443 (explaining that “the proper inquiry” for courts is to consider the extent to which a congressional act “prevents the Executive Branch from accomplishing its constitutionally assigned functions”). Here, President Biden has not objected to any of the requests as being overly broad or unnecessarily intrusive. His counsel has reviewed the first three tranches of responsive records and stated that President Biden supports their production because of Congress’ compelling interest in them. *See* Pl. Mot., Exs. 4, 6. Plaintiff’s argument to the contrary, that the Select Committee’s “broad” requests are overly intrusive into the operations of an office he no longer occupies, is therefore unpersuasive.

Third, “courts should be attentive to the nature of the evidence offered by Congress to establish that a subpoena advances a valid legislative purpose.” *Mazars*, 140 S. Ct. at 2036. “[U]nless Congress adequately identifies its aims and explains why the President’s information will advance its consideration of possible legislation,” “it is impossible to conclude that a

subpoena is designed to advance a valid legislative purpose.” *Id.* The Select Committee has adequately identified its aims and indicated why the requested records may support a valid legislative purpose. As noted above, the Select Committee was created to investigate the facts and circumstances of the January 6 attack, including “influencing factors that contributed to the attack.” H.R. 503 § 4(a)(1)(B). Defendants tie this aim to the Committee’s Presidential records requests by pointing to Plaintiff’s statements claiming the election was “rigged,” promoting the January 6 rally, and calling on his supporters to “walk down to the Capitol” to “take back our country,” Comm. Br. at 7, public reports regarding Plaintiff’s efforts to pressure Department of Justice and state officials to reverse the election results, *id.* at 5-7, and the Committee’s findings about the effort of Plaintiff’s former aides to stop or delay the counting of election results, H.R. Rep. No. 117-152, at 6 (Oct. 19, 2021). The Committee could reasonably expect the requested records to shed light on any White House planning and strategies concerning public messaging about the election, any efforts to halt or delay the electoral count, and preparations for and responses to the January 6 rally and attack. *See* Pl. Mot., Ex. 1 at 4, 7-9. Such information would be plainly material to the Select Committee’s mandate to discover and report on “the facts, circumstances, and causes relating to the January 6 [attack],” H.R. 503, § 3(1), and to pass remedial legislation in any number of previously identified areas within their legislative purview.

Fourth, courts should “assess the burdens imposed on the President by [the] subpoena” because “[the burdens] stem from a rival political branch that has an ongoing relationship with the President and incentives to use subpoenas for institutional advantage.” *Mazars*, 140 S. Ct. at 2036. Defendants satisfy this factor as well, because the “burdens imposed on the President” by the Committee’s request are of considerably less significance when the Presidential records

sought pertain to a former President and when the incumbent President favors the production. *Mazars*, 2021 WL 3602683, at *13. Moreover, unlike the compulsory nature of the subpoena in *Mazars*, here, the Select Committee made its request pursuant to a statutory framework to which the executive branch is a party and has long acquiesced. This fact, too, undermines any notion that the office of the President is unduly burdened by the requests.

Having found that all four *Mazars* factors weigh against Plaintiff's position, the court concludes that the Select Committee's requests are a valid use of legislative power and refuses to enjoin what the legislative and executive branches agree is a vitally important endeavor.

B. Irreparable Harm

A party seeking preliminary injunctive relief must show an imminent threat of irreparable harm by the challenged action or inaction. The "injury must be both certain and great, actual and not theoretical, beyond remediation, and of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm." *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (cleaned up).

Plaintiff fails to show that any irreparable injury is likely to occur. First, to the extent Plaintiff argues that he, as a private citizen, will suffer injury, he has not identified any personal interest that is threatened by the production of Presidential records. He claims no personal interest in the records or the information they contain, and he identifies no cognizable injury to privacy, property, or otherwise that he personally will suffer if the records are produced, much less a harm that is "both certain and great," *id.*, 787 F.3d at 555, if injunctive relief is denied.

Second, Plaintiff's argument that the executive branch will suffer injury is similarly unavailing. Plaintiff invokes the executive privilege protecting presidential communications,

contending that compliance with the Select Committee's requests "will undoubtedly cause sustainable injury and irreparable harm" to future Presidents because releasing confidential communications between him and his advisors concerning his duties and responsibilities as President to a "rival branch of government" will "chill[] advice given by presidential aides[.]" Pl.'s Mot. at 6-7, 36. That privilege, however, is not for the benefit of any "individual, but for the benefit of the Republic." *Nixon v. GSA*, 433 U.S. at 449. Moreover, the notion that the contemplated disclosure will gravely undermine the functioning of the executive branch is refuted by the incumbent President's direction to the Archivist to produce the requested records, and by the actions of past Presidents who similarly decided to waive executive privilege when dealing with matters of grave public importance, such as the Watergate scandal, the Iran-Contra affair, and 9/11. Plaintiff therefore has made no showing of imminent irreparable harm to any interests protected by executive privilege that compels an immediate halt to compliance with the Select Committee's requests.

Plaintiff also contends that an injunction is needed to protect against a risk of inadvertent disclosure of privileged documents, allegedly due to the "short time periods" provided under the PRA for review of potentially large volumes of records whose sensitivity may not be apparent if their authors or custodians cannot be readily ascertained. *See* Pl.'s Mot. at 37. This too is not a convincing injury. Thus far, Plaintiff's PRA representatives have successfully reviewed the records in the first three tranches, and Plaintiff has invoked privilege over many of them. Moreover, NARA routinely accommodates requests from former Presidents for additional time to complete their reviews when the volume or complexity of records requires. NARA Br., Laster Decl. ¶ 11. NARA maintains the records in the same order and manner of organization as they

were transmitted by the outgoing administration. *Id.* ¶ 6. To the extent practicable and necessary, NARA informs the PRA representatives where the responsive records came from, such as from a staff member's office files. *Id.* And when asked, NARA also assists former Presidents in identifying records' authors and custodians. *Id.* ¶ 11. These accommodations are sufficient to mitigate any claim by Plaintiff that he is prejudiced by the PRA statutory process.

C. Balance of the Equities and the Public Interest

The legislative and executive branches believe the balance of equities and public interest are well served by the Select Committee's inquiry. The court will not second guess the two branches of government that have historically negotiated their own solutions to congressional requests for presidential documents. *See Mazars*, 140 S. Ct. 2029-31.

Defendants contend that discovering and coming to terms with the causes underlying the January 6 attack is a matter of unsurpassed public importance because such information relates to our core democratic institutions and the public's confidence in them. NARA Br. at 41. The court agrees. As the Supreme Court has explained, "the American people's ability to reconstruct and come to terms" with their history must not be "truncated by an analysis of Presidential privilege that focuses only on the needs of the present." *Nixon v. GSA*, 433 U.S. at 452-53. The desire to restore public confidence in our political process, through information, education, and remedial legislation, is of substantial public interest. *See id.*

Plaintiff argues that the public interest favors enjoining production of the records because the executive branch's interests are best served by confidentiality and Defendants are not harmed by delaying or enjoining the production. Neither argument holds water. First, the incumbent President has already spoken to the compelling public interest in ensuring that the Select

Committee has access to the information necessary to complete its investigation. And second, the court will not give such short shrift to the consequences of “halt[ing] the functions of a coordinate branch.” *Eastland*, 421 U.S. at 511 n.17. Binding precedent counsels that judicially imposed delays on the conduct of legislative business are often contrary to the public interest. *See id.*; *see also Exxon Corp. v. F.T.C.*, 589 F.2d 582, 589 (D.C. Cir. 1978) (describing *Eastland* as emphasizing “the necessity for courts to refrain from interfering with or delaying the investigatory functions of Congress”).

Accordingly, the court holds that the public interest lies in permitting—not enjoining—the combined will of the legislative and executive branches to study the events that led to and occurred on January 6, and to consider legislation to prevent such events from ever occurring again.

IV. CONCLUSION

For reasons explained above, the court will deny Plaintiff’s request to enjoin Defendants from enforcing or complying with the Select Committee’s August 25, 2021, requests because Plaintiff is unlikely to succeed on the merits of his claims or suffer irreparable harm, and because a balance of the equities and public interest bear against granting his requested relief.

Date: November 9, 2021

Tanya S. Chutkan
TANYA S. CHUTKAN
United States District Judge

DONALD J. TRUMP,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 21-cv-2769 (TSC)
)	
)	
BENNIE G. THOMPSON , <i>in his official</i>)	
<i>capacity as Chairman of the United States</i>)	
<i>House Select Committee to Investigate the</i>)	
<i>January 6th Attack on the United States</i>)	
<i>Capitol, et al.,</i>)	
)	
Defendants.)	
)	

For the reasons explained in the accompanying Memorandum Opinion, Plaintiff's Motion for a Preliminary Injunction, ECF. No. 5, is DENIED because Plaintiff is unlikely to succeed on the merits of his claims or suffer irreparable harm, and because a balance of the equities and public interest bear against granting his requested relief.

Tanya S. Chutkan
TANYA S. CHUTKAN
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DONALD J. TRUMP, in his capacity as
the 45th President of the United States,

Plaintiff,

v.

Civil Action No. 21-2769

BENNIE G. THOMPSON, in his official
capacity as Chairman of the United States
House Select Committee to Investigate
the January 6th Attack on the United States
Capitol; THE UNITED STATES HOUSE
SELECT COMMITTEE TO INVESTIGATE
THE JANUARY 6TH ATTACK ON THE
UNITED STATES CAPITOL; DAVID S.
FERRIERO, in his official capacity as
Archivist of the United States; and THE
NATIONAL ARCHIVES AND RECORDS
ADMINISTRATION,

Defendants.

NOTICE OF APPEAL

Plaintiff Donald J. Trump hereby gives notice of his appeal to the United States Court of Appeals for the D.C. Circuit from this Court's Order denying Motion for Preliminary Injunction entered on November 9, 2021. (Dkt. No. 36).

Dated: November 9, 2021

Respectfully submitted,

/s/ Jesse R. Binnall

Jesse R. Binnall (VA022)
BINNALL LAW GROUP, PLLC
717 King Street, Suite 200
Alexandria, VA 22314
Tel: (703) 888-1943

Fax: (703) 888-1930
jesse@binnall.com

Counsel for President Donald J. Trump

BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DONALD J. TRUMP, in his capacity .
as the 45th President of the .
United States, . Case Number 21-cv-0279
Plaintiff, .
vs. .
BENNIE G. THOMPSON, in his .
official capacity as Chairman of .
the United States House Select .
Committee to Investigate the .
January 6th Attack on the . November 4, 2021
United States Capitol, et al., . 11:05 a.m.
Defendants. .
- - - - -

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE TANYA S. CHUTKAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: JUSTIN CLARK, ESQ.
JESSE BINNALL, ESQ.
Binnall Law Group
717 King Street
Suite 200
Alexandria, Virginia 22314
For the Defendants: DOUGLAS LETTER, ESQ.
ERIC COLUMBUS, ESQ.
STACIE FAHSEL, ESQ.
TODD TATELMAN, ESQ.
U.S. House of Representatives
Office of General Counsel
219 Cannon House Office Building
Washington, D.C. 20515

-- continued --

1 APPEARANCES (CONTINUED) :

2 For Defendants:

ANNIE OWENS, ESQ.

MARY MCCORD, ESQ.

