


CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.			FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: U.S. Department of Justice				2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. President Donald Trump 1100 S OCEAN BLVD PALM BEACH, FL 33480		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN		4. DATE OF BIRTH June 14, 1946	5. MARITAL STATUS Married	6. DATE AND DAY OF ACCIDENT August 8, 2022		7. TIME (A.M. OR P.M.) 8:39 A.M.
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). See attached memorandum						
9. PROPERTY DAMAGE						
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). None						
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side). See attached memorandum						
10. PERSONAL INJURY/WRONGFUL DEATH						
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. See attached memorandum						
11. WITNESSES						
NAME			ADDRESS (Number, Street, City, State, and Zip Code)			
Derek Pieper Assistant Special Agent in Charge, FBI			601 4th Street NW Washington, DC 20535			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars) \$100,000,000						
12a. PROPERTY DAMAGE See attached memorandum		12b. PERSONAL INJURY See attached memorandum		12c. WRONGFUL DEATH None	12d. TOTAL (Failure to specify may cause forfeiture of your rights). See attached memorandum	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.						
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side).  Daniel Z. Epstein Partner, HRE Group LLC Legal Representative of Claimant				13b. PHONE NUMBER OF PERSON SIGNING FORM (202) 240-2398		14. DATE OF SIGNATURE 8/7/2024
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM				CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS		
The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).				Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident Insurance? Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. No

Not relevant to claims alleged. See attached memorandum.

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? Yes No

Not relevant to claims alleged. See attached memorandum.

17. If deductible, state amount.

Not applicable

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

None

19. Do you carry public liability and property damage insurance? Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). No

Not relevant to claims alleged. See attached memorandum.

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

- (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.
(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.
(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.
(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. Authority: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. Principal Purpose: The information requested is to be used in evaluating claims.
C. Routine Use: See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
D. Effect of Failure to Respond: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

Attachment to:
STANDARD FORM SF-85 CLAIM FOR DAMAGE, INJURY, OR DEATH

Re: Tortious Conduct by the United States Against President Trump

Chetan A. Patil
Acting Deputy Assistant Attorney General (Torts Branch)
Federal Tort Claims Act Section
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 888
Benjamin Franklin Station
Washington, DC 20044

Claims

This memorandum provides notice of a claim pursuant to the Federal Tort Claims Act (“FTCA”) presented to the United States, through its Department of Justice and Federal Bureau of Investigation (“FBI”), for tortious conduct under Florida common law against President Trump. The tortious acts against the President are rooted in intrusion upon seclusion, malicious prosecution, and abuse of process resulting from the August 8, 2022, raid of his and his family’s home at Mar-a-Lago in Palm Beach, Florida. This case falls within the established exceptions to the United States’s practice of not generally waiving sovereign immunity to FTCA claims involving intentional torts or discretionary functions. First, a clear exception to the intentional tort bar exists when the tortious conduct was directly carried out by law enforcement agents under the control of the Department of Justice.¹ Second, the FTCA’s carveout for discretionary functions does not apply to decisions that occur at the “operational level.”² As explained below, the operational level decisions here were made by Attorney General Merrick Garland and FBI Director Christopher Wray.³ Those decisions were inconsistent with protocols requiring the consent of an investigative target, disclosure to that individual’s attorneys, and the use of the local U.S. Attorney’s Office.⁴ Further, Garland and Wray’s decisions regarding the Mar-a-Lago raid were not grounded in “social, economic, and political policy” but in clear dereliction of constitutional principles, inconsistent standards as applied to the

¹ 28 U.S.C. § 2680(h).

² *Indian Towing Co. v. United States*, 350 U.S. 61, 64 (1955).

³ U.S. Department of Justice, Office of Public Affairs, *Attorney General Merrick Garland Delivers Remarks* (August 11, 2022), <https://www.justice.gov/opa/speech/attorney-general-merrick-garland-delivers-remarks> (“I personally approved the decision to seek a search warrant in this matter”).

