

RESOLUTION OF INQUIRY REQUESTING THE PRESIDENT AND DIRECTING ATTORNEY GENERAL MERRICK B. GARLAND TO TRANSMIT, RESPECTIVELY, A COPY OF THE AFFIDAVIT TO THE HOUSE OF REPRESENTATIVES RELATED TO THE RAID ON THE FORMER PRESIDENT

SEPTEMBER 22, 2022.—Referred to the House Calendar and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary, submitted the following

ADVERSE REPORT

together with

MINORITY VIEWS

[To accompany H. Res. 1325]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 1325) of inquiry requesting the President and directing Attorney General Merrick B. Garland to transmit, respectively, a copy of the affidavit to the House of Representatives related to the raid on the former President, having considered the same, reports unfavorably thereon with amendments and recommends that the resolution as amended not be agreed to.

CONTENTS

| | Page |
|--|------|
| Purpose and Summary | 2 |
| Background and Need for the Legislation | 2 |
| Hearings | 5 |
| Committee Consideration | 5 |
| Committee Votes | 5 |
| Committee Oversight Findings | 7 |
| Committee Estimate of Budgetary Effects | 7 |
| New Budget Authority and Congressional Budget Office Cost Estimate | 7 |
| Duplication of Federal Programs | 7 |
| Performance Goals and Objectives | 7 |
| Advisory on Earmarks | 7 |
| Section-by-Section Analysis | 7 |
| Minority Views | 7 |

The amendments are as follows:

Strike all after the resolving clause and insert the following:

That President Joseph R. Biden is requested, and the Attorney General Merrick B. Garland is directed, to transmit to the House of Representatives, not later than 14

days after the date of adoption of this resolution, a copy of the affidavit submitted for the warrant on former President Donald J. Trump to the extent that any such affidavit is within the possession of the President or the Department of Justice, respectively.

Amend the title so as to read: Resolution of inquiry requesting President Joseph R. Biden and directing Attorney General Merrick B. Garland to transmit a copy of the affidavit to the House of Representatives related to the raid on former President Donald J. Trump.

Purpose and Summary

H. Res. 1325 is a non-binding resolution of inquiry that requests President Joe Biden and directs Attorney General Merrick Garland to transmit to the House of Representatives a copy of the affidavit related to the raid on former President Donald J. Trump.

Background and Need for the Legislation

Resolutions of inquiry, if properly drafted, are given privileged parliamentary status in the House. This means that, under certain circumstances, a resolution of inquiry can be considered on the House floor even if the committee to which it was referred has not ordered the resolution reported and the majority party's leadership has not scheduled it for consideration. Clause 7 of House rule XIII requires the committee to which the resolution is referred to act on the resolution within 14 legislative days, or a motion to discharge the committee from consideration is considered privileged on the floor of the House. In calculating the days available for committee consideration, the day of introduction and the day of discharge are not counted.¹ The 117th Congress operated under temporary procedures “that effectively ‘turned off’ the 14-day deadline” for resolutions of inquiry until July 19, 2022.²

Under the Rules and precedents of the House, a resolution of inquiry is a means by which the House requests information from the President of the United States or the head of one of the executive departments. According to Deschler's Precedents, it is a “simple resolution making a direct request or demand of the President or the head of an executive department to furnish the House of Representatives with specific factual information in the possession of the executive branch.”³ Such resolutions must ask for facts, documents, or specific information; they may not be used to request an opinion or require an investigation.⁴ Resolutions of inquiry are not akin to subpoenas; they have no legal force and thus compliance by the Executive Branch with the House's request for information is purely voluntary.

According to a study conducted by the Congressional Research Service (CRS), between 1947 and 2017, 313 resolutions of inquiry

¹ Wm. Holmes Brown, et al., *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* ch. 49, Sec. 6, p. 834 (2011).

² Christopher M. Davis, *Resolutions of Inquiry in the House*, CONG. RSCH. SERV. 1 (Jul. 21, 2022), <https://crsreports.congress.gov/product/pdf/IN/IN10661/4>.

