

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

DONALD J. TRUMP,

*Defendant.*

Case No. 1:23-cr-00257-TSC

**PRESIDENT TRUMP’S REPLY IN SUPPORT OF MOTION TO DISMISS FOR  
SELECTIVE AND VINDICTIVE PROSECUTION**

President Donald J. Trump respectfully submits this reply in further support of his motion to dismiss the indictment based on selective and vindictive prosecution.

Dubbing team members “career prosecutors” does not insulate the activities of the Special Counsel’s Office from judicial or public scrutiny. The reliable media reports submitted by President Trump, which are based on information from other “career prosecutors” and government officials, demonstrate the unconstitutional nature of the investigation by the Special Counsel’s Office and the line prosecutors. If the “career prosecutors” in this case wanted to dispute the content of those reports, there was a straightforward way to do so: submit declarations by first-hand witnesses denying the operative facts under oath. If, for example, the *New York Times* falsely reported that President Biden told others that President Trump “should be prosecuted,” then why not give the Court and the public peace of mind through the submission of competent evidence, rather than a blustering brief that is full of venom but deflects on the core facts?

The answer is simple. The media reports are accurate. Thus, despite all of the Special Counsel’s self-aggrandizing comments about the supposedly unprecedented nature of his manufactured allegations against President Trump, the truly unprecedented aspect of this case is that a sitting president successfully urged the Department of Justice (“DOJ”) to try to take down

his chief political rival and, now, the leading candidate to be the next president. President Biden was so successful, in fact, that the Special Counsel brought two deeply flawed cases against President Trump and has engaged in a reckless effort to proceed to trial in both as soon as possible—even while President Biden anxiously waits to learn whether he will be charged with crimes by a different Special Counsel.<sup>1</sup>

The Biden Administration may not, through this prosecution, retaliate against President Trump for speaking out or for exercising his constitutional right to run for office. Nor may the prosecutors do President Biden’s impermissible bidding. Because the Special Counsel’s Office has not submitted evidence to refute—or even dispute—President Trump’s proof regarding the biased and unconstitutional purpose of this case, the Court should dismiss the indictment. In the alternative, the Court must conduct further fact finding.

**I. There Is Much More Than An “Indication” Of Insidious Bias**

The Special Counsel’s Office declares without basis that “[t]he factual and legal record contain absolutely no indication of selective or vindictive prosecution.” Doc. 141 at 1. That is not accurate.

First, evidence of the insidious and unconstitutional bias at the heart of the prosecution team in this case emerged within days of the 2020 election. On November 12, 2020, Deputy Special Counsel J.P. Cooney and Senior Assistant Special Counsel Molly Gaston signed a letter to then-Attorney General Bill Barr in which they declared that allegations regarding election fraud

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<sup>1</sup> See Paula Reid, *Special counsel investigating Joe Biden’s handling of classified material is not expected to bring charges*, CNN (Nov. 16, 2023), available at, <https://www.cnn.com/2023/11/16/politics/special-counsel-hur-biden/index.html> (“Special counsel Robert Hur is not expected to charge anyone in connection with the mishandling of classified documents at two locations connected to President Joe Biden, two sources close to the investigation told CNN.”).

were “false.”<sup>2</sup> Cooney and Gaston signed that letter as Assistant United States Attorneys at the U.S. Attorney’s Office for the District of Columbia without any basis in fact or any investigation to support their sweeping claim.<sup>3</sup>

Cooney and Gaston are now prosecuting the indictment in this case, in which they have alleged that “senior leaders of the Justice Department . . . told [President Trump] on multiple occasions that various allegations of fraud were unsupported.” Doc. 1 ¶ 11(b).<sup>4</sup> For Cooney and Gaston, at least, this outcome was predetermined before mid-November 2020. What followed, then, cannot accurately be characterized as a “thorough and impartial investigation guided by facts and applicable law.” Doc. 141 at 1. Rather, as the unrebutted facts make clear, the prosecutors decided to charge President Trump regardless of the facts:

- In February 2021, Cooney proposed a “wide-ranging effort” to target President Trump that concerned even the Federal Bureau of Investigation (“FBI”). Doc. 116-1 at 5. Cooney’s proposal was ultimately rejected because, among other things, it “tread[ed] on First Amendment-protected activities.” *Id.*

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<sup>2</sup> See Ex. 1, available at [https://www.justice.gov/oip/foia-library/foia-processed/general\\_topics/2020\\_presidential\\_election\\_06\\_03\\_22\\_part\\_2/download](https://www.justice.gov/oip/foia-library/foia-processed/general_topics/2020_presidential_election_06_03_22_part_2/download) (at page 93 of 157).

<sup>3</sup> The U.S. Attorney’s Office for the District of Columbia eventually spearheaded the investigation of President Trump until the appointment of Special Counsel Jack Smith. Cooney, Gaston and others in the U.S. Attorney’s Office, including Senior Assistant Special Counsel Thomas Windom, led the investigation and “cho[se]” to transition to the Special Counsel’s Office after Special Counsel Jack Smith was appointed. Doc. 116-1 at 11.