⁴ See Parts A, D, & E, *infra*; accord *Cohen v. United States*, 151 F.3d 1338, 1341 (11th Cir. 1998) (citing *United States v. Gaubert*, 499 U.S. 315, 322 (1991) (“Government conduct does not involve an element of judgment or choice, and thus is not discretionary, if ‘a federal statute, regulation, or policy specifically prescribes a course of action for an employee to follow, because the employee has no rightful option but to adhere to the directive.’”) (internal citations omitted)).

prospective plaintiff, and a clear intent to engage in political persecution – not to advance good law enforcement practices “susceptible to policy analysis.”⁵ The actions by Garland and Wray were not discretionary but required as a matter of procedure and under the Constitution. Garland and Wray should have never approved a raid and subsequent indictment of President Trump because the well-established protocol with former U.S. presidents is to use non-enforcement means to obtain records of the United States. But notwithstanding the fact that the raid should have never occurred, Garland and Wray should have ensured their agents sought consent from President Trump, notified his lawyers, and sought cooperation. Garland and Wray decided to stray from established protocol to injure President Trump.

A. Intrusion Upon Seclusion⁶

Under Florida law, intrusion upon seclusion,⁷ one of the recognized forms of invasion of privacy, includes (1) An intentional intrusion, physically or otherwise, into the private quarters of another person⁸ and (2) The intrusion must occur in a manner that a reasonable person would find highly offensive.⁹ The first factor requires an intrusion into a place where the plaintiff has a reasonable expectation of privacy.¹⁰ The second factor is met when an intrusion is so severe and unacceptable that it is highly offensive to a reasonable person.¹¹

The former Assistant Director-in-Charge of the FBI’s Washington Field Office, Steven D’Antuono, testified that based on his over 20-year tenure at the FBI, the FBI should have sought consent to search the premises of Mar-a-Lago before resorting to a search warrant.¹² Additionally, Mr. D’Antuono testified that the FBI refused to wait for President Trump’s attorney to be present before starting the raid.¹³ Mr. D’Antuono testified that the FBI sought to exclude President Trump’s attorney from the raid, a

⁵ See Part D, *infra*; accord. *Gaubert*, 499 U.S. at 323, 325.

⁶ This Notice Memorandum should not be interpreted to exclude the possibility of pleading in a forthcoming complaint civil trespass claims as an alternative or additional claim to intrusion upon President Trump’s seclusion. In Florida, the elements for a civil trespass tort to real property require (1) An unauthorized entry onto another’s property, where entry is defined as any intrusion, even the slightest, onto the property of another; (2) The entry must be made without the right or authority to do so; and (3) The property must be owned by or in the lawful possession of the person alleging the trespass at the time of the incident. *R.C.W. v. State*, 507 So.2d 700 (1987); *Dagerath v. State*, 100 So.3d 1260 (2012); *Gunning v. Equestleader.com, Inc.*, 253 So.3d 646 (2017); *Winselmann v. Reynolds*, 690 So.2d 1325 (1997). Indeed, discovery will likely reveal the lack of authority to proceed in the manner for which the search was conducted.

⁷ *Pet Supermarket, Inc. v. Eldridge*, 360 So.3d 1201 (2023)

⁸ *Jackman v. Cebrink-Swartz*, 334 So.3d 653 (2021).

⁹ *Pet Supermarket, Inc.*, note 7, *supra* at *id.*

¹⁰ *Allstate Ins. Co. v. Ginsberg*, 863 So.2d 156 (2003).

¹¹ *Pet Supermarket, Inc.*, note 7, *supra*.

¹² Interview of: Steven D’Antuono: Before the H. Comm. on the Judiciary, 118th Cong. 19-23 (2024) (hereinafter “D’Antuono Transcript”).

