

SEALED

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO: 22-CV-81294-AMC

DONALD J. TRUMP,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

UNDER SEAL AND EX PARTE

(PRIVILEGE REVIEW TEAM)

FILED BY <u>PCS</u> D.C.
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**NOTICE OF STATUS OF PRIVILEGE
REVIEW TEAM'S FILTER PROCESS AND PRODUCTION OF ITEMIZED
LIST OF DOCUMENTS WITHIN PRIVILEGE REVIEW TEAM'S CUSTODY**

On August 27, 2022, the Court ordered the United States to file under seal a “more detailed Receipt of Property specifying all property seized pursuant to the search warrant executed on August 8, 2022.” (Docket Entry (DE):29 at 2). The Court further ordered the United States to provide a “particularized notice indicating the status of the [United States’] review of the seized property, including any filter review conducted by the privilege review team and any dissemination of materials beyond the privilege review team.” (*Id.*) The United States’ Privilege Review Team, through the undersigned attorneys, files this Notice pursuant to the Court’s Preliminary Order (DE:29).¹

¹ Pursuant to the Court’s Preliminary Order (DE:29 at 2), this Notice, Exhibit A, and Exhibit B are filed under seal. In an abundance of caution, the Privilege Review Team has also filed this Notice *ex parte* because the Notice contains some details that are not normally shared with the owner of a searched premises. And finally, because this Notice and Exhibits discuss potentially attorney-client privileged materials, the Notice and Exhibits have been marked “Privilege Review Team” to maintain a clear delineation between the Privilege Review Team and Case Team and prevent inadvertent exposure.

As described below, the Privilege Review Team followed specified search procedures and filter protocols while executing the warrant to search certain locations within 1100 S. Ocean Boulevard (the “premises”) and subsequently during the review of evidence seized during that search.² As a result of that process, the Privilege Review Team identified 64 sets of materials (consisting of approximately 520 pages) warranting further consideration. The Privilege Review Team separated those materials into two groups (identified in the attached Exhibit A and Exhibit B). As of the filing of this Notice, the Privilege Review Team has completed its review of the materials currently within its custody and control and awaits further direction from the Court. As part of this Notice, the Privilege Review Team outlines a potential course of action for resolving issues related to the potentially privileged documents identified in Exhibits A and B.

The Filter Process During the Execution of the Search Warrant

In seeking the warrant to search certain locations within the premises, the United States represented that it would follow certain procedures to segregate from the Case Team materials *potentially* containing attorney-client privileged information and documents *potentially* protected under the attorney work product doctrine (hereinafter collectively “potentially privileged” documents or materials). *See* Affidavit ¶¶ 81-84. Prior to commencing the search, the Case Team provided the Privilege Review Team with a list of 35 attorneys, including Evan Corcoran and his firm, Silverman, Thompson, Slukin & White. The Case Team instructed the Privilege Review Team agents how to conduct their review during the search. They directed the Privilege Review Team agents to mark documents reflecting, containing, or otherwise describing communications with, or between any of the named attorneys, any individuals identified during the search who

² *See In re Sealed Search Warrant*, 9:22-MJ-8332-BER, DE:102-1 ¶¶ 81-84 (S.D. Fla.) (the “Affidavit”). Capitalized terms used herein have the same meaning as identical terms in the Affidavit.

appeared to be attorneys, and their respective staff (*e.g.*, paralegals). They further directed the Privilege Review Team agents to clearly mark, seal, and segregate those potentially privileged materials from the Case Team. If potentially privileged materials were comingled in a container (*e.g.*, a box) with non-privileged materials responsive to Attachment B of the warrant, the Privilege Review Team agents were instructed to clearly mark the entire container as potentially privileged for further review. Additionally, undersigned counsel, as the attorneys assigned to the Privilege Review Team, instructed the Privilege Review Team agents that any photographs taken by the FBI's Evidence Response Team could potentially capture privileged materials, and therefore, the Privilege Review Team should review the SD cards containing the photographs before releasing them to the Case Team.³ If questions arose about a particular item during the search, the Privilege Review Team agents were instructed to contact the Privilege Review Team attorneys.

