

# **EXHIBIT 5**

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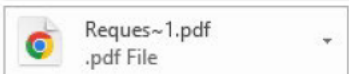
Tue 3/22/2022 3:52 PM

 Thibault, Timothy R. (WF) (FBI)

Arctic Frost Opening EC (Soft Copy)

To  D'Antuono, Steven Michael (WF) (FBI)

Cc  Adams, Jill P. (DO) (FBI)



Sir,

Please find a copy of the Arctic Frost Opening EC for review/approval. This version has the concurrence of FBIHQ PCCRS. Attachments are avail on red. Please let me know if you have any questions.

v/r,

Tim

Timothy R. Thibault  
Assistant Special Agent in Charge  
Criminal Division - Branch II  
Northern Virginia RA  
Washington Field Office  
Desk: [REDACTED]  
Cell: [REDACTED]

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**FEDERAL BUREAU OF INVESTIGATION****Electronic Communication**

**Title:** (U//FOUO) Requests Opening of New  
Investigation - Arctic Frost

**Date:** 03/22/2022

**From:** WASHINGTON FIELD  
WF-CR15

**Contact:** MICHELLE BALL, [REDACTED]

**Approved By:** WF-CR15 (SSA)  
WF-CDC (CDC)  
WF-CRB2 (ASAC)  
WF-CR (SAC)  
WF-ADIC (ADIC)

**Drafted By:** MICHELLE BALL  
Jamie R. Garman  
MEHOCHKO DANIEL A

**Case ID #:** 56D-WF-NEW

(U//FOUO) ARCTIC FROST - Election Law  
Matters - SENSITIVE INVESTIGATIVE MATTER

**Synopsis:** (U//FOUO) This communication requests opening of a new 56D full investigative matter predicated on information subjects corruptly conspired to obstruct the United States Congress' certification of the 2020 Presidential election results by submitting fraudulent certificates of electors' votes to the United States Government. The processes by which these certificates were created, signed, and sent to the United States Government and the purpose for which they were intended to be used violated multiple criminal statutes over which the United States Department of Justice and the Federal Bureau of Investigation have enforcement authority.

**Enclosure(s):** Enclosed are the following items:

1. (U//FOUO) PIN approval and concurrence for case opening.
2. (U//FOUO) Allegedly fraudulent electoral certificates for the 2020 Presidential and Vice Presidential election for Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin. Electoral certificates were received from The National Archives and Records Administration website.
3. (U//FOUO) Electoral certificates for the 2020 Presidential and Vice

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Presidential election for Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin obtained from the National Archive and Records Administration.

4. (U//FOUO) List of allegedly fraudulent electors who submitted certificates naming Donald J. Trump as President in Arizona, Georgia, Michigan, Nevada, and Wisconsin.

5. (U//FOUO) LHM regarding opening a new 56D matter for PCU distribution as deemed appropriate.

**Details:**

The writer respectfully recommends opening a new 56D matter. This recommendation is based on specific and articulable facts and circumstances detailed herein that the proposed subjects have engaged in activity that violates federal law, particularly 18 U.S.C. § 1512(c)(2) and (k) (attempt or conspiracy to corruptly obstruct, influence, and impede the certification of the Electoral College vote), 18 U.S.C. § 371 (conspiracy), and related statutes. In particular, the FBI has obtained evidence suggesting the proposed subjects – including representatives of Donald J. Trump for President, Inc. (the Trump Campaign) – conspired with others, known and unknown, to corruptly obstruct the United States Congress' certification of the election results. As detailed herein, the evidence suggests proposed subjects attempted to overturn the election results by conspiring to submit allegedly fraudulent elector certificates and attempting to convince Vice President Michael Pence (Pence) to rely on the allegedly fraudulent certificates of electors on January 6, 2021, during a Joint Session of Congress.