¹³ *Id.* at 109-10.

move with which Mr. D’Antuono disagreed.¹⁴ Mr. D’Antuono believed that the FBI should have worked with the President’s attorney to get consent to search the residence before seeking a warrant for the search.¹⁵ Mr. D’Antuono’s testimony is consistent with an internal e-mail to DOJ and FBI officials dated August 1, 2022 (a week before the raid of Mar-a-Lago) where the FBI’s Washington Field Office team requested that the Department of Justice and FBI obtain cooperation from President Trump’s lawyer in the “search for any documents,” stating “a Consensual Search . . . would provide a level of comfort that the FBI has retrieved all appropriate documents relevant to the National Defense and Presidential Records Act (PRA).”¹⁶ FBI officials refused to seek such consent.¹⁷

The FBI’s demonstrated activity was inconsistent with protocols used in routine searches of an investigative target’s premises. President Trump had a clear expectation of privacy at Mar-a-Lago, his and his family’s personal residence. Worse, the FBI’s conduct in the raid – where established protocol was violated – constitutes a severe and unacceptable intrusion that is highly offensive to a reasonable person.

B. Malicious prosecution

Malicious prosecution in Florida requires the following elements: (1) An original criminal proceeding against the present plaintiff was commenced; (2) The present defendant was the legal cause of the original proceeding against the present plaintiff as the defendant in the original proceeding; (3) The termination of the original proceeding constituted a bona fide termination of that proceeding in favor of the present plaintiff; (4) there was an absence of probable cause for the original proceeding; (5) There was malice on the part of the present defendant; and (6) The plaintiff suffered damage as a result of the original proceeding.¹⁸

The Special Counsel’s office, based substantially on the fruits of the search executed by the FBI, brought a lawless criminal indictment against President Trump on July

¹⁴ *Id.* at 29-30.

¹⁵ *Id.* at 30. The primary allegations here allege intentional injury to President Trump. President Trump nevertheless preserves his ability to claim negligence to the extent law enforcement officers were subject to negligent instruction by FBI Director Christopher Wray. The facts may support a negligence claim that would not permit the Attorney General or the FBI Director to claim is a matter of unreviewable discretion. In Florida, negligence results if defendants had a duty to use SDFL-based agents (rather than D.C.-based ones) and failed to seek the President’s consent before raiding his home. This breach of the Department of Justice’s duties caused injury to President Trump and his property.

¹⁶ Document 566-1 (dated August 1, 2022), *U.S. v. Trump et al.*, No. 23-80101-CR (S.D. FL April 22, 2024) (hereinafter “Internal FBI E-mails”).

¹⁷ D’Antuono Transcript, *supra* note 12 at 23-24.

¹⁸ *Fischer v. Debrincat*, 169 So.3d 1204 (2015); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352 (1994); *Alterra Healthcare Corp. v. Campbell*, 78 So.3d 595 (2011).

27, 2023.¹⁹ The United States was the cause of this proceeding which was dismissed by Judge Aileen Cannon on July 15, 2024.²⁰ The defects of the appointment of, and appropriations for, Special Counsel Jack Smith and the overbreadth of the search warrant reflect an absence of probable cause for the events leading to the indictment.²¹ Consider the observations of Berkeley law professor and former senior Department of Justice official John Yoo:

[W]e've never indicted a former president before. And so that itself [is] a major hurdle. That's a major statement to say we have probable cause; we, the government, have probable cause to believe that this former president, President Trump, has committed a federal crime. And then the second thing is, if you look at the search warrant, the same thing I think is really important is the breadth of it. It says, essentially, you, the FBI, can look in President Trump's home for any document at all that was created by President Trump in the time period of his presidency.

So, it actually goes well beyond just searching for classified information. And so that, that's what causes, I think, a lot of the controversy over it, is one was this necessary, putting aside whether it's a constitutional search or not, I think it is, and we can get in that. But when was it necessary? And then two, why the breadth? Why look for a lot more than just classified information?²²

Moreover, as former U.S. Court of Appeals Judge and now-Attorney General Merrick Garland should have foreseen, President Trump had immunity from prosecution for official acts.²³ As such, given the Supreme Court's immunity decision and Judge Cannon's dismissal of the prosecution on grounds that the Special Counsel's appointment violated the appointments clause and his office was funded through an

¹⁹ Superseding Indictment at 1-4, *United States v. Trump et al.*, No. 23-80101-CR, 2024 WL 3404555 (S.D. Fla. July 15, 2024) (the original indictment was dated June 8, 2023).