3 Georgetown University Law Center

Institute for Constitutional

4 Advocacy and Protection

600 New Jersey Avenue Northwest

5 Washington, D.C. 20001

6 ELIZABETH SHAPIRO, ESQ.

7 U.S. Department of Justice

Civil Division

8 Federal Programs Branch

1100 L Street Northwest

9 Washington, D.C. 20530

10
11 Official Court Reporter:

SARA A. WICK, RPR, CRR

United States District Court

12 for the District of Columbia

13 333 Constitution Avenue Northwest

Room 4704-B

14 Washington, D.C. 20001

202-354-3284

15 Proceedings recorded by stenotype shorthand.

16 Transcript produced by computer-aided transcription.

P R O C E E D I N G S

(Call to order of the court.)

COURTROOM DEPUTY: Your Honor, we have Civil Action 21-2769, Donald Trump versus Bennie Thompson, et al.

I will ask that counsel please identify yourselves, starting with the plaintiff counsel.

MR. CLARK: Justin Clark and Jesse Binnall for the plaintiff.

THE COURT: Good morning.

And for the defendants?

MS. SHAPIRO: Elizabeth Shapiro from the Department of Justice on behalf of the NARA defendants.

THE COURT: Good morning.

MR. LETTER: Good morning, Your Honor. This is Douglas Letter. I'm general counsel at the House of Representatives here representing the Select Committee.

With me, I've got Todd Tatelman, Eric Columbus, and Stacie Fahsel from the General Counsel's Office and Mary McCord and Annie Owens from the Institute for Constitutional Advocacy and Protection at Georgetown University Law Center.

THE COURT: Mr. Letter, I'm having trouble hearing you, and I believe my court reporter is also having trouble. If anybody definitely needs to hear you, it is the court reporter, because she is preparing the transcript. If you could either speak up or get closer to your microphone, that would be great.

1 MR. LETTER: Is this loud enough, Your Honor?

2 THE COURT: I can hear you. Madam Court Reporter?
3 She's nodding. So I think we're okay.

4 I haven't put time limits on you. You are experienced
5 counsel, and I assume you will make your arguments succinctly.
6 I didn't want to limit you in case I had questioning that took
7 us beyond our allotted time.

8 First, Mr. Letter, are both defendants going to argue, and
9 if so, how are you dividing up your time?

10 MR. LETTER: Yes, Your Honor, we are both going to
11 argue. We didn't do any specific division of time. If you have
12 a preference on who goes first, please let us know. Otherwise,
13 Ms. Shapiro with the Justice Department will speak first for the
14 defendants, and I will go second. But we will change that order
15 if you prefer.

16 THE COURT: That's absolutely fine. So Ms. Shapiro
17 will be arguing first; is that right?

18 MR. LETTER: Yes, ma'am.

19 THE COURT: Mr. Binnall, am I pronouncing your name
20 right?

21 MR. BINNALL: It's Binnall, Your Honor, yes.

22 THE COURT: Mr. Binnall, sorry. I assume you will
23 want -- since you're the movant here, you want to have an
24 opportunity for rebuttal; is that correct?

25 MR. BINNALL: Your Honor, yes, and Mr. Clark, who is

1 with me here, will be handling our argument, and we would like
2 to preserve as much time as the Court would allow us for
3 rebuttal.

4 THE COURT: All right. Well, I trust you will limit
5 rebuttal to any new points presented or unaddressed in the
6 defendants' response and confine your rebuttal to that.

7 At this point I'm not going to set strict time limits, but
8 I have blocked off more than two hours for this, and I'm hoping
9 to stay well within that.

10 All right. Obviously, I've read all the parties'
11 briefings, and given that we are not in court, we're on a video
12 conference, I assume there's no objection from either side to
13 proceeding by video conference in this case?

14 MR. BINNALL: No objection, Your Honor.

15 MR. LETTER: No objection.

16 THE COURT: All right. Why don't I -- I'm going to
17 allow you, Mr. Clark, to begin. I may -- Mr. Letter?

18 MR. LETTER: Yes, Your Honor. I've got a
19 technological issue. I'm in a conference room where for energy
20 saving purposes the lights go out every now and again. We have
21 been unable to fix that. So if the lights go out, they will go
22 right back on as soon as Ms. Owens --

23 THE COURT: I won't take that as an indication of the
24 strength of your argument, Mr. Letter. I'm sure we all
25 appreciate any energy-saving measures that the government is

1 undertaking.

2 COURTROOM DEPUTY: Judge, Mr. McClanahan has joined
3 us, and he wants to request to leave early.

4 Mr. McClanahan?

5 MR. MCCLANAHAN: Good morning, Your Honor. I have to
6 teach a class at GW this afternoon. So if this hearing runs
7 past 12:30, I would like to leave and join by phone so I can
8 drive down to my class.

9 THE COURT: All right. You have filed an amicus brief
10 in this case. I haven't permitted you to argue. So you can
11 leave whenever you need to leave, if you could do so in the
12 least disruptive manner. Thank you.

13 MR. MCCLANAHAN: Yes, Your Honor. I was just making
14 sure.

15 THE COURT: Okay. That's fine.

16 All right. Because we are on video, only one person can
17 speak at one time due to the nature of the medium under which we
18 are operating. I will try to -- if I have a question, I will
19 try to pose it at the time you're addressing the area in which I
20 have a question.

21 So why don't you go ahead and begin, Mr. Clark.

22 MR. CLARK: Thank you, Your Honor, and I appreciate
23 that. As I mentioned, my name is Justin Clark for the
24 plaintiff, and with me is Jesse Binnall.

25 The arguments in this matter have been well briefed and

1 joined by everybody. We are here to discuss and review with the
2 Court today and make our argument. But it's important to note
3 that this is not only a monumental case in the area of executive
4 privilege with respect to a former and incumbent president and
5 that relationship, but it's also a case of first impression for
6 this court and one that has a fact pattern that leads to kind of
7 the end of the slippery slope in any area when you're reviewing
8 a statute. So it's not only just an important argument and a
9 monumental argument, but it also is one that is going to have
10 consequences down the line for generations potentially.

11 THE COURT: Thank you for reminding me of that.

12 MR. CLARK: I know I didn't need to remind you, Your
13 Honor, but I thought it was important to note.

14 So we're, obviously, here on a motion for preliminary
15 injunction, and the four factors there guide our argument, and I
16 want to use them to guide the discussion today.

17 THE COURT: Hold on. My court reporter is having a
18 very difficult time hearing. Just a moment. We are going to
19 pause.

20 (Pause.)

21 THE COURT: So the court reporter is actually going to
22 go to her office and connect via Zoom. So we will take a brief
23 recess.

24 (Recess taken from 11:11 a.m. to 11:18 a.m.)

25 THE COURT: All right. Sorry for the interruption,

1 but my court reporter informs me that the situation is
2 100 percent improved. So as long as I can hear you now and you
3 speak up, we should be okay. And I will tell you, I am so
4 looking forward to the end of Zoom hearings.

5 Mr. Clark?

6 MR. CLARK: Thank you, Your Honor.

7 So the four prongs of -- to the PI today: Likelihood of
8 success on the merits, irreparable harm, balance of harms,
9 favored interim relief and public interest argument.

10 So we will start with likelihood of success on the merits,
11 where I think the meat of this argument is, and I think everyone
12 can agree to that. And plaintiff is likely to succeed on his
13 arguments in large part due to *Mazars*.

14 The Court in *Mazars* really narrowed and recognized the
15 rights of an executive, even a former executive, to have a
16 narrowly tailored and narrowly drawn set of requests.

17 THE COURT: Mr. Clark, let me stop you. I note in
18 your briefs, you do rely a great deal on *Mazars*. But *Mazars* is
19 an unusual -- had an unusual procedural history in that when
20 *Mazars* first went to the Supreme Court, the plaintiff was a
21 sitting president. The Supreme Court emphasized that the case
22 presented a separation of powers issue and remanded it to the
23 District Court to refer four factors to consider.

24 When the District Court took the case again on remand, the
25 plaintiff was no longer the sitting president, and the District

1 Court found -- applied, what do you call them, *Mazars lite* test.

2 Would you agree that the fact that the plaintiff here is no
3 longer a sitting president does -- somewhat diminishes the
4 applicability of the privilege issues you're arguing?

5 MR. CLARK: It's a good question, Your Honor. But no,
6 I don't think it weakens it. In *Mazars*, we were -- Congress was
7 seeking nonexecutive privileged information. Here, they're
8 seeking information that is from the president's time in office
9 and necessarily could be privileged information.

10 Therefore, the --

11 THE COURT: But that privilege has been waived by the
12 current president. I mean, the distinction in *Mazars* and this
13 case is that in *Mazars* -- well, at least the first go around,
14 Congress is seeking private information from a sitting
15 president. And in this case Congress is seeking arguably public
16 information, quintessentially information of a governmental
17 nature from a former president, so that the situation is rather
18 transposed.

19 So how do you square that difference?

20 MR. CLARK: Well, I square that difference because of
21 the heightened nature of the information that's being requested.
22 This is information that has a constitutionally based privilege,
23 based in *Nixon* and *GSA*, that goes beyond -- that *Mazars* relies
24 pretty heavily on.

25 I think that the level and the import of the documents

1 requested here are greater than the private information that was
2 requested in the original *Mazars* case.

3 But I would also say that Judge Mehta specifically, you
4 know, invoked the right of a former president to have some level
5 of protection in *Mazars lite*. So I don't think the fact that
6 the president has left office makes us go to *Mazars lite*. I
7 think that because of the nature of the information being
8 requested by the Congress, *Mazars* still applies here. But even
9 if Your Honor -- if the Court doesn't think it does, *Mazars lite*
10 certainly still would apply.

11 THE COURT: Do you think the factors in *Mazars lite* or
12 *Mazars* are -- how do I square that with the fact that Congress
13 here has not requested private information, that *Mazars* involved
14 banking records and lease documents involved in the lease to the
15 plaintiff of -- lease of a building before he became president?

16 These documents are sought to further Congress's oversight
17 into the events of January 6, and they only seek documents
18 concerning governmental activity and the former president's
19 contact with officials and his actions and statements on
20 January 6 or relating to that event, not private banking
21 information, the result -- the release of which didn't really
22 implicate any governmental activity.

23 MR. CLARK: Well, Your Honor, I'd actually disagree
24 with you on your point that it only relates to information
25 related to January 6. It seeks records from all the way back to

1 April 2020 regarding private polling data and communications
2 with campaign aides. It's not just related to information
3 surrounding January 6.

4 That's one of the points under *Mazars* that we have a very
5 great concern about, is that it's an overly broad request. I
6 would also --

7 THE COURT: Let me ask you, with regard to your
8 privilege argument, one of the things -- some of the documents
9 described by the Director of the Archives, for example, visitor
10 logs, how are visitor logs -- especially since the current
11 president has waived any claim to privilege over those
12 documents, how would visitor logs, which reveal who came to the
13 White House on specific dates, how would those be privileged?
14 How would you assert a claim of privilege over that information?

15 MR. CLARK: The theory behind executive privilege is
16 that presidents can obtain fair, honest advice from individuals
17 without the risk of that advice getting out and tainting things
18 later. Even the act of meeting with an individual could be
19 privileged if that meeting could divulge some kind of
20 information. So I think it could be privileged.

