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**SENT VIA: FOIA STAR**

August 11, 2022

Director of Public Affairs  
Office of Public Affairs  
Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530-0001

Dear FOIA Officer,

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the implementing FOIA regulations of the Department of Justice (“DOJ”), 28 CFR Part 16, I respectfully request the following:

Records sufficient to show for each communication with the Office of the President or the Executive Office of the President relating to a search warrant carried out at Mar-a-Lago on or about August 8 2022, docketed as *In re Sealed Search Warrant*, No. 9:22-mj-08332 (BER) (S.D. Fla):

- (1) The date, author, and addressee;
- (2) The relationship of the author and addressee to each other; and
- (3) A general description of the nature of the record without revealing information itself privileged or protected.

Please limit the search for this request from January 20, 2021 at 12:01 PM EST to present. Please include the following Department components in any search: Office of the Attorney General, Office of the Deputy Attorney General, Office of the Associate Attorney General, Office of the Solicitor General, Office of Legal Counsel, Office of Legal Policy, Criminal Division, U.S. Attorney’s Office for the District of Columbia, U.S. Attorney’s Office for the Southern District of Florida, Federal Bureau of Investigation, and U.S. Marshals Service.

The terms “pertaining to,” “referring,” “relating,” or “concerning” with respect to any given subject means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

The term “record” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (emails), MMS or SMS text messages, instant messages, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger), contracts, cables, telexes, notations of any type of conversation, telephone call, voicemail, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electronic records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise.

The terms “and” and “or” should be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The terms “all,” “any,” and “each” should each be construed as encompassing any and all. The singular includes the plural number, and vice versa. The present tense includes the past and vice versa. The masculine includes the feminine and neuter genders.

The term “communication” means each manner or means of disclosure or exchange of information (in the form of facts, ideas, inquiries, or otherwise), regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in an in-person meeting, by telephone, facsimile, e-mail (desktop or mobile device), text message, MMS or SMS message, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger), regular mail, telexes, releases, or otherwise.



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“Communications with,” “communications from,” and “communications between” means any communication involving the related parties, regardless of whether other persons were involved in the communication, and includes, but is not limited to, communications where one party is cc’d or bcc’d, both parties are cc’d or bcc’d, or some combination thereof.

Please consider all members of a document “family” to be responsive to the Request if any single “member” of that “family” is responsive, regardless of whether the “family member” in question is “parent” or “child.”

In the interest of expediency and to minimize the research and/or duplication burden on your staff, please send records electronically if possible. If this is not possible, please notify me before sending to the mailing address listed below. If access to this request will take longer than twenty business days, please let me know when I might receive records or be able to inspect the requested records. Please produce responsive documents as soon as they become available. In all cases, please communicate with me at the below email address.

Please comply fully with 5 U.S.C. § 552(b). Accordingly, without limitation to the foregoing, if any portion of this request is denied for any reason, please provide written notice of the records or portions of records that are being withheld and cite each specific exemption of the Freedom of Information Act on which the agency relies. Moreover, to the extent that responsive records may be withheld in part produce all reasonably segregable portions of those records. Additionally, please provide all responsive documents even if they are redacted in full.

### **Fee Waiver Request**

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit, Heritage Foundation does not have a commercial purpose and the release of the information requested is not in Heritage Foundation’s commercial interest. Heritage Foundation’s mission is to formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense. Heritage Foundation uses the information requested and analyzes it in order to educate the

public through social media,<sup>1</sup> broadcast media<sup>2</sup> (traditional and nontraditional) and press releases.<sup>3</sup> The requested information is in the public interest as this is an issue of national controversy which has been covered extensively by national broadcast media and national print media. Moreover, numerous Members of Congress have been unable to obtain information from the DOJ concerning the subject matter of this request. *See also infra* 9–11.

Because this is a request by a member of the news media for information of public interest, made in my capacity as an author for the Daily Signal<sup>4</sup> (a major news outlet<sup>5</sup>), I actively gather information of potential interest to our Daily Signal audience, and I use my editorial skills to turn raw materials into a distinct work, and I distribute that work to our Daily Signal audience through podcasts<sup>6</sup> or articles. I request that you waive all applicable fees associated with this request.

If you deny this request for a fee waiver, please advise me in advance of the estimated charges if they are to exceed \$50. Please send me a detailed and itemized explanation of those charges.

### **Request for Expedited Processing:**

Pursuant to 28 C.F.R. 16.5(e)(1)(iv), I request expedited processing for this request. I certify the following statement of facts in support of expedited processing to be true and correct pursuant to 28 C.F.R. § 16.5(e)(3).

### **Background:**

The following factual Appendices are attached and expressly incorporated herein and made part of this request (as are the factual sources cited therein).

