

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-MJ-8332-BER

IN RE SEALED SEARCH WARRANT

_____/

**NOTICE OF FILING OF REDACTED SEARCH WARRANT AFFIDAVIT
AND REDACTED *EX PARTE* MEMORANDUM OF LAW
CONCERNING PROPOSED REDACTIONS**

The United States gives notice that, in compliance with the Court's August 25, 2022 Order To Unseal, Docket Entry ("D.E.") 94, it hereby files the redacted version of the search warrant affidavit, submitted in support of the search warrant signed and approved by the Court on August 5, 2022. The redactions were previously submitted for the Court's review and approved by the Court's August 25, 2022 Order (DE89-1; DE94).

In addition, this notice includes a redacted copy of the government's Sealed, *Ex Parte* Memorandum of Law Concerning Proposed Redactions, filed on August 25, 2022, along with Exhibit B to that Memorandum, a redacted chart explaining the government's proposed redactions—both of which the Court ordered unsealed on August 26, 2022. Exhibit A to that filing consists of the proposed redactions to the affidavit, which accompanies this Notice in its final, redacted form.

Respectfully submitted,

/s Juan Antonio Gonzalez
JUAN ANTONIO GONZALEZ
UNITED STATES ATTORNEY
Florida Bar No. 897388
99 NE 4th Street, 8th Floor
Miami, Fl 33132
Tel: 305-961-9001
Email: juan.antonio.gonzalez@usdoj.gov

classification markings and records were removed from the White House (or any other authorized location(s) for the storage of classified materials) and came to be stored at the PREMISES; determine whether the storage location(s) at the PREMISES were authorized locations for the storage of classified information; determine whether any additional classified documents or records may have been stored in an unauthorized location at the PREMISES or another unknown location, and whether they remain at any such location; and identify any person(s) who may have removed or retained classified information without authorization and/or in an unauthorized space.

3. The FBI's investigation has established that documents bearing classification markings, which appear to contain National Defense Information (NDI), were among the materials contained in the FIFTEEN BOXES and were stored at the PREMISES in an unauthorized location. [REDACTED]

[REDACTED] Further, there is probable cause to believe that additional documents that contain classified NDI or that are Presidential records subject to record retention requirements currently remain at the PREMISES. There is also probable cause to believe that evidence of obstruction will be found at the PREMISES.

4. I am a Special Agent with the FBI assigned to the Washington Field Office [REDACTED]. During this time, I have received training at the FBI Academy located at Quantico, Virginia, specific to counterintelligence and espionage investigations. [REDACTED].

Based on my experience and training, I am familiar with efforts used to unlawfully collect, retain, and disseminate sensitive government information, including classified NDI.

5. I make this affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a warrant to search the premises known as 1100 S Ocean Blvd, Palm Beach, FL 33480, the “PREMISES,” as further described in Attachment A, for the things described in Attachment B.

6. Based upon the following facts, there is probable cause to believe that the locations to be searched at the PREMISES contain evidence, contraband, fruits of crime, or other items illegally possessed in violation of 18 U.S.C. §§ 793(e), 1519, or 2071.

SOURCE OF EVIDENCE

7. The facts set forth in this affidavit are based on my personal knowledge, knowledge obtained during my participation in this investigation, and information obtained from other FBI and U.S. Government personnel. Because this affidavit is submitted for the limited purpose of establishing probable cause in support of the application for a search warrant, it does not set forth each and every fact that I, or others, have learned during the course of this investigation.

STATUTORY AUTHORITY AND DEFINITIONS

8. Under 18 U.S.C. § 793(e), “[w]hoever having unauthorized possession of, access to, or control over any document . . . or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted” or attempts to do or causes the same “to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee

of the United States entitled to receive it” shall be fined or imprisoned not more than ten years, or both.

9. Under Executive Order 13526, information in any form may be classified if it: (1) is owned by, produced by or for, or is under the control of the United States Government; (2) falls within one or more of the categories set forth in the Executive Order [Top Secret, Secret, and Confidential]; and (3) is classified by an original classification authority who determines that its unauthorized disclosure reasonably could be expected to result in damage to the national security.

10. Where such unauthorized disclosure could reasonably result in damage to the national security, the information may be classified as “Confidential” and must be properly safeguarded. Where such unauthorized disclosure could reasonably result in serious damage to the national security, the information may be classified as “Secret” and must be properly safeguarded. Where such unauthorized disclosure could reasonably result in exceptionally grave damage to the national security, the information may be classified as “Top Secret” and must be properly safeguarded.

11. Sensitive Compartmented Information (SCI) means classified information concerning or derived from intelligence sources, methods, or analytical processes, which is required to be handled within formal access control systems.

12. Special Intelligence, or “SI,” is an SCI control system designed to protect technical and intelligence information derived from the monitoring of foreign communications signals by other than the intended recipients. The SI control system protects SI-derived information and information relating to SI activities, capabilities, techniques, processes, and procedures.

13. HUMINT Control System, or “HCS,” is an SCI control system designed to protect intelligence information derived from clandestine human sources, commonly referred to as

“human intelligence.” The HCS control system protects human intelligence-derived information and information relating to human intelligence activities, capabilities, techniques, processes, and procedures.

