EXHIBIT 1

DECLASSIFIED BY: NSICG F76M63K81
ON 06-06-2023
This redaction version only.

From: FBI 19 N. (WF) (FBI)
Sent: Monday, August 1, 2022 1:53 PM
To: (WF) (FBI)
Subject: FW: Items for Mr. Per. 18 ---

Follow Up Flag: Follow up
Flag Status: Flagged

SentinelCaseId:

Classification:
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TRANSITORY RECORD

For the PE sub-COORD file
Thank you

-----Original Message-----
From: FBI 19 WF) (FBI)
Sent: Monday, August 01, 2022 1:19 PM
To: FBI 10 (WF) (FBI)
Cc: Riedlinger, Anthony T. (WF) (FBI)
Subject: Items for Mr. Per. 18 ---

Classification:
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TRANSITORY RECORD

DOJ/FBI would respectfully request Former President Trump's cooperation via Mr. Per. 18 in providing the opportunity to thoroughly search for any documents pursuant to captioned investigation.

If enabled to effect a Consensual Search with the parties below, it would provide a level of comfort that the FBI has retrieved all appropriate documents relevant to the National Defense and Presidential Records Act (PRA).

FBI WFO Team

Mr.

USSS Security POC (anticipated as Mar-A-Lago [MAL] remains a presidential residence)

NARA OGC/Designated Rep

We would ask to search the following MAL locations in order of priority:

- All boxes/containers present in the storage room (located in the ground level of MAL and designated by a gold door)
- The 45th Office at MAL
- MAL Owner's Quarters
- All other spaces currently used to store USG documents from January 2021 to present (including spaces temporarily or otherwise designated as/converted to be used as storage during the off-season)
- Any relevant local off-site storage facilities, including Life Storage, located at 1520 Belvedere Road, West Palm Beach, FL 33406

FBI/DOJ will convey the nature of items to be seized:

- All classified documents or those that appear to be NDI/classified in nature; and/or
- Documents that fall within the purview of the Presidential Records Act

Pursuant to witness testimony detailing Former President Trump's predilection to travel with his papers, this team would also like to request Per. 18 speak with his client about the presence of classified and/or PRA in any other locations, to include Bedminster, NJ and New York.

Thank you,

[redacted]

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Classification: [redacted]

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Classification: [redacted]

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-mj-8332-BER

IN RE SEALED SEARCH WARRANT
_______________________________________/

CRIMINAL COVER SHEET

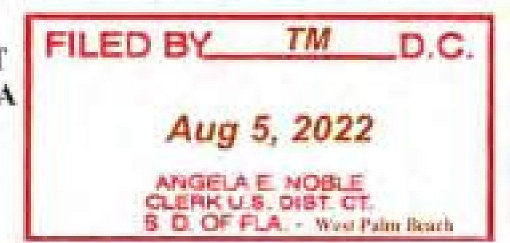
1. Did this matter originate from a matter pending in the Northern Region of the United States Attorney's Office prior to August 8, 2014 (Mag. Judge Shaniek Maynard)? No

2. Did this matter originate from a matter pending in the Central Region of the United States Attorney's Office prior to October 3, 2019 (Mag. Judge Jared Strauss)? No

Respectfully submitted,

JUAN ANTONIO GONZALEZ
UNITED STATES ATTORNEY

BY: /s/ Michael Thakur
MICHAEL THAKUR
Assistant United States Attorney
Court ID No. A5501474/
Florida Bar No.: 1011456
99 Northeast 4th Street
Miami, Florida 33132-2111
Telephone:
E-mail:



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-mj-8332-BER

IN RE: SEARCH WARRANT
_______________________________/

HIGHLY SENSITIVE DOCUMENT

MOTION TO SEAL

The United States of America, by and through the undersigned Assistant United States Attorney, hereby moves to seal this Motion, the Search Warrant, and all its accompanying documents, until further order of this Court. The United States submits that there is good cause because the integrity of the ongoing investigation might be compromised, and evidence might be destroyed.

The United States further requests that, pursuant to this Court's procedures for Highly Sensitive documents, all documents associated with this investigation not be filed on the Court's electronic docket because filing these materials on the electronic docket poses a risk to safety given the sensitive nature of the material contained therein.

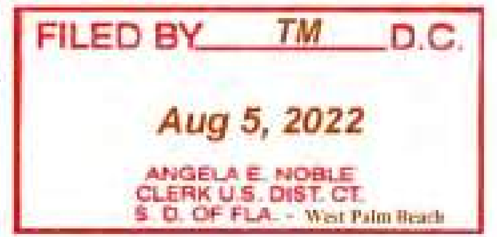
Respectfully submitted,

JUAN ANTONIO GONZALEZ
UNITED STATES ATTORNEY

BY: s/Michael Thakur
MICHAEL THAKUR
Assistant United States Attorney
Court Number A5501474/
Florida Bar No. 1011456
99 Northeast 4th Street
Miami, Florida 33132-2111

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-mj-8332-BER



IN RE: SEARCH WARRANT
_________________________________/

HIGHLY SENSITIVE DOCUMENT

SEALING ORDER

The United States of America, having applied to this Court for an Order sealing the Motion to Seal, the Search Warrant and all its accompanying documents, and this order and the Court finding good cause:

IT IS HEREBY ORDERED that the Motion to Seal, the Search Warrant and its accompanying documents, and this Order shall be filed under seal until further order of this Court. However, the United States Attorney's Office and the Federal Bureau of Investigation may obtain copies of any sealed document for purposes of executing the search warrant.

DONE AND ORDERED in chambers at West Palm Beach, Florida, this 5TH day of August 2022.

HON. BRUCE E. REINHART
UNITED STATES MAGISTRATE JUDGE

AO 106A (08/18) Application for a Warrant by Telephone or Other Reliable Electronic Means

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

FILED BY TM D.C.
Aug 5, 2022
ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S. D. OF FLA. - West Palm Beach

In the Matter of the Search of
(Briefly describe the property to be searched or identify the person by name and address)

the Premises Located at 1100 S. Ocean Blvd., Palm Beach, FL 33480, as further described in Attachment A

Case No. 22-mj-8332-BER

APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

See Attachment A

located in the Southern District of Florida, there is now concealed *(identify the person or describe the property to be seized)*:

See Attachment B

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☑ evidence of a crime;
- ☑ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	*Offense Description*
18 U.S.C. § 793	Willful retention of national defense information
18 U.S.C. § 2071	Concealment or removal of government records
18 U.S.C. § 1519	Obstruction of federal investigation

The application is based on these facts:

See attached Affidavit of FBI Special Agent FBI 21A

☑ Continued on the attached sheet.

☐ Delayed notice of ____ days *(give exact ending date if more than 30 days:* ____ *)* is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

FBI 21A
Applicant's signature

FBI 21A, Special Agent, FBI
Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by Phone (WhatsApp) *(specify reliable electronic means)*.

Date: 08/05/2022

Judge's signature

City and state: West Palm Beach, Florida

Hon. Bruce E. Reinhart, U.S. Magistrate Judge
Printed name and title

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

IN THE MATTER OF THE SEARCH OF:	)	
	)	Case No.
LOCATIONS WITHIN THE PREMISES	)	
TO BE SEARCHED IN ATTACHMENT A	)	**Filed Under Seal**

**AFFIDAVIT IN SUPPORT OF AN
APPLICATION UNDER RULE 41 FOR A
WARRANT TO SEARCH AND SEIZE**

I, FBI 21A, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. The government is conducting a criminal investigation concerning the improper removal and storage of classified information in unauthorized spaces, as well as the unlawful concealment or removal of government records. The investigation began as a result of a referral the United States National Archives and Records Administration (NARA) sent to the United States Department of Justice (DOJ) on February 9, 2022, hereinafter, "NARA Referral." The NARA Referral stated that on January 18, 2022, in accordance with the Presidential Records Act (PRA), NARA received from the office of former President DONALD J. TRUMP, hereinafter "FPOTUS," via representatives, fifteen (15) boxes of records, hereinafter, the "FIFTEEN BOXES." The FIFTEEN BOXES, which had been transported from the FPOTUS property at 1100 S Ocean Blvd, Palm Beach, FL 33480, hereinafter, the "PREMISES," a residence and club known as "Mar-a-Lago," further described in Attachment A, were reported by NARA to contain, among other things, highly classified documents intermingled with other records.

2. After an initial review of the NARA Referral, the Federal Bureau of Investigation (FBI) opened a criminal investigation to, among other things, determine how the documents with

classification markings and records were removed from the White House (or any other authorized location(s) for the storage of classified materials) and came to be stored at the PREMISES; determine whether the storage location(s) at the PREMISES were authorized locations for the storage of classified information; determine whether any additional classified documents or records may have been stored in an unauthorized location at the PREMISES or another unknown location, and whether they remain at any such location; and identify any person(s) who may have removed or retained classified information without authorization and/or in an unauthorized space.

3. The FBI's investigation has established that documents bearing classification markings, which appear to contain National Defense Information (NDI), were among the materials contained in the FIFTEEN BOXES and were stored at the PREMISES in an unauthorized location. Since the FIFTEEN BOXES were provided to NARA, additional documents bearing classification markings, which appear to contain NDI and were stored at the PREMISES in an unauthorized location, have been produced to the government in response to a grand jury subpoena directed to FPOTUS's post-presidential office and seeking documents containing classification markings stored at the PREMISES and otherwise under FPOTUS's control. Further, there is probable cause to believe that additional documents that contain classified NDI or that are Presidential records subject to record retention requirements currently remain at the PREMISES. There is also probable cause to believe that evidence of obstruction will be found at the PREMISES.

4. I am a Special Agent with the FBI assigned to the Washington Field Office counterintelligence division and have been since 2016. During this time, I have received training at the FBI Academy located at Quantico, Virginia, specific to counterintelligence and espionage investigations. I currently am assigned to investigate counterintelligence and espionage matters.

Based on my experience and training, I am familiar with efforts used to unlawfully collect, retain, and disseminate sensitive government information, including classified NDI.

5. I make this affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a warrant to search the premises known as 1100 S Ocean Blvd, Palm Beach, FL 33480, the "PREMISES," as further described in Attachment A, for the things described in Attachment B.

6. Based upon the following facts, there is probable cause to believe that the locations to be searched at the PREMISES contain evidence, contraband, fruits of crime, or other items illegally possessed in violation of 18 U.S.C. §§ 793(e), 1519, or 2071.

SOURCE OF EVIDENCE

7. The facts set forth in this affidavit are based on my personal knowledge, knowledge obtained during my participation in this investigation, and information obtained from other FBI and U.S. Government personnel. Because this affidavit is submitted for the limited purpose of establishing probable cause in support of the application for a search warrant, it does not set forth each and every fact that I, or others, have learned during the course of this investigation.

STATUTORY AUTHORITY AND DEFINITIONS

8. Under 18 U.S.C. § 793(e), "[w]hoever having unauthorized possession of, access to, or control over any document . . . or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted" or attempts to do or causes the same "to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee

of the United States entitled to receive it" shall be fined or imprisoned not more than ten years, or both.

9. Under Executive Order 13526, information in any form may be classified if it: (1) is owned by, produced by or for, or is under the control of the United States Government; (2) falls within one or more of the categories set forth in the Executive Order [Top Secret, Secret, and Confidential]; and (3) is classified by an original classification authority who determines that its unauthorized disclosure reasonably could be expected to result in damage to the national security.

10. Where such unauthorized disclosure could reasonably result in damage to the national security, the information may be classified as "Confidential" and must be properly safeguarded. Where such unauthorized disclosure could reasonably result in serious damage to the national security, the information may be classified as "Secret" and must be properly safeguarded. Where such unauthorized disclosure could reasonably result in exceptionally grave damage to the national security, the information may be classified as "Top Secret" and must be properly safeguarded.

11. Sensitive Compartmented Information (SCI) means classified information concerning or derived from intelligence sources, methods, or analytical processes, which is required to be handled within formal access control systems.

12. Special Intelligence, or "SI," is an SCI control system designed to protect technical and intelligence information derived from the monitoring of foreign communications signals by other than the intended recipients. The SI control system protects SI-derived information and information relating to SI activities, capabilities, techniques, processes, and procedures.

13. HUMINT Control System, or "HCS," is an SCI control system designed to protect intelligence information derived from clandestine human sources, commonly referred to as

"human intelligence." The HCS control system protects human intelligence-derived information and information relating to human intelligence activities, capabilities, techniques, processes, and procedures.

14. Foreign Intelligence Surveillance Act, or "FISA," is a dissemination control designed to protect intelligence information derived from the collection of information authorized under the Foreign Intelligence Surveillance Act by the Foreign Intelligence Surveillance Court, or "FISC."