**RELEVANT FACTS, CIRCUMSTANCES, AND ALLEGATIONS:**

**Background on the Electoral College**

The "Electoral College" refers to the process by which the United States elects the President and Vice President. In this process, the States (including the District of Columbia) elect the President and Vice President through the selection of "electors." The Office of the Federal Register (OFR) is part of the National Archives and Records Administration (NARA). NARA, on behalf of the Archivist of the United States, coordinates certain Electoral College functions between the States and Congress. Acting as an intermediary, NARA reviews "Certificates of Ascertainment and Vote" before Congress accepts them as evidence of official State action in preparation for the counting of

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electoral votes in Congress.

The United States Constitution vests in the state legislatures the manner of appointment of electors. However, federal Constitutional and statutory requirements also apply. Specifically, Title 3, Chapter 1 of the United States Code sets forth certain requirements regarding Presidential elections and electors. Under 3 U.S.C. § 1, the electors for President and Vice President "shall be appointed, in each State, on the Tuesday next after the first Monday in November" during Presidential election years. After the electors are appointed, each state Governor is obliged "to deliver to the electors of such State, on or before the day on which they are required by 3 U.S.C. § 7 to meet, six duplicate-originals of the same certificate under the seal of the State." 3 U.S.C. § 6. The electors are required to "meet and give their votes on the first Monday after the second Wednesday in December next following their appointment at such place in each State as the legislature of such State shall direct. 3 U.S.C. § 7.

In reference to the above, regarding the 2020 Presidential and Vice-Presidential election, the electors were therefore required to meet on December 14, 2020. On that date, they were required by statute to vote for the President and Vice President "in the manner directed by the Constitution." 3 U.S.C. § 8.

In December 2020, as in prior years, the electors had certain responsibilities with respect to the aforementioned "six duplicate-originals" respective state Governors provided to state electors. First, electors had to "make and sign" each of the six certificates." 3 U.S.C. § 9. Electors were also required to "annex to each of the certificates one of the lists of the electors which shall have been furnished to them by direction of the executive of the State" (i.e. the Governors). 3 U.S.C. § 9. Second, the electors were required to specially seal and certify the certificates. 3 U.S.C. § 10. Third, the electors were to "dispose" of the six certificates as follows: by sending one certificate by registered mail "to the President of the Senate at the seat of government;" by delivering two certificates to the "secretary of state of the State;" by sending two certificates by registered mail to the "Archivist of the United States at the seat of government;" and by delivering the final certificate "to the judge of the district in which the electors shall have assembled." 3 U.S.C. § 11.

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On December 14, 2020, electors gathered in all fifty states and the District of Columbia to cast and certify their votes consistent with their Constitutional and statutory duties.

**Fraudulent Certificates**

In addition to the legitimate certificates, allegedly fraudulent certificates were sent to at least the Archivist of the United States, purporting to represent the elector votes from five states: Arizona (11 electors), Georgia (16 electors), Michigan (16 electors), Nevada (6 electors), and Wisconsin (10 electors). The certificates were made publicly available after American Oversight, a nonprofit, obtained copies of fraudulent certificates under a NARA FOIA request.

A review of the allegedly fraudulent certificates indicated they were in substantially similar form (e.g., similar content, wording, and document length), suggesting they were created either by one actor or through coordination among allegedly fraudulent elector groups. Each of the documents was signed by certain individuals representing to "be the duly elected and qualified Electors for President and Vice President" from each of the five effected states. Each of the forms purported to cast all of their electoral votes for then President Donald Trump (Trump) and Pence.

Individuals in two other states – New Mexico (5 electors) and Pennsylvania (20 electors) – sent similar certificates, but with an additional caveat that appears to be relevant in the proposed investigation. The certificates for those states were "certified on the understanding that if, as a result of a final non-appealable Court Order or other proceeding prescribed by law, we are ultimately recognized as being the duly elected and qualified Electors.

On December 14, 2020, the Pennsylvania GOP issued a news release on pagop.org titled "Republican Electors Cast Procedural Vote, Seek to Preserve Trump Campaign Legal Challenge." According to the release, "At the request of the Trump campaign, the Republican presidential electors met today in Harrisburg to cast a conditional vote for Donald Trump and Mike Pence for President and Vice President respectively."