21 I would say, though, I think *Mazars* most importantly
22 is a threshold question before you even get to the privilege
23 argument. And I hate to conflate those, because I think in
24 *Mazars* you really have to go to the legislative purpose on this.
25 I would note from the outset in H.R. 503 that Section 4(d)

1 specifically says, quote, no markup of legislation permitted.

2 The Select Committee may not hold a markup of legislation.

3 That indicates to me that there's not going to be any
4 legislation and no legislation is even intended from this
5 committee.

6 THE COURT: Are you saying, Mr. Clark, that there
7 needs to be specific legislation underway before this material
8 can be subpoenaed? I mean, doesn't Congress -- can't Congress
9 issue a subpoena for information on which it intends to
10 legislate? Are you saying that this Court should require
11 Congress to have legislation underway or to delineate specific
12 legislation for which they need the information?

13 MR. CLARK: No. What I'm saying is, there needs to be
14 at least a legislative purpose behind a request.

15 Here, the legislation that is enumerated in the reply brief
16 and in the amicus briefs, none of the information requested is
17 necessary in order to legislate on any of those items that are
18 brought up.

19 I'm not saying --

20 THE COURT: Are you really saying that the president's
21 notes, talking points, telephone conversations on January 6, for
22 example, have no relation to the matter on which Congress is
23 considering legislation?

24 The January 6 riot happened in the Capitol. That is
25 literally Congress's house. They are charged with oversight to

1 determine, for example, just off the top of my head, whether
2 there need to be -- whether there needs to be legislation
3 altering or strengthening or in some way improving security
4 around the Capitol or appropriation for law enforcement or
5 creating -- creation of an executive agency with targeted goals.

6 In 2002, Congress passed the Homeland Security Act that
7 created the Department of Homeland Security following the 9/11
8 bombings.

9 I mean, are you saying that Congress has to specifically
10 say what legislation they're considering before I consider this?

11 MR. CLARK: Your Honor, I'm saying there has to be a
12 purpose to it, there has to be a valid legislative purpose. You
13 mentioned altering security around the Capitol or appropriation
14 to law enforcement. I'm not sure, and I don't think anyone can
15 articulate how a memo from a campaign aide in April of 2020
16 would lead to any legislation around either of those issues.

17 THE COURT: Well, it's not really your job or my job
18 to determine that, is it, Mr. Clark? I mean, courts -- I'm
19 citing from *McGrain*, 273 U.S. at 178. Courts are bound to
20 presume that the action of the legislative body was with a
21 legitimate object, so long as that object can be construed.

22 Is it really my role to require Congress to specify the
23 legislation that they are intending?

24 And furthermore, isn't it appropriate that Congress may not
25 know how much legislation or what kind of legislation is

1 required until they have completed their fact-finding process?

2 MR. CLARK: I would say that under *Mazars* there needs
3 to at least be some connection between the request for
4 information and even potential or theoretical legislation that
5 could come out. And the breadth of these requests doesn't lend
6 itself to any legislative purpose.

7 THE COURT: I agree with you, Mr. Clark. Some of
8 these requests are alarmingly broad, but some of them are very
9 specific and are specifically, you know, geared or targeting
10 events of January 6.

11 Are you saying that those requests, requests centered on
12 the day of the riots, are overly broad?

13 MR. CLARK: Well, what I'm saying is that the Archives
14 currently has those overly broad requests, and the documents are
15 coming in piecemeal in varying forms, you know, not in any
16 necessarily order in terms of responsiveness, in terms of the
17 order of the request.

18 What I'm saying is, Congress needs to go back and narrow
19 their requests so that as these documents come out we're getting
20 a real breadth of documents that are consistent with *Mazars*,
21 that are consistent with those things.

22 That's what I'm saying here, Your Honor.

23 THE COURT: I will let you resume. I'm sorry.

24 MR. CLARK: No, this is great. I mean, this is --
25 these are good questions, and they're important questions.

1 So the second point in *Mazars*, I think, is the one that we
2 were just touching on, which is that the request can't be any
3 broader than reasonably necessary to support Congress's
4 legislative objectives.

5 You mentioned a few legislative objectives. There are
6 others that were mentioned in the amicus and others in the
7 reply. Here, the requests are unbelievably broad, as I said,
8 and they don't match up to any necessary legislative privilege.

9 Now, it's not our job to glean what Congress really needs
10 or wants. It's not the Archivist's job to glean what they need
11 or want or the Court's job. It's up to Congress to go back and
12 draft requests that are reasonable, that are not overly broad,
13 and that bear some resemblance to a legislative purpose that can
14 even exist.

15 And here, we don't have that. I think that's a really
16 important factor to remember. It's not anyone's job to utensil
17 these things. It's not anyone's job to glean what Congress
18 needs to get to legislative intent. There just has to be some
19 nexus between legislation and a request.

20 I would also note that a lot of these documents that exist
21 are available elsewhere, you know. So many of these are from
22 people who are, you know, going to -- have been subpoenaed by
23 the January 6th committee, and those documents will be available
24 there. Many of these --

25 THE COURT: Wait a second, Mr. Clark.

1 First of all, I challenge your statement that these
2 documents are available elsewhere. I'm not sure where else the
3 White House visitor logs or notes of your client or records of
4 phone calls of your client or talking points prepared for your
5 client could be obtained.

6 And the other point is that your client has instructed
7 others who have received subpoenas not to comply. So I'm not
8 sure how the committee could obtain these documents from other
9 sources, and I'm not sure they're required to do so.

10 MR. CLARK: Well, if they're available and a
11 not-privileged document, then that information can be obtained
12 in a manner that is not seeking records that are privileged
13 under executive privilege. In *Mazars*, they had them. I don't
14 believe -- I think that's the only path that they do have.

15 I would also say your focus on actual privileged documents
16 at the White House in terms of where those documents exist,
17 that's an analysis that the Court has to have and the Court
18 probably needs to have with respect to every question and every
19 document that comes out, to make sure that there's a
20 constitutionally based reason to either assert privilege or not.

21 THE COURT: So what you're advocating is the Court do
22 a document-by-document in-camera review of every document that
23 the committee seeks to get from -- the Archives believes is
24 responsive to the requests?

25 MR. CLARK: No.

1 THE COURT: I mean, you're talking years, and you're
2 talking a level of involvement of this Court that's
3 unprecedented.

4 MR. CLARK: No, I'm not actually suggesting that.

5 What I'm suggesting is that where the former president has
6 asserted a privilege and where the incumbent president has not
7 asserted privilege, when there's a dispute with respect to those
8 documents, because the Constitution is implicated under *GSA* and
9 *Nixon*, it's incumbent on the Court to make a constitutional
10 determination as to who is right and whether --

11 THE COURT: I don't see that. I've read *GSA v. Nixon*
12 or *Nixon v. GSA* several times, and I don't find any support in
13 that case for your argument.

14 Can you point me to language in that case that requires me
15 to do that?

16 I mean, the -- the Former President Carter had agreed, had
17 signed off on legislation. I don't -- here, the sitting
18 president has waived privilege and agreed that the documents can
19 be turned over.

20 Isn't the person who is best able and in a position to
21 determine the executive privilege the executive?

22 MR. CLARK: I don't agree with that, not the incumbent
23 executive. I believe that, as they say in *GSA*, the former
24 president has rights -- and it's in the statute, has rights with
25 respect to asserting privilege.

1 THE COURT: *Nixon v. GSA* also said that the former
2 president's rights are less significant because he is a former
3 president, and where the current president has waived privilege,
4 the Court must necessarily consider that waiver.

5 They're not -- these are not two equal parties here. The
6 person best able to determine whether there is an executive
7 privilege would be, as I asked, the executive; right?

8 MR. CLARK: I don't agree when you have an incumbent
9 president -- or you have a former president, I'm sorry, who has
10 a reliance interest, has a constitutional right to --

11 THE COURT: All right.

12 MR. CLARK: -- exert privilege over. I would say --

13 THE COURT: Can you point me to any language in
14 *Nixon v. GSA* that says that?

15 MR. CLARK: The president -- the former president
16 has -- there's a constitutionally based privilege which the
17 former president can assert.

18 THE COURT: Is that language taken directly from
19 *Nixon v. GSA*?

20 MR. CLARK: Let me pull the quote for you, Your Honor.
21 I will grab that here.

22 Sticking to *Nixon v. GSA*, though, I think the important
23 thing for me is to remember that in both the *Nixon* cases we are
24 talking about documents that were going to be disclosed for
25 confidential review of these documents. Here, we're talking

1 about a broad document dump of executive documents of a
2 preceding administration that drives a truck right through the
3 constitutionally based privilege for a former president and
4 turns it into a partisan exercise.

5 THE COURT: Mr. Clark, I'm going to ask you to dial
6 down the rhetoric.

7 The documents -- the Archives have described the documents
8 at issue. I'd hardly describe them as a document dump. The
9 separation of powers issue you keep talking about I find hard to
10 discern here. In a rare instance, the executive branch and the
11 legislative branch are in agreement. They both agree that the
12 documents should be turned over. So I don't see where the
13 separation of powers argument that you are talking about exists.

14 MR. CLARK: Well, it exists because that -- the
15 previous administration has a right, has a --

16 THE COURT: But it's not a separation of powers. It
17 may be a dispute between a former president and a current
18 president about what is privileged, if that may be a dispute.

19 But can you tell me what the separation of powers issue is
20 here? There's only one executive.

21 MR. CLARK: There is, but that executive exists in
22 perpetuity, and it just changes hands at times.

23 Those documents --

24 THE COURT: Wouldn't the current executive be best
25 positioned to determine -- I mean, you're right. The executive

1 privilege is not limited to one particular officeholder. It
2 exists so that presidents now and in the future will have
3 unfettered, candid advice from advisors, from a wide range of
4 sources without fear of disclosure having a chilling effect.
5 That's the basis for the executive privilege.

6 But the fact that the current -- the current executive
7 asserts that privilege on behalf of the executive branch. And
8 here, he has done so. He has decided that there is no executive
9 privilege.

10 How should I weigh a previous president's assertion of a
11 privilege when the current president has said that there is
12 none?

13 MR. CLARK: I think you need to weigh it by looking at
14 each document that's in dispute. I think that's the only way to
15 do it. I think under the Constitution and, frankly, under the
16 PRA the only way to do this effectively and to have the former
17 president's, you know, rights to executive privilege be heard is
18 to have a review by the Court of each document as it comes out
19 that's in dispute.

20 THE COURT: Other than slowing down the process, what
21 would this -- and can you point to me a case that says that I'm
22 required to do that?

23 MR. CLARK: No, I can't. This is a case of first
24 impression, though. We know it's a constitutional question; we
25 know it's a constitutional question. And we know that only an

1 Article III Court is going to be able to say what the
2 Constitution says, and it has in the past.

3 THE COURT: Let me ask you, Mr. Clark, you talk about
4 the executive privilege and the fact that this -- your client,
5 the plaintiff, retains an executive privilege, even though he's
6 no longer president, and that certainly is an argument you may
7 make.

8 But this Act, the Presidential Records Act, was signed by a
9 previous president and existed during the incumbency of your
10 client's term as president. There was never an attempt to alter
11 it or change the terms of it.