14. Foreign Intelligence Surveillance Act, or “FISA,” is a dissemination control designed to protect intelligence information derived from the collection of information authorized under the Foreign Intelligence Surveillance Act by the Foreign Intelligence Surveillance Court, or “FISC.”

15. Classified information may be marked as “Not Releasable to Foreign Nationals/Governments/US Citizens,” abbreviated “NOFORN,” to indicate information that may not be released in any form to foreign governments, foreign nationals, foreign organizations, or non-U.S. citizens without permission of the originator.

16. Classified information may be marked as “Originator Controlled,” abbreviated “ORCON.” This marking indicates that dissemination beyond pre-approved U.S. entities requires originator approval.

17. Classified information of any designation may be shared only with persons determined by an appropriate United States Government official to be eligible for access, and who possess a “need to know.” Among other requirements, in order for a person to obtain a security clearance allowing that person access to classified United States Government information, that person is required to and must agree to properly protect classified information by not disclosing such information to persons not entitled to receive it, by not unlawfully removing classified information from authorized storage facilities, and by not storing classified information in unauthorized locations. If a person is not eligible to receive classified information, classified information may not be disclosed to that person. In order for a foreign government to receive

access to classified information, the originating United States agency must determine that such release is appropriate.

18. Pursuant to Executive Order 13526, classified information contained on automated information systems, including networks and telecommunications systems, that collect, create, communicate, compute, disseminate, process, or store classified information must be maintained in a manner that: (1) prevents access by unauthorized persons; and (2) ensures the integrity of the information.

19. 32 C.F.R. Parts 2001 and 2003 regulate the handling of classified information. Specifically, 32 C.F.R. § 2001.43, titled “Storage,” regulates the physical protection of classified information. This section prescribes that Secret and Top Secret information “shall be stored in a [General Services Administration]-approved security container, a vault built to Federal Standard (FHD STD) 832, or an open storage area constructed in accordance with § 2001.53.” It also requires periodic inspection of the container and the use of an Intrusion Detection System, among other things.

20. Under 18 U.S.C. § 1519:

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

21. Under 18 U.S.C. § 2071:

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term "office" does not include the office held by any person as a retired officer of the Armed Forces of the United States.

22. Under the PRA, 44 U.S.C. § 2201:

(2) The term "Presidential records" means documentary materials, or any reasonably segregable portion thereof, created or received by the President, the President's immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise or assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term—

(A) includes any documentary materials relating to the political activities of the President or members of the President's staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; but

(B) does not include any documentary materials that are (i) official records of an agency (as defined in section 552(e) of title 5, United States Code; (ii) personal records; (iii) stocks of publications and stationery; or (iv) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

23. Under 44 U.S.C. § 3301(a), government "records" are defined as:

all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them.

PROBABLE CAUSE

NARA Referral

24. On February 9, 2022, the Special Agent in Charge of NARA's Office of the

Inspector General sent the NARA Referral via email to DOJ. The NARA Referral stated that according to NARA's White House Liaison Division Director, a preliminary review of the FIFTEEN BOXES indicated that they contained "newspapers, magazines, printed news articles, photos, miscellaneous print-outs, notes, presidential correspondence, personal and post-presidential records, and 'a lot of classified records.' Of most significant concern was that highly classified records were unfolded, intermixed with other records, and otherwise improperly [*sic*] identified."

25. On February 18, 2022, the Archivist of the United States, chief administrator for NARA, stated in a letter to Congress's Committee on Oversight and Reform Chairwoman The Honorable Carolyn B. Maloney, "NARA had ongoing communications with the representatives of former President Trump throughout 2021, which resulted in the transfer of 15 boxes to NARA in January 2022 NARA has identified items marked as classified national security information within the boxes." The letter also stated that, "[b]ecause NARA identified classified information in the boxes, NARA staff has been in communication with the Department of Justice." The letter was made publicly available at the following uniform resource locator (URL):

<https://www.archives.gov/files/foia/ferriero-response-to-02.09.2022-maloney-letter.02.18.2022.pdf>. On February 18, 2022, the same day, the Save America Political Action

Committee (PAC) posted the following statement on behalf of FPOTUS: "The National Archives did not 'find' anything, they were given, upon request, Presidential Records in an ordinary and routine process to ensure the preservation of my legacy and in accordance with the Presidential Records Act" An image of this statement is below.



Exhibit 13-110

Statement by Donald J. Trump, 45th President of the United States of America

The National Archives did not "find" anything, they were given, upon request, Presidential Records in an ordinary and routine process to ensure the preservation of my legacy and in accordance with the Presidential Records Act. If this was anyone but "Trump," there would be no story here. Instead, the Democrats are in search of their next scam. The Russia, Russia, Russia Hoax turned out to be a Democrat inspired fake story to help Crooked Hillary Clinton. Impeachment Hoax #1, Impeachment Hoax #2, and so much more, has all been a Hoax. The Fake News is making it seem like me, as the President of the United States, was working in a filing room. No, I was busy destroying ISIS, building the greatest economy America had ever seen, brokering Peace deals, making sure Russia didn't attack Ukraine, making sure China didn't take over Taiwan, making sure there was no inflation, creating an energy independent country, rebuilding our military and law enforcement, saving our Second Amendment, protecting our Border, and cutting taxes. Now, Russia is invading Ukraine, our economy is being destroyed, our Border is once again overrun, and the mandate continues. Instead of focusing on America, the media just wants to talk about their plan to "get" Trump. The people won't stand for it any longer!