³ *Deschler's Precedents of the United States House of Representatives*, H. Doc. No. 94-661, 94th Cong., 2d Sess., ch. 24, § 8.

⁴ A resolution that seeks more than factual information does not enjoy privileged status. Brown, *supra* note 1, at 833-34.

were introduced in the House.⁵ Within this period, CRS found that “two periods in particular, 1971–1975 and 2003–2006, saw the highest levels of activity on resolutions of inquiry” and that “the Committees on Armed Services, Foreign Affairs, and the Judiciary have received the largest share of references.”⁶ CRS further found that “in recent Congresses, such resolutions have overwhelmingly become a tool of the minority party in the House.”⁷

A committee has a number of choices after a resolution of inquiry is referred to it. It may vote on the resolution up or down as introduced or it may amend it, and it may report the resolution favorably, unfavorably, or with no recommendation. The fact that a committee reports a resolution of inquiry adversely does not necessarily mean that the committee opposes looking into the matter. In the past, resolutions of inquiry have frequently been reported adversely for several reasons. The two most common reasons are substantial compliance and competing investigations.

House Resolution 1325 was introduced by Representative Paul Gosar (R–AZ) on August 23, 2022. It requests a copy of the affidavit submitted for the warrant on former President Trump from President Biden and Attorney General Garland no later than 14 days after the date of adoption of the resolution.

The affidavit requested by this resolution was already released by the Department of Justice (DOJ) on August 26, 2022, three days after H. Res. 1325 was introduced. In it, the Federal Bureau of Investigation (FBI) stated that it “is conducting a criminal investigation concerning the improper removal and storage of classified information in unauthorized spaces, as well as the unlawful concealment and removal of government records,” concluding that, “Probable cause exists to believe that evidence, contraband, fruits of crime, or other items illegally possessed” were on the premises of former President Trump’s Mar-a-Lago resort.⁸

Former President Trump, is alleged to have left office with hundreds of classified documents, including some related to nuclear weapons programs, files with significantly limited access, and information from protected human intelligence sources.⁹ The National Archives and Records Administration engaged with former President Trump’s team beginning in early 2021 and asked DOJ to investigate in early 2022 after it received classified materials, found files that had been torn up, and realized that other important documents were missing.¹⁰ Before the FBI search on August 8, 2022, attorneys for President Trump claimed in writing that all classified documents had been removed from the Mar-a-Lago resort. This assertion was disproven after the FBI found over 100 classified documents in Donald Trump’s offices and personal quarters at Mar-a-Lago.¹¹

⁵ Christopher M. Davis, *Resolutions of Inquiry: An Analysis of Their Use in the House, 1947–2017*, CONG. RSCH. SERV. R40879, at i (Nov. 9, 2017), <https://sgp.fas.org/crs/secretcy/R40879.pdf>.

⁶*Id.*

⁷*Id.*

⁸“Over 180 classified docs removed by National Archives from Mar-a-Lago, affidavit says,” NPR, Aug. 26, 2022.

⁹Devlin Barrett, et al., “FBI searched Trump’s home to look for nuclear documents and other items, sources say,” THE WASH. POST, Aug. 12, 2022.

¹⁰Marshall Cohen, et al., “Timeline: The Justice Department criminal inquiry into Trump taking classified documents to Mar-a-Lago,” CNN, Sep. 20, 2022.

¹¹*Id.*

Keeping the classified documents pertaining to the United States' national security in an unsecured office at a resort is dangerous to our national security. The state secrets Donald Trump took from the White House included information from human sources—the same individuals who are disappearing at a rapid rate for unknown reasons. In 2021, a top-secret CIA memo warned about troubling numbers of informants being captured or killed, including networks of human intelligence sources in China, Iran, and Pakistan.¹² The precarious state of our national intelligence apparatus warrants increased security, which was not possible while these documents were stored at the Mar-a-Lago Resort.