12 Isn't that -- aren't you now -- isn't your client now bound
13 by that fact?

14 MR. CLARK: I mean, to the extent that the
15 Presidential Records Act, and I believe it does, protects a
16 former president's interests in documents that are privileged
17 and the right to assert that -- and in fact, it does provide for
18 a former president to be able to file suit under this -- to the
19 extent they are, that constitutional right is encapsulated in
20 the Presidential Records Act. To the extent that it grants no
21 rights to a former president, it still doesn't -- it's in
22 conflict with the Constitution. That's why those documents that
23 are in dispute need to be reviewed by an Article III judge.

24 THE COURT: See, the legislative and executive
25 branches agreed on the rules of the road when they enacted the

1 Presidential Records Act, which clearly established that an
2 incumbent president can decide whether or not to uphold the
3 former president's assertion of privilege.

4 That's what has happened here. And here, again, I know, a
5 rare instance of harmony between the branches, Congress and the
6 executive agree that these records should be turned over.

7 So I'm not sure that I have found any language -- I don't
8 see any language in the statute or any case that convinces me
9 that where a previous president disagrees with the incumbent's
10 assertion of privilege, that the Court is required to get
11 involved and do a document-by-document review.

12 I mean, wouldn't that always mean that the process of
13 turning over these records where the incumbent has no objection
14 would slow to a snail's pace?

15 MR. CLARK: I don't know, Your Honor --

16 THE COURT: And wouldn't that be an intrusion by this
17 branch into the executive and legislative branch functions? I
18 mean, the Court is very limited in its role here.

19 MR. CLARK: Well, except in interpreting the
20 Constitution, making sure that the statutes comport with the
21 constitutional rights that were recognized in *Nixon* and *GSA*.

22 I would say this: It is my understanding that this is the
23 first time there's been a court dispute between a former
24 president and an incumbent president with respect to executive
25 privilege. So I don't think this is a common circumstance.

1 So I also don't think we're talking about a huge volume of
2 documents right now, and I think as the release is ongoing of
3 documents, that it's not an unbearable burden for the Court or
4 for anyone to be able to do a review of documents, only the
5 documents that the incumbent president and the former president
6 disagree on with respect to executive privilege.

7 THE COURT: Okay.

8 MR. CLARK: Thank you, Your Honor.

9 So we've talked about *Mazars*. We've talked about *Mazars*
10 lite a little bit. Here, I think we just need to make sure --
11 and we've talked about the judicial review of documents. So I
12 don't want to harp on any of the things that we've already gone
13 over here. I just think it's really important on our end to
14 recognize -- to discuss the irreparable harm argument.

15 Here, we're talking about documents. Obviously, if there
16 is a right for the former president to be heard, former
17 president to have input, and the former president to weigh in
18 with respect to executive privilege, if those documents are
19 released, they necessarily create irreparable harm because they
20 obviously can't be taken back.

21 Again, unlike in *Nixon* and *GSA*, we're not talking about a
22 confidential review of documents. When the documents are out
23 the door and they go to Congress, they're out, and they're going
24 to be -- they're not necessarily under the control of the
25 archivist anymore.

1 THE COURT: Let me ask you about your irreparable harm
2 argument. Irreparable harm necessitates really two facts: Harm
3 and the fact that it's irreparable. I don't disagree that once
4 information is out you can't unring the bell. It's out. The
5 documents are out there.

6 But where is -- what's the harm? Again, we're not talking
7 about banking records or personal, you know, business records of
8 your client before he became president. We're not talking about
9 commercial proprietary information, leaseholder agreements all
10 relating to matters before your client became president. We're
11 talking about documents that are quintessentially about
12 government business, are we not?

13 I mean, again, I come back to White House visitor logs,
14 notes of who your client called on January 6, notes of who he
15 spoke to as people were breaking windows and climbing into the
16 Capitol.

17 MR. CLARK: Some of it that's requested is
18 governmental function, but as we've said, due to the breadth of
19 the requests, much of it isn't quintessentially government
20 function.

21 THE COURT: Where's the -- tell me the harm. Tell me
22 the harm that would accrue to your client if documents related
23 to who he -- I've heard your argument with regard to the
24 executive privilege, but where is the harm that would accrue to
25 plaintiff if documents responsive to the request were produced?

1 MR. CLARK: The harm exists to the institution of the
2 presidency, and if you will let me --

3 THE COURT: But the current president has said -- the
4 current president apparently disagrees.

5 Shouldn't I factor that in?

6 MR. CLARK: I think it is a factor, and it is a factor
7 under the PRA. But what I would suggest, Your Honor, is that at
8 the time whatever advice was given or whatever call was made,
9 there was a reliance interest by those in the executive branch
10 that the president would be able to receive honest, truthful
11 advice that would be private for a period of time.

12 THE COURT: That goes to the executive privilege, and
13 I've heard you on that. What I'm asking, you also say there's
14 irreparable harm to your client, to the plaintiff, if these
15 documents are released, separate from the harms that are
16 attendant in a violation of the executive privilege.

17 What is that harm? How is your client harmed by a release
18 of White House visitor logs?

19 MR. CLARK: Well, Your Honor, I would suggest that the
20 harm exists in the statute. I mean, the ability to sue under
21 this grants a right of private action, which if there was no
22 harm to these documents being released -- you know, damages are
23 something you've got to prove in a case in order to not get
24 dismissed or get thrown out on summary judgment.

25 Here, that right exists for a reason. The only thing we're

1 talking about are documents and communications.

2 This goes back to what I was suggesting before, though,
3 which is, this is exactly why the Court needs to review
4 documents when there's a dispute, because if there is a review
5 of a document and it is determined that it is not privileged and
6 there's no harm, well, then the Court makes a determination as
7 to whether or not that constitutionally based privilege is
8 properly waived or not.

9 THE COURT: Mr. Clark, tell me, if you can, how your
10 client is harmed by a release of White House visitor logs.

11 MR. CLARK: Specifically, you have the president's
12 specific interest in a former president that's before the
13 Supreme Court --

14 THE COURT: That's an executive privilege arising out
15 of the Constitution. I'm not asking about that.

16 MR. CLARK: I understand where Your Honor is coming
17 from. In terms of the specific facts of a specific document,
18 I'd have to actually look at the specific document in question
19 to be able to determine that. I don't know off the top of my
20 head without seeing a document to be able to articulate a
21 specific harm that you're asking for.

22 I can tell you the harm to the institution. I can tell you
23 the harm to the reliance interest of a president. In terms of
24 the specifics of a specific document, I can't do that without it
25 in front of me.

1 THE COURT: Are you suggesting that --

2 MR. CLARK: I can see a situation where the call logs
3 of a former president could have a -- there could be a specific
4 harm to that individual.

5 THE COURT: All right. You can continue.

6 MR. CLARK: Thank you, Your Honor.

7 Finally, I would just -- I can wrap up here, because I
8 think it's important. When we're weighing public interests
9 here, I think it weighs in favor of upholding the rights of
10 executive privilege of a former president. I think a ruling by
11 the Court to not grant this preliminary injunction opens up the
12 door for the partisanship of document requests and blows a hole
13 in executive privilege that should concern everybody.

14 I think we want to make sure that we have presidents and
15 executives that get free and fair and honest advice. And if
16 this broad of a document request is allowed or the release of
17 documents with respect to it, then that two-step process of
18 first *Mazars* and then reviewing the privilege of each document,
19 then I don't think we have a privilege anymore, and I --

20 THE COURT: Mr. Clark, you've accused the defendants
21 of making overbroad requests, and I take your point that some of
22 these requests are overbroad. But isn't your assertion of
23 privilege here just as broad?

24 I mean, you've made a blanket assertion of privilege with
25 regard to some documents that have not even been produced yet.

1 MR. CLARK: Your Honor, I would say this: There have
2 been three or four tranches of documents that have come from the
3 National Archives. Former President Trump's team has reviewed
4 documents, has called balls and strikes on each document, has
5 asserted privilege over some, not asserted privilege over
6 others.

7 If someone is being broad, it's the current administration
8 when they've waived it with respect to everything. The
9 current -- President Trump has made a deliberative and honest
10 assessment of each document as it came in, and it's not -- has
11 made that assertion. There are documents that we agree that
12 should be released.

13 So I can't stress that enough. We've not made a broad
14 assertion of privilege. We're just asking the Court to make a
15 determination in terms of disagreements with respect to these
16 documents.

17 THE COURT: All right. Thank you.

18 MR. CLARK: Thank you, Your Honor. That's all we
19 have.

20 THE COURT: All right. Ms. Shapiro?

21 MS. SHAPIRO: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MS. SHAPIRO: I would like to start where Mr. Clark
24 started, with his observation that this is a case of first
25 impression. That is true, it is the first time in the history

1 of the Presidential Records Act that there's been a disagreement
2 between the incumbent and the former president that has come to
3 litigation.

4 But that does not mean that this is a difficult or even a
5 particularly novel circumstance, because courts in this district
6 are well practiced in assessing privilege. In fact, I think
7 this district has more pointed cases than any in the land, and
8 weighing privilege is not something new to this court.

9 THE COURT: You are sadly correct, Ms. Shapiro.

10 But let me ask you, what is the appropriate test here?

11 The plaintiffs say, Look to *Mazars* or *Mazars* lite. What
12 case do defendants believe is most helpful, and what is the
13 limiting principle on your test?

14 MS. SHAPIRO: The case that is most on point is
15 *Nixon v. GSA*. It addresses the circumstance. And it very
16 clearly assigns the greatest weight to the incumbent president.

17 Plaintiffs, still in response to Your Honor's question, do
18 not acknowledge that that is what the Supreme Court has said.
19 But *Nixon v. GSA*, 433 U.S. at 446, and *Dellums v. Powell*, which
20 is a decision of this circuit, 561 F.2d at 245, the Supreme
21 Court said it must be presumed that the incumbent president is
22 vitally concerned with and in the best position to assess the
23 present and future needs of the executive branch.

24 There is no doubt that the incumbent president gets
25 deference in terms of this balance, and the greatest weight

1 needs to be accorded to the incumbent.

2 So *Nixon v. GSA* basically spells out what courts do every
3 day when they assess privilege. They take the privilege, and
4 they weigh it against the corresponding need for the
5 information, and they determine whether the need outweighs the
6 privilege claim.

7 THE COURT: Ms. Shapiro, to what extent does the
8 former president maintain the ability to exert executive
9 privilege over government communications?

10 MS. SHAPIRO: So *Nixon v. GSA* recognized a single
11 residual right for a former president to make a claim of
12 privilege, and that by statute, then, is assessed by the
13 incumbent president, who makes a determination of whether to
14 assert or uphold the former president's claim of privilege.

15 That is the way the statute operates, and that is the sole
16 residual right that is recognized in *Nixon v. GSA*. And because
17 of that, we are quite confident that the *Mazars* test has no
18 applicability here. We don't have -- the former president does
19 not have a freestanding right to challenge the entire
20 legislative venture.

21 And *Mazars*, as Your Honor already pointed out, concerns a
22 sitting president. And even the *Mazars* lite test accords weight
23 to the incumbent president's view. So in that respect, it's
24 similar to *Nixon v. GSA*.

25 So the test is really to do the normal balancing that

1 courts do, even for executive privilege, ascribing the
2 appropriate amount of weight to the incumbent's judgment that
3 the public interest in this case clearly outweigh the
4 confidentiality concerns underlying the executive privilege.

5 And I would add that for this Court to do otherwise would
6 be very odd indeed, because essentially what the plaintiff is
7 asking you to do is for the Court to superintend a sitting
8 president's decision not to assert privilege.