15. Classified information may be marked as "Not Releasable to Foreign Nationals/Governments/US Citizens," abbreviated "NOFORN," to indicate information that may not be released in any form to foreign governments, foreign nationals, foreign organizations, or non-U.S. citizens without permission of the originator.

16. Classified information may be marked as "Originator Controlled," abbreviated "ORCON." This marking indicates that dissemination beyond pre-approved U.S. entities requires originator approval.

17. Classified information of any designation may be shared only with persons determined by an appropriate United States Government official to be eligible for access, and who possess a "need to know." Among other requirements, in order for a person to obtain a security clearance allowing that person access to classified United States Government information, that person is required to and must agree to properly protect classified information by not disclosing such information to persons not entitled to receive it, by not unlawfully removing classified information from authorized storage facilities, and by not storing classified information in unauthorized locations. If a person is not eligible to receive classified information, classified information may not be disclosed to that person. In order for a foreign government to receive

access to classified information, the originating United States agency must determine that such release is appropriate.

18. Pursuant to Executive Order 13526, classified information contained on automated information systems, including networks and telecommunications systems, that collect, create, communicate, compute, disseminate, process, or store classified information must be maintained in a manner that: (1) prevents access by unauthorized persons; and (2) ensures the integrity of the information.

19. 32 C.F.R. Parts 2001 and 2003 regulate the handling of classified information. Specifically, 32 C.F.R. § 2001.43, titled "Storage," regulates the physical protection of classified information. This section prescribes that Secret and Top Secret information "shall be stored in a [General Services Administration]-approved security container, a vault built to Federal Standard (FHD STD) 832, or an open storage area constructed in accordance with § 2001.53." It also requires periodic inspection of the container and the use of an Intrusion Detection System, among other things.

20. Under 18 U.S.C. § 1519:

> Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

21. Under 18 U.S.C. § 2071:

> (a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term "office" does not include the office held by any person as a retired officer of the Armed Forces of the United States.

22. Under the PRA, 44 U.S.C. § 2201:

(2) The term "Presidential records" means documentary materials, or any reasonably segregable portion thereof, created or received by the President, the President's immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise or assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term—

(A) includes any documentary materials relating to the political activities of the President or members of the President's staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; but

(B) does not include any documentary materials that are (i) official records of an agency (as defined in section 552(e) of title 5, United States Code; (ii) personal records; (iii) stocks of publications and stationery; or (iv) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

23. Under 44 U.S.C. § 3301(a), government "records" are defined as:

all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them.

PROBABLE CAUSE

NARA Referral

24. On February 9, 2022, the Special Agent in Charge of NARA's Office of the

Inspector General sent the NARA Referral via email to DOJ. The NARA Referral stated that according to NARA's White House Liaison Division Director, a preliminary review of the FIFTEEN BOXES indicated that they contained "newspapers, magazines, printed news articles, photos, miscellaneous print-outs, notes, presidential correspondence, personal and post-presidential records, and 'a lot of classified records.' Of most significant concern was that highly classified records were unfoldered, intermixed with other records, and otherwise unproperly [*sic*] identified."

25. On February 18, 2022, the Archivist of the United States, chief administrator for NARA, stated in a letter to Congress's Committee on Oversight and Reform Chairwoman The Honorable Carolyn B. Maloney, "NARA had ongoing communications with the representatives of former President Trump throughout 2021, which resulted in the transfer of 15 boxes to NARA in January 2022 . . . . NARA has identified items marked as classified national security information within the boxes." The letter also stated that, "[b]ecause NARA identified classified information in the boxes, NARA staff has been in communication with the Department of Justice." The letter was made publicly available at the following uniform resource locator (URL): https://www.archives.gov/files/foia/ferriero-response-to-02.09.2022-maloney-letter.02.18.2022.pdf. On February 18, 2022, the same day, the Save America Political Action Committee (PAC) posted the following statement on behalf of FPOTUS: "The National Archives did not 'find' anything, they were given, upon request, Presidential Records in an ordinary and routine process to ensure the preservation of my legacy and in accordance with the Presidential Records Act . . . ." An image of this statement is below.

SAVE AMERICA

Statement by Donald J. Trump, 45th President of the United States of America

FPOTUS Stores Documents in Boxes

26. On April 12, 2022, FBI agents interviewed an FPOTUS representative, "WITNESS ██ WITNESS █ learned from another White House employee, hereinafter referred to as ████████████ that FPOTUS kept boxes in his bedroom in the White House Residence. Both WITNESS █ and ████████████ heard that FPOTUS brought documents that he wanted to read to the White House Residence at the end of the day. WITNESS █ reported these documents were placed in boxes that would be stacked in a corner after FPOTUS was done reading them.

27. On May 12, 2022, FBI agents interviewed a former employee of FPOTUS, "WITNESS ██ who was specifically responsible for handling presidential papers in the White House. WITNESS █ also described a "regular flow of documents" between the White House

Residence and Oval Office, carried by the valets, at the direction of FPOTUS.

28. On May 18, 2022, May 27, 2022, and June 30, 2022, FBI agents interviewed a current employee of FPOTUS, "WITNESS █ WITNESS █ was employed by FPOTUS both during █ Presidential Administration, hereinafter "the Administration," and after the end of the Administration on January 20, 2021. WITNESS █ was aware from █ tenure at the White House that FPOTUS preferred to handle paper documents and retain hard copies of documents to view at his own convenience. It was FPOTUS's practice to store accumulated documents in boxes, and that continues to be his practice. During the Administration, WITNESS █ observed such boxes containing accumulated documents in the Outer Oval Office, the White House Residence, and on Air Force One. Based upon █ knowledge of FPOTUS's document retention practices, WITNESS █ understood that such boxes contained an assortment of unclassified documents, such as schedules, newspapers, and memoranda, as well as documents bearing classification markings.

29. In mid-December 2020, WITNESS █ was aware from the valets that there were still "several boxes" of records in the White House Residence. WITNESS █ brought this to the attention of the FPOTUS Chief of Staff in December 2020. WITNESS █ did not know specifically what documents were in those boxes but stated they "could have had anything in them," to include newspaper articles, briefing books, draft press statements, and draft letters. WITNESS █ knew that FPOTUS received a daily briefing book, with documents such as schedules, "dos of the day," economic reports, and other matters that were mostly unclassified. Sometimes, the daily briefing book contained classified reports. WITNESS █ also regularly handled, on behalf of FPOTUS, decision memo packages that had classified material attached, or

talking points for State Department calls, that were classified at the CONFIDENTIAL level at a minimum. WITNESS █ did not always receive those documents back and assumed they were handled by other staff. WITNESS █ was aware that some of these documents ended up in boxes as that was FPOTUS's "filing system." Sometimes documents that FPOTUS did not return or discard in a burn bag (a common method of disposing of classified documents for appropriate destruction) would be "thrown in a box on the theory that he [FPOTUS] might want to do something with [them] later."

Boxes Containing Documents Were Transported from the White House to Mar-a-Lago

30. According to a CBS Miami article titled "Moving Trucks Spotted At Mar-a-Lago," published Monday, January 18, 2021, at least two moving trucks were observed at the PREMISES on January 18, 2021. On June 9, 2022, FBI agents interviewed a current Mar-a-Lago employee, "WITNESS ██ WITNESS █ recalled that the move had occurred on a Monday morning, when a large moving truck and a box truck were present. Although WITNESS █ did not observe Bankers boxes being offloaded from the moving trucks, at a later date, WITNESS █ recalled observing Bankers boxes in the White and Gold Ballroom within Mar-a-Lago.

31. On May 26, 2022, the FBI interviewed "WITNESS 5." WITNESS 5 was employed by FPOTUS both during the Administration and after the end of the Administration on January 20, 2021. On June 21, 2022, WITNESS 5 testified under oath before a federal grand jury sitting in the District of Columbia. Before the grand jury, WITNESS 5 stated that during the move from the White House to Mar-a-Lago, Bankers boxes were placed within larger brown boxes labeled "█████

32. According to WITNESS █ WITNESS █ subsequently learned that approximately

eighty-five to ninety-five of FPOTUS's boxes, hereinafter referred to as "FPOTUS BOXES," were transported from the White House to the PREMISES but WITNESS█ did not know when this occurred. WITNESS█ described the FPOTUS BOXES as white and blue Bankers boxes and cardboard printer paper boxes with lids. WITNESS█ confirmed that these boxes are similar to the ones pictured below, in a photograph taken by the media, of FPOTUS aides loading boxes onto Marine One on January 20, 2021, as FPOTUS departed the White House.

33. On or about the afternoon of January 20, 2021, WITNESS█ observed several items, which may have contained some of the FPOTUS BOXES, being offloaded from Air Force One and transported to the PREMISES.

34. Between January 21, 2021, and late August 2021, the FPOTUS BOXES were stored in at least two different rooms within the PREMISES. WITNESS█ was aware that in approximately May 2021, FPOTUS directed Mar-a-Lago staff to locate a permanent storage

location on the PREMISES for his boxes. In late August or early September 2021, WITNESS █ observed the FPOTUS BOXES in a ground floor storage room, hereinafter the "STORAGE ROOM," with no lock on the door. Sometime thereafter, WITNESS █ observed locks installed on the STORAGE ROOM door.

35. WITNESS █ described the STORAGE ROOM as being located on the ground floor pool level in a hallway with other offices and storage spaces. The door to the STORAGE ROOM was painted gold and had no other markings on it. The door to the STORAGE ROOM is located approximately mid-way up the wall and is reachable by several wooden stairs.

36. In addition to the approximately eighty-five to ninety-five FPOTUS BOXES located in the STORAGE ROOM, there were also other boxes in the STORAGE ROOM with merchandise such as challenge coins, garment bags, memorabilia from Mar-a-Lago such as photograph frames, and other décor items.

37. On May 27, 2022, FBI agents interviewed "WITNESS ██ WITNESS █ was employed by FPOTUS both during the Administration and after the end of the Administration on January 20, 2021. WITNESS █ described the STORAGE ROOM as located in the basement of the PREMISES. According to WITNESS █ the STORAGE ROOM held file boxes and gifts from the White House deemed too valuable to store off-site. WITNESS █ stated that the entrance to the STORAGE ROOM had a wooden door, which was spray-painted gold.

Provision of the Fifteen Boxes to NARA

38. On March 31, 2022, the FBI interviewed a White House government employee, "WITNESS ██ WITNESS █ reported that sometime in 2017, he/she became aware of multiple documents not being delivered to the White House Office of Records Management pursuant to

PRA requirements for processing. In 2018, WITNESS █ learned from WITNESS █ that approximately two dozen boxes of materials were being kept by FPOTUS. Another White House employee confirmed to WITNESS █ that there was "a separate holding area." After January 20, 2021, WITNESS █ was aware that multiple records had not been provided by FPOTUS to NARA, including the approximately two dozen boxes.

39. On or about May 6, 2021, NARA made a request for the missing PRA records and continued to make requests until approximately late December 2021 when NARA was informed twelve boxes were found and ready for retrieval at the PREMISES. According to WITNESS █ after receiving the request from NARA, FPOTUS wanted to review the boxes before providing them to NARA. WITNESS █ WITNESS 5, and another ██████████ collected the FIFTEEN BOXES closest to the door of the STORAGE ROOM and delivered them to FPOTUS. They carried the boxes from the STORAGE ROOM to the entryway of FPOTUS's personal residential suite on the PREMISES. Between approximately January 1-17, 2022, WITNESS █ WITNESS 5, and the other ██████████ placed two to four boxes at a time outside FPOTUS's personal suite.[1] WITNESS █ believes that FPOTUS took the boxes into the residential suite and reviewed their contents. On January 17, 2022, the day of the scheduled NARA pick up, WITNESS █ saw all FIFTEEN BOXES in the hallway outside FPOTUS's residential suite. WITNESS 5 also testified that the FIFTEEN BOXES were in Pine Hall. Pine Hall is the

[1] When the FBI interviewed WITNESS 5 on May 26, 2022, WITNESS 5 claimed that the first time WITNESS 5 saw the boxes was when WITNESS 5 moved them from Pine Hall, the anteroom to FPOTUS's personal residential suite, to the moving truck to provide the boxes to NARA. WITNESS 5 testified before the grand jury, however, that he/she had actually weeks prior moved them up from the STORAGE ROOM to Pine Hall for FPOTUS's review of them. Further, in WITNESS 5's interview with the FBI on May 26, 2022, he/she had stated that he/she did not know where the boxes had come from prior to being located in Pine Hall. Testifying under oath before the grand jury, WITNESS 5 claimed he/she had said this because he/she was not sure whether the boxes in Pine Hall were the same boxes that he/she had moved from the STORAGE ROOM. WITNESS 5 thereafter admitted, however, that he/she was not aware of anyone moving any other such boxes to Pine Hall.

