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VIA EMAIL

Chairman Mike Turner
House Permanent Selection Committee on Intelligence
United States Capitol
HVC-304
Washington, DC 20515

Dear Chairman Turner:

We represent President Trump and are writing to provide information regarding the probe by the Department of Justice ("DOJ") into the post-Presidency handling of classified documents. We understand that DOJ is making the documents marked classified available for your review, and this letter provides the Committee with information that we suspect DOJ has not disclosed to it.

It has become abundantly clear through this investigation that the institutional practice and procedures within the White House for the handling of classified materials drastically differ from the long-established standard operating procedures employed by various agencies of the intelligence community as well as the U.S. military. As demonstrated by the discovery of documents with classification markings[1] in the homes of President Trump, President Biden, and Vice President Pence, deficient document handling and storage procedures are not limited to any individual, administration, or political party. A legislative solution by Congress is required to prevent the DOJ from continuing to conduct ham-handed criminal investigations of matters that are inherently not criminal.

[1] The purpose of this letter is not to opine about whether these documents are actually classified or have been declassified, but still retain their classification markings. Despite our requests to DOJ, it has refused to tell us whether in its judgment any of the documents remain classified. Similarly, DOJ has refused to allow for inspection of the documents at any time during the last eight months despite the fact that one of our attorneys has sufficient clearance to view the majority of the documents marked as classified.

Factual Background

When President Trump left office, there was little time to prepare for the outgoing transition from the presidency. Unlike his three predecessors, each of whom had over four years to prepare for their departure upon completion of their second term, President Trump had a much shorter time to wind up his administration. White House staffers and General Service Administration ("GSA") employees quickly packed everything into boxes and shipped them to Florida. This was a stark change from the standard preparations made by GSA and National Archives and Records Administration ("NARA") for prior administrations. As NARA acknowledged in a Press Statement it issued on October 11, 2022:

> The National Archives and Records Administration (NARA), in accordance with the Presidential Records Act, assumed physical and legal custody of the Presidential records from the administrations of Barack Obama, George W. Bush, Bill Clinton, George H.W. Bush, and Ronald Reagan, when those Presidents left office. NARA securely moved these records to temporary facilities that NARA leased from the General Services Administration (GSA), near the locations of the future Presidential Libraries that former Presidents built for NARA. All such temporary facilities met strict archival and security standards, and have been managed and staffed exclusively by NARA employees.[2]

NARA unfortunately has become overtly political and declined to provide archival assistance to President Trump's transition team. Interestingly, in its Press Statement NARA cites every recent President after Jimmy Carter as having received the same assistance with "archival and security standards". Yet, President Carter, the last President before President Trump to not receive archival assistance found documents with classification markings in his home, which he returned to NARA (though apparently without an accompanying DOJ criminal probe).[3]

Whether NARA's departure from routine pack-out procedures for President Trump was intentional or a product of the compressed timeline, it did not take custody of the documents and this made necessary the transfer of boxes of documents to President Trump's heavily secured home at Mar-a-Lago. To be clear, had NARA offered President Trump the same assistance that it had provided to all previous Presidents, he would have accepted the offer and *there would have been no reason to transfer the documents to Mar-a-Lago.*

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[2] National Archives, "Press Statements in Response to Media Queries About Presidential Records" (October 11, 2022) https://www.archives.gov/press/press-releases/2022/nr22-001#october -11-2022

[3] https://www.cnbc.com/2023/01/25/classified-records-pose-conundrum-stretching-back-to-carter.html.

NARA's variance from its standard procedures ignited a dispute with President Trump when it "discovered" that boxes were being transferred to Florida. In January 2022, in an attempt to cooperate with NARA, President Trump asked his staff to retrieve 15 boxes that had been moved to Mar-a-Lago so he could see what was in them before they were sent to NARA in Washington, DC. However, due to other demands on his time, President Trump subsequently directed his staff to ship the boxes to NARA without any review by him or his staff. Upon receiving the boxes, NARA's opened them, reviewed their contents, and found that some documents with classification markings had been mixed in with assorted other personal and Presidential records.

Tim Parlatore and Jim Trusty, two of the undersigned counsel for President Trump, reviewed all 15 boxes at NARA earlier this year and based on that review, it is clear to us what happened. The boxes contain all manner of documents from the White House, are loosely grouped by date, and include newspapers, magazines, notes, letters, and daily schedules. Following its review of the materials, NARA inserted placeholder pages where it had removed documents with classification markings. That allowed Messrs. Parlatore and Trusty to discern what the documents were, as well as what other materials in the boxes were in the proximity of the marked documents when the White House staff packed them. The vast majority of the placeholder inserts refer to briefings for phone calls with foreign leaders that were located near the schedule for those calls. This organization of materials (*i.e.,* schedule of calls for the day, insert page for briefing sheet to prepare for the call, newspapers from the same day) indicates that the White House staff simply swept all documents from the President's desk and other areas into boxes, where they have resided ever since.