9 Presidents may decide not to assert privilege every day,
10 and there's no recourse to the courts and no recourse to a
11 former president. For example, presidential communications are
12 often captured in agency records, and those agency records are
13 subject to FOIA. A sitting president may decline to assert
14 exemptions by or otherwise uphold privilege with respect to
15 those presidential communications. There is no challenge to
16 that decision.

17 It would be extremely unusual for courts to superintend the
18 daily decisions of the sitting executive as to whether or not to
19 assert privilege and the sitting president's assessment of the
20 public interest in that regard.

21 THE COURT: One of the requests that the committee has
22 made is for plaintiff's communications with White House counsel
23 and deputy White House counsel concerning legal advice relating
24 to the constitutional process of certifying election results.

25 How does attorney privilege factor in in how I must weigh

1 this request?

2 MS. SHAPIRO: I guess I would say two things. One,
3 the attorney-client privilege in the governmental context would
4 be encompassed within executive privilege. But two, the
5 documents that we have before you in the tranches that are ripe
6 for decision I don't believe involve those -- that particular
7 issue. And so we're talking about sort of a speculative
8 wholesale attack on the scope of the request.

9 And with respect to, you know, the scope of the request,
10 we've explained in our papers why it's related to the
11 investigation of the Select Committee, but I'm sure Mr. Letter
12 will have more to say about that in terms of defending the
13 legislative piece of this.

14 THE COURT: All right.

15 MS. SHAPIRO: The other points I wanted to make with
16 respect to why this is actually not a particularly difficult
17 case is that presidential communications privilege is a
18 qualified privilege. Plaintiffs concede that in their papers.
19 That's not in dispute. It can be overcome.

20 And it's not only qualified, but the Presidential Records
21 Act means that all of these records will be public. They are
22 not, as plaintiff asserts in his brief, in his reply brief,
23 going to be confidential forever. They're restricted for 12
24 years from the general public. But the PRA specifically
25 contemplates that all branches of government will have access to

1 these documents, even during the restricted period, the
2 judiciary, the current executive branch for its needs, and
3 Congress for its needs. That's contemplated in the statute.

4 So these are not documents where privilege and
5 confidentiality will survive forever. Far from it.

6 I also want to stress, Your Honor, that the former
7 president has no personal interest in these documents. There is
8 no personal injury from their disclosure. The only interest
9 that the former president claims is the interest in executive
10 branch confidentiality, which is a weighty constitutional
11 interest. We agree with that.

12 But it is the very same interest that the incumbent
13 president is charged with protecting and which the incumbent has
14 determined should give way in the circumstance due to the
15 countervailing needs of Congress for its investigation into the
16 events of January 6.

17 I also want to note that this is not unusual, it's not
18 unusual for a sitting president -- or I should say, it has
19 happened, certainly, that a sitting president will decline to
20 assert privilege over presidential communications, even of the
21 most sensitive nature. We set out in our brief prior examples
22 of where presidents have allowed their aides and documents
23 dealing with presidential communications to be provided to
24 Congress without an assertion of privilege, and that includes
25 this former president, who also allowed his presidential

1 communications with a number of people to be divulged to
2 Congress.

3 And I would add to the examples in our papers that former
4 President Trump did not sue to prevent, for example, the Acting
5 Attorney General Jeffrey Rosen from testifying about
6 presidential communications to this very same Select Committee.
7 So that apparently was not a monumental case that needed to be
8 litigated, but this one is.

9 Taking all of the elements that I've mentioned, the fact
10 that the privilege can be overcome, that it's not absolute, the
11 fact that the incumbent is entitled to great weight, the fact
12 that courts do this all the time, the fact that past presidents
13 have allowed it to happen and that this very same former
14 president has permitted it to happen, all of those factors come
15 into the balance.

16 And it should be quite clear that the events of January 6
17 create a congressional need that outweighs the confidentiality
18 in this instance and that President Biden's determination that
19 the public interest requires the production of records in this
20 case is not only entitled to deference, but it's eminently
21 rational.

22 THE COURT: Ms. Shapiro, are you going to -- I can ask
23 you, but if you prefer, I can ask Mr. Letter. What of
24 Mr. Clark's point that the documents at issue should be reviewed
25 by the Court to prevent a violation of privilege, because once

1 the documents are released, they can't be, you know, unreleased?
2 What of plaintiff's request for a Court review?

3 MS. SHAPIRO: So I want to make clear, if Your Honor
4 wants to review documents, we're happy to supply documents.
5 However, it is completely not necessary in this case. Privilege
6 is determined all the time in cases via privilege logs and via
7 descriptions of records. And we've tried to provide that in the
8 NARA declaration so that you have a sense of the documents that
9 are at issue.

10 It is certainly not necessary for you to look at White
11 House visitor logs or call logs and determine and make an
12 individualized document-by-document decision. That is --
13 there's no requirement anywhere in the case law, and courts all
14 the time -- courts would do nothing other than review documents
15 if all privilege disputes ended up in a document-by-document
16 review by the judge. I'm sure no member of this court wants to
17 be engaged in that endeavor.

18 It also would, obviously, delay production of records to
19 the committee. And as the Supreme Court has warned in *Eastland*
20 and elsewhere, that when there is an effort to halt the
21 activities of a branch of government, that the Court should act
22 as expeditiously as possible.

23 Your Honor mentioned White House visitor logs. Those
24 visitor logs, there have been multiple presidents who have
25 voluntarily disclosed White House visitor logs as a matter of

1 policy, such that the notion that there is going to be an
2 extreme impingement of confidentiality interest in the
3 disclosure of White House visitor logs, I think, is
4 counter-indicated by the fact that White House visitor logs have
5 been released by numerous presidents.

6 With respect to the irreparable harm allegation, I think
7 Your Honor essentially understands our arguments perfectly. The
8 president has no personal interest in these documents. They are
9 records of the United States per the Presidential Records Act in
10 Section 2202, and he is not personally injured by their
11 disclosure. The only injury he claims is the injury to the
12 executive branch interest. And the current sitting executive
13 has determined that the public interest lies in the production
14 of those records to Congress to further its investigation. So
15 there is no irreparable injury to the plaintiff here.

16 Also, the current schedule under the Presidential Records
17 Act is November 12th for the production of the first tranche of
18 documents. The remaining two tranches that are ripe for review,
19 I believe, go out the week after that.

20 And so we think, Your Honor, that there's ample time for
21 the Court to issue a decision without halting the PRA process,
22 which is, you know, underway and will continue to progress.

23 THE COURT: You and I have a very different view of
24 what ample time is, Ms. Shapiro, but I appreciate that.

25 MS. SHAPIRO: Yes. I apologize for that, Your Honor.

1 I think responding to the preliminary injunction motion has
2 jaded my sense of time.

3 THE COURT: I have another one; I have a hearing on
4 another preliminary injunction motion tomorrow. I appreciate
5 that everything is relative.

6 MS. SHAPIRO: It is.

7 The last thing to address is the balance of equities, and
8 here again, the equities lie heavily in favor of the public
9 interest and the interest in learning what led to the events of
10 January 6 and ensuring that they never happen again.

11 The public interest lies there. It lies in the current
12 president's assessment that that interest outweighs any interest
13 in asserting executive privilege and the underlying
14 confidentiality concerns, and that should easily dispose of this
15 case.

16 I'm happy to answer any further questions, Your Honor.
17 Otherwise, with respect to the sort of, you know, legislative
18 aspect of the -- our briefing, I would leave that to the House
19 and Mr. Letter.

20 THE COURT: Thank you, Ms. Shapiro. I do have some
21 questions, but I think they're better posed to Mr. Letter.

22 Mr. Letter?

23 MR. LETTER: I'm sorry, Your Honor. The mouse froze.
24 Isn't modern life wonderful?

25 Your Honor, first of all, I just want wanted to start off

1 by saying we agree with all of the points that my colleague,
2 Ms. Shapiro, made. So we adopt the arguments that she has made.

3 I did want to emphasize up front where Ms. Shapiro ended,
4 which is the Select Committee to Investigate the January 6th
5 Attack on the U.S. Capitol is expeditiously engaged in
6 investigation of what happened on January 6, what led up to it,
7 why did it happen, what can and should be done. It's one of the
8 most important congressional investigations that -- in the
9 history of our nation that has ever occurred.

10 THE COURT: Mr. Letter, is the Select Committee,
11 therefore, restricted -- and I don't mean to cut short your
12 emphasis on how serious an event the mass riots on January 6
13 were, because I have no disagreement with your characterization.

14 But is the Select Committee restricted to only seeking
15 information regarding the facts, circumstances, and causes of
16 the January 6 attack?

17 MR. LETTER: No, not at all, Your Honor. And this
18 goes to one of the points that my friend made at the beginning.
19 He said that the -- Mr. Clark, that the Select Committee doesn't
20 do markups. But the Select Committee is specifically authorized
21 and the expectation is that they will be making
22 recommendations -- that's right there in Resolution 503 -- for
23 legislation. No, it's not just about January 6 and focused on
24 that specific day.

25 THE COURT: Let me ask you, Mr. Letter, some of the

1 requests seem fairly narrowly tailored, but some of them do
2 strike me as very broad. It's sort of a sliding scale.

3 For example, with regard to January 6 or the days
4 immediately preceding it or even following it, there are
5 requests regarding the president's communications and contacts
6 with a number of individuals. Those appear related to a
7 specific event.

8 But there are requests seeking all documents concerning the
9 president's communications with 40 individuals from
10 April of 2020 to January 6. That seems to me unbelievably
11 broad. And there are requests for documents concerning polling
12 data and election issues, which I guess would tangentially
13 relate to the president's claim that the election was stolen,
14 which I don't think any -- not a single court has upheld. But
15 those requests seem really broad to me.

16 Can you justify them?

17 MR. LETTER: Yes, Your Honor, and they are broad.
18 Your characterization is correct. I have several responses.

19 First, if I may, if you look at page 20 of our brief, that
20 is where you will find Vice Chair Cheney, in remarks that were
21 then adopted also by the Chairman, describe what the committee
22 is looking into. So you see there the breadth of it.

23 The key thing is, I think in response to your question
24 right now, is part of the investigation about the influencing
25 factors that fomented the attack -- as we know, this attack

1 didn't just come out of nowhere. This wasn't just some
2 spontaneous thing that arose on the morning of January 6. One
3 of the most important things that the committee has to look
4 into -- and again, this is emphasized by Ms. Cheney and -- Vice
5 Chair Cheney and Chairman Thompson, is we need to figure out
6 what was the atmosphere that brought this about.

7 So clearly, we go back to the many attempts that were made
8 before the election to try to build the nature of mistrust about
9 the election itself, which goes to undermine our democracy, so
10 that if President Trump did lose he would be able to say that
11 this is unfair and to generate lots of anger and rage that led
12 to January 6. So that is exactly what the committee has to look
13 into and is looking into, because otherwise, we're just looking
14 at a very narrow focus.

15 If I may just note one thing that occurred to me last
16 night. As many wise people have said, those who don't study
17 history are doomed to repeat it. We want to make sure this
18 never happens again, and that means going way before January 6
19 itself.

20 So yes, we want to see who did President Trump talk to, who
21 was he consulting with, what were the various groups urging,
22 what types of claims were they thinking that he could make,
23 et cetera, what really led up to this. I think it's both what
24 the House expects this committee to do, and also, it's what the
25 American people expect.