Subject to Protective Order

anteroom to FPOTUS's personal residential suite.

40. WITNESS █ believed that FPOTUS personally reviewed the items requested by NARA.

41. WITNESS 5 testified that he/she and WITNESS █ transferred the boxes from Pine Hall to WITNESS 5's car. From there, on January 17, 2022, WITNESS █ and WITNESS 5 met the NARA contract driver and provided the driver with the FIFTEEN BOXES.

42. Even though there were far more FPOTUS BOXES than the FIFTEEN BOXES, FPOTUS did not review the remainder of the FPOTUS BOXES before the NARA pickup. According to WITNESS 5, the FIFTEEN BOXES were not selected from the FPOTUS BOXES for review in a systematic way. WITNESS 5 testified before the grand jury that WITNESS 5 would "just open the door, turn to my left, grab a box, and take it up." WITNESS 5 confirmed that he/she was not instructed to take any particular boxes, and WITNESS 5 answered affirmatively when asked if WITNESS 5 would "just pick some off the top." When WITNESS 5 was questioned why he/she did not bring for review more than what WITNESS 5 approximated was 15 to 17 boxes, WITNESS 5 testified that "once I started putting them in there – [FPOTUS] was like, okay, that's it." According to WITNESS 5, FPOTUS did not state why he did not want to review more boxes before the NARA pickup, but whenever WITNESS 5 asked whether FPOTUS wanted WITNESS 5 to get any more boxes, FPOTUS would say, "Nope, that's it."

43. According to WITNESS █ after providing the FIFTEEN BOXES to NARA, FPOTUS indicated to his staff those were the boxes going to NARA and "there are no more."

44. According to WITNESS █ around the time the FIFTEEN BOXES were provided to NARA, FPOTUS directed WITNESS █ to convey to one of FPOTUS's lawyers, hereinafter

"INDIVIDUAL 1," that there were no more boxes at the PREMISES.

45. According to WITNESS █ however, approximately seventy to eighty of the aforementioned eighty-five to ninety-five FPOTUS BOXES remained in the STORAGE ROOM as of approximately January 2022. WITNESS █ did not know the contents of the remaining seventy to eighty FPOTUS BOXES, but believed they contain the same types of documents and records as the FIFTEEN BOXES that were provided to NARA.

46. On May 18, 2022, the FBI obtained an undated photograph, hereinafter referred to as the "STORAGE-PHOTO," from WITNESS █ who had access to the STORAGE ROOM. WITNESS █ took the photograph and provided it to FPOTUS sometime between January 1-17, 2022. The purpose of the photograph was to show FPOTUS the volume of boxes that remained in the STORAGE ROOM. The STORAGE-PHOTO, which appears below, captures approximately sixty-one of the FPOTUS BOXES located in the STORAGE ROOM:

The FIFTEEN BOXES Provided to NARA Contain Classified Information

47. From May 16-18, 2022, FBI agents conducted a preliminary review of the FIFTEEN BOXES provided to NARA and identified documents with classification markings in fourteen of the FIFTEEN BOXES. A preliminary triage of the documents with classification markings revealed the following approximate numbers: 184 unique documents bearing classification markings, including 67 documents marked as CONFIDENTIAL, 92 documents marked as SECRET, and 25 documents marked as TOP SECRET. Further, the FBI agents observed markings reflecting the following compartments/dissemination controls: HCS, FISA, ORCON, NOFORN, and SI. Based on my training and experience, I know that documents classified at these levels typically contain NDI. Several of the documents also contained what appears to be FPOTUS's handwritten notes.

48. Given WITNESS █'s statements that the FIFTEEN BOXES were a sampling taken from the larger amount of approximately eighty-five to ninety-five FPOTUS BOXES being stored in the STORAGE ROOM at the PREMISES, I believe the contents of the remainder of the FPOTUS BOXES are similar to the contents of the FIFTEEN BOXES. Further, based upon the presence and number of documents and records bearing classification markings discovered within the FIFTEEN BOXES provided to NARA, there is reason to believe the remaining FPOTUS BOXES, from which the FIFTEEN BOXES were taken, contain classified NDI.

Following the Provision of the FIFTEEN BOXES to NARA, Remaining FPOTUS BOXES Were Moved from the STORAGE ROOM to Other Locations at the Premises

49. On June 21, 2022, while testifying under oath before the grand jury, WITNESS 5 stated that sometime after January 2022 (i.e., after the provision of the FIFTEEN BOXES to NARA), FPOTUS requested that additional boxes be moved from the STORAGE ROOM to Pine

Hall. FPOTUS would say, "bring me a couple boxes," and WITNESS 5 would "grab them and just put them in Pine Hall."

50. According to WITNESS 5, WITNESS 5 was not asked to nor did he/she return boxes to the STORAGE ROOM. WITNESS 5 confirmed he/she had been in the STORAGE ROOM recently. WITNESS 5 acknowledged that when he/she was in there recently, there were fewer boxes in the STORAGE ROOM than represented in the STORAGE-PHOTO. When asked how WITNESS 5 would account for the deficit in the number of boxes in the STORAGE ROOM compared to the number of boxes in the STORAGE-PHOTO, WITNESS 5 stated that the remaining boxes were "in his room in the residence," referring to FPOTUS's residential suite at the PREMISES.

Grand Jury Subpoena, Related Correspondence, and Production of Additional Classified Documents

51. DOJ has advised me that, on May 11, 2022, an attorney representing FPOTUS, "FPOTUS COUNSEL 1," agreed to accept service of a grand jury subpoena from a grand jury sitting in the District of Columbia sent to him via email by one of the prosecutors handling this matter for DOJ, "DOJ COUNSEL." The subpoena was directed to the custodian of records for the Office of Donald J. Trump, and it requested the following materials:

> Any and all documents or writings in the custody or control of Donald J. Trump and/or the Office of Donald J. Trump bearing classification markings, including but not limited to the following: Top Secret, Secret, Confidential, Top Secret/SI-G/NOFORN/ORCON, Top Secret/SI-G/NOFORN, Top Secret/HCS-O/NOFORN/ORCON, Top Secret/HCS-O/NOFORN, Top Secret/HCS-P/NOFORN/ORCON, Top Secret/HCS-P/NOFORN, Top Secret/TK/NOFORN/ORCON, Top Secret/TK/NOFORN, Secret/NOFORN, Confidential/NOFORN, TS, TS/SAP, TS/SI-G/NF/OC, TS/SI-G/NF, TS/HCS-O/NF/OC, TS/HCS-O/NF, TS/HCS-P/NF/OC, TS/HCS-P/NF, TS/HCS-P/SI-G, TS/HCS-P/SI/TK, TS/TK/NF/OC, TS/TK/NF, S/NF, S/FRD, S/NATO, S/SI, C, and C/NF.

The return date of the subpoena was May 24, 2022. DOJ COUNSEL also sent FPOTUS COUNSEL 1 a letter that permitted alternative compliance with the subpoena by "providing any responsive documents to the FBI at the place of their location" and by providing from the custodian a "sworn certification that the documents represent all responsive records." The letter further stated that if no responsive documents existed, the custodian should provide a sworn certification to that effect.

52. On May 25, 2022, while negotiating for an extension of the subpoena, FPOTUS COUNSEL 1 sent two letters to DOJ COUNSEL. In the second such letter, which is attached as Exhibit 1, FPOTUS COUNSEL 1 asked DOJ to consider a few "principles," which include FPOTUS COUNSEL 1's claim that a President has absolute authority to declassify documents. In this letter, FPOTUS COUNSEL 1 requested, among other things, that "DOJ provide this letter to any judicial officer who is asked to rule on any motion pertaining to this investigation, or on any application made in connection with any investigative request concerning this investigation."

53. I am aware of an article published in *Breitbart* on May 5, 2022, available at https://www.breitbart.com/politics/2022/05/05/documents-mar-a-lago-marked-classified-were-already-declassified-kash-patel-says/, which states that Kash Patel, who is described as a former top FPOTUS administration official, characterized as "misleading" reports in other news organizations that NARA had found classified materials among records that FPOTUS provided to NARA from Mar-a-Lago. Patel alleged that such reports were misleading because FPOTUS had declassified the materials at issue. WITNESS █ was aware Patel visited FPOTUS at the PREMISES around the time the *Breibart* article was published, though WITNESS █ was not present at any meetings between Patel and FPOTUS.

54. On May 26, 2022, and on June 7, 2022, FBI agents interviewed "WITNESS ██

WITNESS █ was employed by FPOTUS during the Administration. WITNESS █ believed FPOTUS had declassified records related to the FBI's investigation of what WITNESS █ referred to as "Russiagate." WITNESS █ was not aware of additional records being declassified in the manner Patel claimed in the aforementioned *Breibart* article. WITNESS █ opined that the President of the United States could declassify classified information without concurrence from, or coordination with, the owner of the information. In some instances, WITNESS █ related, like those involving the Atomic Energy Act, there may be statutes that purport to establish a framework for declassifying classified information.

55. After an extension was granted for compliance with the subpoena, on the evening of June 2, 2022, FPOTUS COUNSEL 1 contacted DOJ COUNSEL and requested that FBI agents meet him the following day to pick up responsive documents. On June 3, 2022, three FBI agents and DOJ COUNSEL arrived at the PREMISES to accept receipt of the materials. In addition to FPOTUS COUNSEL 1, another individual, hereinafter "INDIVIDUAL █ was also present as the custodian of records for FPOTUS's post-presidential office. The production included a single Redweld envelope, wrapped in tape, containing documents. FPOTUS COUNSEL 1 relayed that the documents in the Redweld envelope were found during a review of the boxes located in the STORAGE ROOM. INDIVIDUAL █ provided a Certification Letter, signed by INDIVIDUAL █ which stated the following:

> Based upon the information that has been provided to me, I am authorized to certify, on behalf of the Office of Donald J. Trump, the following: a. A diligent search was conducted of the boxes that were moved from the White House to Florida; b. This search was conducted after receipt of the subpoena, in order to locate any and all documents that are responsive to the subpoena; c. Any and all responsive documents accompany this certification; and d. No copy, written notation, or reproduction of any kind was retained as to any responsive document.

56. During receipt of the production, FPOTUS COUNSEL 1 stated he was advised all

the records that came from the White House were stored in one location within Mar-a-Lago, the STORAGE ROOM, and the boxes of records in the STORAGE ROOM were "the remaining repository" of records from the White House. FPOTUS COUNSEL 1 further stated he was not advised there were any records in any private office space or other location in Mar-a-Lago. The agents and DOJ COUNSEL were permitted to see the STORAGE ROOM and observed that approximately fifty to fifty-five boxes remained in the STORAGE ROOM. Considering that only FIFTEEN BOXES had been provided to NARA of the approximately eighty-five to ninety-five FPOTUS BOXES that had been located in the STORAGE ROOM, it appears that approximately fifteen to thirty of the FPOTUS BOXES had previously been relocated elsewhere. The FBI agents also observed that the composition of boxes differed such that fewer Bankers boxes were visible, while more plain cardboard boxes and storage bins were present. Other items were also present in the STORAGE ROOM, including a coat rack with suit jackets, as well as interior décor items such as wall art and frames.

57. While testifying before the grand jury, WITNESS 5 stated that he did not know whether FPOTUS COUNSEL 1 reviewed any of the boxes that were in FPOTUS's residential suite, but he did not see FPOTUS COUNSEL 1 go in there.

58. A preliminary review of the documents contained in the Redweld envelope produced pursuant to the grand jury subpoena revealed the following approximate numbers: 38 unique documents bearing classification markings, including 5 documents marked as CONFIDENTIAL, 16 documents marked as SECRET, and 17 documents marked as TOP SECRET. Further, the FBI agents observed markings reflecting the following caveats/compartments, among others: HCS, SI, and FISA. Based on my training and experience, I know that documents classified at these levels typically contain NDI. Multiple documents also

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contained what appears to be FPOTUS's handwritten notes.

59. Notably, although the FIFTEEN BOXES provided to NARA contained approximately 184 unique documents with classification markings, only approximately 38 unique documents with classification markings were produced from the remaining FPOTUS BOXES.

60. When producing the documents, neither FPOTUS COUNSEL 1 nor INDIVIDUAL 2 asserted that FPOTUS had declassified the documents.[2] The documents being in a Redweld envelope wrapped in tape appears to be consistent with an effort to handle the documents as if they were still classified.