<sup>4</sup> In addition to Attorney General Barr, Cooney and Gaston sent a copy of the letter to Richard Donoghue, another potential prosecution witness. The letter raises serious witness-advocate problems with respect to the prosecution’s anticipated testimony, which we will address in motions *in limine*, if necessary.

- During the same month, then-acting U.S. Attorney for the District of Columbia Michael Sherwin began “agitating” for a “hammer,” while physically carrying the seditious conspiracy statute around his office. Doc. 116-1 at 6.
- In March 2021, during a *60 Minutes* interview in violation of DOJ policy, Sherwin declared publicly that President Trump was being targeted by DOJ and suggested that statements from “soccer moms” had “moved the needle.”<sup>5</sup>
- In November 2021, Senior Assistant Special Counsel Thomas Windom put forward an investigative proposal targeting President Trump’s close associates, which was met with “flat rejection,” with one FBI official declaring, “You don’t have enough to issue subpoenas.” Doc. 116-1 at 9.
- In the weeks that followed, rather than recognizing the lack of evidentiary basis for grand jury proceedings, Windom “discreetly” asked a different agency if it “might help” with the biased project the FBI had declined to pursue. Doc. 116-1 at 9.

Second, as President Trump criticized the Biden Administration and suggested that he would run in the 2024 election, President Biden urged his “inner circle” that President Trump “was a threat to democracy and should be prosecuted.” Doc. 116-2. President Biden also said privately

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<sup>5</sup> Scott Pelley, *Inside the prosecution of the Capitol rioters*, CBS NEWS (Mar. 22, 2021), available at <https://www.cbsnews.com/news/capitol-riot-investigation-sedition-charges-60-minutes-2021-03-21>.

Notwithstanding Sherwin’s above-quoted language specifically referencing President Trump during the *60 Minutes* interview, the Special Counsel’s Office contends that the interview “pertained not to the defendant” or “any prosecution of the defendant.” Doc. 141 at 10. These false claims serve as further evidence that the prosecution is willing to say whatever it feels best suits its objectives in a particular moment, without regard for the truth. If the Office’s assertions regarding the scope of the interview are correct, then the prosecution has no basis to contend, as it recently did, that President Trump is “responsible for the events at the Capitol on January 6.” Doc. 140 at 1.

that he wanted the Attorney General to “act less like a ponderous judge and more like a prosecutor who is willing to take decisive action.” *Id.* The Biden administration intentionally leaked these comments to the media in early 2022 so that President Biden could improperly provide instructions to and exert pressure on prosecutors and investigators without engaging in direct communications, as is clear from the fact that the article sourced the operative remark to “two people familiar with his comments.” *Id.*

Unmoved by such intimidation tactics, President Trump maintained his criticism of the Biden Administration, leading to a groundswell of support for President Trump’s 2024 candidacy.<sup>6</sup> On November 9, 2022, just days before President Trump announced his candidacy, President Biden issued a final ultimatum: “we just have to demonstrate that he will not take power . . . if he does run.” Doc. 116 at 4. President Biden’s threat was clear. If President Trump chose to “run,” President Biden would bring the force of the government down on President Trump. *Id.*

Once again undeterred, President Trump announced his candidacy. Then, President Biden made good on his threat. Within days of President Trump’s announcement, the Attorney General appointed the Special Counsel, who filed a false indictment against President Trump in Florida in June 2023. After President Trump publicly criticized President Biden and the Special Counsel for engaging in prosecutorial misconduct and improperly weaponizing law enforcement to harm his campaign, *see* Docs. 116-3, 116-4, this indictment followed.

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<sup>6</sup> Quinnipiac University Poll, *78% Of Republicans Want To See Trump Run For President In 2024, Quinnipiac University National Poll Finds; Americans Now Split On Border Wall As Opposition Softens* (October 19, 2021), <https://poll.qu.edu/poll-release?releaseid=3825>.

## II. The Motions Are Supported By Evidence

The Special Counsel's Office has relied on media reports from the *Washington Post* and other sources throughout this case when the prosecution approved of the reports' substance.<sup>7</sup> Because President Trump relies on two articles the Office appears not to like, at least in public, the prosecution seeks to relegate them to the level of "spurious allegations contrived from two newspaper articles citing anonymous sources." Doc. 141 at 1. The Court should see through that ploy.

The reports at issue are not, as the prosecution claims, based on "rumor and innuendo." Doc. 141 at 6. The *Washington Post* article is "based on internal documents, court files, congressional records, handwritten contemporaneous notes, and interviews with more than two dozen current and former prosecutors, investigators, and others with knowledge of the probe." Doc. 116-1 at 3. The *New York Times* article is attributed to "interviews with more than a dozen people, including officials in the Biden administration and people with knowledge of the president's thinking, all of whom asked for anonymity to discuss private conversations." Doc. 116-2 at 2. For example, President Biden's instruction that President Trump "should be prosecuted" is sourced to "two people familiar with his comments." *Id.*

Citing *United States v. Khanu*, 664 F. Supp. 2d 28 (D.D.C. 2009), the prosecution argues that the media reports are "insufficient." Doc. 141 at 10. In *Khanu*, the court found that the defendant's evidence was "too far removed from the actual prosecuting authorities in this case." 664 F. Supp. at 34. Here, the proffered evidence directly implicates President Biden as well as the line prosecutors. Accordingly, in the absence of first-hand declarations to the contrary, there is no

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<sup>7</sup> See, e.g., Doc. 97 at 10; Doc. 109 at 30; Doc. 140 at 11.

basis for disregarding or diminishing the evidence submitted by President Trump in support of his motions.