An individual purported to be Meshawn Maddock, co-chair of Michigan Republican Party and one of the allegedly fraudulent electors from Michigan, was audio-recorded as claiming that "We fought to seat the

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electors. The Trump Campaign asked us to do that. [Inaudible] under a lot of scrutiny for that today." Marshall Cohen, Zachary Cohen, and Dan Merica, *Trump campaign officials, led by Rudy Giuliani, oversaw fake electors plot in 7 states*, CNN.com, Jan. 20, 2022 (containing content of the audio recording). This appears to indicate the allegedly fraudulent electors received direction from, or were in some way coordinating with, the Trump Campaign.

**Statements Made by Giuliani, Eastman, and Epshteyn**

On December 14, 2020, Rudolph "Rudy" Giuliani (Giuliani) appeared on a podcast hosted by former White House appointee Steve Bannon (Bannon) entitled "Bannon's War Room." The two discussed Giuliani and the Trump Campaign sending Trump electors to the state capitals. See War Room, Episode 582. In part, Bannon asked, "Why is the Trump Campaign sending its own slate of electors to these state capitals?" Giuliani responded in part that they were doing so "out of an excess of caution." *Id.*

On January 2, 2021, Giuliani, John Eastman (Eastman), and Boris Epshteyn (Epshteyn) appeared on Bannon's podcast. During the podcast episode, Bannon described Eastman as "the Constitutional lawyer for the President," Giuliani as "the head lawyer," and Epshteyn as "the deputy over there" and "from the Campaign," suggesting each of these men was working in some capacity on behalf of the Trump Campaign. See War Room, Episode 625.

During the January 2, 2021, Bannon podcast, Epshteyn stated, "The Vice President has an extensive amount of power. And when it does come on the 6th, we already know that there is [sic] electors from both the Biden side and the Trump side that have been sent to Congress. That was done on December 14th. The Vice President's got a lot of power and that's very important to recognize." Epshteyn further stated, "The Vice President has a ton of power in terms of opening and counting the Electoral College votes at the Joint Session on the 6th. That power is enumerated in the Twelfth Amendment of the Constitution." After claiming there was extensive election fraud in the 2020 election, Eastman stated, "I think if the Vice President, as presiding over the Joint Session would at least agree that because those ongoing contests have not been resolved we can't count those electors, that, that, that means that nobody has a majority of the electors. Um, and either they delay things, so those Constitutional challenges are resolved, uh, or they say, 'Oh, we don't

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have electors from those states that nobody has a majority, this is going to the House.'"

According to numerous open-source articles, including The Washington Post and CNN, John Eastman (Eastman), an attorney purporting to represent Trump, prepared a memo titled "January 6 scenario." See *John Eastman's first 'January 6 scenario' memo*, Wash. Post, Oct. 29, 2021. [The authenticity of this memo has not been confirmed, and one of the objectives of the proposed investigation is to confirm the source and authenticity of the document.] Eastman appears to have known about the allegedly fraudulent elector certificates when he prepared the memo. For example, the memo begins with the line "7 states have transmitted dual slates of electors to the President of the Senate." The memo goes on to detail scenarios in which Pence could use the purportedly "dual" slates of electors to achieve the goal of keeping Trump in office for a second term. According to the memo, scenarios included Pence declaring that, "because of the ongoing disputes in the 7 States, there are no electors that can be deemed validly appointed in those States," and subsequently discard the legitimate elector certificates from those seven States.

According to testimony given to the Select Committee by Greg Jacob (Jacob), who was Pence's legal counsel, a meeting occurred in the Oval Office on January 4, 2021 between Jacob, Pence, Trump, Eastman, and Marc Short (Short). See Transcript of Interview of Greg Jacob (Feb. 1, 2022), Select Committee, at 82, disclosed in *Eastman v. Thompson*, 22-CV-00099-DOC-DFM, ECF No. 160-8. It was Jacob's impression that during the meeting, Eastman was "trying to persuade" Pence to take actions with respect to the electors. See *id.* at 89-96. Eastman appeared to present two options as legally viable, including that Pence could reject the electors from the states that sent in allegedly fraudulent certificates. See *id.* at 91. But Eastman suggested "he thought that the more prudent course was a procedural send it back to the States, rather than reject electors." *Id.*

Thereafter, at a meeting on January 5, 2021, between Jacob, Short, and Eastman, Jacob recalled that Eastman changed his recommendation and Eastman started the meeting by saying, "I'm here asking you to reject the electors." *Id.* at 92. During the meeting, Eastman "acknowledged that there had been discussions of other possibilities the day before, but that's what he was here to talk about today." *Id.* During the meeting, Eastman conceded that no Supreme Court Justice would accept his argument.