61. On June 8, 2022, DOJ COUNSEL sent FPOTUS COUNSEL 1 a letter, which reiterated that the PREMISES are not authorized to store classified information and requested the preservation of the STORAGE ROOM and boxes that had been moved from the White House to the PREMISES. Specifically, the letter stated in relevant part:

> As I previously indicated to you, Mar-a-Lago does not include a secure location authorized for the storage of classified information. As such, it appears that since the time classified documents (the ones recently provided and any and all others) were removed from the secure facilities at the White House and moved to Mar-a-Lago on or around January 20, 2021, they have not been handled in an appropriate manner or stored in an appropriate location. Accordingly, we ask that the room at Mar-a-Lago where the documents had been stored be secured and that all of the boxes that were moved from the White House to Mar-a-Lago (along with any other items in that room) be preserved in that room in their current condition until further notice.

[2] 18 U.S.C. § 793(e) does not use the term "classified information," but rather criminalizes the unlawful retention of "information relating to the national defense." The statute does not define "information related to the national defense," but courts have construed it broadly. *See Gorin v. United States*, 312 U.S. 19, 28 (1941) (holding that the phrase "information relating to the national defense" as used in the Espionage Act is a "generic concept of broad connotations, referring to the military and naval establishments and the related activities of national preparedness"). In addition, the information must be "closely held" by the U.S. government. *See United States v. Squillacote*, 221 F.3d 542, 579 (4th Cir. 2000) ("[I]nformation made public by the government as well as information never protected by the government is not national defense information."); *United States v. Morison*, 844 F.2d 1057, 1071-72 (4th Cir. 1988). Certain courts have also held that the disclosure of the documents must be potentially damaging to the United States. *See Morison*, 844 F.2d at 1071-72.

On June 9, 2022, FPOTUS COUNSEL 1 sent an email to DOJ COUNSEL, stating, "I write to acknowledge receipt of this letter."

Surveillance Camera Footage Shows Boxes Being Removed from the Storage Room Area Prior to FPOTUS Counsel 1's Review in Connection With the Subpoena

62. DOJ COUNSEL has advised me that on or about June 22, 2022, counsel for the Trump Organization, a group of business entities associated with FPOTUS, confirmed that the Trump Organization maintains security cameras in the vicinity of the STORAGE ROOM and that on June 24, 2022, counsel for the Trump Organization agreed to accept service of a grand jury subpoena for footage from those cameras.

63. The subpoena was served on counsel on June 24, 2022, directed to the Custodian of Records for the Trump Organization, and sought:

> Any and all surveillance records, videos, images, photographs, and/or CCTV from internal cameras located on ground floor (basement) and outside the room known as "Pine Hall" on the Mar-a-Lago property located at 1100 S Ocean Blvd., Palm Beach, FL 33480 from the time period of January 10, 2022 to present.

64. On July 6, 2022, in response to this subpoena, representatives of the Trump Organization provided a hard drive to FBI agents. Before producing the hard drive, representatives from the Trump Organization advised that it does not maintain security cameras outside Pine Hall; rather, the Secret Service maintains such surveillance equipment. Upon review of the hard drive, the FBI determined that the drive contained video footage from four cameras in the basement hallway of the PREMISES in which the door to the STORAGE ROOM is located. The footage on the drive begins on April 23, 2022, and ends on June 24, 2022. The recording feature of the cameras appears to be motion activated, so that footage is only captured when motion is detected within each camera's field of view.

65. One camera in particular, identified on the hard drive as "South Tunnel Liquor," provides a view of entry and exit into a room (hereafter ANTEROOM) that leads to the STORAGE ROOM. The doorway to the ANTEROOM itself is not visible in the camera view, as a refrigerator is directly between the camera and doorway, but the footage from this camera nonetheless establishes entry and exit to the ANTEROOM because it is apparent when persons within the camera's field of view turn directly behind the refrigerator and then disappear from view. The ANTEROOM, in addition to its entrance from the South Tunnel, has approximately four doors leading off it, one of which is the gold-painted door that leads to the STORAGE ROOM. The ANTEROOM provides the only entrance to the STORAGE ROOM; however, other offices can also be entered from the ANTEROOM, so it might be possible for persons to enter the STORAGE ROOM from those other offices without being visible in the surveillance camera footage.

66. By reviewing the camera footage provided by the Trump Organization in response to the subpoena, the FBI has determined the following:

On May 24, 2022, WITNESS 5 is observed exiting the ANTEROOM doorway with three boxes.

On May 30, 2022, four days after WITNESS 5's interview with the FBI during which the location of boxes was a significant subject of questioning, WITNESS 5 is observed exiting the ANTEROOM doorway with approximately fifty Bankers boxes, consistent with the description of the FPOTUS BOXES. FBI did not observe this quantity of boxes being returned to the STORAGE ROOM through the ANTEROOM entrance in its review of the footage.

The next day, on June 1, 2022, WITNESS 5 is observed carrying eleven brown cardboard boxes out the ANTEROOM entrance. One box did not have a lid on it and appeared to contain papers.

The day after that, on June 2, 2022, WITNESS 5 is observed moving twenty-five to thirty boxes, some of which were brown cardboard boxes and others of which were Bankers boxes consistent with the description of the FPOTUS BOXES, into the entrance of the

ANTEROOM. Approximately three and a half hours later, WITNESS 5 is observed escorting FPOTUS COUNSEL 1 in through the entrance of the ANTEROOM, and FPOTUS COUNSEL 1 is not observed leaving until approximately two and a half hours later.

On June 3, 2022, FPOTUS COUNSEL 1 is escorted through the ANTEROOM entrance by an unidentified individual wearing a jacket with "USSS POLICE" printed on the back. The unidentified individual and FPOTUS COUNSEL 1 exit the ANTEROOM entrance moments later. FPOTUS COUNSEL 1 appeared to be carrying a Redweld envelope after exiting the ANTEROOM.

67. As described above, FPOTUS COUNSEL 1 contacted DOJ COUNSEL on June 2, 2022, asking FBI agents to meet FPOTUS COUNSEL 1 the following day. As also described above, on June 3, 2022, FPOTUS COUNSEL 1 in response to a grand jury subpoena provided to FBI agents and DOJ COUNSEL a Redweld envelope containing documents bearing classification markings.

68. As described above in paragraphs 31 and 49, on June 21, 2022, WITNESS 5 testified before a federal grand jury in the District of Columbia. According to FBI's review of video footage, and as detailed in paragraph 66, WITNESS 5 can be observed removing approximately 64 boxes from the STORAGE ROOM area between May 24 and June 1, 2022, but only returning 25-30 boxes to the STORAGE ROOM area on June 2, 2022. Notably, and as described above in paragraph 51, these boxes were removed following service of a grand jury subpoena but before FPOTUS COUNSEL 1's review of boxes in the STORAGE ROOM area to locate documents responsive to the subpoena.

69. During his grand jury testimony on June 21, 2022, WITNESS 5 was asked to identify the occasions on which he had entered the STORAGE ROOM after October 2021, and he testified that "a lot of times" he would store "shirts, and hats, [and] stickers" in the STORAGE ROOM at FPOTUS's behest. When asked if he had removed anything from the STORAGE

ROOM at any time, WITNESS 5 testified that "recently," meaning "within the last month" prior to his June 21, 2022 testimony, he removed a box of challenge coins from the STORAGE ROOM and took them to FPOTUS's office. He did not identify any other occasion on which he had removed anything from the STORAGE ROOM and did not inform the grand jury that, within the month prior to his grand jury appearance, WITNESS 5 had removed approximately sixty boxes from the STORAGE ROOM.

There is Probable Cause to Believe That Documents Containing Classified NDI and Presidential Records Remain at the Premises

70. As explained above, the FPOTUS BOXES contained numerous documents with classification markings, both in the FIFTEEN BOXES and in the remaining FPOTUS BOXES. As also explained above, the classified documents provided to the government in a Redweld envelope pursuant to the subpoena were represented to have been stored in boxes located in the STORAGE ROOM, and based on FPOTUS COUNSEL 1's statements relayed in paragraph 55-56 above, I believe it is very likely that FPOTUS COUNSEL 1 did not search for classified information in other locations at the PREMISES. The investigation has established, however, that classified information was possessed in other areas of the PREMISES and that other FPOTUS BOXES, which are likely to contain similar contents to the FIFTEEN BOXES, were moved from the STORAGE ROOM to other locations in the PREMISES, including FPOTUS's residential suite and Pine Hall, between the time that the FIFTEEN BOXES were provided to NARA and when FPOTUS COUNSEL 1 conducted his review for classified information of the remaining FPOTUS BOXES in the STORAGE ROOM.

71. Since FPOTUS left the White House in January 2021, WITNESS █ has observed, on several occasions, FPOTUS with documents containing classification markings on his desk at

the "45 Office," an office space used by FPOTUS and certain staffers that is located within the PREMISES. Since June 3, 2022, however, WITNESS █ has not observed documents at the PREMISES with classification markings.

72. When WITNESS 5 was questioned under oath as to whether there were Bankers boxes remaining in the residential suite as of the time of his testimony – June 21, 2022 – WITNESS 5 said that to his knowledge, there were remaining boxes. WITNESS 5 at first claimed that there were "maybe two, three boxes in there," but when pressed on whether there were "[j]ust two or three," caveated his answer with "everything happens fast." WITNESS 5 then confirmed that he had taken multiple boxes since January 2022 to FPOTUS's private residence, and that FPOTUS had not asked him to take them back (i.e., return them to the STORAGE ROOM).

73. On or about June 10, 2022, approximately one week after FPOTUS departed Mar-a-Lago for Bedminster, New Jersey, where FPOTUS typically spends time over the summer, WITNESS █ entered the STORAGE ROOM and observed noticeable differences in the types of boxes and organization since the prior time WITNESS █ was in the STORAGE ROOM. WITNESS █ expressed the last time he/she previously observed the STORAGE ROOM was "around the time the truck driver came," which I interpreted was a reference to the January 17, 2022 retrieval by NARA of the FIFTEEN BOXES. WITNESS █ explained that when FPOTUS COUNSEL █ accessed the STORAGE ROOM to conduct his review, it appeared that he was alone, and "his hands were empty" when he entered. Although WITNESS █ was unable to comment on whether sufficient time existed for FPOTUS COUNSEL 1 to conduct a thorough review of the records located in the STORAGE ROOM, WITNESS █ expressed the time required to change the room to its current state "would have taken a full day I would estimate" and "that would have been very surprising to me for [FPOTUS COUNSEL 1] to have done that

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organization." As indicated above, the video footage reveals that FPOTUS COUNSEL 1 was in the STORAGE ROOM area for only about two and a half hours on June 2, 2022.

74. On June 29, 2022, FBI agents interviewed a current employee of the PREMISES, "WITNESS █ Sometime after June 10, 2022, WITNESS █ was contacted by FPOTUS COUNSEL 1 and asked whether there was a "better way to secure [the STORAGE ROOM]." WITNESS █ understood FPOTUS COUNSEL 1's request was per a DOJ requirement. As of June 29, 2022, a padlock was installed on the STORAGE ROOM door.

75. WITNESS █ described FPOTUS's residential suite, referred to as the Owners' Quarters, as accessible via steel sliding doors. The first room is known as Pine Hall, which serves as a sitting room. Pine Hall then accesses a hallway known as French Hall. From within French Hall, there are two available doors. The door to the left leads to FPOTUS's personal suite, and the door to the right leads to FPOTUS's spouse's personal suite. Those two suites are additionally connected by a door between them. As of approximately June 26, 2022, WITNESS █ was present in FPOTUS's suite for maintenance purposes, but did not recall observing boxes in that location. On June 30, 2022, WITNESS █ informed the FBI, via legal counsel representing WITNESS █ that the dimensions of FPOTUS's personal suite are approximately 16 feet by 28 feet, and the dimensions of FPOTUS's spouse's personal suite are approximately 20 feet by 28 feet. WITNESS █'s legal counsel confirmed that WITNESS █ may not have been able to fully observe the entirety of the FPOTUS's personal suite on June 26, 2022.

76. On July 29, 2022, FBI agents interviewed an individual who has worked at the PREMISES since █, hereinafter "WITNESS █ WITNESS █ informed the FBI that he/she is regularly in the residential suite at the PREMISES, and that as recently as July 28, 2022, WITNESS █ did not observe any Bankers boxes or boxes of documents currently in the

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residential suite or the Pine Hall anteroom to the residential suite. WITNESS █ did indicate that there have been occasions in the past in which he/she has observed a few Bankers boxes at a time in either the residential suite or Pine Hall. WITNESS █ stated he/she has never seen more than three boxes at a time, even though WITNESS 5 and others have informed the FBI that the FIFTEEN BOXES were in Pine Hall prior to being delivered to NARA.