### **III. The Presumption of Regularity Does Not Apply**

The presumption of regularity that the Special Counsel seeks to hide behind is entitled to no weight under these circumstances. *See, e.g.*, Doc. 141 at 2, 4. The presumption arises in ordinary cases because prosecutors “are designated by statute as the President’s delegates to help him discharge his constitutional responsibility” under the Take Care Clause, *i.e.*, every president’s constitutional obligation to “take Care that the Laws be faithfully executed.” *United States v. Armstrong*, 517 U.S. 456, 464 (1996); U.S. Const., Art. II, § 3. In this case, President Biden has driven a prosecution that is wholly inconsistent with that Clause and is instead motivated by a constitutionally prohibited desire to pursue election interference by punishing President Trump for his protected speech, his decision to run for office, and his status as the leading candidate in the 2024 election. The evidence also demonstrates that the prosecutors at times acted based on a similar political bias, which led them to make unsupported assertions and press for investigative steps that violated the Constitution. Thus, there exists the type of “clear evidence to the contrary” that warrants setting aside the presumption of regularity. *Armstrong*, 517 U.S. at 464 (cleaned up).

### **IV. The Motion Establishes a *Prima Facie* Cases of Selective Prosecution**

Once the presumption is appropriately stripped away, this extraordinary fact pattern, coupled with the history of prosecutorial inaction in connection with controversial presidential transitions and other elections, is sufficient for President Trump to make out a *prima facie* case of selective prosecution.

The case is unconstitutionally “selective” and motivated by a “discriminatory purpose,” *United States v. Eshetu*, 2023 WL 7384996, at \*12 (D.D.C. 2023), because the Biden

administration singled out President Trump based on unconstitutional considerations and the Special Counsel's Office has acted at President Biden's inappropriate direction. The Office claims that none of the seven other elections identified by President Trump as comparators "involved deceitful and corrupt efforts to defeat a government function or block the certification of the legitimate results of a presidential election." Doc. 141 at 7. However, a law review article cited by the Office describes the 1800 election as having involved protracted and intentional delay by Federalists in the House of Representatives, "a growing threat of indefinite deadlock," and "fear of a constitutional crisis and possible armed revolt." Rami Fakhouri, *The Most Dangerous Blot in Our Constitution: Retiring the Flawed Electoral College 'Contingent Procedure'*, 104 Nw. U. L. Rev. 705, 717-18 (2010), cited in Doc. 139 at 57. The prosecutors' efforts to distinguish the 1800 election boil down to a wrongful political judgment, in a politically motivated case, that Jefferson's "conviction" regarding the outcome was sincere, whereas President Trump's was not. See Doc. 139 at 56. Similar self-serving, discretionary judgments pervade the Office's efforts to distinguish the other six elections cited by President Trump. These are not the sort of distinctions that can defeat a selective prosecution motion in light of the record regarding the investigation and prosecution at issue.

Seeking to deflect, the Special Counsel's Office declares that individuals prosecuted in the physical-presence cases relating to January 6 are "obvious comparators closer at hand." Doc. 141 at 8. However, none of those cases involved the package of charges levied against President Trump or focused on speaking out against election fraud and irregularities, as opposed to physically entering the Capitol. Consequently, even the politically motivated prosecutors responsible for this case did not dare bring the seditious conspiracy charge that Sherwin pre-selected. Moreover, the prosecution's impermissible motives are laid bare by the citation to the *Rhodes* case. Doc. 141 at

8. In March 2022, before President Biden’s declaration that President Trump must be prosecuted, DOJ prosecutors argued that Rhodes acted independently of President Trump. *See, e.g.*, Doc. 156 at 12 (prosecutor describing evidence of “an intent to fight to stop that result with or without somebody like President Trump calling them into action”); *see also id.* (prosecutor arguing in summation that “Mr. Rhodes was clear in these open letters that if President Trump didn’t take action, he and his co-conspirators would,” and that “[t]he President didn’t take action”). Now that President Trump is the leading candidate in the 2024 election, the prosecution argues that President Trump and Rhodes are similarly situated. This tack only supports President Trump’s motion.