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<sup>1</sup> Heritage Foundation. [@ Heritage] (Accessed: 2022, February 18). 626.8K Followers Twitter. <https://twitter.com/Heritage>

<sup>2</sup> Fox News. (Accessed: 2022, February 18). Heritage Foundation launches Conservative Oversight Project aimed at 'exposing' Biden admin, leftist policies. <https://www.foxnews.com/politics/heritage-conservative-oversight-project-biden-admin-leftist-policies>

<sup>3</sup> Heritage Foundation. (Accessed: 2022, February 18). Press. <https://www.heritage.org/press> .

<sup>4</sup>Daily Signal. (Accessed: 2022, February 18). Mike Howell. <https://www.dailysignal.com/author/mike-howell/>

<sup>5</sup>Daily Signal. [DailySignal] (Accessed: 2022, February 18). 73.7K Followers Twitter. <https://twitter.com/DailySignal>

<sup>6</sup>Apple. (Accessed: 2022, March 4). The Daily Signal Podcast. <https://podcasts.apple.com/us/podcast/the-daily-signal-podcast/id1313611947>

- Appendix A is a collection of pertinent transcripts of network news television broadcasts, national newspaper articles, and press releases related to protests concerning the subject matter of the Request.

### **Expedited Processing is Warranted under 28 C.F.R. § 16.5(e)(1)(iv).**

1. This provision provides that expedited processing shall be granted regarding: “A matter of widespread and exceptional media interest in which there exists possible questions about the government’s integrity which affect public confidence.”

Courts have held that the DOJ Regulation requires the requester to show: (1) that the request involves a “matter of widespread and exceptional media interest” (28 C.F.R. § 16.5(e)(1)(iv)); and (2) that the matter is one “in which there exists possible questions about the integrity of the government that affect public confidence” (*id.*). See *Edmonds v. FBI*, No. 02-cv-1294 (ESH), 2002 WL 32539613, \*3 (D.D.C. Dec. 3, 2002). It is not necessary to show “prejudice or a matter of current exigency to the American public.” *Id.*

First, the DOJ Regulation requires showing that the matter about which questions of integrity have been raised is the subject of widespread national media attention. See *Am. Oversight v. DOJ*, 292 F.Supp.3d 501, 507–508 (D.D.C. 2018) (denying motion for expedited processing because general media interest in Solicitor General’s nomination is insufficient to show media interest in possible ethics questions concerning the nomination). There need not be a showing that the disclosure would shed considerable light on agency operations; only that there is “exceptional” and “widespread” media interest. See *CREW v. DOJ*, 870 F.Supp.2d 70, 81 (D.D.C. 2012), *rev’d on other grounds*, 746 F.3d 1082 (D.C. Cir. 2014). While the media interest need be “widespread” and “exceptional” it need not be overwhelming. See *ACLU*, 321 F.Supp.2d at 31–32 (rejecting DOJ’s position that requester’s citation to what the court described as “only a handful of articles” was insufficient to show “widespread and exceptional media interest” because those articles “were published in a variety of publications and repeatedly reference the ongoing national discussion about the Patriot Act and Section 215” (second quotation added)); *Edmonds*, 2002 WL 32539613, at \*3 (numerous national newspaper and network television broadcasts concerning whistleblower’s allegations of security lapses in FBI translator program met test).<sup>7</sup>

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<sup>7</sup> Cf. 28 C.F.R. § 16.5(e)(3) (“The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ‘urgency to inform’ the public on the topic.”).

Second, the DOJ Regulation requires showing that “there exists *possible* questions about the government’s integrity that affect public confidence.” *CREW v. DOJ*, 436 F.Supp.3d 354, 361 (D.D.C. 2020) (*quoting* 28 C.F.R. § 16.5(e)(1)(4)) (emphasis by Court).<sup>8</sup> It does not “require the requester to prove wrongdoing by the government in order to obtain documents on an expedited basis.” *Id.* at 362. “The primary way to determine whether such possible questions exist is by examining the state of public coverage of the matter at issue, and whether that coverage surfaces possible ethics issues so potentially significant as to reduce public confidence in governmental institutions.” *Am. Oversight v. DOJ*, 292 F.Supp.3d 501, 508 (D.D.C. 2018). This is not an extraordinarily high bar. *See, e.g.*, *CREW*, 436 F.Supp.3d at 361 (complaint sufficient to survive a motion to dismiss where it alleged Attorney General’s action regarding disclosure of Mueller Report “supported an inference that at best, the Attorney General undertook to frame the public discussion on his own terms, and at worst that he distorted the truth”); *ACLU v. DOJ*, 321 F.Supp.2d 24, 32 (D.D.C. 2004) (allegations in press that Section 215 of the Patriot Act may be unconstitutional and reports that Members of Congress have alleged abuses of Section 215 “implicate[] government integrity” and hence are sufficient to meet test); *Edmonds*, 2002 WL 32539613, at \*3–4 (test met where plaintiff alleged security lapses in FBI translators program, national news covered the issue, and two Senators expressed concern regarding “the significant security issues raised by plaintiff’s allegations and the integrity of the FBI”).<sup>9</sup>

## 2. Specifically, on August 8th, the FBI executed a search warrant at former

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<sup>8</sup> To be sure, this standard does not require expedition of any questions concerning government integrity. *See, e.g., White v. DOJ*, 16 F.4th 539, 544 (7th Cir. 2021) (test not met in case where records sought to cast doubt on requestors’ criminal conviction where requestor claimed he was subject to an elaborate government sting operation).