²⁰ *United States v. Trump*, No. 23-80101-CR, 2024 WL 3404555, at *1 (S.D. Fla. July 15, 2024) (hereinafter "Dismissal Order").

²¹ Order Denying Motion for *Franks* Hearing and Reserving Ruling on Balance of Motion Pending Necessary Factual Development at 9, *U.S. v. Trump et al.*, No. 23-80101-CR (S.D. FL June 27, 2024) (Document 655) ("But the Court determines that some of the terms in that document (e.g., 'national defense information' and 'Presidential Records'), do not carry 'generally understood meaning[s]' such that a law enforcement agent, without further clarification, would have known to identify such material as 'seizable' property[.]; accord. *id.* at 10 ("the present record does not indicate, for example, whether the clarifying information in the affidavit was attached to the warrant or expressly incorporated into it [See ECF No. 567 p. 13]").

²² Constitutional Questions After the Raid on Mar-a-Lago, National Constitution Center 2 (August 18, 2022), https://constitutioncenter.org/media/files/Mar-a-lago_Raid_Transcript.pdf.

²³ *Trump v. United States*, 144 S. Ct. 2312, 2327 (2024).

improper appropriation, there was no constitutional basis for the search or the subsequent indictment.²⁴

Internal FBI communications reflect the skeptical attitude of line-level agents to the probable cause theory for the August 8, 2022, raid. Documents obtained from the FBI and reported upon in *Bloomberg* reveal the bias (“political antics”) and lack of probable cause (“I no longer believe we have real PC”) involved in the raid of Mar-a-Lago:²⁵

²⁴ See *Miami-Dade County v. Asad*, 78 So.3d 660 (2012) (describing malicious prosecutions as lacking probable cause).

²⁵ Jason Leopold, *After Mar-a-Lago Search, FBI Agent Wondered, “Am I Dreaming?”*, BLOOMBERG (March 15, 2024, 10:54 AM), <https://www.bloomberg.com/news/newsletters/2024-03-15/trump-documents-raid-at-mar-a-lago-sparked-protest-from-fbi-employees>.

From: Morey, Chauncenette D. (OO) (FBI)
Subject: Search Warrant on former President Trump
To: Abbate, Paul M. (DO) (FBI)
Cc: [redacted] (DO) (FBI)
Sent: August 11, 2022 6:00 AM (UTC-04:00)

Good morning sir,

Just wanted you to be aware of the concerns/comments our office has received regarding the search of former President Trump.

- Hello Chauncenette,

Did this really just happen? Am I dreaming? The FBI served a Search Warrant on a former president? The news is saying it's about documents. Did this really just happen? b6
b7c

I've lost just about all faith in our leadership. Obviously they forgot Crossfire Hurricane. If he took documents, give him a call and ask for them back. Like... Seriously? My own agency.... A bunch of democrat political hacks up top.

I don't know how many [redacted] but they may have lost one here.

Is there any plan from leadership to explain these absurd actions? I no longer believe we have real PC based on Crossfire Hurricane and everything else I've seen to include targeting parents based on the AG's letter. They need to explain their embarrassment of the Bu. That used to be a mortal sin.

Please convey this message. They owe our workforce an explanation of their overt political antics.

Thanks,

- Chauncenette,

While you are at it, please ask them why we break out all the tools to enforce a federal misdemeanor of someone walking through the Capitol on January 6th (track down through cell phone analysis and arrest), but people can violate 18 U.S.C. § 1507 every day and harass Supreme Court Justices in broad day light on the news and NOTHING is done about it.

I believe they won't be able to answer it because the answer is that they are a bunch of political hacks of the democratic party.

Federal law is quite clear. Under 18 U.S.C. § 1507, it is a criminal violation of federal law to picket or parade "near a building or residence occupied or used by [a federal] judge, juror, witness, or court officer" with the "intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty."

Respectfully,
Chauncenette Morey
Acting Ombudsman
Office of the Ombudsman

[redacted]
Phone: BuCell [redacted]

The Office of the Ombudsman is a confidential, independent, informal, and neutral resource for assistance with workplace issue resolution.