[Redacted]

26.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

27.

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

28. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

29. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Boxes Containing Documents Were Transported from the White House to Mar-a-Lago

30. According to a CBS Miami article titled "Moving Trucks Spotted At Mar-a-Lago," published Monday, January 18, 2021, at least two moving trucks were observed at the PREMISES on January 18, 2021. [REDACTED]

[REDACTED]

31. [REDACTED]

[REDACTED]

32. [REDACTED]

[REDACTED]

[REDACTED]

33. [REDACTED]

[REDACTED]

34. [REDACTED]

[REDACTED]

[REDACTED]

35. [REDACTED]

[REDACTED]

36. [REDACTED]

[REDACTED]

37. [REDACTED]

[REDACTED]

Provision of the Fifteen Boxes to NARA

38. [REDACTED]

[REDACTED]

[REDACTED]

39. On or about May 6, 2021, NARA made a request for the missing PRA records and continued to make requests until approximately late December 2021 when NARA was informed twelve boxes were found and ready for retrieval at the PREMISES. [REDACTED]

[REDACTED]

¹ [REDACTED]

[REDACTED]

40. [REDACTED]

[REDACTED]

41. [REDACTED]

[REDACTED]

[REDACTED]

42. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

43. [REDACTED]

[REDACTED]

44. [REDACTED]

[REDACTED]

[REDACTED]

45.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

46.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The FIFTEEN BOXES Provided to NARA Contain Classified Information

47. From May 16-18, 2022, FBI agents conducted a preliminary review of the FIFTEEN BOXES provided to NARA and identified documents with classification markings in fourteen of the FIFTEEN BOXES. A preliminary triage of the documents with classification markings revealed the following approximate numbers: 184 unique documents bearing classification markings, including 67 documents marked as CONFIDENTIAL, 92 documents marked as SECRET, and 25 documents marked as TOP SECRET. Further, the FBI agents observed markings reflecting the following compartments/dissemination controls: HCS, FISA, ORCON, NOFORN, and SI. Based on my training and experience, I know that documents classified at these levels typically contain NDI. Several of the documents also contained what appears to be FPOTUS's handwritten notes.

48. [REDACTED]

49. [REDACTED]

[REDACTED]

[REDACTED]

50. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

51. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

52. [REDACTED]

[REDACTED] In the second such letter, which is attached as Exhibit 1, FPOTUS COUNSEL 1 asked DOJ to consider a few “principles,” which include FPOTUS COUNSEL 1’s claim that a President has absolute authority to declassify documents. In this letter, FPOTUS COUNSEL 1 requested, among other things, that “DOJ provide this letter to any judicial officer who is asked to rule on any motion pertaining to this investigation, or on any application made in connection with any investigative request concerning this investigation.”

53. I am aware of an article published in *Breitbart* on May 5, 2022, available at <https://www.breitbart.com/politics/2022/05/05/documents-mar-a-lago-marked-classified-were-already-declassified-kash-patel-says/>, which states that Kash Patel, who is described as a former top FPOTUS administration official, characterized as “misleading” reports in other news organizations that NARA had found classified materials among records that FPOTUS provided to NARA from Mar-a-Lago. Patel alleged that such reports were misleading because FPOTUS had declassified the materials at issue. [REDACTED]

[REDACTED]

54. [REDACTED]

[REDACTED]

55. [REDACTED]

[REDACTED]

[REDACTED]

56. [REDACTED]

[REDACTED]

57. [REDACTED]

[REDACTED]

58. [REDACTED]

[REDACTED]

[REDACTED]

59. [REDACTED]

[REDACTED]

[REDACTED]

60. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

61. On June 8, 2022, DOJ COUNSEL sent FPOTUS COUNSEL 1 a letter, which reiterated that the PREMISES are not authorized to store classified information and requested the preservation of the STORAGE ROOM and boxes that had been moved from the White House to the PREMISES. Specifically, the letter stated in relevant part:

As I previously indicated to you, Mar-a-Lago does not include a secure location authorized for the storage of classified information. As such, it appears that since the time classified documents [REDACTED] were removed from the secure facilities at the White House and moved to Mar-a-Lago on or around January 20, 2021, they have not been handled in an appropriate manner or stored in an appropriate location. Accordingly, we ask that the room at Mar-a-Lago where the documents had been stored be secured and that all of the boxes that were moved from the White House to Mar-a-Lago (along with any other items in that room) be preserved in that room in their current condition until further notice.

² 18 U.S.C. § 793(e) does not use the term “classified information,” but rather criminalizes the unlawful retention of “information relating to the national defense.” The statute does not define “information related to the national defense,” but courts have construed it broadly. See *Gorin v. United States*, 312 U.S. 19, 28 (1941) (holding that the phrase “information relating to the national defense” as used in the Espionage Act is a “generic concept of broad connotations, referring to the military and naval establishments and the related activities of national preparedness”). In addition, the information must be “closely held” by the U.S. government. See *United States v. Squillacote*, 221 F.3d 542, 579 (4th Cir. 2000) (“[I]nformation made public by the government as well as information never protected by the government is not national defense information.”); *United States v. Morison*, 844 F.2d 1057, 1071-72 (4th Cir. 1988). Certain courts have also held that the disclosure of the documents must be potentially damaging to the United States. See *Morison*, 844 F.2d at 1071-72.