Pursuant to the filter protocol and search procedures set forth in the Affidavit, the Privilege Review Team agents were responsible for searching the "45 Office" and "conduct[ing] a review of the seized materials from the '45 Office' to identify and segregate documents or data containing potentially attorney-client privileged information." Affidavit ¶¶ 81-82. Additionally, the Privilege Review Team agents were to be "available to assist in the event that a procedure involving potentially attorney-client privileged information [was] required." *Id.* ¶ 81. At the time of the search on August 8, 2022, the Case Team elected to have the Privilege Review Team agents conduct an initial search and review of the Storage Room (as well as the 45 Office, as described in the Affidavit) to identify and segregate potentially privileged documents from the Case Team.

³ Both Privilege Review Team agents and undersigned counsel reviewed the images and verified no potentially privileged documents were captured in the photographs before those photographs were released to the Case Team.

During the search, the Privilege Review Team agents took a broad view of potentially privileged information, to include any documents to, from, or even referencing an attorney (regardless of whether the document appeared to capture communications to or from an attorney for the purpose of seeking legal advice and regardless of who the attorney represented).⁴ The Privilege Review Team agents also treated any legal document as potentially privileged. These materials were sealed, segregated, and identified as potentially privileged without regard to the substance or confidentiality of the communication.⁵

By the conclusion of the search, the Privilege Review Team agents had marked and sealed six boxes of evidence as potentially privileged—one box containing the entire contents of a single drawer in the 45 Office in which non-privileged, responsive materials had been located and five boxes from the Storage Room containing potentially privileged documents comingled with non-privileged, responsive materials. The Privilege Review Team agents in Florida maintained sole

⁴ That is, of course, significantly broader than the scope of the attorney-client privilege and work product doctrine. As the Court is no doubt aware, a claim of attorney-client privilege requires proof of the following elements: (1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is the member of a bar of a court, or his subordinate and (b) in connection with this communication acting as a lawyer; (3) the communication relates to a fact which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client. *In re Grand Jury Proceedings* 88-9 (MIA), 899 F.2d 1039, 1042 (11th Cir. 1990), citing *United States v. Jones*, 517 F.2d 666 (5th Cir. 1975). The Privilege Review Team agents focused on identifying and segregating documents that captured or even implied communications to or from attorneys, intending to leave legal analysis of the documents to the Privilege Review Team attorneys, pursuant to paragraph 84 of the Affidavit.

⁵ For example, the Privilege Review Team agents identified and segregated a printed email exchange between the U.S. Air Force Academy's head baseball coach and the White House, because "Pat C" (perhaps a reference to White House Counsel Pat Cipollone) was written on the document in black marker (Item Number 4 in Exhibit A at FILTER-A-005).

custody and continuous control of the six boxes of evidence containing potentially privileged materials until those boxes were transferred to Privilege Review Team agents assigned to FBI's Washington Field Office (WFO) on August 9, 2022.

Continuation of the Filter Process at the Washington Field Office

At the Washington Field Office, the six sealed boxes containing potentially privileged materials remained segregated from the Case Team in a secure room to which the Case Team did not (and does not) have access. An additional seventh box was transferred to the custody and control of the Privilege Review Team agents on August 10, 2022, after a Case Team agent observed a document on Morgan Lewis letterhead comingled with newspapers.⁶ Consistent with the filter protocols set forth in the Affidavit,⁷ the Case Team stopped its review of that entire box and provided it to the Privilege Review Team agents to conduct a review to identify and segregate potentially privileged materials.

By August 11, 2022, the Privilege Review Team agents had completed their review of the contents of the seven containers of evidence containing potentially privileged materials (*i.e.*, the five boxes from the Storage Room, the one box containing the contents of the 45 Office desk drawer, and the seventh box the Case Team provided to the Privilege Review Team for review shortly after the search) at the Washington Field Office. During this further review, and consistent

⁶ That document is Item Number 3 in Exhibit B (FILTER-B-065 to FILTER-B-068). Also contained within the seventh box were Item Numbers 1 to 4 in Exhibit A (FILTER-A-001 to FILTER-A-005), which the Privilege Review Team agents identified as potentially privileged after receiving custody and control of the box.