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*Id.* at 110. Jacob refused this request. See *id.* at 111.

Additionally, in a January 21, 2022 news interview, Epshteyn said, "Yes, I was part of the process to make sure there were alternate electors for when as we hoped the challenges to the seated electors would be heard and be successful." Epshteyn further stated, "Everything that was done was done legally by the Trump legal team by, according to, to the rules and under the leadership of Rudy Giuliani." See Sonnet Swire, *Former Trump campaign advisor acknowledges being part of 2020 'alternate electors' plot*, CNN.com, Jan. 22, 2022 (containing content of audio recording).

**January 6, 2021**

By statute, a Joint Session of the United States Congress was scheduled to convene at the United States Capitol on January 6, 2021. 3 U.S.C. § 15. The purpose of the Joint Session was for Members of the United States House of Representatives and the United States Senate to certify the vote count of the Electoral College for the 2020 Presidential Election.

On January 6, 2021, at approximately 1:02 p.m., Pence tweeted a letter stating that "Some believe that as Vice President, I should be able to accept or reject electoral votes unilaterally. Others believe that electoral votes should never be challenged in a Joint Session of Congress. After a careful study of our Constitution, our laws, and our history, I believe neither view is correct." Pence went on to state, "It is my considered judgment that my oath to support and defend the Constitution constrains me from claiming unilateral authority to determine which electoral votes should be counted and which should not."

At approximately 2 p.m., protestors breached the United States Capitol in an effort to stop the certification of the votes. Pence and his counsel, Jacob, were in the Capitol that day and were transferred to safe locations to avoid the rioters.

As revealed in emails disclosed by the Select Committee, at approximately 12:44 a.m. on January 7, 2021, Eastman at [REDACTED] emailed Jacob at [REDACTED] stating "I implore you to consider one more relatively minor violation and adjourn for 10 days to allow the legislatures to finish their investigations, as well as to allow a full forensic audit of the massive

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amount of illegal activity that has occurred here." *Eastman v. Thompson*, at ECF No. 160-16. [One of the objectives of the proposed investigation is to confirm the source and authenticity of these documents.]

Hours later when rioters had been cleared from the Capitol, the Joint Session resumed. Early on the morning of January 7, 2021, Pence called a majority of the Electoral College votes for Biden.

**FEDERAL VIOLATIONS:**

By conspiring, attempting to submit, and/or submitting allegedly fraudulent elector certificates, subjects, both known and unknown, may have violated one or more of the following federal statutes of which the FBI has enforcement responsibility:

- Attempt or conspiracy to corruptly obstruct, influence, and impede the certification of the Electoral College vote (18 U.S.C. § 1512(c)(2) and (k))
- Obstruction of certain proceedings (18 U.S.C. § 1505)
- Falsification of records (18 U.S.C. § 1519)
- Conspiracy to defraud the United States (18 U.S.C. § 371)
- Aiding and abetting (18 U.S.C. § 2)

**STATEMENT OF PREDICATION:**

In accordance with DIOG Sections 7.1-7.2, based on the facts and information described above, there is an articulable factual basis that reasonably indicates an activity constituting a federal crime has occurred and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity. A new Full Investigation will be opened that will obtain information about, prevent, or protect against federal crimes; identify, locate, and apprehend subjects and possible co-conspirators; and obtain evidence for prosecution if warranted based on the new set of facts and circumstances.

Per DIOG section 10.1.2, this investigation will be considered a sensitive investigative matter (SIM) due to the potential involvement or activities of a domestic public official, domestic political organization, or individual prominent in such an organization.