#### **V. The Motion Establishes a *Prima Facie* Cases of Vindictive Prosecution**

President Trump has also made the required showing of vindictiveness. A case cited by the Special Counsel’s Office establishes that a defendant can meet his burden through evidence that the prosecutor “was prevailed upon to bring the charges by another with animus such that the prosecutor could be considered a ‘stalking horse.’” *See* Doc. 141 at 4-5 (quoting *United States v. Sanders*, 211 F.3d 711, 717 (2d Cir. 2000)). That is precisely what President Trump has demonstrated through President Biden’s public statements and news reports based on leaks from former members of the prosecution team. The Special Counsel is President Biden’s stalking horse in highly publicized cases in this District and in Florida, and line prosecutors took politically biased steps during the investigation that suggest they also have personal stakes in the outcome. *See United States v. Meyer*, 810 F.2d 1242, 1246 (D.C. Cir. 1987) (“[A] presumption of vindictiveness will lie in the pretrial setting if the defendant presents facts sufficient to show a realistic likelihood of vindictiveness.”); *United States v. Slatten*, 865 F.3d 767, 799-800 (D.C. Cir. 2017) (reasoning that “particularly in an important, highly publicized case, a prosecutor being but human may have a personal stake in obtaining a conviction and a motivation to engage in self-vindication” serve as “additional facts that support the finding of a presumption” of vindictiveness). The inference of

vindictiveness is further supported by the fact that—before President Trump declared his candidacy and President Biden urged for his prosecution—DOJ declined a proposal by the National Archives to investigate the use of electors in the 2020 election and alleged “documents that Trump used to pressure Pence not to certify the election for Biden.” Doc. 116-1 at 6; *see also id.* at 9 (noting that “the FBI wasn’t ready to move forward” on so-called “fake electors” following Windom’s November 2021 presentation).

The Special Counsel’s Office contends that an inference of vindictiveness is less appropriate in pretrial settings, such as this one, because this is “a time when the prosecutor’s assessment of the proper extent of prosecution may not have crystallized.” Doc. 141 at 5. To the extent the prosecutors’ “crystallization” is relevant, it only supports dismissal. The Office recently suggested that it will seek to offer evidence of the January 6 violence at the Capitol at trial in this case, which is a position the prosecution announced only after President Trump made public statements criticizing the prosecution and filed pretrial motions defending himself.

#### **VI. At Minimum, Fact Finding Is Necessary to Resolve These Motions**

The prosecution suggests that President Trump must provide “exceptionally clear proof” to obtain a hearing on these motions. Doc. 141 at 10. That is not the law. *See, e.g., United States v. Bass*, 536 U.S. 862, 863 (2002) (“[A] defendant who seeks discovery on a claim of selective prosecution must show *some evidence* of both discriminatory effect and discriminatory intent.” (emphasis added)); *United States v. Oseguera Gonzalez*, 507 F. Supp. 3d 137, 175 (D.D.C. 2020) (applying selective-prosecution standard for discovery to vindictive prosecution claim).

On the selective prosecution motion, some courts have “lowered the standard for discovery in selective-enforcement cases by jettisoning the ‘similarly situated’ requirement for the discriminatory-effect prong and abandoning the discriminatory-intent prong entirely.” *Eshetu*,

2023 WL 7384996, at \*12. Regardless, under either formulation, President Trump has met the “some evidence” standard. *See, e.g., United States v. Rashed*, 234 F.3d 1280, 1286 (D.C. Cir. 2000) (“[A]s a condition of discovery, to adduce ‘some evidence tending to show the essential elements of’ the defense . . . .” (quoting *Armstrong*, 517 U.S. at 462)). President Trump has also established a “realistic likelihood of vindictiveness,” which the prosecution must “attempt to rebut” through actual evidence rather than unsworn assertions in a memorandum of law. *Slatten*, 865 F.3d at 799.

Finally, the Special Counsel’s Office professes confusion about what the fact finding “would entail” and claims that it requires a “rough[] sketch.” Doc. 141 at 14. The Supreme Court has provided one, in a case the Office cited: “the Government must assemble from its own files documents which might corroborate or refute the defendant’s claim.” *Armstrong*, 517 U.S. at 464. So too have our discovery requests. *See* Ex. 2 (10/23/23 Requests 10-12, 24, 39-40, 43, 55). There is no mystery about what the prosecution must do if it seeks to establish that this case is based on permissible motives, which it clearly is not.

**CONCLUSION**

For the foregoing reasons, and the reasons set forth in our opening brief, President Trump respectfully submits that the indictment should be dismissed on the basis of selective and vindictive prosecution. In the alternative, the Court should hold a hearing to develop the record regarding due process violations by the Special Counsel's Office.

Dated: November 22, 2023

Respectfully submitted,

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*Counsel for President Donald J. Trump*

# **EXHIBIT 1**



**U.S. Attorney's Office for the District of Columbia**  
Criminal Division  
*Public Corruption & Civil Rights Section*

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November 12, 2020

The Honorable William P. Barr  
United States Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Dear Mr. Attorney General:

We currently serve in the Public Corruption and Civil Rights Section (PCCR) in the United States Attorney's Office for the District of Columbia. We share responsibility for enforcing federal criminal election law in this jurisdiction and are alumni of the Justice Department's Criminal Division. The views expressed below are our own.