⁷ Pursuant to the search procedures set forth in the Affidavit, “[i]f at any point the law-enforcement personnel assigned to the investigation subsequently identify any data or documents that they consider may be potentially attorney-client privileged, they will cease the review of such identified data or documents and refer the materials to the Privilege Review Team for further review by the Privilege Review Team.” Affidavit ¶ 83.

with paragraph 83 of the Affidavit, the Privilege Review Team agents reviewed each box's contents and separated any potentially privileged materials from the balance of the documents that were not privileged and conveyed the non-privileged documents to the Case Team. The Privilege Review Team agents continued to maintain custody and control of the potentially privileged materials in the secure room described above.

Undersigned counsel completed our review of the potentially privileged materials identified by the Privilege Review Team agents on August 23, 2022. As part of that review, the Privilege Review Team created a complete inventory of the potentially privileged documents and divided those materials into two groups (described in more detail below and in Exhibits A and B to this filing). Although most of the materials do not appear to be even potentially privileged, consistent with the procedures set forth in paragraph 84 of the Affidavit, the Privilege Review Team has not released any of these materials to the Case Team.

On August 25, 2022, an attorney on the Case Team provided the Privilege Review Team attorneys with a 39-page set of materials that appears to reflect the former President's calls. (The majority of pages are titled "The President's Calls" and include the Presidential Seal.) Specifically, the document contains handwritten names, numbers, and notes that primarily appear to be messages, as well as several pages of miscellaneous notes. (This document is identified as Item Number 21 in Exhibit A.) After the Case Team attorney observed notes next to names, the attorney stopped reviewing the set of materials and asked the Privilege Review Team attorneys to review it. The Privilege Review Team attorneys reviewed this set of materials and added it to the group of potentially privileged materials identified in Exhibit A.⁸ The Privilege Review Team

⁸ This set of materials was not previously identified as potentially privileged by the Privilege Review Team agents.

attorneys further directed the Privilege Review Team agents to segregate the set of materials from the Case Team and to maintain custody and control of it in the secure room described above.

As of the date of this pleading, no materials identified by the Privilege Review Team agents as containing potentially privileged information have been provided to the Case Team. It is the Privilege Review Team's understanding that the Case Team has finished a preliminary review of the documents seized during the search that are within the Case Team's possession (i.e., materials not identified as potentially privileged). The Case Team has not referred any additional materials to the Privilege Review Team for review since August 25, 2022. To the extent the Case Team refers any additional materials to the Privilege Review Team pursuant to the filter protocols, undersigned counsel will update the Court.

Proposed Next Steps

As described above, the Privilege Review Team has completed its review of the materials currently within its custody and control and awaits further direction from the Court. Below, the Privilege Review Team outlines a potential course of action for resolving issues related to the potentially privileged documents identified in Exhibits A and B.

Attorneys assigned to the Privilege Review Team, including undersigned counsel, have determined that the 21 sets of materials identified in Exhibit A (FILTER-A-001 to FILTER-A-138) are primarily government records, public documents, and communications to or from third parties. As such, virtually none of those materials appears to be privileged attorney-client communications or protected under the attorney work product doctrine. There are two closer calls, which involve communications to a White House government e-mail account (implicating waiver) (Item 18 at FILTER-A-061 to FILTER-A-064) and a brief message from a possible attorney ("Rudy") that does not appear, on its face, to be related to legal advice (Item 21 at FILTER-A-

