

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

MICHAEL A. SUSSMANN,

Defendant.

UNDER SEAL AND IN CAMERA
Criminal Case No. 21-582 (CRC)

Declaration of Marc Elias

I, Marc Elias, have personal knowledge of the following facts:

1. I, Marc Elias, am a graduate of Duke University Law School (JD) and Duke University Graduate School (MA, political science). From 1993 until September 1, 2021, I was an attorney in the Washington, D.C. office of Perkins Coie LLP (“Perkins Coie” or “the firm”). I became chair of the firm’s political law group at the end of 2009. During my career I have represented hundreds of Democratic candidates, including those running for President, Senate, Congress, and state and local office. I have also represented numerous Political Action Committees (“PACs”), parties, and nonprofit organizations. I have litigated scores of cases involving voting rights, redistricting, and how votes are cast, counted, and recounted.

2. Since September 2, 2021, I have been a partner at Elias Law Group LLP, a law firm specializing in political law and voting rights litigation.

3. In 2015, Perkins Coie was retained by Hillary for America, the principal campaign committee of Secretary Hillary Clinton’s 2016 presidential campaign (“the Clinton Campaign”). I served as the firm’s client lead for the Clinton Campaign and held the campaign title General Counsel. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. From approximately 2009 until September 1, 2021, the firm also served as the General Counsel of the Democratic National Committee (“the DNC”). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. As counsel to political committees, the firm and I routinely advised on and reviewed client advertisements and statements in the media either before or after publication to ensure compliance with applicable campaign finance, defamation, copyright, and political broadcasting laws, rules, and regulations. We also defended clients in litigation related to those advertisements and statements. The firm and I served in a similar capacity for previous presidential campaigns. In my experience, presidential campaigns regularly encounter offensive and defensive litigation risks in multiple ways. For example, in 2004, the firm and I served as General Counsel for John Kerry’s presidential campaign (“the Kerry Campaign”). It is well documented that false claims attacking Senator Kerry’s service in Vietnam became a major theme in that election, including in advertisements. As I recall, representing the Kerry Campaign with respect to that issue required extensive review and understanding of military facts, events, and procedures that were beyond my expertise. I recall that the controversy around those claims also led to contemplated and actual litigation. I recall at least one lawsuit, for example, was filed against Senator Kerry and his Pennsylvania campaign manager for defamation. Similarly, in 2008 and 2012, the firm represented Barack Obama’s presidential campaign. One of the partners in my practice group served as General Counsel. It has been widely reported that among the issues raised during President Obama’s 2012 re-election campaign were lies spread about his place of birth. During that campaign, Donald Trump became a leading figure in promoting the lie that became known as “Birtherism.” For example, in March 2011, Mr. Trump reportedly told Fox News: “He doesn’t have a birth certificate. He may have one, but there is something on that birth certificate—maybe

religion, maybe it says he's a Muslim; I don't know." Though patently false, I recall that fully rebutting those claims appeared to require a knowledge and expertise in the various forms of birth certificates issued by the state of Hawaii over the years. My recollection is that those claims also resulted in threatened and actual litigation. Accordingly, in my and the firm's capacity as General Counsel for the Clinton Campaign, I expected to encounter similar claims and litigation risks from the opposing candidate, political party, and their supporters.

6. In the context of the 2016 election, I generally recall being aware that candidate Trump had been involved in an exceptionally high number of lawsuits—ranging from slip and falls to complex bankruptcies and restructuring—more than I recall ever previously encountering on behalf of a client in the political arena. I also generally remember being aware that he had used the threat of defamation litigation for tactical advantage and had filed and threatened meritless claims of defamation in the past.

7. Significantly, I recall that during the Republican primaries in 2015 and 2016, candidate Trump threatened to sue several rival candidates, campaigns, and political organizations for defamation. According to media reports, these included threatening to sue a conservative group for defamatory ads; threatening to sue a supporter of candidate Jeb Bush for defamation if that individual placed advertisements critical of candidate Trump; threatening to sue a political committee supporting candidate John Kasich if that committee aired advertisements critical of candidate Trump and tweeting "Watch Kasich squirm—if he is not truthful in his negative ads I will sue him just for fun!"; and threatening to sue candidate Ted Cruz for defamation related to campaign advertisements.

8. In 2016, both the DNC and the Clinton Campaign maintained a large research staff whose responsibility it was to research candidate Trump—his background and public statements as well as his campaign and its supporters. Also, during this period, both the DNC and the Clinton Campaign maintained large communications staffs whose responsibility was to disseminate statements from the candidate (Hillary Clinton), the Clinton Campaign, the Democratic Party, and others focused on candidate Trump and other Republicans. To the best of my recollection, I would

estimate that over the course of 2016, more than 100 people worked across these two departments at the two committees.

9. [REDACTED]

10. I recall that at some point in the Spring 2016, Peter Fritsch and Glenn Simpson, former reporters who were then affiliated with an investigative firm Fusion GPS (“Fusion”), contacted me to see if I was interested in retaining them. I generally recall them saying that they thought they would be a good fit if I was looking to retain a consultant to support me in representing my clients.

11. At some point after that meeting, Perkins Coie engaged Fusion. As stated in the engagement letter, Fusion’s role was to provide consulting services in support of the legal advice attorneys at Perkins Coie were providing to specific firm clients “related to defamation, libel and similar laws in which accuracy is an essential legal element[.]” Such consulting services included “[p]rovid[ing] public record information and strategy to aid [Perkins Coie] in the provision of legal services, including potential and actual litigation, to [the specific firm clients].”

12. As General Counsel for the Clinton Campaign I recall thinking that the expertise that could be provided by Fusion would aid me in my work for the client. I provided Fusion direction on the research and information I thought would help me perform my job. I recall that on some occasions, Fusion’s work was distilled and incorporated into my judgments about legal issues, while in other instances, I shared the results of Fusion’s work with my clients. For example, as a hypothetical, if I thought that the Clinton Campaign or the DNC was likely going to want to make public statements about the way the local Scottish population was treated by candidate Trump when he developed his golf course in Scotland, I might ask Fusion to obtain accurate information regarding candidate Trump’s relationships in Scotland (e.g., records of lawsuits or documentary films which exist only in Scotland) to assist me in advising the campaign and the DNC. In this hypothetical, I might go through the information provided by Fusion to determine

which of the information is useful, which is worth passing along to the Clinton Campaign, and which is worth my keeping in the back of my mind so I could provide legal advice to the clients.

13. By way of background, by the summer of 2016 it was public knowledge and my understanding that the DNC and at least one other democratic organization had been hacked by Russia—that is, Russia or entities working at its direction had infiltrated their servers and/or computers and stolen voluminous materials. I recall that materials stolen during the hack or hacks were being publicly disseminated in a manner that appeared to assist candidate Trump. I recall that around the time of the Democratic convention, candidate Trump publicly encouraged Russia to take action to release Secretary Clinton’s emails, [REDACTED]

[REDACTED]

14. [REDACTED]

[REDACTED]

15. [REDACTED]

[REDACTED]

16.

[REDACTED]

17.

[REDACTED]

18.

[REDACTED]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 4/18/2022

DocuSigned by:
Marc Elias
By: D1129E6601E540F...
Marc Elias