77. Based upon this investigation, I believe that the STORAGE ROOM, FPOTUS's residential suite, Pine Hall, the "45 Office," and other spaces within the PREMISES are not currently authorized locations for the storage of classified information or NDI. Similarly, based upon this investigation, I do not believe that any spaces within the PREMISES have been authorized for the storage of classified information at least since the end of FPOTUS's Presidential Administration on January 20, 2021.

78. As described above, evidence of the SUBJECT OFFENSES has been stored in multiple locations at the PREMISES. In addition, as described in paragraph 66 among other paragraphs, the video footage reflects that evidence has been moved recently: WITNESS 5 removed approximately 64 boxes from the STORAGE ROOM area between May 24 and June 1, 2022, but only returned 25-30 boxes to the STORAGE ROOM area on June 2, 2022. It cannot be seen on the video footage where the boxes were moved when they were taken from the STORAGE ROOM area, and accordingly, the current location of the boxes that were removed from the STORAGE ROOM area but not returned to it is unknown. WITNESS 5 did not reveal during his FBI interview or his grand jury testimony that he had moved the boxes recently or give an indication as to their current location. Additionally, no witness has indicated that boxes have left the PREMISES since the provision of the FIFTEEN BOXES to NARA on January 17, 2022. Accordingly, this affidavit seeks authorization to search the "45 Office" and all storage rooms and

any other rooms or locations where boxes or records may be stored within the PREMISES, as further described in Attachment A. The PREMISES is currently closed to club members for the summer; however, as specified in Attachment A, if at the time of the search, there are areas of the PREMISES being occupied, rented, or used by third parties, and not otherwise used or available to be used by FPOTUS and his staff, the search would not include such areas.

CONCLUSION

79. Based on the foregoing facts and circumstances, I submit that probable cause exists to believe that evidence, contraband, fruits of crime, or other items illegally possessed in violation 18 U.S.C. §§ 793(e), 2071, or 1519 will be found at the PREMISES. Further, I submit that this affidavit supports probable cause for a warrant to search the PREMISES described in Attachment A and seize the items described in Attachment B.

REQUEST FOR SEALING

80. It is respectfully requested that this Court issue an order sealing, until further order of the Court, all papers submitted in support of this application, including the application and search warrant. I believe that sealing this document is necessary because the items and information to be seized are relevant to an ongoing investigation and the FBI has not yet identified all potential criminal confederates nor located all evidence related to its investigation. Premature disclosure of the contents of this affidavit and related documents may have a significant and negative impact on the continuing investigation and may severely jeopardize its effectiveness by allowing criminal parties an opportunity to flee, destroy evidence (stored electronically and otherwise), change patterns of behavior, and notify criminal confederates.

SEARCH PROCEDURES FOR HANDLING POTENTIAL ATTORNEY-CLIENT PRIVILEGED INFORMATION

The following procedures will be followed at the time of the search in order to protect against disclosures of attorney-client privileged material:

81. These procedures will be executed by: (a) law enforcement personnel conducting this investigation (the "Case Team"); and (b) law enforcement personnel not participating in the investigation of the matter, who will search the "45 Office" and be available to assist in the event that a procedure involving potentially attorney-client privileged information is required (the "Privilege Review Team").

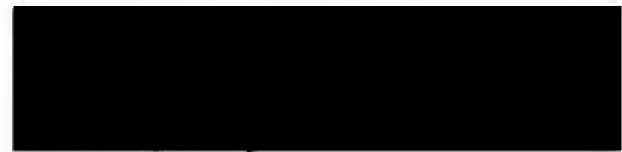
82. The Case Team will be responsible for searching the **TARGET PREMISES**. However, the Privilege Review Team will search the "45 Office" and conduct a review of the seized materials from the "45 Office" to identify and segregate documents or data containing potentially attorney-client privileged information.

83. If the Privilege Review Team determines the documents or data are not potentially attorney-client privileged, they will be provided to the law-enforcement personnel assigned to the investigation. If at any point the law-enforcement personnel assigned to the investigation subsequently identify any data or documents that they consider may be potentially attorney-client privileged, they will cease the review of such identified data or documents and refer the materials to the Privilege Review Team for further review by the Privilege Review Team.

84. If the Privilege Review Team determines that documents are potentially attorney-client privileged or merit further consideration in that regard, a Privilege Review Team attorney may do any of the following: (a) apply *ex parte* to the court for a determination whether or not the documents contain attorney-client privileged material; (b) defer seeking court intervention and

continue to keep the documents inaccessible to law-enforcement personnel assigned to the investigation; or (c) disclose the documents to the potential privilege holder, request the privilege holder to state whether the potential privilege holder asserts attorney-client privilege as to any documents, including requesting a particularized privilege log, and seek a ruling from the court regarding any attorney-client privilege claims as to which the Privilege Review Team and the privilege-holder cannot reach agreement.

Respectfully submitted,



Special Agent
Federal Bureau of Investigation

Subscribed and sworn before me by
telephone (WhatsApp) or other reliable electronic
means this 5 day of August, 2022:

HON. BRUCE E. REINHART
UNITED STATES MAGISTRATE JUDGE

EXHIBIT 1

Per. 18

May 25, 2022

Via Electronic Mail

Jay I. Bratt, Esquire
Chief
Counterintelligence & Export Control Section
National Security Division
U.S. Department of Justice
950 Pennsylvania, Avenue, N.W.
Washington, D.C. 20530

Re: Presidential Records Investigation

Dear Jay:

I write on behalf of President Donald J. Trump regarding the above-referenced matter.

Public trust in the government is low. At such times, adherence to the rules and long-standing policies is essential. President Donald J. Trump is a leader of the Republican Party. The Department of Justice (DOJ), as part of the Executive Branch, is under the control of a President from the opposite party. It is critical, given that dynamic, that every effort is made to ensure that actions by DOJ that may touch upon the former President, or his close associates, do not involve politics.

There have been public reports about an investigation by DOJ into Presidential Records purportedly marked as classified among materials that were once in the White House and unknowingly included among the boxes brought to Mar-a-Lago by the movers. It is important to emphasize that when a request was made for the documents by the National Archives and Records Administration (NARA), President Trump readily and voluntarily agreed to their transfer to NARA. The communications regarding the transfer of boxes to NARA were friendly, open, and straightforward. President Trump voluntarily ordered that the boxes be provided to NARA. No legal objection was asserted about the transfer. No concerns were raised about the contents of the boxes. It was a voluntary and open process.

Unfortunately, the good faith demonstrated by President Trump was not matched once the boxes arrived at NARA. Leaks followed. And, once DOJ got involved, the leaks continued. Leaks about any investigation are concerning. Leaks about an investigation that involve the residence of a former President who is still active on the national political scene are particularly troubling.

It is important to note a few bedrock principles:

(1) A President Has Absolute Authority To Declassify Documents.

Under the U.S. Constitution, the President is vested with the highest level of authority when it comes to the classification and declassification of documents. *See* U.S. Const., Art. II, § 2 ("The President [is] Commander in Chief of the Army and Navy of the United States[.]"). His constitutionally-based authority regarding the classification and declassification of documents is unfettered. *See Navy v. Egan*, 484 U.S. 518, 527 (1988) ("[The President's] authority to classify and control access to information bearing on national security . . . flows primarily from this constitutional investment of power in the President and exists quite apart from any explicit congressional grant.").

(2) Presidential Actions Involving Classified Documents Are Not Subject To Criminal Sanction.

Any attempt to impose criminal liability on a President or former President that involves his actions with respect to documents marked classified would implicate grave constitutional separation-of-powers issues. Beyond that, the primary criminal statute that governs the unauthorized removal and retention of classified documents or material *does not apply* to the President. That statute provides, in pertinent part, as follows:

> Whoever, being an officer, employee, contractor, or consultant of the United States, and, by virtue of his office, employment, position, or contract, becomes possessed of documents or materials containing classified information of the United States, knowingly removes such documents or materials without authority and with the intent to retain such documents or materials at an unauthorized location shall be fined under this title or imprisoned for not more than five years, or both.

18 U.S.C. § 1924(a). An element of this offense, which the government must prove beyond a reasonable doubt, is that the accused is "an officer, employee, contractor, or consultant of the United States." The President is none of these. *See Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 497–98 (2010) (citing U.S. Const., Art. II, § 2, cl. 2) ("The people do not vote for the 'Officers of the United States.'"); *see also Melcher v. Fed. Open Mkt. Comm.*, 644 F. Supp. 510, 518–19 (D.D.C. 1986), *aff'd*, 836 F.2d 561 (D.C. Cir. 1987) ("[a]n officer of the United States can only be appointed by the President, by and with the advice and consent of the Senate, or by a court of law, or the head of a department. A person who does not derive his position from one of these sources is not an officer of the United States in the sense of the Constitution."). Thus, the statute does not apply to acts by a President.

(3) DOJ Must Be Insulated From Political Influence.

According to the Inspector General of DOJ, one of the top challenges facing the Department is the public perception that DOJ is influenced by politics. The report found that "[o]ne important strategy that can build public trust in the Department is to ensure adherence to policies and procedures designed to protect DOJ from accusations of political influence or partial application of the law." *See* https://oig.justice.gov/reports/top-management-and-performance-challenges-facing-department-justice-2021 (last visited May 25, 2022). We request that DOJ adhere to long-standing policies and procedures regarding communications between DOJ and the White House regarding pending investigative matters which are designed to prevent political influence in DOJ decision-making.

(4) DOJ Must Be Candid With Judges And Present Exculpatory Evidence.

Long-standing DOJ policy requires that DOJ attorneys be candid in representations made to judges. Pursuant to those policies, we request that DOJ provide this letter to any judicial officer who is asked to rule on any motion pertaining to this investigation, or on any application made in connection with any investigative request concerning this investigation.

The official policy of DOJ further requires that prosecutors present exculpatory evidence to a grand jury. Pursuant to that policy, we request that DOJ provide this letter to any grand jury considering evidence in connection with this matter, or any grand jury asked to issue a subpoena for testimony or documents in connection with this matter.

Thank you for your attention to this request.

With best regards,

cc: Matthew G. Olsen
Assistant Attorney General
National Security Division
Via Electronic Mail

ATTACHMENT A

Property to be searched

The premises to be searched, 1100 S Ocean Blvd, Palm Beach, FL 33480, is further described as a resort, club, and residence located near the intersection of Southern Blvd and S Ocean Blvd. It is described as a mansion with approximately 58 bedrooms, 33 bathrooms, on a 17-acre estate. The locations to be searched include the "45 Office," all storage rooms, and all other rooms or areas within the premises used or available to be used by FPOTUS and his staff and in which boxes or documents could be stored, including all structures or buildings on the estate. It does not include areas currently (i.e., at the time of the search) being occupied, rented, or used by third parties (such as Mar-a-Largo Members) and not otherwise used or available to be used by FPOTUS and his staff, such as private guest suites.

ATTACHMENT B

Property to be seized

All physical documents and records constituting evidence, contraband, fruits of crime, or other items illegally possessed in violation of 18 U.S.C. §§ 793, 2071, or 1519, including the following:

a. Any physical documents with classification markings, along with any containers/boxes (including any other contents) in which such documents are located, as well as any other containers/boxes that are collectively stored or found together with the aforementioned documents and containers/boxes;

b. Information, including communications in any form, regarding the retrieval, storage, or transmission of national defense information or classified material;

c. Any government and/or Presidential Records created between January 20, 2017, and January 20, 2021; or

d. Any evidence of the knowing alteration, destruction, or concealment of any government and/or Presidential Records, or of any documents with classification markings.

Subject to Protective Order

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

In the Matter of the Search of
(Briefly describe the property to be searched or identify the person by name and address)

the Premises Located at 1100 S. Ocean Blvd., Palm Beach, FL 33480, as further described in Attachment A

Case No. 22-mj-8332-BER

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the Southern District of Florida
(identify the person or describe the property to be searched and give its location):

See Attachment A

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal *(identify the person or describe the property to be seized)*:

See Attachment B

YOU ARE COMMANDED to execute this warrant on or before August 19, 2022 *(not to exceed 14 days)*

☑ in the daytime 6:00 a.m. to 10:00 p.m. ☐ at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to Duty Magistrate.
(United States Magistrate Judge)

☐ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized *(check the appropriate box)*

☐ for ____ days *(not to exceed 30)* ☐ until, the facts justifying, the later specific date of ________.