On June 9, 2022, FPOTUS COUNSEL 1 sent an email to DOJ COUNSEL, stating, "I write to acknowledge receipt of this letter."

[REDACTED]

62. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

63. [REDACTED]

[REDACTED]

[REDACTED]

64. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

65.

[REDACTED]

66.

[REDACTED]

[REDACTED]

[REDACTED]

67. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

68. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

69. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

There is Probable Cause to Believe That Documents Containing Classified NDI and Presidential Records Remain at the Premises

70. [REDACTED]

[REDACTED]

71. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

72. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

73. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

74. [REDACTED]

[REDACTED]

75. [REDACTED]

[REDACTED]

76. [REDACTED]

[REDACTED]

[REDACTED]

77. Based upon this investigation, I believe that the STORAGE ROOM, FPOTUS's residential suite, Pine Hall, the "45 Office," and other spaces within the PREMISES are not currently authorized locations for the storage of classified information or NDI. Similarly, based upon this investigation, I do not believe that any spaces within the PREMISES have been authorized for the storage of classified information at least since the end of FPOTUS's Presidential Administration on January 20, 2021.

78. As described above, evidence of the SUBJECT OFFENSES has been stored in multiple locations at the PREMISES. [REDACTED]

[REDACTED]

Accordingly, this affidavit seeks authorization to search the "45 Office" and all storage rooms and

any other rooms or locations where boxes or records may be stored within the PREMISES, as further described in Attachment A. The PREMISES is currently closed to club members for the summer; however, as specified in Attachment A, if at the time of the search, there are areas of the PREMISES being occupied, rented, or used by third parties, and not otherwise used or available to be used by FPOTUS and his staff, the search would not include such areas.

CONCLUSION

79. Based on the foregoing facts and circumstances, I submit that probable cause exists to believe that evidence, contraband, fruits of crime, or other items illegally possessed in violation 18 U.S.C. §§ 793(e), 2071, or 1519 will be found at the PREMISES. Further, I submit that this affidavit supports probable cause for a warrant to search the PREMISES described in Attachment A and seize the items described in Attachment B.

REQUEST FOR SEALING

80. It is respectfully requested that this Court issue an order sealing, until further order of the Court, all papers submitted in support of this application, including the application and search warrant. I believe that sealing this document is necessary because the items and information to be seized are relevant to an ongoing investigation and the FBI has not yet identified all potential criminal confederates nor located all evidence related to its investigation. Premature disclosure of the contents of this affidavit and related documents may have a significant and negative impact on the continuing investigation and may severely jeopardize its effectiveness by allowing criminal parties an opportunity to flee, destroy evidence (stored electronically and otherwise), change patterns of behavior, and notify criminal confederates.

**SEARCH PROCEDURES FOR HANDLING POTENTIAL ATTORNEY-CLIENT
PRIVILEGED INFORMATION**

The following procedures will be followed at the time of the search in order to protect against disclosures of attorney-client privileged material:

81. These procedures will be executed by: (a) law enforcement personnel conducting this investigation (the “Case Team”); and (b) law enforcement personnel not participating in the investigation of the matter, who will search the “45 Office” and be available to assist in the event that a procedure involving potentially attorney-client privileged information is required (the “Privilege Review Team”).

82. The Case Team will be responsible for searching the **TARGET PREMISES**. However, the Privilege Review Team will search the “45 Office” and conduct a review of the seized materials from the “45 Office” to identify and segregate documents or data containing potentially attorney-client privileged information.

83. If the Privilege Review Team determines the documents or data are not potentially attorney-client privileged, they will be provided to the law-enforcement personnel assigned to the investigation. If 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.

84. 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.

Respectfully submitted,



Special Agent
Federal Bureau of Investigation

Subscribed and sworn before me by
telephone (WhatsApp) or other reliable electronic
means this 5 day of August, 2022:

Handwritten signature of Bruce E. Reinhart in black ink, written over a horizontal line.

HON. BRUCE E. REINHART
UNITED STATES MAGISTRATE JUDGE

EXHIBIT 1

**SILVERMAN
THOMPSON**

Silverman Thompson Slutkin White

ATTORNEYS AT LAW

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May 25, 2022

Via Electronic Mail

Jay I. Bratt, Esquire
Chief
Counterintelligence & Export Control Section
National Security Division
U.S. Department of Justice
950 Pennsylvania, Avenue, N.W.
Washington, D.C. 20530

Re: Presidential Records Investigation

Dear Jay:

I write on behalf of President Donald J. Trump regarding the above-referenced matter.

Public trust in the government is low. At such times, adherence to the rules and long-standing policies is essential. President Donald J. Trump is a leader of the Republican Party. The Department of Justice (DOJ), as part of the Executive Branch, is under the control of a President from the opposite party. It is critical, given that dynamic, that every effort is made to ensure that actions by DOJ that may touch upon the former President, or his close associates, do not involve politics.