We write to voice our support for the nonpartisan career prosecutors in the Public Integrity Section (PIN), especially former Election Crimes Branch (ECB) Director Richard Pilger, whose faithful administration of the Department's longstanding policy of non-interference in elections has, for decades, protected the institution from the appearance of political partisanship and afforded field offices like ours the credibility necessary to enforce federal criminal election law. In particular, for nearly 30 years, Mr. Pilger has served the Department selflessly and honorably, exhibiting unimpeachable integrity and evenhandedness. We, along with scores of other career prosecutors fortunate enough to have worked with him, were demoralized by his need to resign as ECB Director a courageous act signaling that the Department has strayed from institutional norms ensuring independence from inappropriate political influence.

Specifically, we believe that your November 9, 2020, memorandum, "Post-Voting Election Irregularities Inquiries" (the Memorandum), in which you altered the Department's longstanding non-interference policy, eradicates the Department's guardrails against improper political influence. The process leading to the Memorandum which prompted Mr. Pilger's resignation along with its timing and the apparent elimination of the policy requiring United States Attorneys to consult PIN before initiating ballot fraud investigations, erode public confidence in the Department's independence and impartiality, and hinder our ability to protect the nation's electoral system from criminal interference.

First, the process by which you changed the non-interference policy diminishes the public's confidence in the Department's political neutrality with respect to federal criminal election law enforcement. We are informed that PIN, whose career prosecutors are charged with overseeing the Department's enforcement efforts, was not consulted on your post-election decision to change the policy nor consulted on the Memorandum itself. Such a process violates the norms respecting

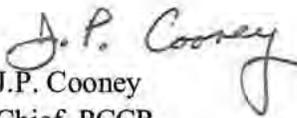
deference to career officials in such a sensitive and highly scrutinized area of the law and deteriorates the credibility of any policy change.

Second, the timing of your decision to change the non-interference policy inappropriately injects the Department and its field offices into a political thicket. You issued the Memorandum within days of a polarizing election, during a time in which false allegations of widespread voter fraud are running rampant and risk undermining confidence in the election's outcome. Your abrupt decision to revise the 40-year-old non-interference policy lends the Department's imprimatur to conspiracy theories and counterfactual balloting fraud allegations that risk permanent damage to the integrity of the election process, and the timing gives the unseemly appearance that the Department's motives arise from political partisanship.

Finally, your Memorandum apparently eliminates the written policy requiring that United States Attorneys consult with career prosecutors in PIN prior to launching ballot fraud investigations during an election period, *see* Justice Manual, § 9-85.210, thus silencing PIN's expert and nonpartisan voice in any discussion of whether such an investigation is warranted. As your Memorandum points out, PIN often advises the field that whenever possible, overt investigation of ballot fraud allegations should be delayed until after an election is concluded, the results are certified, and recounts are exhausted. *See also* Federal Prosecution of Election Offenses (Dec. 2017, 8th Ed.) at 84-85. You raise the concern that “[s]uch a passive and delayed enforcement approach can result in situations in which election misconduct cannot realistically be rectified.” While we are unaware of any such instance, the very purpose of the consultation requirement is that in such a case, a United States Attorney contemplating a ballot fraud investigation would discuss the unique facts and circumstances with nonpartisan career experts in PIN to determine whether immediate overt steps are necessary and appropriate. In so doing, the Department and United States Attorney involved would avoid the appearance of improperly launching political investigations aimed at affecting the outcome of an election, and bolster public confidence in the Department's integrity. Your apparent decision to eliminate the consultation requirement and leave such decisions in the hands of politically appointed United States Attorneys does the opposite.

The process by which you reached your decision to issue the Memorandum, coupled with its timing and the apparent elimination of the investigative consultation requirement with PIN, undermine the Department's commitment to non-interference in elections and constitute a grave threat to the Department's status as an independent and nonpartisan institution. The collateral damage it has already inflicted—including the resignation of Mr. Pilger, turmoil within the ranks of career nonpartisan prosecutors, and the pall it risks casting over the integrity of the 2020 election—will be felt by this Department beyond your tenure as Attorney General. But you have the opportunity to mend that damage: we urge you to rescind your November 9, 2020, Memorandum, affirm the requirement that United States Attorneys consult PIN before opening ballot fraud investigations, and restore the full scope of the Justice Department's longstanding non-interference policy.

Sincerely,

  
J.P. Cooney  
Chief, PCCR  
(Criminal Division/PIN, 2012-2018)

  
Liz Alot  
Assistant United States Attorney, PCCR  
District Election Officer/Election Fraud Coordinator  
(Criminal Division, 2012-2018)

  
Molly Gaston  
Assistant United States Attorney, PCCR  
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# **EXHIBIT 2**

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October 23, 2023

**Via Email:** MGG@usdoj.gov; TPW@usdoj.gov

Molly Gaston  
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Washington, D.C. 20530

**Re: United States v. Donald J. Trump, No. 23 Cr. 257 (TSC)**

Dear Ms. Gaston and Mr. Windom:

We write on behalf of President Trump, to request that your office produce the following discovery pursuant to Rule 16(a)(1)(E), *Brady v. Maryland*, 373 U.S. 83 (1963), *United States v. Agurs*, 427 U.S. 97 (1976), *Giglio v. United States*, 405 U.S. 150 (1972) and their progeny; and the Fifth and Sixth Amendments to the United States Constitution. Simply pointing to the voluminous discovery produced as satisfaction of your constitutional obligations is not sufficient. In furtherance of your offer “to exceed [your] discovery obligations” and “provide substantial assistance to aid the Defendant’s review” (doc. 23 at 4), we request that you specifically search for and produce discovery responsive to the following discrete requests.