Date and time issued: 8/5/22 12:12 pm

Judge's signature: Bruce Reinhart

City and state: West Palm Beach, FL

Hon. Bruce Reinhart, U.S. Magistrate Judge
Printed name and title

AO 93 (Rev. 11/13) Search and Seizure Warrant (Page 2)

Return		
Case No.: 22-mj-8332-BER	Date and time warrant executed:	Copy of warrant and inventory left with:
Inventory made in the presence of :		
Inventory of the property taken and name of any person(s) seized:		

Certification

I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.

Date: ____________

____
Executing officer's signature

____
Printed name and title

ATTACHMENT A

Property to be searched

The premises to be searched, 1100 S Ocean Blvd, Palm Beach, FL 33480, is further described as a resort, club, and residence located near the intersection of Southern Blvd and S Ocean Blvd. It is described as a mansion with approximately 58 bedrooms, 33 bathrooms, on a 17-acre estate. The locations to be searched include the "45 Office," all storage rooms, and all other rooms or areas within the premises used or available to be used by FPOTUS and his staff and in which boxes or documents could be stored, including all structures or buildings on the estate. It does not include areas currently (i.e., at the time of the search) being occupied, rented, or used by third parties (such as Mar-a-Largo Members) and not otherwise used or available to be used by FPOTUS and his staff, such as private guest suites.

ATTACHMENT B

Property to be seized

All physical documents and records constituting evidence, contraband, fruits of crime, or other items illegally possessed in violation of 18 U.S.C. §§ 793, 2071, or 1519, including the following:

a. Any physical documents with classification markings, along with any containers/boxes (including any other contents) in which such documents are located, as well as any other containers/boxes that are collectively stored or found together with the aforementioned documents and containers/boxes;

b. Information, including communications in any form, regarding the retrieval, storage, or transmission of national defense information or classified material;

c. Any government and/or Presidential Records created between January 20, 2017, and January 20, 2021; or

d. Any evidence of the knowing alteration, destruction, or concealment of any government and/or Presidential Records, or of any documents with classification markings.

EXHIBIT 3

LAW ENFORCEMENT OPERATIONS ORDER

CASE ID NUMBER [redacted]	
FIELD DIVISION/SQUAD WF[redacted] MM[redacted]	
Date Prepared 08/03/2022	Planned Operation Date 08/08/2022
CASE TITLE PLASMIC ECHO (SIM); Mishandling of Classified or National Defense Information; UNSUB	
CASE AGENT/OFFICE [redacted] FBI 21A, 11, 9	Telephone Number [redacted]
ALTERNATE CASE AGENT [redacted] FBI 39	Telephone Number [redacted]

SITUATION/MISSION

Type of Operation	Activity Location
☐ Arrest ☑ Search ☐ Surveillance ☑ Seizure ☐ Other	Mar-a-Lago Resort (The PREMISES) - 1100 S Ocean Blvd, Palm Beach, FL 33480 (See Attachments)

Warrant Information

☑ Warrant Verified 22-mj-8332-BER, dated 8/5/2022

Overall Mission Concept (Brief statement of who, what, why, when, and where)

FBI WF and FBI/MM agents and ERT will effect a search of designated locations within Mar-a-Lago (MAL) to locate and seize classified information, NDI, and US Government records as described in captioned search warrant.

CAUTION STATEMENT

Not applicable.

(U) LAW ENFORCEMENT SENSITIVE: The information marked (U//LES) in this document is the property of the Federal Bureau of Investigation and may be distributed within the federal government (and its contractors), U.S. intelligence, law enforcement, public safety or protection officials, and individuals with a need to know. Distribution beyond these entities without FBI authorization is prohibited. Precautions should be taken to ensure this information is stored and/or destroyed in a manner that precludes unauthorized access. Information bearing the LES caveat may not be used in legal proceedings without first receiving authorization from the originating agency. Recipients are prohibited from subsequently posting the information marked LES on a Website on an unclassified network without first obtaining FBI approval.

This Document has been prepared by the Federal Bureau of Investigation

SITUATION/MISSION CONTINUED

SUBJECT INFORMATION			
Name: Not applicable.	Race:	Sex:	DOB:
Aliases:	Height:		Weight:
	Eyes:		Hair:
Fingerprint Code:	SSAN:		FBI#:

Identifying Marks and Tattoos:

Address:

Vehicle Info.:

Criminal History:

REASON FOR CAUTION STATEMENT (subject specific)

Identify other outstanding legal processes. The issuing officials, districts and dates issued, and warrant locations should be included.

Other Information Regarding Subject (Can include items such as possible locations of subject, identification of associates, and information provided by informants and other law enforcement agencies.) **Provide Photo If Available.**

SITUATION/MISSION CONTINUED

SUBJECT INFORMATION			
Name: Not applicable.	Race:	Sex:	DOB:
Aliases:	Height:		Weight:
	Eyes:		Hair:
Fingerprint Code:	SSAN:		FBI#:

Identifying Marks and Tattoos:

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SITUATION/MISSION CONTINUED

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	Eyes:		Hair:
Fingerprint Code:	SSAN:		FBI#:

Identifying Marks and Tattoos:

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Vehicle Info.:

Criminal History:

REASON FOR CAUTION STATEMENT (subject specific)

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SITUATION/MISSION CONTINUED

SUBJECT INFORMATION			
Name: Not applicable.	Race:	Sex:	DOB:
Aliases:	Height:		Weight:
	Eyes:		Hair:
Fingerprint Code:	SSAN:		FBI#:

Identifying Marks and Tattoos:

Address:

Vehicle Info.:

Criminal History:

REASON FOR CAUTION STATEMENT (subject specific)

Identify other outstanding legal processes. The issuing officials, districts and dates issued, and warrant locations should be included.

Other Information Regarding Subject (Can include items such as possible locations of subject, identification of associates, and information provided by informants and other law enforcement agencies.) **Provide Photo If Available.**

SITUATION/MISSION CONTINUED

SUBJECT INFORMATION			
Name: Not applicable.	Race:	Sex:	DOB:
Aliases:	Height:		Weight:
	Eyes:		Hair:
Fingerprint Code:	SSAN:		FBI#:
Identifying Marks and Tattoos:			
Address:			
Vehicle Info.:			
Criminal History:			
REASON FOR CAUTION STATEMENT (subject specific)			
Identify other outstanding legal processes. The issuing officials, districts and dates issued, and warrant locations should be included.			
Other Information Regarding Subject (Can include items such as possible locations of subject, identification of associates, and information provided by informants and other law enforcement agencies.) **Provide Photo If Available.**			

This Document has been prepared by the Federal Bureau of Investigation

SITUATION/MISSION CONTINUED

INTELLIGENCE - Additional pertinent information can be added as an attachment

- [x] Site Survey Results: Photos attached. On 6/3/22, Case Agents observed ground floor of MAL; CCTV review of the same.
- [ ] Danger Areas
- [ ] Aggressive Animals
- [x] Surveillance Systems: Four known cameras on basement level; security control center at MAL and offsite controlled by the USSS.
- [ ] Cover and Concealment
- [ ] Presence of Children/Minors
- [ ] Other

LAW ENFORCEMENT PARTICIPANTS IN THE OPERATION

Identify personnel directly involved in the operation, as well as their assignment (entry/perimeter) for the operation

NAME	AGENCY	ASSIGNMENT	SIGNAL#	CELLULAR#
FBI 8, 10, 19, 39, 21A, 9, 30, 1, 28, 31, 22, 12, 17, 5, 13, 36				

OTHER LAW ENFORCEMENT PERSONNEL

Identify personnel who are not directly involved in the operation, but may support the overall mission (e.g., mass interviews, evidence technicians, photo specialists, intelligence analysts, Command Post personnel, traffic control, etc.)

NAME	AGENCY	ASSIGNMENT	SIGNAL#	CELLULAR#

EXECUTION

OVERALL PRIMARY PLAN SUMMARY

DOJ and FBI will contact FPOTUS' retained counsel, Per. 18 on 8/8/2022, to notify him of the search warrant and request collaboration and assistance. After a reasonable time period, FBI WF/MM will execute the search warrant with the Case Team, MM Filter Team, and MAL/USSS representatives, as deemed necessary. This execution will require coordination with USSS and may include coordination with MAL Guest Services to ensure a fulsome understanding of spaces occupied as designated in the search warrant.

- Friday, 8/5/2022 -
External DOJ/SDFL/FBI Ops Brief, 10am via TEAMS
Internal FBI Brief, 1pm via Lync

- Sunday, 8/7/2022 -
WF Team travels to MM AOR via commercial carrier
All Case and Filter Team on Standby for Monday execution

- Monday, 8/8/2022 -
DOJ/FBI EM contact Mr. Per. 18 locations to be searched will be safeguarded by FBI at time of this call
SW execution will occur at or around 9:00am; routine updates to FBI EM via Command Element ( )
Evidence secured overnight; designated couriers will maintain positive control of evidence throughout the search

- Tuesday, 8/9/2022 -
Couriers will maintain positive control of all evidence
CIRG/SFOU pick-up at Ft. Lauderdale Airport at/around 9:30am
WF staging at Reagan National Airport to retrieve evidence and personnel; evidence to temp storage in Workbox room

SPECIFIC DUTIES

(Concise, detailed statements directing how each unit, squad, team, or individual accomplishes their duties.)

MM EM will be notified to coordinate with EM of partnering agencies.

Case Team and MM ERT will conduct an operations briefing prior to departure to MAL. All personnel participating in the search will review the Search Warrant Attachment A and Attachment B prior to the commencement of the search.

A Ryder box truck, passenger van, a sprinter van, a cargo van, and ERT unmarked vehicles will be on standby and will transport team and equipment to premise. The minimum amount of of vehicles needed for the operation will be used.

FBI will request CCTV on premises be disabled during the search.

Upon arrival, ERT photographers will take entry photographs, overall and in each area/room to be searched.

WF Case Team Seizing Agent is FBI 21A and WF will lead the team on items to be seized.

Search team will locate and seize boxes and documents within premises as detailed in search warrant.

Once located, photographed, and sketched, boxes and documents will be removed from premises and loaded into the box truck. At least one designated search team member will maintain positive control of seized items.

Once search of premise is complete, the vehicles containing boxes/documents will be manned appropriately.

Boxes/documents will be transported to MM HQ for temporary storage.

The boxes and documents will be moved to a designated space in the MM HQC SCIF. SAs will maintain 24/7 visual coverage of the boxes and documents until scheduled aircraft pickup at Ft Lauderdale Airport.

The CIRG 757 can accommodate the projected case-seizure load of 100 Bankers boxes and five passengers (4xWF, 1xHQ).

WF personnel will transport evidence from the Reagan National Airport to WFO by unmarked truck.

Related to this search warrant, FBI/MM may effect surveillance of the Life Storage Facility, located at 1520 Belvedere Road, West Palm Beach, Florida, during and periods designated after this search.

EXECUTION CONTINUED

COORDINATING INSTRUCTIONS

(Include here instructions common to all. Examples include times and dates for specific phases of the operation, coordination intra-office or with other agencies, warrant verification, danger areas, rehearsals, debriefings, etc.)

Coordination with the following will be executed as described above:

Per. 18
USSS and other LE Agencies deemed necessary
MAL Security and Staff (execution occurs during off-season date range)

SDFL Per. 23 and DOJ/CES Per. 6 will be on stand-by for questions at the FBI/WPBRA.

POLICY STATEMENT USE OF DEADLY FORCE (7/19/2022)

1. Law enforcement officers of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.

A. Deadly force may not be used solely to prevent the escape of a fleeing suspect.

B. Firearms may not be fired solely to disable moving vehicles.Specifically, firearms may not be discharged at a moving vehicle unless:

i. a person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or

ii. the vehicle is operated in a manner that threatens to cause death or serious physical injury to the officer or others, and no other objectively reasonable means of defense appear to exist, which includes moving out of the path of the vehicle.

C. If feasible and if to do so would not increase the danger to the officer or others, a verbal warning to submit to the authority of the officer shall be given prior to the use of deadly force.

D. Warning shots are not permitted outside of the prison context.

E. Officers will be trained in alternative methods and tactics for handling resisting subjects, which must be used when the use of deadly force is not authorized by this policy.

F. Deadly force should not be used against persons whose actions are a threat solely to themselves or property unless an individual poses an imminent danger of death or serious physical injury to the officer or others in close proximity.

2. Officers should seek to gain voluntary compliance before using force if feasible and if doing so would not increase the danger to the officer or others.