This office does not accept formal complaints nor does communication constitute notice to the FBI. Please note that confidentiality cannot be assured when using emails.

In another internal email, an agent questions whether there was “predication” for the raid as well as questions the existence of probable cause (“PC”) for the warrant, suspecting the motive was “any type of political opposition”:

From: Morey, Chauncenette D. (OO) (FBI)
Subject: RE: Search Warrant on former President Trump
To: Abbate, Paul M. (DO) (FBI)
Cc: [REDACTED] (DO) (FBI)
Sent: August 11, 2022 11:04 AM (UTC-04:00)

b6 -1
b7c -1

Good morning,

Here’s the latest:

Hello Chauncenette,

See the START of the result below from the politicizing and absolute embarrassment of the recently formed Banana Republic Bu. People are threatening us more than usual due to the actions of the few. Here we go again. I can't wait to see what training we will all have to do.

- 1) What is the predication of the investigation involving the search? It better be more than putting a few documents in the archives or classified material of which the man could have declassified.
- 2) What is the PC of the warrant? It better not involve any type of political opposition.
- 3) Provided 1 & 2 are legit, why didn't someone work with one of the former POTUS's delegates to resolve the problem? I doubt it was the least intrusive method, and they probably wanted the publicity.

The 7th floor needs to lead and provide faith back in our organization if it's even possible.

Thanks,

Additional FBI communications reflect internal concerns with the Department of Justice’s expressed bias that was likely to negatively affect the Mar-a-Lago raid. In e-mails received by FBI Washington Field Office officials Anthony Riedlinger and Steven D’Antuono, concerns were raised reflecting the Department of Justice’s disinterest in following standard procedures at the operational level:

Since we heard [National Security Division Deputy Assistant Attorney General George Toscas] say yesterday in the call that “he frankly doesn’t give a damn about the optics” and [National Security Division Assistant Attorney General Jay Bratt] already has built an antagonistic relationship with FPOTUS’s attorney over the service of the Grand Jury subpoena, I think it is more than fair to say that the DOJ contact with [Evan Corcoran] just prior to the execution of the warrant will not go well. DOJ said as much yesterday. I also think that it is fair to say that if FBI calls, having in mind officer safety, [the] optics of the search, and the desire to conduct this search in a professional and low key manner, there is a far better chance that the execution will go more smoothly and we may actually gain some measure of

cooperation, which could go some way to resolving the mishandling of classified records investigation that is being conducted. I understand that this request may not go well at DOJ, however, it is FBI serving and executing the search and it will be our personnel who will have to deal with the reaction to that first contact.²⁶

Attorney General Garland, FBI Director Wray, and Special Counsel Smith's targeting, indictment, and harassment of President Trump has always been a malicious political prosecution aimed at affecting an electoral outcome to prevent President Trump from being re-elected. This malicious prosecution led President Trump to spend tens of millions of dollars defending the case and his reputation.²⁷

C. Abuse of process

In Florida, the elements required to establish an abuse of process claim are (1) An illegal, improper, or perverted use of process by the defendant; (2) An ulterior motive or purpose in exercising the illegal, improper, or perverted process, and (3) Damage to the plaintiff because of the defendant's actions.²⁸

As the factual recitations above show, the process used against President Trump was unconstitutional and aimed at politically persecuting the former President, which led to extensive legal costs and negative consequences for him. In Judge Cannon's decision, she describes the ulterior motives behind the appointment of a Special Counsel:

Attorney General Reno observed that the [Special Counsel] Act "distort[ed]" the process of prosecutorial discretion by "creat[ing] a new category of prosecutors" with "no practical limits on their time or budgets," thus artificially incentivizing prosecution; vested an independent counsel "with the full gamut of prosecutorial powers, but with little of its accountability"; applied too broadly to various categories of public officials, most of whom could be prosecuted by the Department of Justice without conflicts; contained an unduly broad and malleable "triggering mechanism," resulting in appointments that ordinarily would not have been sought; created

²⁶ Internal FBI E-mails from August 4, 2022 (Document 469-1), *supra* note 16 (cleaned up).