133). Before disclosing the materials identified in Exhibit A to the Case Team, however, and consistent with the search procedures described in the Affidavit⁹ the Privilege Review Team is prepared to disclose a Bates-stamped copy of the Exhibit A materials to Plaintiff's counsel, so that Plaintiff and his attorneys may review the materials and, if appropriate, assert the attorney-client privilege through a particularized privilege log that identifies the control numbers of the materials and the basis for asserting they are privileged. If any such documents are identified, consistent with the local rules and paragraph 84(c) of the Affidavit, the Privilege Review Team would attempt to resolve the issue through consultation with Plaintiff's counsel. If unable to reach an agreement, the Privilege Review Team would submit the documents at issue under seal to the Court.¹⁰

⁹ Under the procedures set forth in the Affidavit:

If the Privilege Review Team determines that documents are potentially attorney-client privileged or merit further consideration in that regard, a Privilege Review Team attorney may do any of the following: (a) apply *ex parte* to the court for a determination whether or not the documents contain attorney-client privileged material; (b) defer seeking court intervention and continue to keep the documents inaccessible to law-enforcement personnel assigned to the investigation; or (c) disclose the documents to the potential privilege holder, request the privilege holder to state whether the potential privilege holder asserts attorney-client privilege as to any documents, including requesting a particularized privilege log, and seek a ruling from the court regarding any attorney-client privilege claims as to which the Privilege Review Team and the privilege-holder cannot reach agreement.

(*Id.* ¶ 84.)

¹⁰ Before Plaintiff's Motion and the Court's Preliminary Order, the United States would have submitted any privilege dispute to the Magistrate Court that authorized the warrant and received the return. However, the Privilege Review Team now seeks direction from this Court on where to file materials related to any privilege dispute the parties are unable to resolve between themselves.

As to the documents described in Exhibit B (FILTER-B-001 to FILTER-B-383), the Privilege Review Team proposes to return the originals and provide a Bates-stamped control copy to the Plaintiff. Many of these materials do not appear to be privileged (although one appears to be¹¹), but they are all either legal in nature (*e.g.*, settlement, non-disclosure, and retainer agreements) or otherwise potentially sensitive, and they do not appear to be themselves government or Presidential Records or classified documents. In light of this pending litigation related to the search of the premises and the filter protocol and search procedures, the Privilege Review Team proposes to maintain and continue to segregate from the Case Team a stamped control copy of the Exhibit B materials until conclusion of any litigation over the conduct of the search or otherwise ordered by the Court. *See* Fed. R. Crim. P. 41(g) (permitting a court to impose reasonable conditions to protect access to returned property and its use in later proceedings).

Conclusion

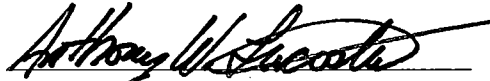
In sum, the Privilege Review Team has completed review of materials identified as potentially privileged during the search and during the Case Team's review of the evidence in its

¹¹ Specifically, Item Number 33 at FILTER-B-351 appears to be privileged.

possession,¹² has segregated those materials from the Case Team, and awaits further direction from this Court on how to proceed with the documents identified in Exhibits A and B.

Respectfully submitted,

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¹² While review of all potentially privileged materials is complete, the Privilege Review Team remains available to segregate and review any additional materials identified consistent with the filter protocols set forth in paragraph 84 of the Affidavit.