In spite of Donald Trump's multiple alleged violations of United States law, refusal to cooperate with DOJ investigators, and potential endangerment of American national security, conservatives in politics, on social media, and on cable news have viciously attacked FBI personnel. Florida Governor Ron DeSantis recently called the FBI investigation “another escalation in the weaponization of federal agencies against the Regime's political opponents.”¹³ The sponsor of this resolution, Congressman Paul Gosar, tweeted, “Failure is not an option. We must destroy the FBI.”¹⁴ Finally, members of the House Judiciary Committee have gone so far as to accuse the FBI and DOJ of weaponizing “their powers against Americans who disagree with them politically”¹⁵ and “acting as the political enforcers of the Democrat Party.”¹⁶

Far right extremists on the internet have made increasingly violent threats against federal law enforcement since the FBI search of Mar-a-Lago on August 8, 2022. References on social media to terms like “armed rebellion,” “revolution,” “lock and load,” and “civil war” went up 106 percent in the month following the Mar-a-Lago search.¹⁷ These threats have included calls to “take out” specific FBI personnel and threats to the children of FBI agents, among other violence.¹⁸ These threats have also resulted in physical attacks. Three days after the FBI searched Mar-a-Lago, a right-wing extremist Trump supporter attacked the FBI's Cincinnati field office with an AR 15-style rifle, and five days after the FBI search, armed protesters gathered outside the FBI field office in Phoenix, Arizona.¹⁹

Because of these threats and attacks, on August 12th, FBI and DHS released a joint bulletin warning of an increase in domestic terror threats against the FBI since the search of Donald Trump's offices at Mar-a-Lago, including “an increase in violent threats posted on social media against federal officials and facilities, including a threat to place a so-called dirty bomb in front of FBI

¹² Julian E. Barnes and Adam Goldman, “Captured, Killed or Compromised: C.I.A. Admits to Losing Dozens of Informants,” N.Y. Times, Oct. 5, 2021.

¹³ Ron DeSantis (@RonDeSantisFL), Twitter (Aug. 8, 2022, 8:43 PM), https://twitter.com/RonDeSantisFL/status/1556803433939755010?s=20&t=J5GO3C2WHo7A_Op9U1RWDg.

¹⁴ Paul Gosar (@PaulGosar), Twitter (Aug. 8, 2022, 9:57 PM), <https://twitter.com/RepGosar/status/1556821907726630915>.

¹⁵ Andy Biggs (@RepAndyBiggsAZ), Twitter (Aug. 9, 2022, 10:38 AM), <https://twitter.com/RepAndyBiggsAZ/status/1557013466694778880>.

¹⁶ Dan Bishop (@RepDanBishop), Twitter (Aug. 8, 2022, 8:51 PM), <https://twitter.com/RepDanBishop/status/1556805300681940992>.

¹⁷ Elwood Watson, “Violent threats increase in wake of Mar-A-Lago search,” MIDLAND DAILY NEWS, Sep. 7, 2022.

¹⁸ Jacob Rosen and Nicole Sgagna, “Online violent extremist rhetoric soars after Mar-a-Lago search,” CBS NEWS, Aug. 12, 2022.

¹⁹ Joshua Zitser, “Armed Trump supporters protest outside FBI office in Phoenix following Mar-a-Lago raid: reports,” BUSINESS INSIDER, Aug. 14, 2022.

Headquarters and issuing general calls for ‘civil war’ and ‘armed rebellion.’²⁰

The Judiciary Committee and the House should not needlessly request information that is already available to the public. Moreover, resolutions of inquiry should not be used to undermine ongoing investigations of wrongdoing, even when the person being investigated is the former President.

Hearings

The Committee on the Judiciary held no hearings on H. Res. 1325.

Committee Consideration

On September 21, 2022, the Committee met in open session and ordered the resolution, H. Res. 1325 unfavorably reported with an amendment by a rollcall vote of 20 to 14, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, the following rollcall vote occurred during the Committee’s consideration of H. Res. 1325:

1. A motion to report H. Res. 1325 unfavorably passed by a rollcall vote of 20 to 14. The vote was as follows:

²⁰Olafimihan Oshin, “FBI, DHS warn of increase in threats to federal law enforcement officials after Mar-a-Lago search: reports,” THE HILL. Aug. 14, 2022.