²⁷ Letter from Representative Jim Jordan (Chairman, Committee on the Judiciary, U.S. House of Representatives) to Jack Smith (Special Counsel) (September 7, 2023); See Katherine Doyle and Rebecca Shabad, *Jim Jordan to investigate alleged DOJ pressure campaign in Trump documents case*, NBC NEWS (September 7, 2023, 15:57 EST), <https://www.nbcnews.com/politics/congress/jim-jordan-investigate-doj-trump-classified-documents-case-rcna103910> (describing a key prosecutor's attempt to inappropriately pressure a lawyer in the Trump classified documents case).

²⁸ *Della-Donna v. Nova University, Inc.*, 512 So.2d 1051 (1987); *Verdon v. Song*, 251 So.3d 256 (2018); *CCP Harbour Island, LLC v. Manor at Harbour Island, LLC*, 373 So.3d 18 (2023).

disputes about the independent prosecutor’s jurisdiction; made removal of an independent counsel by the Attorney General politically difficult; and contained a final-report requirement that “created a forum for unfairly airing a target’s dirty laundry,” among other issues.²⁹

Furthermore, Judge Cannon opined “there does appear to be a ‘tradition’ of appointing special-attorney-like figures in moments of political scandal throughout the country’s history.”³⁰ While Florida law emphasizes that there is no abuse of process when the process is used for its intended purpose, here, the process involved clear misuse: the lack of appropriations, a lack of a constitutionally appropriate appointment, and the unconstitutional nature of prosecuting an immune former President reflect the misuse of the prosecutorial process for an inappropriate—that is, a political—end.³¹

Finally, the justification for the Special Counsel prosecution against President Trump for retention of classified materials is starkly different than the Department of Justice’s treatment of President Biden who, as Vice President—and for several years thereafter—retained classified documents as personal property.³² President Trump had a good faith belief justifying his initial possession of the relevant documents and returned certain records within a much more reasonable amount of time than former Vice President Biden did.³³ Furthermore, consider that almost five (5) years after President Obama’s presidency ended, his representatives discovered presidential records in his personal custody.³⁴ Before the Obama presidency, the Department of Justice defended the executive branch in refusing to seek recovery of records created by President Bill Clinton and stored in a personal sock drawer.³⁵ Ordering recovery

²⁹ Dismissal Order, 2024 WL 3404555, at *6 n.12 (internal citations omitted).

³⁰ *Id.* at *20; *accord Bothmann v. Harrington District Court of Appeal of Florida*, Third District (November 06, 1984), 458 So.2d 1163/1984 WL 1134828 (“Abuse of process involves the use of criminal or civil legal process against another primarily to accomplish a purpose for which it was not designed”); *see also Cline v. Flagler Sales Corp.*, 207 So.2d 709 (Fla. 3d DCA 1968).

³¹ *Id.* Cf. *CCP Harbour Island, LLC v. Manor at Harbour Island, LLC*, 373 So.3d 18 (2023); *S & I Investments v. Payless Flea Market, Inc.*, 36 So.3d 909 (2010); *Bothmann v. Harrington*, 458 So.2d 1163 (1984); *Thomson McKinnon Securities, Inc. v. Light*, 534 So.2d 757 (1988).

³² Catherine Herridge *et al.*, *Special counsel finds Biden “willfully” disclosed classified documents, but no criminal charges warranted*, CBS NEWS (February 8, 2024, 20:53 ET), <https://www.cbsnews.com/news/biden-special-counsel-report-handling-classified-documents/>; *accord. Complaint, America First Legal Foundation v. Beccerra et al.*, No. 1:24-01092 (D.D.C. April 17, 2024) at ¶¶ 50-52, https://media.aflegal.org/wp-content/uploads/2024/04/17191528/ECF-001_Complaint.pdf#page=14 (describing the voluntary request to a former FBI agent who retained sensitive law enforcement files for several years).

³³ *Id.*

³⁴ Jason Leopold, *Missing Presidential Record Led to Obama’s Office*, BLOOMBERG (April 19, 2024, 10:30 AM), <https://www.bloomberg.com/news/newsletters/2024-04-19/missing-presidential-record-led-to-obama-s-office>.