**I. Background**

Each of the Requests set forth below calls for production of documents irrespective of their classification level. As used herein, the term “documents” includes (i) all communications, including memoranda, reports, letters, notes, emails, text messages, and other electronic communications; (ii) hard copies and electronically stored information, whether written, printed, or typed; and (iii) all drafts and copies.

As used herein, the term “foreign influence” is broader than the definition of the term “foreign interference” in Executive Order 13848 and includes any overt or covert effort by foreign governments and non-state actors, as well as agents and associates of foreign governments and non-state actors, intended to affect directly or indirectly a US person or policy or process of any federal, state, or local government actor or agency in the United States.

The Requests call for specified documents in the possession of the prosecution team, as we defined that term in our October 15, 2023 letter to you.

## II. Requests

1. Please provide all documents regarding informants, cooperators, undercover agents, representatives, or anyone acting in a similar capacity on behalf of or at the behest of the Department of Justice or any law enforcement agency (including state or District of Columbia) who was present at or within five miles of the United States Capitol on January 6, 2021.

2. Please provide all documents regarding informants, cooperators, undercover agents, representatives, or anyone acting in a similar capacity on behalf of or at the behest of the Department of Justice or any law enforcement agency (including state or District of Columbia) who were involved in the assistance, planning, or encouragement of any activities related to the protest, breach, or trespassing of the United States Capitol on January 6, 2021.

3. Please identify all consideration or things of value given to or on behalf of each person present at or involved in any activities related to the protest, breach, or trespassing of the United States Capitol on January 6, 2021.

4. Please provide all documents regarding requests for security, National Guard, or any law enforcement presence related to the Ellipse rally or any other protest or demonstration within Washington D.C. on January 6, 2021.

5. Please provide all documents regarding the use of alternate electors in prior elections, including documents regarding any investigations relating to alternate electors.

6. Please provide all documents regarding State Legislature involvement, approval, or acquiescence to alternate electors in any election.

7. Please provide all legal opinions considered by State Legislatures regarding alternate electors in any election.

8. Please provide all documents relating to investigations relating to fraud, interference (including but not limited to foreign interference), or irregularities during the 2020 election, including but not limited to documents relating to:

- a. The issues alleged in paragraphs 12(a) – 12(f) of the Indictment;
- b. The election security and integrity risks arising from the cyberattack and data breach relating to SolarWinds, Microsoft, and VMWare in or about 2020;
- c. Dominion Voting Systems and its voting-system products, including ballot-marking devices, precinct-count optical scanners, central count optical scanners, any other ballot scanners, and all versions of the Dominion Democracy Suite voting system;

d. The Russian advanced persistent threat actor activity “targeting various U.S. state, local, territorial, and tribal (SLTT) government networks,” including activities that pose “risk to elections information housed on SLTT networks” (SCO-07608691);

e. The Iranian advanced persistent threat actor activity “targeting U.S. state websites,” “to include election websites” (SCO-06616206);

f. Documents prepared by, or relating to, Allied Security Group’s election-related investigative work and analysis.

g. Documents related to the investigation of GBI Strategies or other investigations of possible nationwide voter registration fraud;

h. Documents related to the December 23, 2020 request by Corey Ellis of the Executive Office for United States Attorneys for identification of any “recently opened (in the past 90 days) Election related fraud matter” (SCO-12665132), including all communications and submissions in response to the request;

i. Documents related to the investigation of voting anomalies or irregularities in the 2020 election, including, but not limited to, the total number of votes exceeding past elections either nationally or in particular states or localities, the total votes exceeding support for one candidate compared to past elections, significant or late shifts in voting totals toward one candidate, signature verification, ballots sent out without requests, ballot harvesting, and any other quantitative or qualitative anomalies or irregularities in the 2020 election compared to past elections.

j. Documents provided to President Trump and/or his advisors between November 3, 2020, and January 6, 2021, suggesting fraud, irregularities, or anomalies in any State election.

k. Documents regarding changes or amendments to State election statutes, rules, guidelines, or policies prior to or after the 2020 election, including any documents reflecting analysis, views, positions, or opinions by personnel from DOJ or the Special Counsel’s Office regarding the propriety or legislative approval for such changes or amendments.

l. Documents regarding activities or responses by State Legislatures following the 2020 election to investigate or address voting anomalies or irregularities, including changes or amendments to State election statutes, rules, guidelines, or policies.

9. Please provide all documents relating to assessments of potential fraud, interference, or irregularities during the 2020 election.

10. Please provide all documents relating to complaints or concerns by any prosecutor from DOJ, the Special Counsel's Office, or any federal law enforcement agent relating to the conduct of the investigations of President Trump, the 2020 election, or President Biden.

