

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE APPLICATION OF USA FOR
ORDER PURSUANT TO FED. R. CRIM.
P. 6(e)(3)(E)(i) FOR LIMITED
DISCLOSURE OF MATTER
OCCURRING BEFORE A GRAND JURY

NO. 22-GJ-37

FILED UNDER SEAL

SUPPLEMENTAL NOTICE REGARDING PROPOSED REDACTIONS

The government responds herein to this Court’s minute order of September 2, 2022, (the “Order”), ordering the government to clarify whether it opposes the unsealing of the attachments to its Application (Dkt. No. 1). Of the four attachments to the government’s Application, three were disclosed, with minimal redactions, in *Trump v. United States of America*, No. 9:22-cv-81294-AMC (S.D. Fla.) (the “SDFL Matter”) (Exhibits A, C, and D to the Application). The government submits that they can be unsealed here to the same extent—*i.e.* with the same redactions—as in the SDFL Matter.¹ Redacted versions of those documents are attached hereto.

With respect to the fourth exhibit to the government’s Application, Exhibit B, the government noticed in preparing this filing that it had inadvertently filed the wrong one of two May 25, 2022 letters from the former President’s counsel as Exhibit B to its Application. The correct version of that letter is attached hereto and should be substituted for Exhibit B to the Application. This letter has already been publicly disclosed in full and without redaction in connection with the partial unsealing of the government’s search warrant affidavit in the Southern District of Florida. See *In re Sealed Search Warrant*, No. 9:22-mj-08332-BER (S.D. Fla.), Dkt. No. 102-1 at 34.

¹ The only redactions are to the direct-dial phone number of a government attorney and the name of a witness whose identity has not yet been revealed in any court filings.

For these reasons, the government submits that this filing and the exhibits hereto may be unsealed consistent with the Court's Minute Order, its order granting the government's Application (Dkt. No. 2), and the public disclosures already made in the matters pending in the Southern District of Florida.

September 6, 2022

Respectfully submitted,

MATTHEW G. OLSEN
ASSISTANT ATTORNEY GENERAL
NATIONAL SECURITY DIVISION

/s/

Jay I. Bratt
Julie A. Edelstein
Brett C. Reynolds
Counterintelligence and Export Control Section
National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530
(202) 233-0986

UNITED STATES DISTRICT COURT
for the
District of Columbia

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: Custodian of Records
The Office of Donald J. Trump
1100 South Ocean Blvd.
Palm Beach, FL 33480

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

| | |
|--|---|
| Place: U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA U.S. Courthouse, 3 rd Floor Grand Jury #21-09 333 Constitution Avenue, N.W. Washington, D.C. 20001 | Date and Time: May 24, 2022 9:00 a.m. |
|--|---|

You must also bring with you the following documents, electronically stored information, or objects:

Any and all documents or writings in the custody or control of Donald J. Trump and/or the Office of Donald J. Trump bearing classification markings, including but not limited to the following: Top Secret, Secret, Confidential, Top Secret/SI-G/NOFORN/ORCON, Top Secret/SI-G/NOFORN, Top Secret/HCS-O/NOFORN/ORCON, Top Secret/HCS-O/NOFORN, Top Secret/HCS-P/NOFORN/ORCON, Top Secret/HCS-P/NOFORN, Top Secret/TK/NOFORN/ORCON, Top Secret/TK/NOFORN, Secret/NOFORN, Confidential/NOFORN, TS, TS/SAP, TS/SI-G/NF/OC, TS/SI-G/NF, TS/HCS-O/NF/OC, TS/HCS-O/NF, TS/HCS-P/NF/OC, TS/HCS-P/NF, TS/HCS-P/SI-G, TS/HCS-P/SI/TK, TS/TK/NF/OC, TS/TK/NF, S/NF, S/FRD, S/NATO, S/SI, C, and C/NF.

Date: May 11, 2022

The name, address, telephone number and email of the prosecutor who requests this subpoena are:

Jay I. Bratt
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
jay.bratt2@usdoj.gov
[Redacted]

Subpoena #GJ2022042790054

CO 293 (Rev. 8/91) Subpoena to Testify Before Grand Jury

| RETURN OF SERVICE ⁽¹⁾ | | |
|--|----------|-------|
| RECEIVED BY SERVER | DATE | PLACE |
| SERVED | DATE | PLACE |
| SERVED ON (PRINT NAME) | | |
| SERVED BY (PRINT NAME) | | TITLE |
| STATEMENT OF SERVICE FEES | | |
| TRAVEL | SERVICES | TOTAL |
| | | |
| DECLARATION OF SERVER ⁽²⁾ | | |
| I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct. | | |
| Executed on _____ <div style="text-align: center;">Date</div> | | |
| _____ Signature of Server | | |
| _____ Address of Server | | |
| ADDITIONAL INFORMATION | | |
| | | |

⁽¹⁾ As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.

⁽²⁾ "Fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal rules of Civil Procedure; Rule 17(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rule 17(b) Federal Rules of Criminal Procedure)".

Subpoena #GJ2022042790054

**SILVERMAN
THOMPSON**
Silverman Thompson Slutkin White

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Writer's Direct Contact:
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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
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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
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(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



CERTIFICATION

I hereby certify as follows:

1. I have been designated to serve as Custodian of Records for The Office of Donald J. Trump, for purposes of the testimony and documents subject to subpoena #GJ20222042790054.
2. I understand that this certification is made to comply with the subpoena, in lieu of a personal appearance and testimony.
3. Based upon the information that has been provided to me, I am authorized to certify, on behalf of the Office of Donald J. Trump, the following:
 - a. A diligent search was conducted of the boxes that were moved from the White House to Florida;
 - b. This search was conducted after receipt of the subpoena, in order to locate any and all documents that are responsive to the subpoena;
 - c. Any and all responsive documents accompany this certification; and
 - d. No copy, written notation, or reproduction of any kind was retained as to any responsive document.

I swear or affirm that the above statements are true and correct to the best of my knowledge.

Dated: June 3, 2022



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, D.C. 20530

May 11, 2022

M. Evan Corcoran, Esq.
Silverman Thompson
400 East Pratt Street – Suite 900
Baltimore, Maryland 21202

Re: Grand Jury Subpoena

Dear Mr. Corcoran:

Thank you for agreeing to accept service of the grand jury subpoena on behalf of the custodian of records for the Office of Donald J. Trump.

As we discussed, in lieu of personally appearing on May 24, the custodian may comply with the subpoena by providing any responsive documents to the FBI at the place of their location. The FBI will ensure that the agents retrieving the documents have the proper clearances and will handle the materials in the appropriate manner. The custodian would also provide a sworn certification that the documents represent all responsive records. If there are no responsive documents, the custodian would provide a sworn certification to that effect.

Thank you again for your cooperation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay L. Bratt".

Jay L. Bratt
Chief

Counterintelligence and Export Control Section


jay.bratt2@usdoj.gov