<sup>9</sup> DOJ has granted expedition under the DOJ Regulation in a number of circumstances. *See, e.g., CREW v. DOJ*, 870 F.Supp.2d at 81 n. 14 (expedition granted to request seeking records on FBI’s closed investigation of Congressman DeLay for misconduct which did not result in charges, but received considerable media attention (subsequent history omitted)); *CREW v. DOJ*, 820 F.Supp.2d 39, 42, 46 (D.D.C. 2011) (expedition granted to request seeking information concerning possible deletion of Office of Legal Counsel emails where the possible deletion was flagged as a hindrance in an internal investigation, covered in the media, and was the subject of Congressional concerns); *Elec. Frontier Found. v. DOJ*, 565 F.Supp.2d 188, 189–91 (D.D.C. 2008) (expedition granted to request seeking information regarding storage of information obtained by National Security Letters in FBI’s Data Warehouse); *CREW v. DOJ*, No. 05-cv-2078 (EGS), 2006 WL 1518964, \*1 (D.D.C. June 1, 2006) (expedition granted to request concerning government’s decision to seek a reduced penalty in tobacco litigation where government’s decision was subject to intensive news coverage and prompted concern from “several Congressman” which caused a request for an Inspector General investigation of “improper political interference” with the decision).



President Donald Trump's home in Florida on Monday, and a CBS News source told CBS News on Monday that the search was "related to PRA," or the Presidential Records Act.<sup>10</sup> As per 44 U.S.C. §3106, In the event of unlawful removal, defacing, or erasure of records, the related Federal Records Act (44 U.S.C. Chapters 21, 29, 31, and 33) requires the Archivist to initiate action through the Attorney General for the recovery of the records.<sup>11</sup> Therefore, if this investigation was part of Presidential Records Preservation, then the Archivist and the Attorney General had a role in one of the most scrutinized warrant in US History.<sup>12</sup> The Department of Justice itself has described this matter as "one of significant interest and attention from news media organizations and other entities," and accordingly has concluded that the public has a "clear and powerful interest in understanding what occurred" as to the text of the warrant. Mot. to Unseal at 1, 4, *In re Sealed Search Warrant*, No. 9:22-mj-08332 (BER) (S.D. Fla. Aug. 11, 2022) (ECF No. 18).

This raid and what transpired before and after it has affected public confidence. On the one hand this is a criminal warrant executed against a former President. On the other this is viewed as a political hit job by the current President against his likely future political opponent. As per the Trafalgar Group poll conducted after the Trump raid,<sup>13</sup> 53.9 percent of likely general election voters believe Trump's political enemies are behind the FBI raid on President Trump's private home, and only 35.3 percent of likely general election voters believe it is due to an impartial justice system.

Please see Attachment 1 for media related stories pertaining to the request for expedited processing which shows both media salience and issues affecting public confidence.

I affirm that this request for expedited processing certified to be true and correct.

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<sup>10</sup> CBS News. (Accessed: 2022, August 11). FBI took boxes and documents in Trump search, sources say.

<https://www.cbsnews.com/news/trump-mar-a-lago-search-fbi-documents-boxes/>

<sup>11</sup> Congressional Research Service. (Accessed: 2022, August 11). Presidential Records Management: Preservation and Disposal. <https://crsreports.congress.gov/product/pdf/IF/IF12056>

<sup>12</sup> Fox News. (Accessed: 2022, August 11). Former FBI special agent on Mar-a-Lago raid: This is arguably 'the most scrutinized warrant' in US history. <https://www.foxnews.com/media/former-fbi-special-agent-mar-a-lago-raid-scrutinized-warrant-us-history>

<sup>13</sup> The Trafalgar Group. (Accessed: 2022, August 11). Nationwide Issues Survey Aug 2022. (Conducted 08/09/22 - 08/10/22) <https://www.thetrafalgargroup.org/wp-content/uploads/2022/08/COSA-FBI-Raid-Motivation-Full-Report-0810.pdf>



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Thank you in advance for considering my request. If you have any questions, or feel you need clarification of this request please contact me at [oversightproject@heritage.org](mailto:oversightproject@heritage.org).

Sincerely,

Mike Howell  
Senior Advisor and Author at The Daily  
Signal  
The Heritage Foundation  
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