³⁵ *See Memorandum Opinion, Judicial Watch v. National Archives and Records Administration*, 845 F. Supp. 2d 288, 289 (D.D.C. 2012).

of records was deemed inappropriate for the federal courts, which, before the Special Counsel case, were instructed to defer to negotiations between presidents and the National Archives and Records Administration.³⁶ But for President Trump, the Department of Justice flipped its position and, for the first time in its history, used law enforcement to recover records.

The Department of Justice’s mistreatment of President Trump is inconsistent with executive branch practice going back to President Carter, who signed the 1978 reforms to the Presidential Records Act. And yet after his presidency, and over forty (40) years ago, President Jimmy Carter found classified materials at his home in Plains, Georgia. Neither President Obama, former Vice President Biden, President Clinton, nor President Carter were subject to a raid of their personal residences, as was President Trump. President Trump’s home was searched for records without any overture from the government to negotiate with him, unlike either Obama or Biden, who retained Presidential Records Act-subject records without any legal consequence.³⁷ And why would the National Archives and Records Administration negotiate with President Trump when former National Archivist David Ferriero was at all relevant times biased against the President, stating, “It’s important to me, that [the Biden] administration replace me . . . I’m concerned about what’s going to happen in 2024.”³⁸ The investigation and prosecution of President Trump—so starkly different than the Department of Justice’s standard operating procedures in similar cases—does not reflect a law enforcement purpose but instead aims to advance a political scheme. No procedure of the Department of Justice justifies the use of prosecutorial resources for such a political result.³⁹

Damages

A. Compensatory Damages

In Florida, compensatory damages are awarded to a plaintiff for actual harm suffered. The Department of Justice’s and FBI’s malicious prosecution and abuse of process caused President Trump to incur, upon information and belief, \$15 million in actual harm due to his legal costs in defending the Special Counsel proceedings before the U.S. District Court for the Southern District of Florida.

³⁶ *Id.*

³⁷ Leopold, *supra* note 34; Catherine Herridge *et al.*, *supra* note 32 at *id.*; see also TRUTH SOCIAL, POST BY @REALDONALD TRUMP (August 12, 2022), <https://truthsocial.com/@realDonaldTrump/posts/108811279834566814> (“They could have had it anytime they wanted—and that includes LONG ago. ALL THEY HAD TO DO WAS ASK. The bigger problem is, what are they going to do with the 33 million pages of documents, many of which are classified, that President Obama took to Chicago?”).

³⁸ Michael E. Ruane, *As U.S. archivist retires, Jan. 6 looms as his worst day*, WASH. POST (May 11, 2022), <https://www.washingtonpost.com/history/2022/05/11/archives-retires-jan-6-ferriero-mob/>.

³⁹ See *e.g.*, RESTATEMENT (SECOND) OF TORTS § 682, comment b (1977); W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 121 (4th ed. 1971) (describing standards for the abuse of process tort).

Florida law recognizes that a malicious prosecution action is actionable *per se*. Thus, certain damages are assumed to follow from the wrongful prosecution and may be awarded even without specific proof of loss.⁴⁰

B. Punitive Damages

The intrusion into President Trump’s seclusion, the abuse of process by the Garland Department of Justice and Wray FBI, and the subsequent malicious prosecution are particularly egregious, showing willful, wanton, oppressive, and malicious intent by the Department of Justice and FBI.⁴¹ The fact that several FBI employees and the former Assistant Director in Charge of the Washington Field Office viewed the Mar-a-Lago search as oppressive and politically biased (and therefore willful and malicious) reflects the degree to which an egregious abuse of process occurred.⁴²

Also, Judge Cannon’s dismissal of the prosecution because the Special Counsel was inappropriately appointed and lacked lawful appropriations reflects the degree to which the Garland and Wray prosecution was overtly malicious. Judge Cannon, in the *U.S. v. Trump* case, revealed the extent to which the prosecution of President Trump reflected “legal malice” and constituted a prosecution initiated under circumstances showing oppression, wantonness, and reckless disregard of President Trump’s rights.⁴³

The bottom line is this: The Appointments Clause is a critical constitutional restriction stemming from the separation of powers, and it gives to Congress a considered role in determining the propriety of vesting appointment power for inferior officers. The Special Counsel’s position effectively usurps that important legislative authority, transferring it to a Head of Department, and in the process threatening the structural liberty inherent in the separation of powers. If the political branches wish to grant the Attorney General power to appoint Special Counsel Smith to

⁴⁰ *Adler v. Segal*, 108 So.2d 773 (1959).