Subjects of the investigation include members of the Trump Campaign, both identified and yet to be identified. Additional details related to

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the subjects can be found under the subject section below.

Per DIOG section 7.10.1, the "Updated Requirements for Certain Investigative Matters Related to Presidential and Congressional Candidates Policy Notice (1096N)," requires approval from the FBI Director and Attorney General, delegated to the Deputy Attorney General, prior to opening the predicated investigation.

**VENUE:**

Although relevant activity occurred in multiple states and jurisdictions, the allegedly fraudulent certificates were mailed to Washington, DC and were received by NARA in Washington, DC. Additionally, Washington, DC is the location where the effects of the criminal activity were felt. As a result, as per consultation with the USAODC, venue likely lies in the District of Columbia. It is also noted Washington Field Office (WFO) is uniquely qualified by experience and location to investigate this matter.

**UNITED STATES ATTORNEY'S OFFICE OPINION:**

On February 17, 2022, USAODC Assistant United States Attorney Thomas Windom advised that the United States Attorney's Office concurred with the initiation of this full investigation and the United States Attorney's Office had opened a related Grand Jury investigation on January 31, 2022, under USAO Case Number 2022R00150. As such, Matthew Graves, United States Attorney for the District of Columbia, concurred with the initiation of this investigation.

**OTHER INVESTIGATIVE ENTITIES:**

Prior to the FBI's involvement in the case, agents from the United States Postal Inspector's Service and the Investigative Unit of the Office of the Inspector General for the National Archives had both opened investigations related to this matter and were coordinating with the USAODC. WFO will coordinate with USAODC to ensure the FBI has primary responsibility for the investigation.

**IDENTIFICATION OF SUBJECTS:**

Subjects include approximately 60 individuals in Arizona, Georgia, Michigan, Nevada, and Wisconsin who signed allegedly fraudulent certificates, as well as other individuals who may have coordinated

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efforts among the individuals in different states. Subjects are both known and unknown as of predication of the case.

**Donald J. Trump for President, Inc.**

As detailed herein, Eastman, Giuliani, Epshteyn, and others were involved in the scheme to convince Vice President Pence to use the allegedly fraudulent elector certificates during the Joint Session of Congress to overturn the 2020 election and they were purportedly doing so on behalf of the Trump Campaign. For example, in public statements, Giuliani, Epshteyn, and Eastman all indicated that they were representing the Trump Campaign in late 2020 and early 2021.

Moreover, in a public filing on January 22, 2022, Eastman filed a Declaration stating that he was engaged to represent Trump "in his capacity as a candidate for President of the United States, and Donald J. Trump for President, Inc." *Eastman v. Thompson*, ECF No. 132-1, at 11. According to Eastman's filing, Eastman's engagement letter indicated Eastman was retained to represent Trump and the Trump Campaign "in federal litigation matters in relation to the 2020 presidential general election, including election matters related to the Electoral College." See *id.*

Further, a press release by the Republican Party in Pennsylvania indicated that their "conditional vote" for Trump was submitted "At the request of the Trump campaign." Additionally, one of the allegedly fraudulent electors from Michigan was audio-recorded as claiming that "We fought to seat the electors. The Trump Campaign asked us to do that."

**John Eastman**

Eastman is an attorney who purported to represent Trump. Eastman drafted a memorandum entitled "January 6 scenario" (the Eastman Memo), which detailed options for the Vice President. Eastman appears to have known about the apparent fraudulent elector certificates when he prepared the Memo because it begins with the line "7 states have transmitted dual slates of electors to the President of the Senate." The memo goes on to detail scenarios in which Pence could use the purportedly "dual" slates of electors in order to achieve the goal of keeping President Trump in office for a second term. Both scenarios required Pence to declare that "because of the ongoing disputes in the 7 States, there are no electors that can be deemed validly appointed in those States," and throw out the

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legitimate elector certificates from those seven states. Eastman alternatively proposed that Pence should adjourn the Joint Session for ten days in order for the state legislatures to finish their investigations, in direct violation of federal law.