There have been public reports about an investigation by DOJ into Presidential Records purportedly marked as classified among materials that were once in the White House and unknowingly included among the boxes brought to Mar-a-Lago by the movers. It is important to emphasize that when a request was made for the documents by the National Archives and Records Administration (NARA), President Trump readily and voluntarily agreed to their transfer to NARA. The communications regarding the transfer of boxes to NARA were friendly, open, and straightforward. President Trump voluntarily ordered that the boxes be provided to NARA. No legal objection was asserted about the transfer. No concerns were raised about the contents of the boxes. It was a voluntary and open process.

Unfortunately, the good faith demonstrated by President Trump was not matched once the boxes arrived at NARA. Leaks followed. And, once DOJ got involved, the leaks continued. Leaks about any investigation are concerning. Leaks about an investigation that involve the residence of a former President who is still active on the national political scene are particularly troubling.

Jay I. Bratt
May 25, 2022
Page 2 of 3

It is important to note a few bedrock principles:

(1) A President Has Absolute Authority To Declassify Documents.

Under the U.S. Constitution, the President is vested with the highest level of authority when it comes to the classification and declassification of documents. *See* U.S. Const., Art. II, § 2 (“The President [is] Commander in Chief of the Army and Navy of the United States[.]”). His constitutionally-based authority regarding the classification and declassification of documents is unfettered. *See Navy v. Egan*, 484 U.S. 518, 527 (1988) (“[The President’s] authority to classify and control access to information bearing on national security . . . flows primarily from this constitutional investment of power in the President and exists quite apart from any explicit congressional grant.”).

(2) Presidential Actions Involving Classified Documents Are Not Subject To Criminal Sanction.

Any attempt to impose criminal liability on a President or former President that involves his actions with respect to documents marked classified would implicate grave constitutional separation-of-powers issues. Beyond that, the primary criminal statute that governs the unauthorized removal and retention of classified documents or material *does not apply* to the President. That statute provides, in pertinent part, as follows:

Whoever, being an officer, employee, contractor, or consultant of the United States, and, by virtue of his office, employment, position, or contract, becomes possessed of documents or materials containing classified information of the United States, knowingly removes such documents or materials without authority and with the intent to retain such documents or materials at an unauthorized location shall be fined under this title or imprisoned for not more than five years, or both.

18 U.S.C. § 1924(a). An element of this offense, which the government must prove beyond a reasonable doubt, is that the accused is “an officer, employee, contractor, or consultant of the United States.” The President is none of these. *See Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 497–98 (2010) (citing U.S. Const., Art. II, § 2, cl. 2) (“The people do not vote for the ‘Officers of the United States.’”); *see also Melcher v. Fed. Open Mkt. Comm.*, 644 F. Supp. 510, 518–19 (D.D.C. 1986), *aff’d*, 836 F.2d 561 (D.C. Cir. 1987) (“[a]n officer of the United States can only be appointed by the President, by and with the advice and consent of the Senate, or by a court of law, or the head of a department. A person who does not derive his position from one of these sources is not an officer of the United States in the sense of the Constitution.”). Thus, the statute does not apply to acts by a President.

Jay I. Bratt
May 25, 2022
Page 3 of 3

(3) DOJ Must Be Insulated From Political Influence.

According to the Inspector General of DOJ, one of the top challenges facing the Department is the public perception that DOJ is influenced by politics. The report found that “[o]ne important strategy that can build public trust in the Department is to ensure adherence to policies and procedures designed to protect DOJ from accusations of political influence or partial application of the law.” See <https://oig.justice.gov/reports/top-management-and-performance-challenges-facing-department-justice-2021> (last visited May 25, 2022). We request that DOJ adhere to long-standing policies and procedures regarding communications between DOJ and the White House regarding pending investigative matters which are designed to prevent political influence in DOJ decision-making.

(4) DOJ Must Be Candid With Judges And Present Exculpatory Evidence.

Long-standing DOJ policy requires that DOJ attorneys be candid in representations made to judges. Pursuant to those policies, we request that DOJ provide this letter to any judicial officer who is asked to rule on any motion pertaining to this investigation, or on any application made in connection with any investigative request concerning this investigation.

The official policy of DOJ further requires that prosecutors present exculpatory evidence to a grand jury. Pursuant to that policy, we request that DOJ provide this letter to any grand jury considering evidence in connection with this matter, or any grand jury asked to issue a subpoena for testimony or documents in connection with this matter.

Thank you for your attention to this request.

With best regards,



M. Evan Corcoran

cc: Matthew G. Olsen
Assistant Attorney General
National Security Division
Via Electronic Mail

ATTACHMENT A

Property to be searched

The premises to be searched, 1100 S Ocean Blvd, Palm Beach, FL 33480, is further described as a resort, club, and residence located near the intersection of Southern Blvd and S Ocean Blvd. It is described as a mansion with approximately 58 bedrooms, 33 bathrooms, on a 17-acre estate. The locations to be searched include the “45 Office,” all storage rooms, and all other rooms or areas within the premises used or available to be used by FPOTUS and his staff and in which boxes or documents could be stored, including all structures or buildings on the estate. It does not include areas currently (i.e., at the time of the search) being occupied, rented, or used by third parties (such as Mar-a-Largo Members) and not otherwise used or available to be used by FPOTUS and his staff, such as private guest suites.