Our review of the boxes at NARA shows that White House institutional practices for the handling of classified materials—including declassification procedures—are inconsistent with how the intelligence community and military handles classified materials. This is indicative of the staff's packing processes and not any criminal intent by President Trump. As such, the matter should have been immediately referred to the Office of the Director of National Intelligence ("ODNI") or your Committee, and not DOJ. The improper involvement of DOJ in what should have been an administrative investigation of the mishandling or spillage of documents with classified markings set the matter on the wrong course and, in the current political environment, Attorney General Merrick Garland and DOJ predictably chose to pursue this as a criminal investigation.

Any doubts that the presence of marked documents in the boxes was the result of White House institutional processes, rather than intentional decisions by President Trump, should have been dispelled by the recent discovery of marked documents at the residences of President Biden and Vice President Pence. The possession of documents by these two former Vice Presidents is similar in some respects to those that were transferred to Mar-a-Largo. President Trump, like the outgoing Vice Presidents, was not afforded assistance from NARA and GSA (although, as President, he and not the Vice Presidents

was entitled to that assistance). This resulted in confusion about how materials were to be handled as the administration was winding down.[4]

To be clear, our legal team has reviewed the entirety of the 15 boxes since their return to NARA and has supervised searches of several different locations, some of which resulted in the discovery of a handful of additional marked documents. We have seen absolutely no indication that President Trump knowingly possessed any of the marked documents or willfully broke any laws. Rather, all indications are that the presence of marked documents at Mar-a-Lago was the result of haphazard records keeping and packing by White House staff and GSA. President Trump has directed us to immediately notify DOJ of the discovery of marked documents at Mar-a-Largo and we have faithfully done so.

Misguided DOJ Investigation

The decision to have DOJ, rather than ODNI, conduct a review of what happened is probably the Executive Branch's single biggest blunder in addressing this issue. As Abraham Maslow wrote in 1966, "If the only tool you have is a hammer, it is tempting to treat everything as if it were a nail." Despite the availability of far more appropriate support, such as from ODNI, the involvement of DOJ improperly predetermined that the matter should be handled as a criminal investigation. DOJ needlessly ratcheted up the adversarial nature of the matter, resulting in a waste of time and resources and a disturbing loss of public trust. This serves no legitimate purpose, as DOJ's actions further erode constitutional rights while blindly compromising its own ability to provide a comprehensive account of what happened.

From the inception of this matter, rather than working cooperatively to ensure the return of all marked documents and correct any procedural failures, the DOJ team chose a path of aggressive combativeness. In doing so, it compromised the evidence, constitutional rights, and, in many instances, the professional ethics of its prosecutors. It has sought to criminalize a civil matter, pursue an unprecedented investigation of a

[4] Of course, we also recently learned from media reports that President Biden possessed marked documents in a "personal" folder at the Penn-Biden Center – strong evidence that he intentionally possessed then after he or someone else secretly removed them, from the Senate SCIF at least 14 years earlier when he was the Senator from Delaware. We also now know that after DOJ learned about President Biden's possession of classified documents at the Penn-Biden Center, it allowed his personal attorneys to search for and collect documents from his residence in Delaware making the specific locations of the documents in the residence difficult, and perhaps impossible, to determine. And, it has since been publicly reported that there could be even more classified documents in the 1,850 boxes that Mr. Biden shipped to the University of Delaware in 2012. https://www.cnn.com/2-23/02/15/politics/biden-delaware-search/index.html. DOJ's reaction to all of this is stunningly different from how it responded to President Trump's offer of cooperation regarding the boxes stored at Mar-a-Largo.

former President while bristling at transparency, and is desperately seeking to justify its abominable conduct. History will not be kind to DOJ or the administration that supports this assault, while excusing much more serious conduct by the current President.

The best way to investigate how marked documents found their way out of a controlled environment is to analyze where they were found with surrounding materials. Had ODNI investigators approached President Trump early on, it would have been able to work cooperatively with the President's staff and conclude that any alleged mishandling or spillage was due to failed institutional procedures in the White House, not intentional wrongdoing. DOJ chose not to work cooperatively President Trump's team and instead chose to fuel the animosity though the inappropriate use of criminal investigative tools such as a grand jury subpoena[5] on May 11 and a search warrant on August 8.

By unleashing a grand jury subpoena, DOJ intended to put President Trump on the defensive, not to invite his cooperation. Moreover, grand jury subpoenas seek only the disclosure of documents—in this case any documents with classification markings. They do not provide any mechanism to document where those documents were located or what they were near, thus destroying the contextual evidence that is critical to understanding the handling of the boxes that were ultimately transmitted to NARA.