11. Please provide all documents related to views and opinions expressed by Department of Justice personnel, including from the Public Integrity Section and National Security Division, discouraging, disagreeing with, or resisting investigations of election fraud, interference (including foreign interference), anomalies, or irregularities related to the 2020 election.

12. Please provide all documents related to or reflecting decisions by the Department of Justice, federal law enforcement, state law enforcement, election officials, or other government officials declining or refusing a review or investigation of election fraud, interference (including foreign interference), anomalies, or irregularities related to the 2020 election.

13. Please provide all documents that the Special Counsel's Office will rely upon at trial to argue that there was no fraud in the 2020 election.

14. Please provide all documents indicating the acceptance of non-outcome determinative fraud within federal or state government elections.

15. Please provide all documents defining "outcome determinative fraud."

16. Please provide all documents authored or reviewed by attorneys that support the legality of any action alleged in the Indictment.

17. Please provide all audits of election results, vote tabulation, vote submission, or related election activities performed by State governments named in the Indictment.

18. Please provide all statutes, rules, or policies regarding election audit procedures of the States named in the Indictment.

19. Please provide all documents regarding any assessments of the opportunity or lack of opportunity for fraud or foreign interference in the 2020 election.

20. Please provide all documents regarding State Legislature disagreement with any court decisions regarding the 2020 election.

21. Please provide all documents regarding audits, checks, inspections, or reviews to ensure the integrity of mail-in ballots and their compliance with state laws and regulations.

22. Please provide all documents regarding the compromise, diminishment, or lowering of the standards for mail-in ballots and their compliance with state laws and regulations related to the 2020 election.

23. Please provide all documents reflecting legal opinions relating to mail-in ballots.
24. Please provide all documents, including communications, memorandums, and opinions (whether formal written opinions, drafts thereto, or informal analyses), of the Department of Justice Office of Legal Counsel concerning the Electoral Count Act, election fraud, any litigation related to the 2020 election, or any advice provided directly or indirectly to any Executive Branch official concerning the outcome of the 2020 election.
25. Please identify all Capitol Police Officers present at the Capitol on January 6, 2021, and provide all interview notes (including rough notes), statements, recordings, or memoranda of those Capitol Police Officers. If any interviews were not memorialized, please explain why that was not done.
26. The discovery contains some FBI 302s for investigations related to events at the Capitol on January 6, 2021. Please provide all FBI 302s, reports (including FD-1057s), and other memoranda for those investigations, including investigations relating to foreign interference and efforts by foreign actors to support and exacerbate events at the Capitol on January 6, 2021. If the reports or memoranda are not available, please explain why.
27. All exhibits, including audio, software, or video files, referenced during any grand jury testimony or presentation.
28. Please provide all documents relating to potential mishandling of classified information by Mike Pence and any other potential witness in this case.
29. Please provide all documents—including drafts and communications regarding revisions, and source materials—relating to the November 12, 2020 “Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees” by CISA and others.
30. Please provide all documents—including drafts and communications regarding revisions, and source materials—relating to the unclassified version of the Intelligence Community Assessment titled “Foreign Threats to the 2020 US Federal Elections” (SCO-00723593), including the “Minority View” reflected in the Assessment.
31. Please provide all documents—including drafts and communications regarding revisions, and source materials—relating to the DOJ-DHS Joint Report on “Foreign Interference Targeting Election Infrastructure or Political Organization, Campaign, or Candidate Infrastructure Related to the 2020 US Federal Elections” (SCO-03668448), including:
  - a. The “FBI forensic analyses; CISA cyber incident response activities, risk analysis, and stakeholder information; IC reporting; and open-source reporting” referenced in the report (SCO-03668449);

b. All documents relating to the “[b]road Russian and Iranian campaigns” referenced in the report (SCO-03668450);

c. All documents relating to “Iranian claims that sought to undermine the public's confidence in the US election infrastructure” (SCO-03668450);

d. All documents relating to “incidents when Russian, Chinese, and Iranian government-affiliated actors materially impacted the security of networks associated with or pertaining to US political organizations, candidates, and campaigns during 2020 federal elections” (SCO-03668450); and

e. Documents relating to “claims” that Venezuela, Cuba, and China “owned, directed, or controlled election infrastructure used in the 2020 federal elections.”

32. With respect to the December 16, 2022 interview of John Ratcliffe, please provide:

a. The “50-page report” referenced during the interview (SCO-11542960 at 27);

b. All documents relating to the “whistleblower” referenced during the interview (*id.* at 76, 88);

c. The “email or memo to file” referenced during the interview (*id.* at 126);

d. The documents that Mr. Ratcliffe “reviewed” at ODNI “on May 14” of 2023 (*id.* at 48; *see also id.* at 174 (“when I received the documents at ODNI”)).

33. All documents relating to unauthorized and/or improper querying of FISA databases in connection with the investigation of events in the vicinity of Washington, D.C. on January 6, 2021. *See* FISC Order at 29 (Apr. 21, 2022) (“The queries were run against unminimized Section 702 information to find evidence of possible foreign influence . . .”), *available at* [https://www.intelligence.gov/assets/documents/702%20Documents/decclassified/21/2021\\_FISC\\_Certification\\_Opinion.pdf](https://www.intelligence.gov/assets/documents/702%20Documents/decclassified/21/2021_FISC_Certification_Opinion.pdf).