3. Officers must prevent or stop, as appropriate, another officer from engaging in excessive or unlawful force, or force that violates DOJ policy.

4. Officers must request and/or render medical aid as appropriate.

☐ Non DOJ Deadly Force Policy Addressed
"All Non DOJ personnel will abide by their own agency's Deadly Force Policy"

EXECUTION CONTINUED

CONTINGENCIES

1. Should media be present at MAL, all personnel will refer to MM OSC and adhere to FBI Media policy as briefed.

2. Should FPOTUS arrive at MAL, FBI MM EM and OSCs will be prepared to engage with FPOTUS and USSS Security Team.

3. Should USSS provide resistance or interfere with FBI timeline or accesses, FBI MM EM will engage with [redacted] FBI 8 and [redacted] FBI 19 will engage with USSS POC's per existing liaison relationships.

4. Should MAL Guest Reception be unwilling to provide a list of occupied guest rooms, FBI Search Team will knock on each guest room door to determine occupation status. FBI will request a map, list of rooms and skeleton key/card for all rooms from MAL staff.

5. An FBI MM/TTA with lock-picking equipment will be on scene.

ADMINISTRATION AND EQUIPMENT

WEAPONS AND AMMUNITION
Standard Issue Weapon, Ammo, Handcuffs, Badge and Credentials (concealed)
Classified courier cards
Classified courier bags
SACs badge/RSA token

CLOTHING AND EQUIPMENT (Includes protective gear, identifying clothing, and special equipment, e.g., ballistic shield, body armor, pepper spray, flex cuffs, etc.)
Team Leaders and On-Scene Command: Business attire.
Case Agents and ERT: Business casual with unmarked polo or collared shirts and law enforcement equipment concealed.
medium and large sized bolt cutters carried by Search Team SA
food and water

ADMINISTRATION AND EQUIPMENT CONTINUED

HANDLING OF INJURED

Be specific. Include EMS telephone numbers, local radio channels, and addresses of medical facilities and/or EMS)

☑ On Site Medical Support Available: Medic: [redacted] FBI 9, WF, Paramedic: [redacted] FBI 37, MM

(This should include on-site medical support personnel name(s), location and contact information/call signs.)

☐ Nearest Hospital/Trauma Center:

Name of Hospital: St. Mary's Medical Center, Level I Trauma Center

Address and Key Map Designation: 901 45th Street, West Palm Beach, FL 33407

Telephone Number: 561-844-6300

Life Flight Information: N/A. Drive time is 18 minutes

☐ Additional Emergency Medical Information:

HANDLING OF PRISONERS

Name: Not applicable. Age: ______ Sex: ______

Subject To Be Transported Directly To Incarceration: ☐ Yes ☐ No

Transporting Agents:

Subject Will Be Transported To FBI Office For Processing: ☐ Yes ☐ No

Transporting Agents:

Processing Agent(s):

Fingerprinted ☐ Yes ☐ No Fingerprinting Agent:

Photographed ☐ Yes ☐ No Photographing Agent:

DNA Swab ☐ Yes ☐ No Swabbing Agent:

Interviewed ☐ Yes ☐ No Interviewing Agent(s):

Subject Has Medical Needs? ☐ Yes ☐ None Known If yes, please describe:

This Document has been prepared by the Federal Bureau of Investigation

HANDLING OF PRISONERS

Subject #2
Name: Not applicable. Age: ________ Sex: ________

Subject To Be Transported Directly To Incarceration: ☐ Yes ☐ No

Transporting Agents: ____________________

Subject Will Be Transported To FBI Office For Processing: ☐ Yes ☐ No

Transporting Agents: ____________________

Processing Agents(s): ____________________

Fingerprinted ☐ Yes ☐ No Fingerprinting Agent: ____________________

Photographed ☐ Yes ☐ No Photographing Agent: ____________________

DNA Swab ☐ Yes ☐ No Swabbing Agent: ____________________

Interviewed ☐ Yes ☐ No Interviewing Agent(s): ____________________

Subject Has Medical Needs? ☐ Yes ☐ None Known If yes, please describe:

Please Provide Details For All Additional Subjects.

HANDLING OF PRISONERS

Subject #3
Name: Not applicable. Age: ________ Sex: ________

Subject To Be Transported Directly To Incarceration: ☐ Yes ☐ No

Transporting Agents: ____________________

Subject Will Be Transported To FBI Office For Processing: ☐ Yes ☐ No

Transporting Agents: ____________________

Processing Agent(s): ____________________

Fingerprinted ☐ Yes ☐ No Fingerprinting Agent: ____________________

Photographed ☐ Yes ☐ No Photographing Agent: ____________________

DNA Swab ☐ Yes ☐ No Swabbing Agent: ____________________

Interviewed ☐ Yes ☐ No Interviewing Agent(s): ____________________

Subject Has Medical Needs? ☐ Yes ☐ None Known If yes, please describe:

Please Provide Details For All Additional Subjects.

HANDLING OF PRISONERS

Subject #4
Name: Not applicable. Age: ______ Sex: ______

Subject To Be Transported Directly To Incarceration: ☐ Yes ☐ No

Transporting Agents: ______

Subject Will Be Transported To FBI Office For Processing: ☐ Yes ☐ No

Transporting Agents: ______

Processing Agent(s): ______

Fingerprinted ☐ Yes ☐ No Fingerprinting Agent: ______

Photographed ☐ Yes ☐ No Photographing Agent: ______

DNA Swab ☐ Yes ☐ No Swabbing Agent: ______

Interviewed ☐ Yes ☐ No Interviewing Agent(s): ______

Subject Has Medical Needs? ☐ Yes ☐ None Known If yes, please describe:

Please Provide Details For All Additional Subjects.

HANDLING OF PRISONERS

Subject #5
Name: Not applicable. Age: ______ Sex: ______

Subject To Be Transported Directly To Incarceration: ☐ Yes ☐ No

Transporting Agent(s): ______

Subject Will Be Transported To FBI Office For Processing: ☐ Yes ☐ No

Transporting Agent(s): ______

Processing Agent(s): ______

Fingerprinted ☐ Yes ☐ No Fingerprinting Agent: ______

Photographed ☐ Yes ☐ No Photographing Agent: ______

DNA Swab ☐ Yes ☐ No Swabbing Agent: ______

Interviewed ☐ Yes ☐ No Interviewing Agent(s): ______

Subject Has Medical Needs? ☐ Yes ☐ None Known If yes, please describe:

Please Provide Details For All Additional Subjects.

CONTROL AND COMMUNICATIONS

Command Post (if utilized)	
Supervisor in Charge: [redacted] FBI 9	Location: MAL premises
Phone#: [redacted]	Radio Channel: N/A Call Sign: N/A
On-Scene Command	
Agent in Charge: [redacted] FBI 10	Location: MAL premises
Phone#: [redacted]	Radio Channel: N/A Call Sign: N/A
☑ If applicable, state & local police notified [redacted] will be notified of this search warrant on or around the morning of 8/8/2022.	

RADIO COMMUNICATIONS (include channels, frequencies, secure or clear mode)			
Channel ID (A-1, D-4, etc.)	Secure/Clear	AGENCY/OWNER (i.e., FBI, Virginia State Police, etc.)	PRIMARY PURPOSE/use (i.e., Sniper Channel, Administrative/Support Channel, etc.)
Not applicable.			

CAUTION STATEMENT (Repeat of General Case Related Caution Statement)
Not applicable.

Reviewed By: WF/SWAT briefed for awareness 8/1/2022;FBI MM/SWAT briefed for awareness 8/5/2022
Certified Tactical Instructor (Review to be conducted at the discretion of the SAC or Designee)

Reviewed By: [redacted] FBI 19, [redacted] [redacted] FBI 39, [redacted]
GS-14 Supervisory Special Agent

Approved By: [redacted] [redacted] Per. 18, [redacted]
On Scene Commander or SAC Designee

This Document has been prepared by the Federal Bureau of Investigation

18 min (10.5 miles)

via I-95 N

Fastest route now due to traffic conditions

1100 S Ocean Blvd

Palm Beach, FL 33480

> Get on I-95 N in West Palm Beach from US-98/Southern Blvd

8 min (2.8 mi)

> Follow I-95 N to 45th St. Take exit 74 from I-95 N

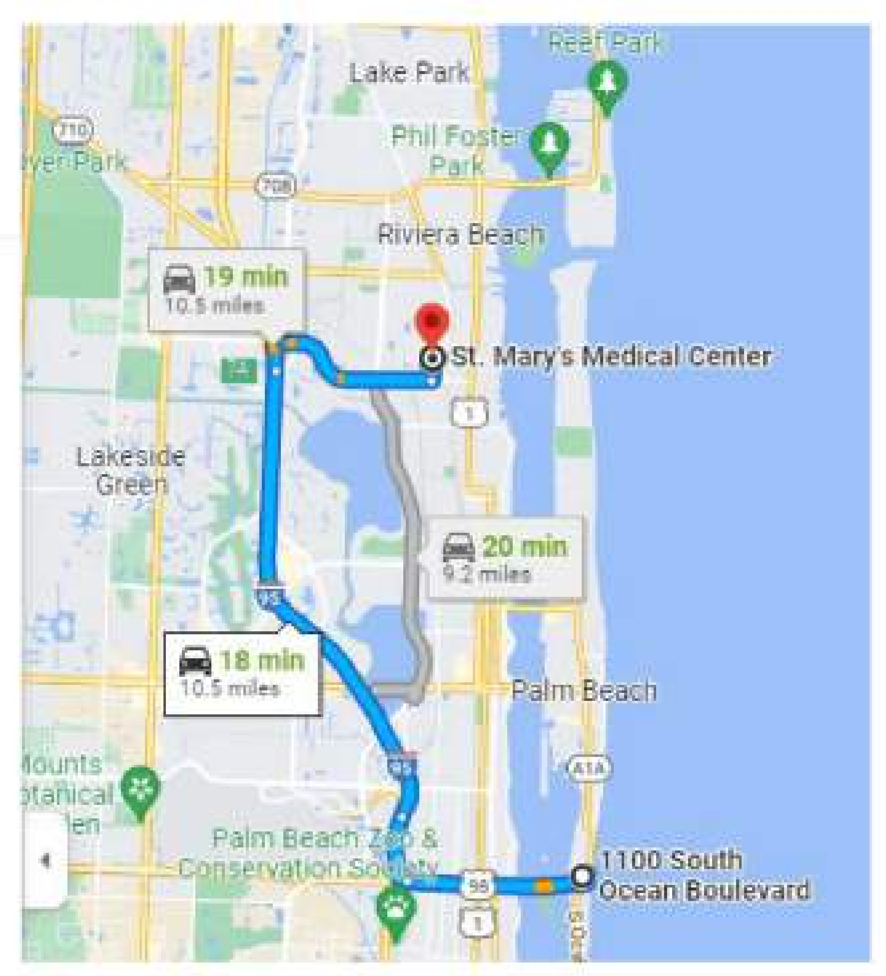
6 min (5.6 mi)

> Follow 45th St to N Terrace Dr

5 min (2.0 mi)

St. Mary's Medical Center

901 45th St, West Palm Beach, FL 33407



Subject to Protective Order

BANKERS BOX
BANKERS BOX
BANKERS BOX
BANKERS BOX
799
33250

BANKERS BOX

South
06/01/202

2:06.801 UTC

EXHIBIT 4

FD-302 (Rev. 5-8-10)

OFFICIAL RECORD

FEDERAL BUREAU OF INVESTIGATION

DECLASSIFIED BY: NSICG F14M24K52
ON 04-05-2023
This redaction version only.

Date of entry 08/17/2022

DOCUMENT RESTRICTED TO CASE PARTICIPANTS

This document contains information that is restricted to case participants.

A search warrant, 22-mj-8332-BER, issued in the United States District Court for the Southern District of Florida on August 5, 2022, was executed at 1100 South Ocean Boulevard, Palm Beach, Florida 33480 at 10:33 AM on August 8, 2022.

Prior to the Federal Bureau of Investigation (FBI) team's entry onto the MAL premises, FBI leadership informed and coordinated with local United States Secret Service (USSS) leadership. Local USSS facilitated entry onto the premises, provided escort and access to various locations within, and posted USSS personnel in locations where the FBI team conducted searches.