**Boris Epshteyn**

Epshteyn is an attorney who purported to represent the Trump Campaign. On January 21, 2022, in a news interview, Epshteyn publicly admitted, "Yes, I was part of the process to make sure there were alternate electors for when as we hoped the challenges to the seated electors would be heard and be successful." Epshteyn further stated, "Everything that was done was done legally by the Trump legal team by, according to, to the rules and under the leadership of Rudy Giuliani."

**Rudolph "Rudy" Giuliani**

Giuliani purported to be Trump's attorney and an attorney for the Trump Campaign. On November 19, 2020, Giuliani, joined by other legal representatives from the Trump Campaign, held a press conference regarding alleged voter fraud in the 2020 election. On December 14, 2020, Giuliani appeared on Bannon's podcast and discussed the Trump Campaign sending Trump electors to the state Capitols. In part Bannon asked, "Why is the Trump campaign sending its own slate of electors to these state Capitols?" Giuliani responded in part that they were doing so "out of an excess of caution." Therefore, Giuliani may have conspired to subvert the Electoral College process established by the United States Constitution.

**Electors**

Attached hereto is an initial list of subjects and their identifiers who signed the Electoral College ballots naming Trump the winner in their respective states. Some of the individuals, as noted in the spreadsheet, are considered public officials.

**INVESTIGATIVE PLAN:**

The investigative plan will likely include the following steps:

- Full identification of known subjects, including biographical particulars and locations.
- Review pertinent open-source materials including videos regarding the signing of the allegedly fraudulent certificates on December 14, 2020 and statements by the allegedly fraudulent electors regarding their

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plan and goals.

- In coordination with the USAODC, issuance of grand jury subpoenas for records including phone tolls and bank records as appropriate.
- As such records are identified, issuance of preservation letters for relevant records.
- In coordination with USAODC, as electronic facilities are identified, issuance of 2703(d) orders and search warrants for relevant digital content.
- Conduct witness interviews and related investigation including, but not limited to:
  - A subset of the legitimate electors in each State, in order to determine and establish potential testimony about and witnesses for processes associated with legitimate electoral certificates.
  - Coordination with The Archivist of the United States to locate and preserve original evidence such as mailed allegedly fraudulent certificates which may contain forensic evidence, such as fingerprints and impression evidence, that may link the certificates to specific subjects known and unknown.
  - Coordination with The Archivist of the United States, to determine, understand, and document the processes which occurred related to the legitimate and illegitimate certificates, for example, to what degree the certificates were ever viewed as legitimate or if there was any attempt to withdrawal such certificates.
  - Identify and interview the parliamentarian of the Senate and/or House of Representatives who may have consulted with Pence on this matter.
- Work through and with United States Postal Inspection Service to locate and preserve as evidence any documents and records associated with registered mail sent to the Archivist and President of the Senate.
- Conduct or attempt to conduct one or more sensitive interviews of potential witnesses in the matter including, but not limited to, Greg Jacob, Marc Short, and Pence.

**APPROVAL DOCUMENTATION AND REQUIRED NOTIFICATIONS:**

The proposed investigation is considered a SIM and per DIOG section 7.7.1.1. requires Chief Division Counsel review and SAC approval to open.

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Per DIOG, an LHM for distribution as deemed necessary is attached hereto with an informational lead for Public Corruption Unit for distributions.

Pursuant to the AG Barr Memorandum dated February 5, 2020 (Barr Memorandum), DOJ is "charged with the responsibility of protecting the integrity of our elections and democratic system of government against improper influences." As a result, certain investigations require heightened notification to ensure "particular care" is exercised by the Department and its law enforcement agencies. In accordance with the Barr Memorandum, WFO is seeking additional approval in excess of that required under DIOG 7.7.1.1. because the matter involves individuals who represented the former president and members of the former president's campaign team (See Page 2, Number 1 of the Barr Memorandum).

DOJ Public Integrity Section has also been notified and has concurred with opening. In particular, on January 28, 2022, Richard Pilger, Director, Election Crimes Branch, Public Integrity Section provided email concurrence for a full-field and Grand Jury investigation of the alleged criminal activity.

Documentation of concurrence from Richard Pilger is attached hereto in digital format.

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