DOJ's unnecessarily aggressive use of a grand jury subpoena was not intended to ensure full compliance. When defense attorneys request additional time, U.S. Attorney's offices routinely agree to a reasonable schedule, often including rolling production (allowing parties to produce what they find when they find it, but continue to search, even after the compliance date, until the search is complete), to ensure full and complete disclosure. Here, President Trump's attorney, Evan Corcoran, attempted to negotiate additional time to conduct a complete search, and Jay Bratt, then Chief of the Counterintelligence and Export Control Section of the National Security Division, initially agreed to extend the applicable response time. However, he subsequently reneged on that agreement and rejected the proposed production schedule or *any* rolling production. Ultimately, President Trump's legal team complied with DOJ's demands, performing as diligent a search as they could by Mr. Bratt's arbitrary deadline, and submitted a certification that affirmed the same. To be clear, the certification stated that a diligent search was conducted, and all responsive documents found were provided—*not* that the search turned up *all* possible materials, as many media outlets have falsely characterized the certification as saying.

On June 3, 2022, several weeks after serving the subpoena, Jay Bratt and three FBI agents met with Mr. Corcoran at Mar-a-Lago, at which time Mr. Corcoran turned over the documents he found in boxes located in a storage room. President Trump briefly joined

[5] The issuance of a grand jury subpoena carries with it the overt threat of criminal prosecution. Indeed, a federal grand jury's "principal function is to determine whether or not there is probable cause to believe that one or more persons committed a certain Federal offense." *See* Justice Manual 9-11.101.

the meeting and told Mr. Bratt that if DOJ needed anything else, his team should simply ask, after which Mr. Corcoran showed the DOJ the room in which the documents were stored. Although Mr. Corcoran told the DOJ representatives that they were not going to go through boxes together that day, he fully expected DOJ to ask to return to Mar-a-Lago and examine all the boxes. Mr. Bratt reinforced this belief when, five days later, he wrote to Mr. Corcoran requesting that an additional lock be placed on the door. The lock was soon installed, and the boxes kept under lock and key in a facility guarded by armed Secret Service agents.

At the time, President Trump and Mr. Corcoran understood this to be the beginning, not the end, of working cooperatively with Mr. Bratt and DOJ to resolve any outstanding concerns about the boxes. President Trump did not imagine that, rather than accept his offer, Mr. Bratt would abruptly discontinue the dialogue and seek a search warrant, apparently eager to criminalize this document dispute with NARA. As we now know from reporting by *The Washington Post*,[6] Mr. Bratt fought with the FBI to block any further cooperation with Mr. Corcoran. According to one news report, Mr. Bratt met with FBI officials who "repeatedly urged" that the FBI should seek to negotiate a consensual search, rather than conducting a surprise search. According to the *Washington Post,* "Tempers ran high in the meeting. Bratt raised his voice at times and stressed to the FBI agents that the time for trusting Trump and his lawyer was over." The same article reported that Mr. Bratt urged the use of a search warrant as early as May 2022, which speaks volumes about his desire to use criminal investigative tools in the unprecedented and heavy-handed fashion that followed.

The *Washington Post* article—showing a clear effort by FBI officials to distance themselves from the misconduct of Mr. Bratt and his team in this investigation—also stated, "Some FBI field agents then argued to prosecutors that they were inclined to believe Trump and his team had delivered everything the government sought to protect and said the bureau should close down its criminal investigation." This is consistent with the demeanor of the field agents who met with Mr. Corcoran and expressed their gratitude for being permitted to inspect the storage room, which they acknowledged that most attorneys and their clients would not permit under similar circumstances. And when the FBI asked Mr. Bratt whether President Trump was the subject of a criminal investigation, Mr. Bratt reportedly replied, "What does that matter?" This was a stunning and disingenuous position for a DOJ attorney to take when advocating for the unprecedented search of a former President's home. In the end, AG Garland endorsed Mr. Bratt's conduct by approving DOJ's raid and then, on August 11, held a press conference that failed to mention President Trump's offer to cooperate regarding the return of documents.

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[6] Carol D. Leonnig et al., "Showdown before the raid: FBI agents and prosecutors argued over Trump," *The Washington Post* (March 1, 2023), https://www.washingtonpost.com/national-security/2023/03/01/fbi-dispute-trump-mar-a-lago-raid/.

To date, only a heavily redacted version of the search warrant affidavit has been made public;[7] however, it is clear that DOJ utterly failed to make an accurate presentation to the Magistrate Judge, thereby violating President Trump's constitutional rights against an unreasonable search and seizure. DOJ likely concealed from the Judge that President Trump had offered his cooperation or that the DOJ team could have pursued a consensual search, as President Trump had essentially invited them to do. The redactions to paragraphs 56 and 57 of the application are telling, as they may well conceal distortions about DOJ's interactions with Mr. Corcoran, rather than any actual sensitive information.

