

TO BE SEARCHED IN ATTACHMENT A) Filed Under Seal

AFFIDAVIT IN SUPPORT OF AN
APPLICATION UNDER RULE 41 FOR A
WARRANT TO SEARCH AND SEIZE

I, [REDACTED], being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. The government is conducting a criminal investigation concerning the improper removal and storage of classified information in unauthorized spaces, as well as the unlawful concealment or removal of government records. The investigation began as a result of a referral the United States National Archives and Records Administration (NARA) sent to the United States Department of Justice (DOJ) on February 9, 2022, hereinafter, "NARA Referral." The NARA Referral stated that on January 18, 2022, in accordance with the Presidential Records Act (PRA), NARA received from the office of former President DONALD J. TRUMP, hereinafter "FPOTUS," via representatives, fifteen (15) boxes of records, hereinafter, the "FIFTEEN BOXES." The FIFTEEN BOXES, which had been transported from the FPOTUS property at 1180 S Ocean Blvd, Palm Beach, FL 33480, hereinafter, the "PREMISES," a residence and club known as "Mar-a-Lago," further described in Attachment A, were reported by NARA to contain, among other things, highly classified documents intermingled with other records.
2. After an initial review of the NARA Referral, the Federal Bureau of Investigation (FBI) opened a criminal investigation to, among other things, determine how the documents with

The Trump Search Warrant Affidavit has been released

Description

The DOJ just released the affidavit submitted in support of the search warrant of former President Trump’s Mar-a-Lago residence.

[Here it is for download.](#)

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As expected, the judge allowed the Government to heavily redact the affidavit before it went public. In yesterday's order, the judge found that parts of the affidavit must remain sealed because:

disclosure would reveal (1) the identities of witnesses, law enforcement agents, and uncharged parties, (2) the investigation's strategy, direction, scope, sources, and methods, and (3) grand jury information protected by Federal Rule of Criminal Procedure 6(e).

This aligns with the DOJ representations that (1) information in the affidavit "could be used to identify many, if not all" of the witnesses; (2) the affidavit would provide a "roadmap for anyone intent on obstructive the investigation."

Affidavit allegations:

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]

[REDACTED]

[REDACTED]

[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.

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.

[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 NARA from Mar-a-Lago. Patel alleged that such reports were misleading because FPOTUS had declassified the materials at issue. [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]

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.

Other thoughts.

A lot has been made about whether this was the Garland DOJ taking back declassified (or classified) Russiagate materials from Trump. It's possible. Mike Davis believes so, [stating on Fox](#): "President Trump declassified and made personal a copy of the Crossfire Hurricane records, Russian collusion records. Those records are very damaging politically to Obama, Biden, Hillary, the FBI, the Intel Community."

Some aren't so convinced. According to The Wall Street Journal, Kash Patel, one of the foremost experts on Russiagate, has stated he didn't know what was in the boxes taken from Mar-A-Lago by the FBI. The New York Times also has doubts about whether the documents included Russiagate materials:

None of those documents or any other materials pertaining to the Russia investigation were believed to be in the cache of documents recovered by the F.B.I. during the search of Mar-a-Lago, according to a person with knowledge of the situation.

In fact, many of the Russiagate documents declassified by Trump may already be in possession of the National Archives. According to June 2022 reporting from Politico:

Former President Donald Trump has told the National Archives to grant journalist John Solomon access to non-public administration records, according to Solomon and a spokesperson for the former president.

Solomon said Trump specifically directed the Archives to give him access to documents related to the Russia probe that were declassified in the final days of his administration. And he said the Archives have been cooperative and accommodating.

Then there's the issue of classification. Does it matter if the documents at Mar-A-Lago were classified or unclassified?

As we stated when the warrant was released, the statutes in question do not necessarily require the documents to be classified. One of the statutes mentioned in the warrant – [18 USC § 2071](#) – prohibits the removal of “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. . .” Prosecution under § 2071 does not depend on the classification of the document.