Roll Call No. 1

Date: 9/14/22

COMMITTEE ON THE JUDICIARY
House of Representatives
117th Congress

Subject: Motion to report H. Res. 1325 Unfavorably to the House

PASSED
 FAILED

| | AYES | NOS | PRES. |
|----------------------------|------|-----|-------|
| Jerrold Nadler (NY-10) | ✓ | | |
| Zoe Lofgren (CA-19) | ✓ | | |
| Sheila Jackson Lee (TX-18) | ✓ | | |
| Steve Cohen (TN-09) | | | |
| Hank Johnson (GA-04) | ✓ | | |
| Ted Deutch (FL-22) | | | |
| Karen Bass (CA-37) | ✓ | | |
| Hakeem Jeffries (NY-08) | | | |
| David Cicilline (RI-01) | ✓ | | |
| Eric Swalwell (CA-15) | ✓ | | |
| Ted Lieu (CA-33) | ✓ | | |
| Jamie Raskin (MD-08) | | | |
| Pramila Jayapal (WA-07) | ✓ | | |
| Vai Demings (FL-10) | ✓ | | |
| Lou Correa (CA-46) | ✓ | | |
| Mary Gay Scanlon (PA-05) | ✓ | | |
| Sylvia Garcia (TX-29) | ✓ | | |
| Joseph Neguse (CO-02) | ✓ | | |
| Lucy McBath (GA-06) | ✓ | | |
| Greg Stanton (AZ-09) | ✓ | | |
| Madeleine Dean (PA-04) | ✓ | | |
| Veronica Escobar (TX-16) | ✓ | | |
| Mondaire Jones (NY-17) | | | |
| Deborah Ross (NC-02) | ✓ | | |
| Cori Bush (MO-01) | ✓ | | |
| | AYES | NOS | PRES. |
| Jim Jordan (OH-04) | | ✓ | |
| Steve Chabot (OH-01) | | ✓ | |
| Louie Gohmert (TX-01) | | | |
| Darrell Issa (CA-50) | | ✓ | |
| Ken Buck (CO-04) | | ✓ | |
| Matt Gaetz (FL-01) | | ✓ | |
| Mike Johnson (LA-04) | | ✓ | |
| Andy Biggs (AZ-05) | | ✓ | |
| Tom McClintock (CA-04) | | ✓ | |
| Greg Steube (FL-17) | | ✓ | |
| Tom Tiffany (WI-07) | | ✓ | |
| Thomas Massie (KY-04) | | | |
| Chip Roy (TX-21) | | ✓ | |
| Dan Bishop (NC-09) | | ✓ | |
| Michelle Fischbach (MN-07) | | ✓ | |
| Victoria Spartz (IN-05) | | | |
| Scott Fitzgerald (WI-05) | | | |
| Cliff Bentz (OR-02) | | ✓ | |
| Burgess Owens (UT-04) | | ✓ | |
| | AYES | NOS | PRES. |
| TOTAL | 20 | 14 | |

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of House rule X, are incorporated in the descriptive portions of this report.

Committee Estimate of Budgetary Effects

Pursuant to clause 3(d) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

New Budget Authority and Congressional Budget Office Cost Estimate

Pursuant to clause 3(c)(2) of House rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause 3(c)(3) of House rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested by not received from the Director of the Congressional Budget Office a budgetary analysis and a cost estimate of this resolution.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H. Res. 1325 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H. Res. 1325 requests President Joe Biden and directs Attorney General Merrick Garland to transmit to the House of Representatives a copy of the affidavit related to the raid on former President Trump.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H. Res. 1325 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Section-by-Section Analysis

The following discussion describes the resolution as reported by the Committee.

H. Res. 1325, a non-binding resolution of inquiry, requests President Biden and directs Attorney General Garland to transmit to the House of Representatives a copy of the affidavit related to the raid on former President Trump.

Minority Views

H. Res. 1325 requests that President Biden, and directs Attorney General Merrick Garland to, provide a copy of the affidavit to the House of Representatives related to the FBI's raid of President Trump's private residence. This resolution will assist the Commit-

tee’s oversight of the FBI’s unprecedented raid of President Trump’s residence—a shocking escalation of the Biden Administration’s weaponization of law-enforcement resources against its political opponents.