1 THE COURT: But in April of 2020, Mr. Letter? What's
2 going on in April of 2020 that might have a connection to
3 January 6?

4 MR. LETTER: Your Honor, it's all -- we think maybe
5 this all ties in with -- you know, leading up to this, the
6 fomenting of it, the building a groundswell of feeling that this
7 election was going to be tainted.

8 THE COURT: Okay. I grant you that after the November
9 election this groundswell began, and even shortly before the
10 election, there's an argument to be made that the former
11 president was priming the pump for in case he lost.

12 But April of 2020? How could those documents be connected
13 to what happened on January 6?

14 MR. LETTER: Your Honor, because remember that there
15 was an election that was held that -- you know, later in which
16 there were major concerns, obviously, that Mr. Trump had that
17 started this whole line of well, the election is going to be
18 stolen, and it may reveal a plan to subvert the election.

19 And more important, this ties in with -- remember, there
20 was an entire impeachment about subverting the election. So the
21 connection is noted. The House impeached the president because
22 of concerns about Russian efforts to subvert the American
23 people's confidence in the election itself.

24 Now, I did want to make two other points about that, Your
25 Honor, because your questions are very serious ones.

1 Remember that Congress can investigate -- plenty of times
2 it may lead to blind alleys, plenty of times a quick evaluation
3 might lead one to say it's just not -- it turns out there's
4 nothing there. But you've got to look to see it.

5 And my colleagues have just reminded me that the April 2020
6 date is when the president himself started tweeting about the
7 election coming up. So this is something that he was raising.
8 He himself made this relevant.

9 But again, yes, we might run into, you know, blind alleys,
10 et cetera, in which case we will stop wasting time. But that's
11 a determination for Congress to make.

12 THE COURT: I understand. And Congress certainly has,
13 you know, broad authority to determine the facts before it
14 decides what legislation to create or to enact.

15 But there has to be some limit, wouldn't you agree?

16 MR. LETTER: Yes, Your Honor.

17 THE COURT: And where is the line drawn?

18 MR. LETTER: Your Honor, we could probably come up
19 with a batch of hypotheticals if the -- you know, that if the
20 committee asked about that would so clearly could have no
21 relationship whatsoever, certainly.

22 But remember, again, we're talking about a whole
23 groundswell. Many of the people who were caught in the Capitol,
24 who were doing things in the Capitol, and who were thrown out of
25 the Capitol have said that it was because the president asked

1 them to come, the president asked them to save the democracy.

2 And so we want to know, when did that process start, who
3 was involved in it, how did it come about. And as far as
4 legislation, yes, this is all tied to and is clearly appropriate
5 for Congress to look into.

6 For example, should we amend the Election Counting Act.
7 Should there be restrictions possibly on ways that federal
8 officials can try to influence state officials to change
9 election results. Should we increase the resources of various
10 committees and bodies who are gathering information. Should we
11 increase resources for, you know, something that I think has
12 been done many, many decades, rebuilding the confidence of the
13 American people in the election process and our democracy.

14 I remember any number of times, I think it started with
15 Chief Justice Burger, who would distribute pocket copies of the
16 Constitution. The whole point was an effort to -- you know,
17 sort of a civics lesson to the American people.

18 So we need to know, what are we confronting? Clearly, we
19 have major dangers with a significant percentage of the
20 population thinking that these elections were stolen, even
21 though, even though any number of judges said there's no
22 evidence of that. The committee is -- it's perfectly
23 appropriate for them to say we've got a problem in United States
24 that we need to address, we need to make people have more
25 confident in the electoral process.

1 Again, in order to do that, we need to find out, why was
2 the president tweeting that early about already undermining the
3 confidence of the American people in the election.

4 THE COURT: Mr. Letter, I'm not sure that there's an
5 answer to why the president was tweeting whatever he was
6 tweeting. And I don't disagree that some of these requests seem
7 very narrowly tailored to me.

8 But for example, one of the committee's request is all
9 documents and communications within the White House on
10 January 6, 2021, relating in any way to plaintiff, Former Vice
11 President Pence, and over two dozen government officials.

12 Now, plaintiff argues that because this request is not
13 limited to communications about the facts, circumstances, or
14 causes of the January 6 attack, that these communications could
15 be about all sorts of unrelated things, including conversations
16 with foreign leaders, attorney work product, and discussion of
17 matters of national security.

18 And that question becomes even more compelling when we're
19 talking about communications, you know, in April or May. And I
20 understand, you know, the president started tweeting about
21 issues in April. But why is that not overbroad?

22 MR. LETTER: Your Honor, we don't think it's overbroad
23 because the president was talking to lots of people. Lots of
24 people were talking to each other. And we want to know how much
25 of this was inside the White House, how much of it was with

1 members of Congress, how much of it was with outside groups such
2 as the Proud Boys, et cetera, how long was this whole problem
3 that we now face, where did it come from.

4 Now, and let me emphasize, Your Honor, one of the most
5 important things I want to say is, if there are certain requests
6 that are overbroad, there are a couple of things. One is,
7 President Trump can say specifically that particular request is
8 overbroad.

9 The one question is, is he entitled to do that, since as
10 Ms. Shapiro pointed out, these materials being sought are not
11 his. These are materials of the current administration and the
12 United States government and the Archives. These do not belong
13 to President Trump.

14 And if I could, I just want to interrupt myself for a
15 moment. At one point, Mr. Clark, I think, said something about,
16 you know, these are -- I forget what words he used, you know,
17 personal, that they don't involve official duties. If that's
18 true, they're not covered by executive privilege.

19 And remember, that's what we're here about. President
20 Trump under this statute and under the Constitution is allowed
21 to raise concerns about privileges. Well, executive privilege
22 doesn't cover the kinds of things that Mr. Clark was talking
23 about.

24 So that's --

25 THE COURT: What about attorney-client privilege?

1 MR. LETTER: Yes, he could clearly claim
2 attorney-client privilege. Now, White House counsel -- that
3 seems to be one of the privileges he could raise. So a couple
4 questions about that. One, I don't know what that has to do
5 with the chief of staff. Two, there may be all sorts of
6 waivers. Three, it's not at all clear that that even applies
7 against the Congress of the United States. The House does not
8 recognize a, you know, common law claim like attorney-client
9 privilege. That's not --

10 THE COURT: Are you posing another novel area of first
11 impression for me to wade into, Mr. Letter? I have enough on my
12 hands.

13 MR. LETTER: Yes, you're right. You do not need to go
14 into that. But remember, as I think Ms. Shapiro said,
15 attorney-client privilege is merely a subset of executive
16 privilege. It's not some different thing all by itself. And as
17 Ms. Shapiro pointed out, President Trump has had all sorts of
18 his attorneys providing evidence and testifying.

19 But again, if he wants to say that particular request is
20 overbroad, then that is a plea that he can make, and that is
21 something that this Court could rule on if the Court finds that
22 that particular part is invalid.

23 That doesn't have anything to do with the broad nature of
24 the request, which is overwhelmingly -- there's just no
25 argument. I think overwhelmingly the request is appropriate.

1 So there isn't some sort of notion that if one tiny thing is
2 wrong, overbroad, that that means the whole request falls.
3 That's just wrong.

4 And as Your Honor knows clearly from when you consider
5 privilege claims, if you find that, you know, there are claims
6 that five different items are privileged and you reject that
7 argument as to four, that doesn't mean that the whole request is
8 no good. It just means whatever might be overbroad will be
9 tossed out.

10 But again, we don't think President Trump can make that
11 claim anyway. That's up to --

12 THE COURT: I want to ask you about that, Mr. Letter.
13 To the issue of overbreadth, is that issue one that I need to
14 consider, given that the current president has waived any claim
15 over -- any claim over release of the documents?

16 MR. LETTER: No, Your Honor. In fact, you have
17 anticipated the note that one of my colleagues just handed me
18 saying that exact thing. If it's overbroad, that's for the
19 Department of Justice and NARA, the Archivist. That's a
20 determination for those bodies to make.

21 But President Biden does not seem to believe that any of
22 these tranches thus far has a problem, because he has not raised
23 this. Again, there's no reason why that would be something that
24 President Trump could raise.

25 And I did want to point out, too, remember that the

1 declaration from Mr. Lassiter (phonetic), I think it is, has
2 pointed out that there are a batch of documents that have been
3 set aside as nonresponsive. Other documents have been set aside
4 for the moment. The committee has agreed to have those set
5 aside so that we don't get bogged down in those.

6 Instead, let's deal with as quickly as possible the ones
7 that we've identified and that the Archivist has identified and
8 that President Biden has said are not covered by executive
9 privilege.

10 So that was a long-winded answer, Your Honor, of saying no,
11 they are not issues that -- overbreadth is not an issue. If
12 ever the Archivist identifies some documents that are responsive
13 and President Trump says I just think those are overbroad, we
14 can deal with that then. I suspect that's never going to
15 happen.

16 THE COURT: Let me ask you, Mr. Letter, and this could
17 be equally posed to Ms. Shapiro, the Congress and the executive
18 branch are in agreement that the documents should be turned
19 over, and the executive branch has waived any claim to privilege
20 in the documents. The previous president has said wait a
21 minute, there is a privilege to be asserted.

22 What factors -- what balancing test is appropriate in
23 weighing basically what is a disagreement between the current
24 president and a former president as to whether the privilege
25 exists?

1 MR. LETTER: The balancing -- and I think Ms. Shapiro
2 did address this somewhat. The balancing has already been done.
3 It's been done by President Biden. The D.C. Circuit Court and
4 the Supreme Court said it's in the best position to determine
5 what is in the interest of the executive branch and the interest
6 of the president --

7 THE COURT: So is that where I end? Is that where I
8 start and begin? Once a current executive, once a current
9 president says there's no privilege, that the former president
10 doesn't get a say?

11 Would you agree that if these were personal documents, that
12 that would be different?

13 MR. LETTER: If they were personal documents, it's to
14 say they wouldn't be covered by executive privilege. So I'm not
15 sure how that would tie in.

16 But Your Honor, I think the best way to answer what you
17 said is, on the one hand, yes, this is authority of the
18 president, current president. You have only one president. The
19 former president has had an opportunity to raise these claims.
20 He raised them to President Biden. They were rejected by him.

21 Undoubtedly, we can think of hypotheticals where a court
22 would say, well, I think there still is an important residual
23 interest here and, you know, that it's bad faith or something
24 like that. We can come up with hypotheticals. Frankly, we've
25 had trouble coming up with ones that make sense. None of them

1 have any relation to the current situation. And so I don't want
2 to say there would never be any need to under the statute, I'm
3 not saying that, but certainly nothing that is raised by this
4 case, no.

5 THE COURT: All right.

6 MR. LETTER: As far as other points, I just had a
7 couple of things I wanted to mention.

8 THE COURT: Oh, let me just ask you one more question
9 while we're on the question of -- the subject of the breadth of
10 the committee's requests.

11 The limiting principle on overbreadth is -- the committee
12 has authority to request information over areas where
13 legislation could be had.

14 MR. LETTER: Yes.

15 THE COURT: What is the relevance of summer 2020
16 polling data? That's one of the areas of information that the
17 requests seek. How is that relevant, polling data?