The Espionage Act (18 USC § 793) is also referenced in the warrant. Over at [Lawfare](#) they guessed that “the part of the Espionage Act that is likely most relevant in this case is § 793(d).” They ended up being wrong. The affidavit cites to 793(e), which prohibits the unauthorized possession and retention of documents “relating to the national defense.”

The Espionage Act does not contain the term “classified.” And although the law's application considers the status of classification, there's a question of whether the documents *must* be classified for charges to be brought. See *US v. Morison*, 844 F.2d 1057, 1076 (4th Cir. 1988) (discussing the narrowing of the definition of documents “relating to the national defense” to those documents “which had been ‘closely held’ by the government and was ‘not available to the general public’”). This leads us to ask whether the government can consider a document to be “closely held” if it isn't classified.

The affidavit answers that question, stating “information related to the national defense” has been construed broadly by the courts.

² 18 U.S.C. § 793(e) does not use the term “classified information relating to the national defense.” The statute does use the phrase “information relating to the national defense,” but courts have construed it broadly. *See Gorin v. United States*, 844 F.2d 542, 579 (4th Cir. 2000) (“[I]nformation made public by the government is not national defense information.”); *United States v. Morison*, 844 F.2d at 1071-72.

Make no mistake: the Garland DOJ would see no issue with prosecuting for the retention of unclassified documents. But maybe they don't need to go that far, as they're alleging the materials at Mar-a-Lago were classified. From the DOJ's April 29, 2022 letter to Trump's attorneys: “among the materials in the boxes are over 100 documents with classification markings, comprising more than 700 pages.” And back in May 2022, [NARA stated](#) it had “identified items marked as classified national security information, up to the level of Top Secret and including Sensitive Compartmented Information and Special Access Program materials.” And now we have the affidavit's allegations that the materials were classified.

That gets us to how a president can declassify documents. Opponents of Trump suggest he needed to follow the “formal process” established by President Obama's Executive Order 13526. They're wrong. A president can declassify however he wants.

Even Obama's Executive Order 13526, cited by Trump's critics to argue that it alone “specifies criteria to justify declassification”, concedes the president has “authority to classify information.”

The president's inherent power to classify information applies equally to declassification. And if the power is inherent, then it can be practiced through formal or informal processes, unconstrained by a predecessor's Executive Order. We again cite Mike Davis, arguing in *Newsweek*:

The president has the inherent constitutional power to declassify any record he wants, in any manner he wants, regardless of any otherwise-pertinent statute or regulation that applies to everyone else.

Update on the declassification issue: this afternoon, Kash Patel told Breitbart:

“Trump declassified whole sets of materials in anticipation of leaving government that he thought the American public should have the right to read themselves,” Patel had told Breitbart News in a phone interview back in May, long before the FBI’s raid.

“The White House counsel failed to generate the paperwork to change the classification markings, but that doesn’t mean the information wasn’t declassified,” Patel told Breitbart News. “I was there with President Trump when he said, ‘We are declassifying this information.’”

Finally, we get to the pre-raid knowledge of the Biden Administration. Due to Presidential Records Act regulations, it is highly likely that the Biden White House requested the documents in Trump’s possession from the National Archives. As Jack Goldsmith explains, these regulations provide that President Biden (probably through the White House Counsel) “must request the records [he seeks] ... from the Archivist in writing.”

Not that the National Archives demands every record – or treats all former presidents equally. Former President Clinton was allowed to retain seventy-nine audiotapes, which were created after Clinton enlisted a historian to assist him in creating “an oral history of his eight years of office.” *Judicial Watch v. Nat. Archives and Records Admin.*, 845 F.Supp.2d 288, 290 (D.D.C. 2012).

What changed? The politics of the leadership of the National Archives, the DOJ, and the FBI, all of whom are more than willing to target a former president because he is also presidential candidate.

Category

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