On August 15, 2022, Committee Republicans wrote Attorney General Garland, FBI Director Christopher A. Wray, and White House Chief of Staff Ronald Klain requesting documents and communications related to the FBI’s raid of President Trump’s residence.¹ The Department, FBI, and White House have all failed to comply with this request to date. During the Committee’s business meeting to consider H. Res. 1325, Chairman Nadler misleadingly argued that “the affidavit has now been made public,”² ignoring that large portions of the publicly available affidavit remain heavily redacted. The unredacted affidavit is necessary to fully understand the basis for the FBI’s unprecedented action and to conduct effective oversight of the federal law enforcement apparatus. The Committee should not have reported H. Res. 1325 unfavorably.

THE FBI’S UNPRECEDENTED RAID

On August 8, 2022, the FBI raided President Trump’s Mar-a-Lago residence in Palm Beach, Florida, purportedly to seize government and presidential records.³ In the process, the FBI seized numerous other materials such as books, magazines, newspapers, clothing and gifts, and privileged documents.⁴ This unprecedented raid occurred after months of ongoing discussions and negotiations between President Trump’s representatives and the National Archives and Records Administration (NARA) about material from his time office.⁵

The Biden Department of Justice has provided limited justification for this unprecedented action through a heavily redacted warrant affidavit and selective leaks to favored media outlets.⁶ The affidavit alleged probable cause to suspect evidence of violations of three federal crimes relating to federal records—misuse of national defense information; obstruction of justice by destroying, altering, or falsifying records related to a federal probe; and concealing, removing, or destroying protected federal documents.⁷ The affidavit

¹See Letter from Rep. Jim Jordan et al, Ranking Member, H. Comm. on the Judiciary, to Hon. Merrick Garland, Atty Gen., U.S. Dept of Justice (Aug. 15, 2022); Letter from Rep. Jim Jordan et al, Ranking Member, H. Comm. on the Judiciary, to Dir. Christopher Wray, Fed. Bureau of Investigation (Aug. 15, 2022); and Letter from Rep. Jim Jordan et al, Ranking Member, H. Comm. on the Judiciary, to Ronald Klain, Chief of Staff, White House (Aug. 15, 2022).

²H. Res. 1238 et al., markup before the S. Comm. on Judiciary, 117th Cong. (Sept. 14, 2022) (statement of the Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary).

³Stephanie Pagonis et al, *FBI raids Trump’s Mar-a-Lago: ‘Unprecedented’ for agency to execute search warrant against former president*, FOX NEWS (AUG. 8, 2022); Deepa Shivram, *Trump says FBI agents searched his Mar-a-Lago home in Florida*, NPR (Aug. 8, 2022).

⁴Sadie Gurman et al, *Court Releases Detailed FBI Inventory of Material Seized at Trump’s Mar-a-Lago*, WALL ST. J. (Sept. 2, 2022).

⁵Order, Donald J. Trump v. U.S., No. 22-81294-CIV-CANNON at 2 (S.D. Fla. Sept. 5, 2022); Motion for Judicial Oversight and Additional Relief, In the Matter of the Search of Mar-a-Lago, No. 22-cv-81294-AMC (S.D. Fla. Aug. 22, 2022).

⁶See Devlin Barrett, Josh Dawsey, Perry Stein, & Shane Harris, *FBI searched Trump’s home to look for nuclear documents and other items, sources say*, Wash. Post (Aug. 11, 2022); Maggie Haberman, Jodi Kantor, Adam Goldman, & Ben Protess, *Trump Had More Than 300 Classified Documents at Mar-a-Lago*, NEW YORK TIMES (Aug. 22, 2022).

⁷Affidavit in support of an application under Rule 41 for a warrant to search and seize, In the Matter of the Search of: Locations Within the Premises to be Searched in Attachment A, p. 7–8 (S.D. Fla.) (unsealed Aug. 26, 2022, Sept. 13, 2022); see also 18 U.S.C. §§ 793, 2071, and 1519.

also alleged probable cause to suspect of evidence of obstruction.⁸ However, the unredacted portions of the affidavit provide little context for these allegations and are wholly insufficient to support for the FBI's unprecedented action.