ATTACHMENT B

Property to be seized

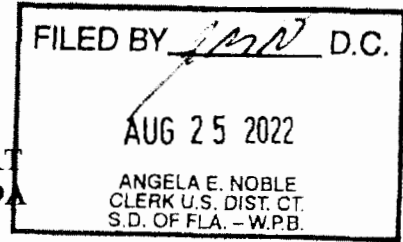
All physical documents and records constituting evidence, contraband, fruits of crime, or other items illegally possessed in violation of 18 U.S.C. §§ 793, 2071, or 1519, including the following:

a. Any physical documents with classification markings, along with any containers/boxes (including any other contents) in which such documents are located, as well as any other containers/boxes that are collectively stored or found together with the aforementioned documents and containers/boxes;

b. Information, including communications in any form, regarding the retrieval, storage, or transmission of national defense information or classified material;

c. Any government and/or Presidential Records created between January 20, 2017, and January 20, 2021; or

d. Any evidence of the knowing alteration, destruction, or concealment of any government and/or Presidential Records, or of any documents with classification markings.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-MJ-8332-BER

IN RE SEALED SEARCH WARRANT

UNDER SEAL

UNITED STATES' SEALED, *EX PARTE* MEMORANDUM OF LAW REGARDING
PROPOSED REDACTIONS

Pursuant to this Court's August 18 and August 22, 2022 orders, the United States respectfully submits this sealed, *ex parte* memorandum of law setting forth the justifications for its proposed redactions to the affidavit submitted to the Court on August 5, 2022, in support of the government's application for a search warrant at a property of former President Donald J. Trump. *See* Docket Entries ("D.E.") 1, 74, 80. For the reasons explained below, the materials the government marked for redaction in the attached document must remain sealed to protect the safety and privacy of a significant number of civilian witnesses, in addition to law enforcement personnel, as well as to protect the integrity of the ongoing investigation and to avoid disclosure of grand jury material in violation of the Federal Rules of Criminal Procedure.

Procedural Background

On August 8, 2022, the Department of Justice executed a search warrant, issued by this Court upon the requisite finding of probable cause, at the premises located at 1100 S. Ocean Blvd., Palm Beach, Florida 33480, a property of former President Trump. Given the circumstances presented in this matter and the public interest in transparency, and in the wake

The Court found that disclosure of the Affidavit would likely result in witnesses being “quickly and broadly identified over social media and other communication channels, which could lead to them being harassed and intimidated.” *Id.* at 9. The Court gave “great weight” to “the significant likelihood that unsealing the Affidavit would harm legitimate privacy interests,” with disclosures potentially serving to “impede the ongoing investigation through obstruction of justice and witness intimidation or retaliation.” *Id.* at 9-10. And the Court found that the Affidavit contains “critically important and detailed investigative facts: highly sensitive information about witnesses . . . ; specific investigative techniques; and information required to be kept under seal pursuant to Federal Rule of Criminal Procedure 6(e),” the disclosure of which “would detrimentally affect this investigation and future investigations.” *Id.* at 10. However, noting that the warrant involves “matters of significant public concern,” *id.*, the Court concluded that “the present record” does not “justif[y] keeping the *entire* Affidavit under seal,” *id.* at 13 (emphasis added).

Argument

The Redacted Materials Must Remain Under Seal

As the Court has found, “[p]rotecting the integrity and secrecy of an ongoing criminal investigation is a well-recognized compelling governmental interest.” D.E. 80 at 6 (citing, *inter alia*, *United States v. Valenti*, 986 F.2d 708, 714 (11th Cir. 1993)). Indeed, “[a]t the pre-indictment stage, the Government’s need to conceal the scope and direction of its investigation, as well as its investigative sources and methods, is at its zenith.” D.E. 80 at 7-8 (citing *Blalock v. United States*, 844 F.2d 1546, 1550 n.5 (11th Cir. 1988)). Counsel for the Intervenor has also acknowledged that certain portions of the affidavit must likely remain

of the former President's public confirmation of the search and his representatives' public characterizations of the materials sought, the government moved to unseal the search warrant, its attachments, and the Property Receipt summarizing materials seized, and this Court granted the government's motion. D.E. 18, 41.

A number of news media organizations and other entities (the "Intervenors") have filed motions to unseal these and other materials associated with the search warrant, including the affidavit. The government submitted its omnibus response to those motions on August 15, 2022. D.E. 59. The Court conducted a hearing on August 18, 2022, at the conclusion of which the Court directed the government to file under seal its proposed redactions to the affidavit and a legal memorandum setting forth the justifications for the proposed redactions.¹ D.E. 74.

In a subsequent order, the Court noted that the government "has met its burden of showing good cause/a compelling interest that overrides any public interest in unsealing the full contents of the Affidavit." D.E. 80 at 12. In that order, the Court observed that the obstruction and threat concerns raised by the government were "not hypothetical in this case." *Id.* at 8. In particular, the Court cited its prior finding of probable cause that a statute prohibiting obstruction of justice has been violated, and further relied upon the post-search increase in specific threats of violence to identified FBI agents, overall violent threats to FBI personnel, and the armed attack on the FBI office in Cincinnati. *Id.* at 8-9.