18 MR. LETTER: Because what we would hope, what we may
19 find, is that that helps explain why President Trump started at
20 that time --

21 THE COURT: He didn't want to lose the election. I
22 mean, do you need polling data to determine that a president who
23 is up for reelection wants to win or may be worried that he's
24 not going to win?

25 MR. LETTER: It might very well be, though, that it

1 will tell us -- the polling data, combined with the other
2 material that we're looking at, would help tell us, okay, he
3 decided at that point that the key thing to do was to start
4 stirring up the far-right armed militias, certain members of
5 Congress.

6 Polling data, remember, isn't just you're likely to be
7 reelected or you're not. It's who's not going to vote for you,
8 who might vote for you. And so you might then start --

9 THE COURT: But isn't that kind of tangential? I
10 mean, you have -- you sought information, and you have
11 information that the plaintiff did start doing these things. I
12 mean, so polling data may show that he had every good reason to
13 be worried, but isn't the fact that -- is it really in
14 dispute -- don't you have plenty of information that he started
15 tweeting, that he started making these connections? And aren't
16 there other requests you've made which would corroborate that?

17 MR. LETTER: As to the other requests, we hope so, but
18 I think your question earlier helped us -- helps answer that
19 question, which is, at this point we don't know exactly who is
20 going to be cooperating with us, who is going to be providing
21 information, who instead is going to say President Trump --
22 former President Trump instructed me not to respond, so I'm not
23 going to.

24 As far as the polling data, if a report is issued, I
25 suspect there's some people out there who are going to attack

1 it. And one of the things they will do --

2 THE COURT: I think it's almost assured.

3 MR. LETTER: Isn't it? And they're going to say, oh,
4 they didn't look at this, the committee didn't look at that.

5 THE COURT: But that's the nature of politics in this
6 town, which is why I'm a judge and not a politician. I mean,
7 there's always going to be an attack from the other side.
8 You're never going to, you know, waterproof or make your report
9 completely airtight. There's almost no limit to the information
10 you could be seeking, and some of these requests do seem very,
11 very broad indeed.

12 MR. LETTER: They are broad, Your Honor, and that gets
13 into a separation of powers issue. That's for Congress to
14 decide. I think it would be a very startling thing. And I
15 think a question you asked earlier showed that you fully
16 recognize this: It would be a startling thing for you to,
17 either in an injunction or declaratory judgment or in an
18 opinion, tell Congress, I know better than you what you need,
19 you don't need that.

20 THE COURT: Well, I think the question more is, I
21 think I would be on stronger footing doing something like that
22 if the executive branch disagreed with Congress, but they seem
23 to be in agreement here.

24 MR. LETTER: Exactly, Your Honor. That's exactly
25 right. Therefore, if at some point the current administration

1 says, oh, come on, you're reaching too far into the White House,
2 I'm putting my foot down, obviously, that's something that the
3 president could do.

4 But this is not -- this apparently is not harming --
5 remember, what executive privilege is about is can the White
6 House function properly. It's not is Congress asking too many
7 questions. It's can the White House function properly, can the
8 president get the advice that he needs.

9 And not surprisingly, the current administration does not
10 think that Congress asking for polling data is going to harm the
11 operation of the presidency of the White House.

12 So we may be wasting some time. Maybe the committee is
13 wasting some time. Maybe we're wasting some of the Archivist's
14 time. I don't think we are. But even if we are, that's not in
15 this case. That's not a question here. That's something that
16 if Mr. Trump wants to raise with President Biden, he can do
17 that. But it's not a question here for this Court. It's not
18 what's being raised in this case.

19 What privilege would it be for President Trump to say, you
20 can't find out if I'm looking at polling data. I don't know
21 what privilege would cover that.

22 So again, if we're wasting the taxpayers' money, President
23 Trump can argue about that, but that's not the issue before this
24 Court today.

25 THE COURT: All right.

1 MR. LETTER: Just -- I'm sorry. Some of the
2 questions, some of the things in legislation that might come up,
3 things like, should there maybe be a hotline or ways for
4 Congress to be able so that there isn't that massive delay that
5 there was at the White House before requests were made for
6 National Guard troops to show up, should there be some standards
7 for when the D.C. National Guard is brought in.

8 And remember, here, there's a very key aspect to this,
9 because I'm sure that Mr. Clark there is saying, oh, oh, wait a
10 minute, that would interfere with the powers of the executive.
11 Remember, here, one of the things we're looking at is was the
12 president himself fomenting this attack on Congress.

13 THE COURT: Are we once again to what did the
14 president know and when did he know it?

15 MR. LETTER: I think we are, Your Honor. I think that
16 is absolutely central to this inquiry.

17 I think that that covers the main things that I wanted to
18 cover. Obviously, I'm happy to answer any other questions.
19 Really, the way I want to end is by saying that, you know, we
20 urge the Court to act with great dispatch. We totally
21 understand how much you have on your docket. We are very aware
22 that you have numerous criminal cases on your docket arising
23 from the riot. Every time I talk to your colleagues, they
24 remind me of how many cases they have.

25 THE COURT: We have a lot.

1 MR. LETTER: You do, and we're very well aware of
2 that. We deeply appreciated the fact that you set this hearing
3 so quickly.

4 But the committee also has essential work that we need
5 done, because we can't have this happen again, and that is
6 something that, fortunately, the Archivist and the current
7 president has insisted that the Archivist move fast.

8 And so as I say, we strongly request that you act with
9 dispatch here.

10 THE COURT: Thank you, Mr. Letter.

11 Mr. Clark?

12 MS. SHAPIRO: Your Honor, may I --

13 THE COURT: Ms. Shapiro?

14 MS. SHAPIRO: I'm sorry. I just wanted to respond to
15 a few points of Mr. Letter before Mr. Clark so he has the
16 opportunity to respond to both of us.

17 THE COURT: Okay. Briefly.

18 MS. SHAPIRO: So a few things that go to Your Honor's
19 concerns and, I think, are very important. Mr. Letter alluded
20 to one of them, and that's the accommodation process.

21 The current executive has the constitutional mandate to
22 engage in accommodations with the legislative branch, and that
23 has been going on. There have been, as spelled out in
24 Mr. Lassiter's declaration, there have been requests that have
25 been deferred because the executive branch went back to Congress

1 and said whatever it said to question whether those are
2 appropriately addressed at this time.

3 So there is that accommodation process, and the
4 accommodation process is typically how overbreadth issues get
5 resolved. And those discussions, I want to underscore, are
6 going on in this very case.

7 Relatedly, it is not the case that President Biden has
8 wholesale waived privilege. One, it hasn't been -- I wouldn't
9 call it a waiver. It's a decision not to assert or uphold
10 privilege.

11 THE COURT: I agree. That's an important distinction.

12 MS. SHAPIRO: And secondly, it hasn't been wholesale,
13 because there has been a careful review of the records, and
14 there has been some pushback and some accommodation, and there
15 have been records that the executive has gone back to NARA and
16 said these aren't relevant or they're not responsive. And those
17 things get worked out in the accommodation process.

18 And the declaration spells out that for decades that
19 informal process of dealing with the representatives from the
20 former president, the representatives of the incumbent, and
21 NARA, that that process has worked informally for decades
22 without an issue. And that pertains not only to the
23 accommodation process with respect to scope and breadth, but
24 also with respect to administrative burdens that the plaintiff
25 alluded to in their briefs.

1 There's another point that I wanted to make with respect to
2 Your Honor's question about polling data. We need to remember
3 the definitions in the Presidential Records Act itself. Section
4 2201(3)(c) defines materials related exclusively to the
5 president's own election to be personal records. So those would
6 not even be appropriate for production and -- because they would
7 be deemed non-records.

8 So there are decisions all the time that NARA will be
9 making with respect to what's a presidential record and what
10 might be strictly personal or strictly campaign-related or
11 otherwise not falling within the definition of presidential
12 records. That's all a part of the PRA process, the review, the
13 accommodation, and all of that is ongoing.

14 So I wanted to stress those points, Your Honor.

15 THE COURT: Thank you for the clarification,
16 Ms. Shapiro.

17 Mr. Clark?

18 MR. CLARK: Thank you, Your Honor.

19 THE COURT: And Mr. Clark, I hate to jump right in
20 here, and I meant to ask you about this when you started your
21 argument.

22 You make a rather startling assertion in your reply brief
23 on page 2, where you say, "Notwithstanding their allegations and
24 insinuations of conspiracy, investigations by the FBI and the
25 Senate Committee on Government Affairs and Homeland Security

1 rebut their contentions of wrongdoing by Trump administration
2 officials."

3 What's your basis for that assertion?

4 MR. CLARK: That's a public article from Reuters with
5 respect to the -- quoting the FBI. The citation is right in
6 there.

7 THE COURT: So you cite an article -- and by the way,
8 the article says the FBI has found scant evidence.

9 But I mean, the fact that something -- that's the only
10 support for that statement?

11 MR. CLARK: The support's in the brief, Your Honor.

12 I think the bigger point here, though, is that, you know,
13 there's no limiting principle to these questions, and finding an
14 answer to that question may or may not be in Congress's purview.

15 And that's not what my point here is. My point is, the
16 lack of the limiting principle on what they're asking for and
17 the lack of any balancing between a former president's assertion
18 of privilege and the current administration is really
19 revolutionary and breathtaking.

20 You asked me earlier with respect to where in *GSA v. Nixon*
21 we could point to that the former president had a right to
22 assert privilege. They're very clear on pages 448 to 449, and
23 we cite it in our reply brief at page 21, that the privilege
24 survives the president's tenure.

25 THE COURT: Absolutely. I don't disagree with you,

1 and the case is pretty clear on that. But is his right to
2 assert the privilege the same as a sitting president?

3 The current president has decided -- has declined, as
4 Ms. Shapiro says, has declined to assert privilege. What
5 principle do I apply here when a former president says wait, but
6 I want to assert it?

7 They're not equal. I mean, there's not a single case that
8 says a former president has -- you know, his assertion or her
9 assertion -- all of the former presidents were his, but his
10 assertion trumps the current executive. What principle do I
11 apply?

12 MR. CLARK: I think you have to apply the principles
13 in *Nixon* and *GSA* with respect to where we are with the PRA,
14 which does give a former president rights to --

15 THE COURT: I'm not sure if that case is as helpful to
16 you as you think it is, Mr. Clark.

17 MR. CLARK: Okay. I mean, I would say that the way
18 that NARA currently reads the statute and applies it doesn't
19 balance anything. All it does is just give a final say to the
20 executive, period, full stop. And that reading is inconsistent
21 with what's in *GSA v. Nixon* and, frankly, what's in the text of
22 the statute.

23 THE COURT: Wasn't the PRA enacted after *Nixon v. GSA*,
24 *GSA v. Nixon* was decided, and wasn't there a response to that
25 case? And it's been signed off on by several administrations

1 since, and there was never an objection from your client's
2 administration about that act.

3 MR. CLARK: Well, right, because it certainly didn't
4 overturn *Nixon v. GSA* or in any way take away the value of a
5 former president's ability to object to documents with respect
6 to privilege.

7 So there isn't a need to have objected to it, because the
8 rights that exist in *Nixon* and *GSA* and are codified in the PRA,
9 quite frankly, give the former president a right to balance it.
10 This Court needs to make that balancing test for them. I mean,
11 that's what this is.