The Biden Department of Justice has hidden behind a formal policy of not commenting on the investigation, while it has simultaneously engaged in selective leaks of salacious accusations. On August 11, 2022, Attorney General Garland addressed the search for the first time, stating, "I have made clear that the Department of Justice will speak through its court filings and its work."⁹ On the same day, however, the Washington Post reported that FBI agents were seeking "classified documents relating to nuclear weapons,"¹⁰ according to leaks from "people familiar with the investigation." The New York Times later reported that President Trump "had more than 300 classified documents at Mar-a-Lago," according to leaks from "people briefed on the matter."¹¹

The Department's affidavit and subsequent media leaks do not explain why a raid was necessary in light of ample evidence of co-operation. In January 2022, President Trump transferred 15 boxes of documents from Mar-a-Lago to NARA.¹² In February 2022, NARA issued a public statement noting the cooperation of President Trump in the identification and submission of certain documents.¹³ In fact, his submission of material was over inclusive. According to NARA, this submission included personal and post-presidential records, along with presidential correspondence and documents with classification markings.¹⁴

Subsequently, in May 2022, President Trump voluntarily accepted service of a grand jury subpoena that sought documents bearing classification markings.¹⁵ Throughout June 2022, the Department and President Trump's lawyers engaged in discussions about the matter.¹⁶ On June 3, the FBI visited Mar-a-lago and President Trump allowed them to inspect his storage room.¹⁷ President Trump also provided responsive documents during the visit.¹⁸ On June 8, the FBI requested that President Trump further secure the storage room, which he did.¹⁹ President Trump also made his staff available for voluntarily interviews.²⁰ On June 22, the FBI subpoenaed surveillance footage from cameras at Mar-a-Largo.²¹ The Trump Organization voluntarily accepted the subpoena and pro-

⁸*Id.*; see also Editorial Board, *The Mar-a-Lago Affidavit: Is That All There Is?*, WALL ST. J. (Sept. 12, 2022).

⁹Press Release, Attorney General Merrick Garland Delivers Remarks, U.S. DEPARTMENT OF JUSTICE (Aug. 11, 2022).

¹⁰Devlin Barrett, Josh Dawsey, Perry Stein, & Shane Harris, *FBI searched Trump's home to look for nuclear documents and other items, sources say*, WASH. POST (Aug. 11, 2022).

¹¹Maggie Haberman, Jodi Kantor, Adam Goldman, & Ben Protess, *Trump Had More Than 300 Classified Documents at Mar-a-Lago*, NEW YORK TIMES (Aug. 22, 2022).

¹²*Id.*

¹³Press Release, Attorney General Merrick Garland Delivers Remarks, U.S. DEPARTMENT OF JUSTICE (Aug. 11, 2022).

¹⁴*Id.* at 7–8.

¹⁵*Id.* at 3; see also Motion for Judicial Oversight and Additional Relief at 5, In the Matter of the Search of Mar-a-Lago, No. 22–cv–81294–AMC (S.D. Fla. Aug. 22, 2022).

¹⁶See generally, Motion for Judicial Oversight and Additional Relief at 5, In the Matter of the Search of Mar-a-Lago, No. 22–cv–81294–AMC (S.D. Fla. Aug. 22, 2022).

¹⁷*Id.* at 5.

¹⁸*Id.*

¹⁹*Id.* at 6.