¹ Based on the government's and the Intervenors' agreement that certain additional documents (namely, the government's motion to seal, the Court's sealing order, and two cover sheets) could be publicly released with minor redactions to protect government personnel, the Court also ordered those documents released. D.E. 74.

under seal to protect information such as witness identities and investigative sources and methods. Hrg. Tr. at 35.

The government has carefully reviewed the affidavit and has identified five categories of information that must remain under seal in order to protect the safety of multiple civilian witnesses whose information was included throughout the affidavit and contributed to the finding of probable cause, as well as the integrity of the ongoing investigation. In the attached chart, the government has identified each category that applies to information the government proposes to redact. Some information falls within more than one category. The categories, described further below, are (1) information from a broad range of civilian witnesses who may be subject to “witness intimidation or retaliation,” D.E. 80 at 9; (2) information regarding investigative avenues and techniques that could provide a roadmap for potential ways to obstruct the investigation, *id.* at 9-10; (3) information whose disclosure is prohibited under Rule 6(e) of the Federal Rules of Criminal Procedure (“Rule 6(e)”), such as grand jury subpoenas, testimony, and related material, *id.* at 10; (4) information whose disclosure could risk the safety of law enforcement personnel, *id.* at 9; and (5) information whose disclosure could harm “legitimate privacy interests” of third parties, *id.*

1. Witness Information

First and foremost, the government must protect the identity of witnesses at this stage of the investigation to ensure their safety. As this Court noted, if information relating to witnesses were disclosed, “it is likely that even witnesses who are not expressly named in the Affidavit would be quickly and broadly identified over social media and other communication channels, which could lead to them being harassed and intimidated.” D.E. 80 at 9. *See also,*

e.g., Douglas Oil Co. of Cal. v. Petrol Stops Nw., 441 U.S. 211, 219 (1979) (describing the risk that “prospective witnesses would be hesitant to come forward voluntarily, knowing that those against whom they testify would be aware of that testimony”); *United States v. Steinger*, 626 F. Supp. 2d 1231, 1235 (S.D. Fla. 2009) (similar).

Information in the affidavit could be used to identify many, if not all, of these witnesses. For example,

[REDACTED]

[REDACTED]

If witnesses' identities are exposed, they could be subjected to harms including retaliation, intimidation, or harassment, and even threats to their physical safety. As the Court has already noted, "these concerns are not hypothetical in this case." D.E. 80 at 8.

[REDACTED]

[REDACTED]

[REDACTED] Meanwhile, FBI agents who have been publicly identified in connection with this investigation have received repeated threats of violence from members of the public. Exposure of witnesses' identities would likely erode their trust in the government's investigation, and it would almost certainly chill other potential witnesses from coming forward in this investigation and others.

2. Investigation "Road Map"

As Judge Jordan explained in *Steinger*, if details about an ongoing investigation are prematurely disclosed, such disclosures "would compromise the investigation and might also lead to the destruction of evidence." 626 F. Supp. 2d at 1235 (citing *Douglas Oil Co.*, 441 U.S. at 218-19); *see also, e.g., Patel v. United States*, No. 9:19-MC-81181, 2019 WL 4251269, at *5 (S.D. Fla. Sept. 9, 2019) (agreeing with the government that disclosure of information "would severely prejudice" its investigation, including by "prematurely disclosing its scope and direction, subjects, and potential witnesses, and could result in the destruction of evidence"); D.E. 80 at 9-10 (disclosure of investigative "sources and methods" "would detrimentally affect this investigation and future investigations").

Although the public is now aware that the government executed a search warrant at the premises owned by the former President and seized documents marked as classified, the affidavit is replete with further details that would provide a roadmap for anyone intent on obstructing the investigation. "Maximizing the Government's access to untainted facts increases its ability to make a fully-informed prosecutive decision." D.E. 80 at 8.

For example, [REDACTED]

[REDACTED]

Revealing this information could thus adversely impact the government's pursuit of relevant evidence.²

In addition, revealing this information could severely disadvantage the government as it seeks further information from witnesses. For example, [REDACTED]

² Additionally, the Court has noted that disclosure of certain information pertaining to physical aspects of the premises could negatively affect the Secret Service's ability to carry out its protective functions. D.E. 80 at 10. Although the Department of Justice is not in a position at this time to assess those potential harms, the information in the affidavit describing physical aspects of the premises fits within the category of information whose disclosure would provide a "road map" of investigative techniques and avenues, [REDACTED]

[REDACTED]

These concerns are particularly compelling in this case. As explained in the affidavit,

[REDACTED]

In short, the government has well-founded concerns that steps may be taken to frustrate or otherwise interfere with this investigation if facts in the affidavit were prematurely disclosed.