EXHIBIT A**FILED UNDER SEAL AND *EX PARTE*
(PRIVILEGE REVIEW TEAM)**

Item No.	Description	Bates Range
01	Draft 2019 immigration initiative	FILTER-A-001
02	Congressional clemency request for "RN"	FILTER-A-002 to FILTER-A-003
03	Senate clemency request for "RN"	FILTER-A-004
04	Printed email between Head Baseball Coach at U.S. Air Force Academy and White House	FILTER-A-005
05	Unsigned letter from Kasowitz Benson & Torres to Robert Mueller dated 6/23/2017	FILTER-A-006 to FILTER-A-016
06	Document titled "Executive Action to Curb Illegal Immigration and Move Towards Merit-Based Entry" (2 copies)	FILTER-A-017 to FILTER-A-018
07	Printed email between White House and National Security Council regarding John Walker Lindh's release	FILTER-A-019 to FILTER-A-020
08	Letter to President regarding Ted Suhl clemency and Ted Suhl commutation internal analysis (2 copies)	FILTER-A-021 to FILTER-A-028
09	Publicly filed letter to judge regarding Rod Blagojevich clemency	FILTER-A-029 to FILTER-A-030
10	Rod Blagojevich commutation internal analysis (2 copies)	FILTER-A-030 to FILTER-A-032
11	Publicly filed letter to Congress regarding Rod Blagojevich clemency	FILTER-A-033
12	Internal pardon package for "IR" and "JC"	FILTER-A-034 to FILTER-A-040
13	Internal pardon package for "MB"	FILTER-A-041 to FILTER-A-052
14	Printed email from Charles Harder to New York Times	FILTER-A-053
15	Document titled "Meeting Requests for Your Approval"; post-it note "For POTUS Review"	FILTER-A-054
16	Document titled "Molly's Questions for POTUS Approval"	FILTER-A-055
17	Printed email dated 12/31/2020 from Kurt Hilbert to White House email account regarding signed verifications for Fulton County lawsuit and federal complaint and three verifications	FILTER-A-056 to FILTER-A-060
18	Printed email dated 12/31/2020 from Kurt Hilbert to White House email account sharing 10 files regarding federal lawsuit	FILTER-A-061 to FILTER-A-064
19	Contents of red folder marked "NARA letters & other copies"	Filter-A-065 to FILTER-A-091
20	Contents of manila folder marked "NARA letters one top sheet + 3 signing sheets"	FILTER-A-092 to FILTER-A-098
21	35 pages, each titled "The President's Calls" with the Presidential Seal in the upper left corner, containing handwritten names, numbers, and	FILTER-A-099 to FILTER-A-137

**FILED UNDER SEAL AND *EX PARTE*
(PRIVILEGE REVIEW TEAM)**

	notes that primarily appear to be messages (including "Message from Rudy . . ."); four blank pages with miscellaneous handwritten notes	
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EXHIBIT B**FILED UNDER SEAL AND *EX PARTE*
(PRIVILEGE REVIEW TEAM)**

Item No.	Description	Bates Range
01	Medical letter from Dr. Harold N. Bornstein dated 9/13/2016	FILTER-B-001
02	Summons and Complaint with attached exhibits in Trump for President v. Northland Television	FILTER-B-002 to FILTER-B-064
03	Letter from Morgan Lewis regarding taxes (4 copies)	FILTER-B-065 to FILTER-B-068
04	Pat Cipollone business card with "LIC Sat Night Live" written on it; post-it note "Joe Digernova Appoint Special Council [sic]"	FILTER-B-069
05	Signed letter from Trump campaign legal advisor to Biden campaign copying Facebook & Twitter CEOs	FILTER-B-070 to FILTER-B-075
06	Letter from Morgan Lewis regarding taxes (duplicate of Item No. 03)	FILTER-B-076
07	Last page of letter signed by Philip Ruffin	FILTER-B-077
08	First page of letter from Balch & Bingham to Kurt Hilbert; post-it note "from Cleta Mitchel"	FILTER-B-078
09	Envelope containing Blue Cross Blue Shield Explanation of Benefits for "WG"; post it note "Molly-Talk to Aronwald"	FILTER-B-079
10	Yellow folder marked "TMG" containing execution copy of "Restrictive Covenant Agreement" signed by Donald J. Trump	FILTER-B-080 to FILTER-B-093
11	Red folder marked "Galicia" containing document titled "Bronx Mediation Program's Agreement to Mediate" signed by Donald J. Trump	FILTER-B-094
12	Invoice for legal fees from Stein Mitchell Beato & Missner; post-it notes "said you agreed to pay this bill? Work prior to his becoming WH counsel" "No"	FILTER-B-095
13	Manila folder marked "accountants" containing signed letter from BKM accounting firm regarding retention	FILTER-B-096 to FILTER-B-104
14	Trump Media Group Board "Resolution for Appointment of Company Secretary" and "Joint Written Consent of Board of Directors" and Trump Media Corp letter of employment	FILTER-B-105 to FILTER-B-122