²⁰*Id.*

²¹*Id.*

vided the footage.²² On September 13, a federal judge unsealed a some more portions of the affidavit—although still largely redacted—that showed President Trump had returned even more documents to the Department than previously known.²³

Despite this cooperation, Attorney General Garland personally approved the decision to escalate the matter by seeking a warrant for excessive and unprecedented access to President Trump’s private residence.²⁴ FBI agents spent approximately nine hours rummaging through President Trump’s personal belongings.²⁵ They collected more than 11,000 documents, more than 1,600 press articles and printed materials, 19 items of clothing or gifts, and 33 books.²⁶ They also collected about 100 documents with classification markings.²⁷

THE PRESIDENTIAL RECORDS ACT

The FBI’s unprecedented raid of President Trump’s residence bears on the Presidential Records Act (PRA). Congress passed the PRA in 1981 at the beginning of President Ronald Reagan’s first term.²⁸ The PRA “governs the collection and retention of records” that were “created or received by the President, the President’s immediate staff, or a unit or individual of the Executive Office of the President,” while conducting activities related to “the constitutional, statutory, or other official or ceremonial duties of the President.”²⁹ The statute considers these records property of the United States, not the relevant President.³⁰ The PRA does not extend to a President’s personal records, defined by the statute as “purely private or nonpublic” records which include diaries, journals, materials directly related to the President’s election or election of another individual, and “materials relating to private political associations.”³¹

During a presidency, the President has the exclusive authority over presidential records.³² Following a presidency, the Archivist

²² *Id.*

²³ Affidavit in support of an application under Rule 41 for a warrant to search and seize, In the Matter of the Search of: Locations Within the Premises to be Searched in Attachment A, p. 7–8 (S.D. Fla.) (unsealed Aug. 26, 2022, Sept. 13, 2022). (“Since the fifteen boxes were provided to [National Archives], documents bearing classifications markings, which appear to contain [national defense information] and were stored at the premises in an unauthorized location, have been produced to the government in response to a grand jury subpoena. . . .” “On July 6, 2022, in response to the subpoena [served on June 24, 2022], representatives of the Trump Organization provided a hard drive to FBI agents.”) *Id.* at 2, 23.

²⁴ Press Release, Attorney General Merrick Garland Delivers Remarks, U.S. Department of Justice (Aug. 11, 2022). During Garland’s confirmation hearing, he vowed not to weaponize the Justice Department to target the Biden Administration’s political opponents. Garland promised that the Justice Department (“will be under my protection for the purpose of preventing any kind of partisan or other improper motive in making any kind of investigation or prosecution. That’s my vow. That’s the only reason I’m willing to do this job.”). Jeremy Herb, *Garland vows at confirmation hearing to keep politics out of DOJ while drawing bipartisan praise*, CNN (Feb. 22, 2021).

²⁵ Motion for Judicial Oversight and Additional Relief, In the Matter of the Search of Mar-a-Lago, No. 22–cv–81294–AMC at 8 (S.D. Fla. Aug. 22, 2022).

²⁶ Samuel Chamberlain and Emily Crane, *Detailed inventory of Trump Mar-a-Lago FBI raid released*, N.Y. POST (Sept. 2, 2022).

²⁷ Phillip Bump, *Trump’s classified Mar-a-Lago documents, catalogued*, WASH. POST (Sept. 2, 2022).

²⁸ David B. Rivkin Jr. & Lee A. Casey, *The Trump warrant had no legal basis*, WALL ST. J. (Aug. 22, 2022).

²⁹ See 44 U.S.C. § 2201 (2014); MEGHAN M. STUESSY, CONG. RESEARCH SERV., IN12056, PRESIDENTIAL RECORDS MANAGEMENT: PRESERVATION AND DISPOSAL (2022).

³⁰ *Id.*

³¹ *Id.*

³² MEGHAN M. STUESSY, CONG. RESEARCH SERV., IN12056, PRESIDENTIAL RECORDS MANAGEMENT: PRESERVATION AND DISPOSAL (2022).

gains responsibility for the “custody, control, preservation, and access to presidential records.”³³ The PRA gives a former president the right to access records from his presidency.³⁴

Former Department of Justice and White House Counsel officials David Rivkin and Lee Casey argue that the PRA “guarantees a former president continuing access to his papers.”³⁵ Rivkin and Casey note that the PRA does not address how presidential records are to be physically turned over to the Archivist “leaving this matter to be negotiated between the archivist and the former president.”³⁶ According to Rivkin and Casey, when making records available to the former president, the PRA does not distinguish between classified and unclassified material.³⁷ They conclude that “the bureau could and should have sought a less intrusive judicial remedy than a search warrant—a restraining order allowing the materials to be moved to a location with the proper storage facilities, but also ensuring Mr. Trump continuing access.”³⁸