12 I would just like to address one more thing, Your Honor,
13 and it's a little bit off the beaten path of what we discussed.

14 I agree that the executive privilege rights are broader and
15 probably stronger than an attorney-client privilege, but there's
16 one really key distinction here. With a private attorney, the
17 current administration holds no rights to waiving or not waiving
18 attorney-client privilege with respect to a private attorney for
19 a former president. I just want to make sure that we all have
20 an understanding of that distinction.

21 THE COURT: And are you claiming that there are
22 documents that are subject to production that involve
23 communications with the former president and his private
24 attorney?

25 MR. CLARK: In a few of the document requests, there

1 are. They're not in the identified documents right now, but I
2 just wanted to make sure that if the requests are read broadly,
3 there are communications that could be produced that were
4 private between a private attorney and his client, and that
5 right isn't -- there's no right to the current administration to
6 waive attorney-client privilege with respect to those documents.

7 THE COURT: All right.

8 MR. CLARK: That's all, Your Honor. Thank you.

9 THE COURT: Thank you very much. Thank you to the
10 parties.

11 I know this case was put on a very short timeline because
12 of the deadline that we have of November 12th. Everyone has
13 worked really hard to complete their briefings and submit their
14 materials on a very, very short deadline, and I appreciate the
15 work that's gone in and the preparation for the argument today.

16 I will issue my opinion and ruling expeditiously. Thank
17 you very much.

18 (Proceedings adjourned at 12:44 p.m.)
19
20
21
22
23
24
25

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Sara A. Wick, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Please Note: This hearing occurred during the COVID-19 pandemic and is, therefore, subject to the technological limitations of court reporting remotely.

/s/ Sara A. Wick

November 4, 2021

SIGNATURE OF COURT REPORTER

DATE

DONALD J. TRUMP,

V.

BENNIE G. THOMPSON, *in his official capacity as Chairman of the United States House Select Committee to Investigate the January 6th Attack on the United States Capitol, et al.,*

ORDER

I. BACKGROUND¹

¹ This court provided the factual background of the January 6 attack and the events leading to the creation of the Select Committee in its Memorandum Opinion denying Plaintiff's Motion for a Preliminary Injunction. *See Trump v. Thompson*, No. 21-2769, 2021 WL 5218398, at *1-3 (D.D.C. Nov. 9, 2021).

information obtained via the requests, and (3) an injunction preventing the Archivist and NARA from producing the requested records. *See* ECF No. 1, at 25-26. The next day, Plaintiff moved for a preliminary injunction “prohibiting Defendants from enforcing or complying with the Committee’s request.” ECF No. 5, Pl. Mot. at 3. At the parties’ request, the court set an accelerated briefing schedule and heard argument on the motion on November 4, 2021. *See* Min. Order (Oct. 22, 2021).

On November 8, Plaintiff filed what appeared to be a preemptive emergency motion requesting an injunction pending appeal, or an administrative injunction, “should the court refuse” to grant his requested relief. ECF No. 34, at 1. The court denied Plaintiff’s emergency motion without prejudice as premature and stated that it would consider such a motion from the non-prevailing party after it issued its ruling. *See* Min. Order (Nov. 9, 2021) (citing Fed. R. Civ. P. 62(d)).

On November 10, 2021, the court denied Plaintiff’s original motion for preliminary injunction. In so doing, it denied Plaintiff’s request to enjoin Defendants from enforcing or complying with the Select Committee’s August 25, 2021, requests. *See Trump v. Thompson*, 2021 WL 5218398, at *1. On November 11, Plaintiff filed a “renewed” Emergency Motion for Preliminary Injunction Pending Appeal or Administrative Injunction. ECF No. 34, Pl. Renewed Mot. Both the Congressional and NARA Defendants oppose the motion.

II. ANALYSIS

Plaintiff’s motion is a renewed request for injunctive relief and not a request for a stay. Federal Rule of Civil Procedure 62 allows for the court to stay the effects of an interlocutory order or final judgment for a period of time to allow time for the non-prevailing party to pursue

an appeal. *See Nat'l Treas. Emps. Union v. Federal Labor Relations Auth.*, 712 F.2d 669, 671 (D.C. Cir. 1983) (“[S]tays, of course, do not impede appeals from the stayed dispositive order; their sole purpose is to preserve the status quo while an appeal is in the offing or in progress.”). Injunctive relief, by contrast, is more concerned with the prevention of irreparable harm. *See, e.g., Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008) (“Our frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction.”) (emphasis in original).

Plaintiff characterizes his motion as a Rule 62 motion “seeking . . . to preserve the status quo.” Pl. Renewed Mot. at 1. However, it is clear from the caption and the substance of Plaintiff’s arguments that he again seeks injunctive relief, rather than a stay of this court’s November 9 order. A stay would not give Plaintiff the relief he seeks—preventing the transmission of documents from NARA to the House Select Committee—as the status quo in this case is that NARA will disclose documents on November 12, “absent any intervening court order.” Pl. Mot., Ex. 7. Accordingly, the court will analyze Plaintiff’s motion as one seeking injunctive relief, rather than a stay.²

A. Preliminary Injunction Pending Appeal

A motion for a preliminary injunction pending appeal requires the same four elements necessary for a preliminary injunction: (1) a likelihood of success on the merits, (2) the likely prospect of irreparable harm in the absence of preliminary relief, (3) that the balance of equities

² The standard for a preliminary injunction and a stay are similar, but the standard for a stay replaces the balance of equities factor with a requirement that “other parties interested in the proceedings” will not be “substantially injure[d].” *Compare Winter*, 555 U.S. at 20 (preliminary injunction standard), with *Hilton v. Braunskill*, 481 U.S. 770, 776-77 (1987) (stay standard).

tip in movant's favor, and (4) that an injunction is in the public interest. *John Doe Co. v. Consumer Fin. Prot. Bureau*, 849 F.3d 1129, 1131 (D.C. Cir. 2017) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). This court analyzed these factors at length in its Opinion denying Plaintiff's original motion for a preliminary injunction, and found that none justified injunctive relief. *See Trump v. Thompson*, 2021 WL 5218398, at *12-39. In his renewed motion, despite the fact that he requests essentially the same relief as in his original preliminary injunction motion, Plaintiff has not advanced any new facts or arguments that persuade the court to reconsider its November 9, 2021, Order. The court's analysis previously rejecting Plaintiff's requested relief is thus equally applicable here: Plaintiff is unlikely to succeed on the merits of his claims or suffer irreparable harm, and a balance of the equities and public interest bear against granting his requested relief. *Id.*

Nor is Plaintiff entitled to injunctive relief under the "serious legal question" doctrine. That doctrine, which Plaintiff contends is a "more flexible" standard, weighs in favor of granting an injunction pending appeal, even when the likelihood of success on the merits is low, if the remaining three preliminary injunction factors "tip sharply in the movant's favor." *In re Special Proceedings*, 840 F. Supp. 370, 372 (D.D.C. 2012) (citing *Wash. Metro. Area Transit Comm'n v. Holiday Tours*, 559 F.2d 841, 844 (D.C. Cir. 1977)).³ Moreover, when the relief sought is an

³ Courts in this Circuit have applied a "sliding scale" to analyze the four preliminary injunction factors—a particularly strong showing in one factor could outweigh weakness in another. *Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011). While it is unclear if that approach and its import for the "serious legal question" doctrine have survived the Supreme Court's decision in *Winter*, its use is still applicable here. *See, e.g., Banks v. Booth*, 459 F. Supp. 3d 143, 149-50 (D.D.C. 2020) (citing *Sherley*, 644 F.3d at 393); *see also Davis v. Billington*, 76 F. Supp. 3d 59, 63 n.5 (D.D.C. 2014) ("[T]he Circuit has had no occasion to decide this question . . . [t]hus, because it remains the law of this Circuit, the Court must employ the sliding-scale analysis here.").

injunction on the coordinate branches of government—in this case, the legislative and executive branches, who are united in their desire to have the records produced—it is even more important that the three remaining factors outweigh the lack of likelihood of success on the merits. *See Sampson v. Murray*, 415 U.S. 61, 83-84 (1974).

The court has already found that Plaintiff is unlikely to succeed on the merits in this case, and the three remaining preliminary injunction factors do not “tip sharply” in his favor. To the contrary, those factors counsel against injunctive relief. *See Trump v. Thompson*, 2021 WL 5218398, at *36-39. Plaintiff cannot do an end run around the preliminary injunction factors simply because he seeks appellate review. Rather, the court maintains “a considerable reluctance in granting an injunction pending appeal when to do so, in effect, is to give the appellant the ultimate relief being sought.” 11 Wright & Miller, Fed. Prac. & Proc. Civ., § 2904 (3d ed. 2021). Were the court to grant Plaintiff’s motion, the effect would be “to give [Plaintiff] the fruits of victory whether or not the appeal has merit.” *See, e.g., Jimenez v. Barber*, 252 F.2d 550 (9th Cir. 1958). Plaintiff is not entitled to injunctive relief simply because the procedural posture of this case has shifted.

B. Administrative Injunction

Plaintiff also seeks an administrative injunction per the *All Writs Act*, 28 U.S.C. § 1651, which allows federal courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” The Act, however, is not an independent jurisdictional grant for federal courts to issue extraordinary writs—it is confined to the issuance of writs in aid of the issuing court’s jurisdiction. *In re Tennant*, 359 F.3d 523, 527 (D.C. Cir. 2004) (quoting *Clinton v. Goldsmith*, 52 U.S. 529, 534-35 (1999)). Plaintiff alleges

that such a writ is necessary, lest “the issues at hand [be] mooted.”⁴ Pl. Renewed Mot. at 5. But while November 12 draws near, this court’s jurisdiction is not imperiled. Plaintiff has already filed a notice of appeal with the Court of Appeals for the D.C. Circuit. *See* Notice of Appeal to the DC Circuit Court, ECF No. 37. He is therefore free to petition that Court for relief. Because there is no threat to the ongoing jurisdiction of this court, there is no need to issue a writ pursuant to the Act.

III. CONCLUSION

Plaintiff, as is his right, has sought review of this court’s denial of his Motion for a Preliminary Injunction. And the court is aware that the timeline for appellate review of that decision will be accelerated. But nothing in the court’s November 9, 2021, Order, or this Order, triggers the harm he alleges because the Archivist will not submit the requested records to the Select Committee until November 12, 2021, and Plaintiff can seek appellate relief in the interim. This court will not effectively ignore its own reasoning in denying injunctive relief in the first place to grant injunctive relief now.

For the above reasons, Plaintiff’s Emergency Motion for Preliminary Injunction Pending Appeal or Administrative Injunction, ECF No. 38, is DENIED.

Date: November 10, 2021

Tanya S. Chutkan

TANYA S. CHUTKAN
United States District Judge

⁴ An Article III court loses jurisdiction when an issue is moot. *See, e.g., DeFunis v. Odegaard*, 416 U.S. 312, 319-320 (1974).

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed with the Clerk of the Court using the Court's CM/ECF system, which will send a copy to all counsel of record.

Dated: November 16, 2021

Respectfully submitted,

/s/ Jesse R. Binnall

Jesse R. Binnall (VA022)

BINNALL LAW GROUP, PLLC

717 King Street, Suite 200

Alexandria, VA 22314

Tel: (703) 888-1943

Fax: (703) 888-1930

jesse@binnall.com

Attorney for Donald J. Trump