



**U.S. Department of Justice**  
Civil Division  
950 Pennsylvania Ave. NW  
Washington, DC 20530

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January 18, 2022

Mr. Mark Langer  
Clerk of the Court  
U.S. Court of Appeals for the  
District of Columbia Circuit  
E. Barrett Prettyman U.S. Courthouse  
333 Constitution Avenue N.W.  
Washington, DC 20001

Re: *Trump v. Thompson*, No. 21-5254  
Oral argument held on November 30, 2021, before Judges Millett,  
Wilkins, and Jackson

Dear Mr. Langer:

We write to notify the Court that tomorrow, January 19, 2022, as previously scheduled, the Archivist intends to release to the Select Committee to Investigate the January 6th Attack on the United States Capitol (Committee) records from the fourth tranche of documents over which the former President has asserted privilege. *See* Letter from Dana A. Remus to David Ferriero (December 17, 2021) (December 17 Letter).<sup>1</sup> On December 17, 2021, the Counsel to the President directed the Archivist to withhold those records for an additional thirty days—*i.e.*, through today, January 18, 2022—to enable the former President to seek an injunction if he wished. *See id.* Because the former President has not obtained such an injunction from any court, the release will proceed as scheduled absent an intervening court order.

We alert this Court to this development in an abundance of caution because counsel for the former President asserted today that releasing the fourth tranche of

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<sup>1</sup> <https://www.archives.gov/files/foia/remus-letter-to-ferriero-re-january-6-notification.12.17.2021.pdf>

records to the Committee would violate this Court's November 11, 2021 administrative stay order precluding the Archivist from "releasing the records requested by the House Select Committee over which appellant asserts executive privilege." This Court specifically stated in its December 9, 2021 decision, however, that its administrative injunction encompassed only records from the first three tranches, which were the only tranches at issue in the appeal. *See Trump v. Thompson*, 20 F.4th 10, 23 (D.C. Cir. 2021) ("[T]his court administratively enjoined the Archivist from releasing the records from the first three tranches over which former President Trump had claimed executive privilege."). Although the Court recognized that there would likely be disputes over additional tranches, the Court stressed that "this preliminary injunction appeal" involves only "a subset of documents in the Archivist's first three tranches," and "[a]ny potential future claims are neither ripe for constitutional adjudication nor capable of supporting this preliminary injunction." *Id.* at 24. As to the documents set to be released tomorrow from the fourth tranche, the Court specifically observed that "[f]ormer President Trump has not raised any arguments about those six pages in this appeal." *Id.* at 20 n.7.<sup>2</sup>

Accordingly, following this Court's decision, government counsel informed counsel for the former President that the Archivist would release records from the fourth tranche as scheduled, absent a court order. President Biden then directed the Archivist to delay that release for an addition thirty days, through January 18, 2022, to ensure the former President had an opportunity to seek judicial relief. *See* December 17 Letter, *supra*.

Despite that opportunity, the former President did not move for a preliminary injunction in district court with respect to records from the fourth tranche or even amend his complaint to seek relief with respect to any such records. Nor did he seek clarification or further relief from this Court. His only request for relief with respect to records from the fourth tranche was in the Supreme Court. In his emergency application for an administrative injunction pending the disposition of his petition for a writ of certiorari, the former President acknowledged that records from the fourth tranche were due to be produced to the

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<sup>2</sup> As this Court observed, the former President asserted executive privilege over six pages of documents from the fourth tranche and President Biden declined to uphold that assertion. *See Thompson*, 20 F.4th at 20 n.7. Because two of the six pages are similar to pages that are contained in the first three tranches and subject to this Court's administrative injunction, the Archivist intends to produce only the remaining four pages.

Committee on January 19, 2022, and asked the Supreme Court to enjoin that release:

As the D.C. Circuit acknowledged, there will be forthcoming tranches over which President Trump intends to assert privilege. For example, there has been a fourth tranche of documents due to be produced by January 19, 2022, absent court order. For the sake of judicial efficiency and to preserve the status quo, President Trump asks that Respondents be enjoined from producing any potentially privileged or restricted records until the petition for a writ of certiorari matter is resolved by the Court.

Application at 3 n.1, *Trump v. Thompson*, No. 21A272 (U.S. filed Dec. 23, 2021). In response, the Solicitor General explained that such an injunction was both procedurally improper and unwarranted: “Applicant is not entitled to any form of injunctive relief, but certainly not with respect to records for which he has made no effort to demonstrate a continued need for confidentiality.” Response in Opposition at 17 n.1, No. 21A272 (U.S. filed Dec. 30, 2021). The Supreme Court has not yet acted on the former President’s application.

As a courtesy, government counsel wrote to counsel for the former President last Friday, January 14, 2022, to reiterate that the Archivist would release the documents to the Committee on January 19, 2022, as scheduled, absent a court order. To date, the former President has not sought such an order from the district court or this Court. Absent an intervening court order, the Archivist intends to release records from the fourth tranche to the Committee at 6:00 pm tomorrow.

Sincerely,

/s/ Brian M. Boynton

Brian M. Boynton

Acting Assistant Attorney General

cc: All parties via CM/ECF