34. Please provide an unredacted copy of the document bearing production number SCO-04798336.

35. Please identify the custodian of the folders depicted in photographs in and around production number SCO-04798357.

36. Please provide all documents reflecting or relating to communications between any component of DOJ’s Criminal Division and DOJ’s Office of the Inspector General concerning President Trump, Jeffrey Clark, or the 2020 election.

37. Please provide all documents reflecting or relating to communications between the National Archives and Records Administration (“NARA”) and either the Special Counsel’s Office, DOJ, or White House Counsel, including:

a. Communications between NARA and component(s) of DOJ responsible for investigating election-related crimes; and

b. All documents relating to the Executive Privilege and the Presidential Records Act.

38. Please provide all documents reflecting or relating to communications regarding the 2020 election or President Trump between the U.S. Postal Inspector’s Office, including Timothy Heaphy, and DOJ or the Special Counsel’s Office.

39. Please provide all documents relating to the “referrals” referenced by Lisa Monaco during an interview on or about January 25, 2022.

40. Please provide all documents relating to the March 2021 “60 Minutes” interview of Michael Sherwin, including all documents relating to investigations of potential violations of applicable rules, policies, or procedures resulting from Mr. Sherwin’s participation in the interview.

41. Please provide all documents relating to communications between the Special Counsel’s Office and the United States House Select Committee on the January 6 Attack, established by H. Res. 503, 117<sup>th</sup> Cong. (2021) (the “House Select Committee”).

42. Please provide all documents related to the loss, destruction, and lack of retention of any documents or evidence by the Office of the Special Counsel, the Department of Justice, the White House, or the House Select Committee, related to events at the U.S. Capitol on January 6, 2021.

43. Please provide all documents relating to communications or coordination by the Special Counsel’s Office and DOJ with any of the Biden Administration, the Biden Campaign, Hunter Biden, the Biden family, the Biden White House, or any person representing Joe Biden.

44. Please provide all documents regarding Department of Justice policy regarding a prosecutor or special counsel signing or executing an indictment or other official records without having fully or properly executed the oath of office.

45. Please provide all documents referenced by General Mark Milley at pages 10 and 169 of the transcript of his November 17, 2021 testimony before the House Select Committee.

46. Please provide all documents relating to briefings provided to President Trump regarding:

- a. Election security issues, prior to or after the 2020 election; or
- b. Any sort of foreign influence efforts by foreign state or non-state actors, including but not limited to briefing summaries reflected in emails involving Beth Sanner and Edward Gistaro.

47. Please provide all documents relating to President Trump's daily schedule for the period from October 1, 2020 through January 20, 2021, including scheduling materials, itineraries, and summaries of President Trump's activities, including all "Daily Diary" documents (*E.g.*, SCO-02294198), and all communications involving the Office of Presidential Scheduling (using, for example, the email address [scheduling@who.eop.gov](mailto:scheduling@who.eop.gov)).

48. Please provide all emails involving Beth Sanner or Edward Gistaro.

49. Please provide all rough notes, working papers, recordings, reports, and statements of law enforcement agents or officers pertaining to this or related investigations.

50. Please identify any statements by any witness, prospective witness, or non-witness declarant that the prosecution team knows or should know are false.

51. Please identify statements made by any law enforcement official to any witness, prospective witness, or non-witness declarant suggesting that any member of the prosecution team tended to doubt the individual's credibility or the veracity of statements he or she has made that is relevant to the allegations in the indictment.

52. Please provide all information not otherwise requested that might potentially reflect either the motivation of a witness, prospective witness, or non-witness declarant to favor the government or be biased against President Trump.

53. Please provide all prior statements, communications, or testimony by FBI Special Agent Jamie Garman related to President Trump.

54. Please provide Agent Garman's personnel file.

55. Please provide all documents reflecting statements by any member of the prosecution team indicating an intent or effort to stop or hinder President Trump from becoming President of the United States.

56. We have found many redacted documents in the discovery production. There are likely many more because we cannot search for redactions. For each of these redactions, please explain why the document was redacted and provide the complete document.

57. Please identify any documents within the discovery production that have been edited or altered from their original content or format.

58. Please confirm that you have conducted a case-file review consistent with Justice Manual § 9-5.002.

59. Please confirm that your review of materials potentially subject to the Jencks Act and *Giglio* has included all electronic facilities used by each witness, including both classified and unclassified email accounts, classified and unclassified chat and messaging programs, personal email accounts, personal phones, and personal messaging apps.

We expect to submit additional questions and requests on a rolling basis. Please let us know if you would like to discuss any of these issues.

Respectfully Submitted,

A handwritten signature in blue ink that reads "John Lauro". The signature is cursive and fluid.

John F. Lauro  
Gregory M. Singer  
Filzah I. Pavalon  
LAURO & SINGER

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