3. Rule 6(e)

The affidavit contains certain information that must be kept under seal pursuant to Federal Rule of Criminal Procedure 6(e) because it may disclose “a matter occurring before the grand jury.” Although “Rule 6(e) does not draw a veil of secrecy over all matters occurring in the world that happen to be investigated by a grand jury,” it bars disclosure of information that “would reveal something about the grand jury’s identity, investigation, or deliberation.” *Labow v. U.S. Dep’t of Justice*, 831 F.3d 523, 529 (D.C. Cir. 2016) (internal quotations omitted).³

[REDACTED]

4. Safety of Law Enforcement Personnel

Minor but important redactions are necessary to protect the safety of law enforcement

³ [REDACTED]

personnel. See D.E. 80 at 3 (redactions in other materials “are appropriate to protect the identity and personal safety of” an investigative agent). Specifically, information in the affidavit that would identify the affiant, such as by name or through biographical information, see Aff. ¶ 4, should remain under seal. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. Privacy Interests

As the Supreme Court has long recognized, premature disclosure of investigative information creates a risk that “persons who are accused but exonerated” may be “held up to public ridicule.” *Douglas Oil Co.*, 441 U.S. at 219; see also, e.g., *Steinger*, 626 F. Supp. 2d at 1235 (disclosure of names of subjects and of matters being investigated “could have devastating consequences for those persons who have been cleared of any misconduct, as well as for those still under investigation”).⁴ The government recognizes that the former President has spoken publicly about this investigation and has said in a public statement that he wishes for the affidavit to be disclosed in its entirety, although the Court has noted that “[n]either Former President Trump nor anyone else purporting to be the owner of the Premises has filed a pleading taking a position on the Intervenors’ Motion to Unseal.”⁵ D.E.

⁴ Protecting the identities of uncharged individuals is also consistent with government counsel’s professional responsibilities. See Justice Manual § 9-27.760 (“Limitation on Identifying Uncharged Third-Parties Publicly”).

⁵ See Perry Stein & Josh Dawsey, “Trump Wants Mar-a-Lago Affidavit Released, As Some Aides Ponder Risk,” *Washington Post* (Aug. 17, 2022), available at <https://www.washingtonpost.com/national-security/2022/08/16/trump-mar-a-lago-affidavit/>. [REDACTED]

80 at 1-2. Nevertheless, the affidavit contains additional information about others that could harm these individuals' privacy and reputational interests if disclosed.

For example, [REDACTED]

[REDACTED]

Conclusion

For the reasons stated herein, the Court should maintain under seal the text the government has marked for redaction. The government defers to the Court to determine whether the redactions are "so extensive that" release of the remainder of the affidavit would "result in a meaningless disclosure." D.E. 80 at 12. Should the Court order disclosure of a redacted version of the affidavit, and if the Court agrees with the government's proposed redactions, the government will submit a final version of the redacted affidavit for public release.

In the interest of transparency, as well as the principle that limitations on public access

[REDACTED]

to judicial proceedings should be “narrowly tailored,” *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982), the government respectfully submits that certain portions of this filing may be unsealed, including the introductory segment up through the first two paragraphs in the Argument section on page 4, as well as certain text in the sections that follow describing relevant provisions of law. The government will submit a version of this filing that identifies the portions that can be publicly filed, along with its proposed redactions, forthwith. And with the Court’s permission, the government will confer with counsel for the former President as to whether counsel or the former President has any objection to unsealing the letter from counsel included as Exhibit 1 to the affidavit. Absent any such objection, the government supports unsealing the letter.

Respectfully submitted,

/s/ Juan Antonio Gonzalez

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Exhibit B

ATTACHMENT

Aff. Paragraph	Reason(s) for withholding
Prefatory language	Agent safety
¶ 3	[REDACTED]
¶ 4	Agent safety
Heading above ¶ 26	[REDACTED]
¶ 26	[REDACTED]
¶ 27	[REDACTED]
¶ 28	[REDACTED]
¶ 29	[REDACTED]
¶ 30	[REDACTED]
¶ 31	[REDACTED]
¶ 32	[REDACTED]
¶ 33	[REDACTED]
¶ 34	[REDACTED]
¶ 35	[REDACTED]
¶ 36	[REDACTED]
¶ 37	[REDACTED]
¶ 38	[REDACTED]
¶ 39	[REDACTED]
¶ 40	[REDACTED]
¶ 41	[REDACTED]
¶ 42	[REDACTED]
¶ 43	[REDACTED]
¶ 44	[REDACTED]
¶ 45	[REDACTED]
¶ 46	[REDACTED]
¶ 48	[REDACTED]
Heading above ¶ 49	[REDACTED]
¶ 49	[REDACTED]
¶ 50	[REDACTED]
Heading above ¶ 51	[REDACTED]
¶ 51	[REDACTED]

¶ 52	[REDACTED]
¶ 53	[REDACTED]
¶ 54	[REDACTED]
¶ 55	[REDACTED]
¶ 56	[REDACTED]
¶ 57	[REDACTED]
¶ 58	[REDACTED]
¶ 59	[REDACTED]
¶ 60	[REDACTED]
¶ 61	[REDACTED]
Heading above	[REDACTED]
¶ 62	[REDACTED]
¶ 63	[REDACTED]
¶ 64	[REDACTED]
¶ 65	[REDACTED]
¶ 66	[REDACTED]
¶ 67	[REDACTED]
¶ 68	[REDACTED]
¶ 69	[REDACTED]
¶ 70	[REDACTED]
¶ 71	[REDACTED]
¶ 72	[REDACTED]
¶ 73	[REDACTED]
¶ 74	[REDACTED]
¶ 75	[REDACTED]
¶ 76	[REDACTED]
¶ 78	[REDACTED]
Agent signature	Agent safety