THE APPOINTMENT OF A SPECIAL MASTER

During the raid, “privileged and/or potentially privileged documents were among the items taken from [President Trump’s] home.”³⁹ President Trump’s lawyers subsequently filed a motion requesting the appointment of a special master, an independent third party often appointed to assist a court in complex litigation, to conduct the review to determine which documents were privileged. The filing raised Fourth Amendment concerns with the search, characterized the warrant as “overbroad,” and requested a special master to “protect the integrity of privileged documents.”⁴⁰

The Department argued against the appointment of a special master, essentially arguing that the Biden Administration would adequately protect President Trump’s right to protect privileged documents. The Department stated that “the government’s filter team has already completed its work of segregating any seized materials that are potentially subject to attorney-client privilege, and the government’s investigative team has already reviewed all of the remaining materials, including any that are potentially subject to claims of executive privilege.”⁴¹

On September 5, Judge Aileen Cannon ordered the appointment of a special master.⁴² Judge Cannon requested the Department and President Trump’s lawyers submit a joint filing with a list of proposed candidates.⁴³ The order rejected the Department’s assurances that its Privilege Review Team caught all privileged material. Judge Cannon wrote that “without drawing inferences, there is a basis on this record to question how materials passed through the screening process, further underscoring the importance of pro-

³³ *Id.*

³⁴ 44 U.S.C. § 2205(3) (2014).

³⁵ David B. Rivkin Jr. & Lee A. Casey, *The Trump warrant had no legal basis*, WALL ST. J. (Aug. 22, 2022).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Motion for Judicial Oversight & Additional Review, In the Matter of the Search of Mar-a-Lago, No. 22-cv-81294-AMC (S.D. Fla. Aug. 22, 2022). *Id.* at 3.

⁴⁰ *Id.* at 10, 11, & 9.

⁴¹ United States’ Response to Motion for Judicial Oversight & Additional Relief, Donald J. Trump v. U.S., No. 22-CV-81294-CANNON at 3 (S.D. Fla. Aug. 30, 2022).

⁴² Order, Donald J. Trump v. U.S., No. 22-81294-CIV-CANNON (S.D. Fla. Aug. 27, 2022)

⁴³ *Id.*

cedural safeguards and an additional layer of review.”⁴⁴ In addition, Judge Cannon ordered the Department to halt the use of all documents seized in the raid.⁴⁵

Commenting on the appointment of the Special master, Professor Jonathan Turley stated that:

While it is admittedly less common to use a special master in a criminal case, it is not “unprecedented” for a court to conduct in camera reviews of seized material. In this case, the court wants to use a special master to perform that function. Moreover, special masters are commonly appointed in the federal courts in an array of cases where judges need assistance in creating a record for a ruling on motions.⁴⁶

While the Department is prohibited from using the documents at this time, the order “does not halt the criminal investigation.”⁴⁷ Professor Turley stated that Judge Cannon’s ruling “will not necessarily change the ultimate trajectory of the case but it will force critical reviews and rulings on issues from attorney-client privilege to executive privilege.”⁴⁸

CONCLUSION

Throughout the business meeting, Democrats failed to join Republicans in the Committee’s constitutional duty to conduct oversight of the Executive Branch and obtain access to the unredacted affidavit. Rather than receive more facts and information about the FBI’s unprecedented raid of President Trump’s former residence, the Democrats wrongly voted to report H. Res. 1325 unfavorably to the House of Representatives. We strongly disagree with this action.

JIM JORDAN,
Ranking Member.



⁴⁴*Id.* at 15, n. 13.

⁴⁵*Id.*

⁴⁶Jonathan Turley, *Federal judge orders appointment of special master and halts use of seized Mar-a-Lago material by prosecutors*, RES IPSA LOQUITUR BLOG (Sept. 6, 2022).

⁴⁷*Id.*

⁴⁸*Id.*