As President Trump's legal team moved to conduct additional searches for documents with classification markings, DOJ's continued its pattern of prioritizing belligerence over thorough investigation, refusing our invitation to have FBI agents observe our search. This refusal, like the earlier decision to proceed by search warrant rather than cooperate in a consent search, again resulted in DOJ's inability to establish a clear chain-of-custody or evidentiary context of the document locations. In an attempt to overcome its own failures, DOJ chose to compel Mr. Corcoran—and the investigators hired by the legal team—to testify before the grand jury concerning their memories of where documents were found. This was clearly a sub-optimal and constitutionally dubious substitute for what should have been a well-documented consent search – that would have located documents in the condition that had been collected and stored by White House staff.

DOJ Is the Wrong Agency to Investigate Mishandling or Spillage of Classified Documents

DOJ's conduct of this investigation, as well as its persistent, often criminal, leaks of sealed information to the media, is antithetical to the principles of a fair and impartial search for the truth. However, President Trump's case is not the only instance in which DOJ has demonstrated its unsuitability for such investigations.

When documents were found in President Joseph Biden's Penn-Biden Center office, despite clear indicators that his violations were more likely the result of willful misconduct, DOJ treated him very differently by forgoing any attempts at manufacturing conflict, while implicitly approving the spoliation of evidence.

The applicable criminal statute prohibits "willful retention" of national defense information, not mere possession. *See* 18 U.S. § 793 (e). To prove willful retention, a prosecutor must first establish that the possession was knowing. Despite media spin to the contrary, this is the key element that distinguishes President Trump's retention of documents from that by President Biden. Evidence of knowing possession can be readily inferred from the length of time that President Biden possessed the marked documents since leaving office and the fact that they were moved and stored at multiple locations. In

[7] *See United States v. Sealed Search Warrant*, No. 9:22-mj-08332, ECF 102-1 (S.D. Fla.), available at https://www.courtlistener.com/docket/64872441/102/1/united-states-v-sealed-search-warrant/.

comparison, the materials found at Mar-a-Lago were still stored in the same GSA boxes in which they left the White House, untouched in the relatively short time since the end of President Trump's term. Perhaps the most damning fact for President Biden is that he possessed marked documents from his time in the Senate—a body that maintains all marked documents in a SCIF, unlike the White House. Further, as you are no doubt aware and as mentioned earlier in this letter, media reports have indicated that classified documents were contained in a folder labeled "personal,"[8] which is much more powerful evidence of knowing retention than documents being randomly dispersed into boxes by moving teams.

Rather than learning its lesson from mishandling President Trump's document searches, DOJ repeated the same mistakes, allowing President Biden's private attorneys to conduct searches and turn over marked documents without any documentation of where they were found and what evidence, if any, indicated knowing possession. It was widely reported that, unlike the search of President Trump's home, DOJ declined to attend and observe or participate in the searches. Instead, it chose to allow this key contextual evidence to be destroyed in a case that has far more indications of criminality.

Similarly, it appears that Vice President Pence was also permitted to return documents without DOJ involvement or documentation of where the documents were found.

What is consistent in all three of these cases is that the document handling procedures in the White House are flawed and DOJ is not the appropriate agency to conduct investigations pertaining to the mishandling or spillage of classified material.

Conclusion

The solution to these issues is not a misguided, politically infected, and severely botched criminal investigation, but rather a legislative solution. DOJ should be ordered to stand down, and the intelligence community should instead conduct an appropriate investigation and provide a full report to this Committee, as well as your counterparts in the Senate. Armed with the appropriate knowledge, we respectfully suggest that your Committee hold hearings and make legislative changes to:

1. Correct classified document handling procedures in the White House;

2. Standardize document handling and storage procedures for Presidents and Vice Presidents when they leave office; and

[8] *See, e.g.*, Jamie Gangel *et al.,* "Exclusive: U.S. intelligence materials related to Ukraine, Iran and UK found in Biden's private office, source tells CNN," CNN (Jan. 10, 2023), https://www.cnn.com/2023/01/10/politics/biden-classified-documents-iran-ukraine-united-kingdom-beau-funeral/index.html.

3. Formalize procedures for investigations into the mishandling or spillage of classified material, to prevent future situations where DOJ is inappropriately assigned to conduct an investigation.

President Trump's legal team would be happy to meet with you or your staff to assist in any way necessary to address these issues. Please know that despite the differences in the cases, we do not believe that any of these three matters should be handled by DOJ as a criminal case. Rather, the stakeholders to these matters should set aside political differences and work together to remediate this issue and help to enhance our national security in the process.

Very truly yours,

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