⁴¹ *Id.* (relying on *S.H. Kress & Co. v. Powell*, 132 Fla. 471 (1938)).

⁴² Dismissal Order, 2024 WL 3404555, at *7 (discussing *Edmond*, 520 U.S. at 559–660; *Freytag v. Comm’r*, 501 U.S. 868, 884 (1991) (examining historical sources on the subject of executive appointment-power abuses); *Weiss*, 510 U.S. at 184 (1994) (Souter, J., concurring) (discussing Framers’ awareness of the English monarchy’s pre-revolutionary “manipulation of official appointments” and corresponding recognition “that lodging the appointment power in the President alone would pose much the same risk as lodging it exclusively in Congress: the risk of an incautious or corrupt nomination.”); *Trump v. United States*, 144 S. Ct. 2312, 2349 (2024) (Thomas, J., concurring)) (internal quotation marks and brackets omitted).

⁴³ See e.g., *Adler*, *supra* note 40.

investigate and prosecute this action with the full powers of a United States Attorney, there is a valid means by which to do so.⁴⁴

For these harms to President Trump, the respondents must pay punitive damages of \$100 million.⁴⁵

Thank you for your consideration of this matter.

Sincerely,



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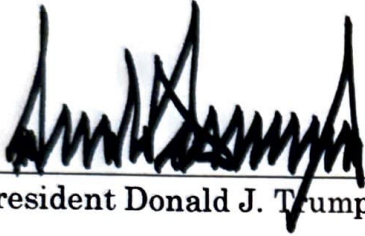
Counsel to President Donald J. Trump

⁴⁴ Dismissal Order, 2024 WL 3404555, at *1.

⁴⁵ President Trump faced legal costs of over \$60 million per year since shortly after he left office. See FEDERAL ELECTION COMMISSION, REPORTS, SAVE AMERICA PAC, <https://docquery.fec.gov/cgi-bin/fecimg/?C00461723>; see also FEDERAL ELECTION COMMISSION, REPORTS, DONALD J. TRUMP FOR PRESIDENT, <https://docquery.fec.gov/cgi-bin/forms/C00828541>. Consider that these are only two of at least five President Trump-related fundraising committees (e.g., Trump Save America Joint Fundraising Committee, Donald J. Trump for President 2024, Inc., Trump Make America Great Again Committee, Save America, and Make America Great Again PAC); accord. Aaron M. Kessler and Richard Lardner, *With trials pushed back, Trump sees first big dip in legal bills*, AP (July 27, 2024), <https://apnews.com/article/election-trump-presidential-1ba0261aeab402327120e5250a081b75> (chart showing legal spending per month). While the Special Counsel case was not the only source of legal expenses for the President, it represents a significant source of legal costs. Moreover, having to defend against lawsuits means the President has less revenue for other campaign-related expenditures. As scholars have shown, “[B]oth civil litigation and criminal subpoenas could require the President to participate in litigation activities and thereby divert some of her time, energy, and focus away from public duties.” Evan Caminker, *Democracy, Distrust, and Presidential Immunities*, 36 CONST’L COMMNTY, 260 (2021).

**Certification of Daniel Z. Epstein as Legal Representative for the Claim
Notice under the Federal Tort Claims Act**

I, President Donald J. Trump, certify that Daniel Z. Epstein is my legal representative for the attached Federal Tort Claims Act notice to the United States Department of Justice.

A handwritten signature in black ink, appearing to read 'Donald Trump', is written over a horizontal line. The signature is stylized and somewhat illegible due to the cursive nature of the handwriting.

President Donald J. Trump

August 7, 2024