FILED UNDER SEAL AND *EX PARTE*
(PRIVILEGE REVIEW TEAM)

	to Philip Juhan; pages from agreement involving Trump Media Group	
15	Confidential settlement agreement between PGA & Trump Golf signed by Donald J. Trump	FILTER-B-123 to FILTER-B-128
16	Manila envelope marked "UBS" containing signed power of attorney	FILTER-B-129 to FILTER-B-141
17	Manila envelope marked "NYC 8/10" containing IRS Form 872	FILTER-B-142 to FILTER-B-156
18	Manila envelope containing IRS Form 872 (copies)	FILTER-B-157 to FILTER-B-165
19	Civil complaint in Trump v. Kemp & Raffensperger (N.D. Ga)	FILTER-B-166 to FILTER-B-197
20	Consent to substitute counsel for Habba, Madaio & Associates and retainer agreement with Habba	FILTER-B-198 to FILTER-B-209
21	Red folder containing retainer agreements related to campaign and Fulton County lawsuit	FILTER-B-210 to FILTER-B-231
22	Invoices for Habba legal fees	FILTER-B-232 to FILTER-B-238
23	Filed summons to Mary L. Trump and complaint in Donald J. Trump v. Mary L. Trump	FILTER-B-239 to FILTER-B-265
24	Folder marked "Harder" containing signed settlement agreement	FILTER-B-265 to FILTER-B-269
25	Manila Folder marked "Serio Contract" containing contract with CIC Ventures and Gold Ventures	FILTER-B-270 to FILTER-B-293
26	CIC Ventures signed written consent	FILTER-B-294
27	Manila folder marked "Molly 2018 IRS Tax Audit" containing IRS Form 2848	FILTER-B-295 to FILTER-B-298
28	"Trump" folder containing filed substitution of counsel in E. Jean Carroll vs. Trump	FILTER-B-299 to FILTER-B-300
29	FEC designation of counsel	FILTER-B-301
30	Folder marked "news article" containing "Event Appearance and Commentating Services Agreement"	FILTER-B-302 to FILTER-B-319
31	Red Folder containing endorsement request for state official and email accepting Trump's resignation from SAG	FILTER-B-320 to FILTER-B-323
32	Folder containing nondisclosure agreement and contract agreement regarding Save	FILTER-B-324 to FILTER-B-350

FILED UNDER SEAL AND *EX PARTE*
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	America and service agreement regarding United Atlantic Ventures	
33	Letter from Charles Harder regarding "AJ" allegations (from Manila folder marked "Legal")	FILTER-B-351 to FILTER-B-351
34	Signed tax return disclosure consent form (from Manila folder marked "Legal")	FILTER-B-352
35	Dave Wolfe fee agreement (from Manila folder marked "Legal")	FILTER-B-353 to FILTER-B-355
36	Draft non-disclosure agreement with handwritten notes (from Manila folder marked "Legal")	FILTER-B-356 to FILTER-B-358
37	Meadows Collier terms of representation and fee arrangement (from Manila folder marked "Legal")	FILTER-B-359 to FILTER-B-370
38	Legal services engagement agreement with Veen, O'Neill, Hartshorn, Levin regarding DC and Fulton County (from Manila folder marked "Legal")	FILTER-B-371 to FILTER-B-372
39	Signed letter to transfer files regarding estate planning (from Manila folder marked "Legal")	FILTER-B-373
40	Stipulation for counsel in Jane Doe, Luke Doe, Richard Roe, Mary Moe v. Trump; post-it note "signed give to Molly" (from Manila folder marked "Legal")	FILTER-B-374 to FILTER-B-375
42	Signed escrow agreement (from Manila folder marked "Legal")	FILTER-B-376 to FILTER-B-381
43	Consent order for substitution of counsel in E. Jean Carrol vs. Trump (from Manila folder marked "Legal")	FILTER-B-382 to FILTER-B-383