Department of Justice (DOJ) and FBI personnel onsite consisted of:

- Four (4) FBI Washington Field Office (WFO) personnel
- One (1) FBI Headquarters (HQ) personnel
- Twenty-five (25) FBI Miami Field Office (MM) personnel
- One (1) DOJ Counterintelligence and Export Control Section (CES) attorney
- One (1) United States Attorneys Office (USAO) Southern District of Florida (SDFL) attorney

The timeline for the events are as follows, all times are approximate:

- August 8, 2022
  - 0859 - FBI team entered the Mar-a-Lago (MAL) premises
  - 0901 - Entry photographs of exterior initiated
  - 0914 - Telephonic contact with attorney Per. 18 attempted
  - 0936 - Telephonic contact established with Per. 18

Investigation on 08/08/2022 at Palm Beach, Florida, United States (In Person)

File # [redacted] Date drafted 08/09/2022

by FBI 21A

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

- 1013 - CCTV activated on MAL premises
- 1033 - Search of MAL initiated
- 1055 - Entry photographs resumed
- 1055 - Filter Team review of "45 Office" initiated
- 1333 - USAO SDFL approves FBI entry in "45 Office" safe
- 1404 - FBI successfully access safe via technical means
- 1423 - Exit photos of "45 Office" initiated
- 1633 - Search of MAL premises concluded
- 1819 - Receipt for Property provided to Attorney Per. 12
- 1839 - FBI exits MAL premises
- 1952 - Seized evidence arrived at MM
- 2018 - Seized evidence secured in MM temporary storage

- August 9, 2022
  - 0708 - Seized evidence removed from MM temporary storage
  - 0713 - Convoy briefing provided by
  - 0754 - Seized evidence departed MM
  - 0834 - Seized evidence arrived at Fort Lauderdale-Hollywood International Airport (FLL)
  - 0835 - Seized evidence loaded on aircraft
  - 0849 - Aircraft departs FLL
  - 1100 - Aircraft arrives at Reagan International Airport (DCA)
  - 1115 - MM Filter Team Lead transfers potentially privileged seized evidence to WFO Filter Team
  - 1120 - Seized evidence depart DCA
  - 1150 - Seized evidence arrived at WFO

A total of forty-five (45) pieces of evidence, comprised of boxes and sets of miscellaneous documents, were seized from the premises described in Attachment A. Thirty-nine (39) of the boxes and/or sets of documents contained comingled items described in Attachment B. Six (6) of the boxes and/or sets of documents contained potentially privileged items comingled with items described in Attachment B. On August 10, 2022 upon further review by FBI WFO, one (1) box was determined to contain potentially privileged information and was provided to the WFO Filter Team.

Storage Room:

- Ten (10) boxes which contained classified marked physical document
- Five (5) boxes which contained both potentially privileged items co-mingled with items in Attachment B

- Eleven (11) boxes which contained non-classified marked items in Attachment B

"45 Office" Staff Room/Anteroom:

- One (1) box which contained both potentially privileged items co-mingled with items in Attachment B
- Two (2) boxes which contained non-classified marked items in Attachment B
- Two (2) individual physical documents which contained non-classified marked items in Attachment B

"45 Office" Private Office adjacent to Staff Room:

- One (1) individual physical document which contained non-classified marked items in Attachment B
- One (1) individual classified marked physical document

"45 Office" Private Office's closet:

- One (1) box which contained classified marked physical documents

The following items will be maintained in the attached 1A:

- Three (3) signed FD-597 documents
- Three (3) SD cards
- One (1) Map of MAL premises

EXHIBIT 5

FD-674a (7-24-2017) **ERT PHOTOGRAPHIC LOG** PAGE 1 OF 6

FD-674a (7-24-2017)

FBI

DATE 8 / 08 / 22

CASE ID [redacted]

PHOTOGRAPHER SA FBI 24

LOCATION Mar-a-Lago (45/office)
1100 S Ocean Blvd
Palm Beach, FL 33480

FD-674a (7-24-2017)

ERT PHOTOGRAPHIC LOG

PAGE 2 OF 6

GENERAL INFORMATION

LOCATION Mar-a-Lago (45 office) 1100 S. Ocean Blvd., Palm Beach, FL 33480
DATE 8/08/22
CASE ID [redacted]

CAMERA TYPE Nikkon D780
CARD # 1 [redacted] FBI 23, 16
PREPARER/PHOTOGRAPHER [redacted] / SA [redacted] FBI 24
REMARKS

Photo #	Subject (Circle One)	Range	Use Scale	Description
1	Entry / Exit / Other / Items #	Long / Med / Close		Photo Log
2	Entry / Exit / Other / Items #	Long / Med / Close		Stairwell To 45 Office
3	Entry / Exit / Other / Items #	Long / Med / Close		Stairwell To 45 Office
4	Entry / Exit / Other / Items #	Long / Med / Close		Stairwell To 45 Office
5	Entry / Exit / Other / Items #	Long / Med / Close		Stairwell To 45 Office
6	Entry / Exit / Other / Items #	Long / Med / Close		Stairwell To 45 Office
7	Entry / Exit / Other / Items #	Long / Med / Close		Entry From Doorway (45 Office)
8	Entry / Exit / Other / Items #	Long / Med / Close		From Doorway (45 secretary Office)
9	Entry / Exit / Other / Items #	Long / Med / Close		From Doorway (45 secretary Office)
10	Entry / Exit / Other / Items #	Long / Med / Close		From Doorway (45 secretary Office)
11	Entry / Exit / Other / Items #	Long / Med / Close		From Doorway (45 secretary Office
12	Entry / Exit / Other / Items #	Long / Med / Close		From Doorway (45 secretary Office)
13	Entry / Exit / Other / Items #	Long / Med / Close		From Doorway (45 secretary office)
14	Entry / Exit / Other / Items #	Long / Med / Close		From Doorway (45 office)
15	Entry / Exit / Other / Items #	Long / Med / Close		45 office from doorway
16	Entry / Exit / Other / Items #	Long / Med / Close		45 office from doorway
17	Entry / Exit / Other / Items #	Long / Med / Close		45 office from doorway
18	Entry / Exit / Other / Items #	Long / Med / Close		Bathroom next to 45 office secretary
19	Entry / Exit / Other / Items #	Long / Med / Close		Bathroom next to 45 office secretary
20	Entry / Exit / Other / Items #	Long / Med / Close		Bathroom next to 45 secretary office
21	Entry / Exit / Other / Items #	Long / Med / Close		Bathroom next to 45 secretary office

[redacted] FBI 23

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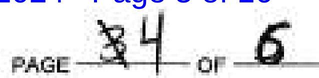
ERT PHOTOGRAPHIC LOG

22	Entry / Exit / Other / Items #	Long / Med / Close		Room E
23	Entry / Exit / Other / Items #	Long / Med / Close		Room E
24	Entry / Exit / Other / Items #	Long / Med / Close		Room E
25	Entry / Exit / Other / Items #	Long / Med / Close		Room C
26	Entry / Exit / Other / Items #	Long / Med / Close		Room C
27	Entry / Exit / Other / Items #	Long / Med / Close		Room C
28	Entry / Exit / Other / Items #	Long / Med / Close		Room C
29	Entry / Exit / Other / Items # 1	Long / Med / Close		Item 1 & 1A Locations
30	Entry / Exit / Other / Items # 1	Long / Med / Close		Item 1 & 1A Locations
31	Entry / Exit / Other / Items # 1	Long / Med / Close		Item 1 & 1A Locations
32	Entry / Exit / Other / Items # 1	Long / Med / Close		Item 1 & 1A Locations
33	Entry / Exit / Other / Items # 1	Long / Med / Close		Items 1 & 1A Locations
34	Entry / Exit / Other / Items # 1, 1A	Long / Med / Close		
35	Entry / Exit / Other / Items # 1, 1A	Long / Med / Close		
36	Entry / Exit / Other / Items # 1, 1A	Long / Med / Close		
37	Entry / Exit / Other / Items #	Long / Med / Close		Room F - Post Taint Search
38	Entry / Exit / Other / Items #	Long / Med / Close		Room F - Post Taint Search
39	Entry / Exit / Other / Items #	Long / Med / Close		Room F - Post Taint Search
40	Entry / Exit / Other / Items #	Long / Med / Close		Room F - Post Taint Search
41	Entry / Exit / Other / Items # 2	Long / Med / Close		
42	Entry / Exit / Other / Items # 2	Long / Med / Close		
43	Entry / Exit / Other / Items # 2	Long / Med / Close		
44	Entry / Exit / Other / Items # 2	Long / Med / Close		
45	Entry / Exit / Other / Items # 3	Long / Med / Close		Item 3 Location
46	Entry / Exit / Other / Items # 3	Long / Med / Close		Item 3 Location
47	Entry / Exit / Other / Items # 3	Long / Med / Close		Item 3 Location

FBI 23

FD-674a (7-24-2017)

ERT PHOTOGRAPHIC LOG


PAGE 34 OF 6

48	Entry / Exit / Other / **Items #** 3	Long / Med / **Close**		with scale
49	Entry / Exit / Other / **Items #** 2A	Long / Med / **Close**		with scale
50	Entry / Exit / Other / **Items #** 2A	Long / Med / **Close**		with scale
51	Entry / Exit / Other / **Items #** 2A	Long / Med / **Close**		with scale
52	Entry / Exit / Other / **Items #** 2A	Long / Med / **Close**		with scale
53	Entry / Exit / Other / **Items #** 4	**Long** / Med / Close		Drawer, Item 4 Location
54	Entry / Exit / Other / **Items #** 4	Long / **Med** / Close		Drawer, Item 4 Location
55	Entry / Exit / Other / **Items #** 4	Long / Med / **Close**		Drawer, Item 4 Location
56	Entry / Exit / Other / Items # 5	**Long** / Med / Close		bin location - Item 5
57	Entry / Exit / Other / Items # 5	Long / **Med** / Close		bin location - Item 5
58	Entry / Exit / Other / Items # 5	Long / Med / **Close**		bin location - Item 5
59	Entry / Exit / Other / Items # 5	Long / Med / **Close**		with scale
60	Entry / Exit / Other / Items # 5	Long / Med / **Close**		with scale
61	Entry / Exit / Other / Items # 5	Long / Med / **Close**		with scale
62	**Entry** / Exit / Other / Items #	Long / Med / Close		room G
63	**Entry** / Exit / Other / Items #	Long / Med / Close		room G
64	**Entry** / Exit / Other / Items #	Long / Med / Close		room G
65	**Entry** / Exit / Other / Items #	**Long** / Med / Close		Item 6 location
66	Entry / Exit / Other / Items #	Long / **Med** / Close		Item 6 location
67	Entry / Exit / Other / Items #	Long / Med / **Close**		Item 6 location
68	Entry / Exit / Other / Items # 6	Long / Med / **Close**		with scale
69	Entry / Exit / Other / Items #	**Long** / Med / Close		Item 7 location
70	Entry / Exit / Other / Items #	Long / **Med** / Close		Item 7 location
71	Entry / Exit / Other / Items #	Long / Med / **Close**		Item 7 location
72	Entry / Exit / Other / Items # 7	Long / Med / **Close**		with scale
73	Entry / Exit / **Other** / Items #	Long / Med / Close		room F wall safe

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ERT PHOTOGRAPHIC LOG

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74	Entry / Exit / (Other) / Items #	Long / Med / Close		room F wall safe
75	Entry / Exit / (Other) / Items #	Long / Med / Close		room F wall safe
76	Entry / Exit / Other / Items #	Long / Med / Close		room label B
77	Entry / Exit / Other / Items #	Long / Med / Close		room label C
78	Entry / Exit / Other / Items #	Long / Med / Close		room label D
79	Entry / Exit / Other / Items #	Long / Med / Close		room label E
80	Entry / Exit / Other / Items #	Long / Med / Close		room label F
81	Entry / Exit / Other / Items #	Long / Med / Close		room label G
82	Entry / (Exit) / Other / Items #	Long / Med / Close		room F
83	Entry / (Exit) / Other / Items #	Long / Med / Close		room F
84	Entry / (Exit) / Other / Items #	Long / Med / Close		room F
85	Entry / (Exit) / Other / Items #	Long / Med / Close		room E
86	Entry / (Exit) / Other / Items #	Long / Med / Close		room E
87	Entry / (Exit) / Other / Items #	Long / Med / Close		room E
88	Entry / (Exit) / Other / Items #	Long / Med / Close		room C
89	Entry / (Exit) / Other / Items #	Long / Med / Close		room C
90	Entry / (Exit) / Other / Items #	Long / Med / Close		room C
91	Entry / (Exit) / Other / Items #	Long / Med / Close		room C
92	Entry / (Exit) / Other / Items #	Long / Med / Close		room C
93	Entry / (Exit) / Other / Items #	Long / Med / Close		room C
94	Entry / (Exit) / Other / Items #	Long / Med / Close		room C
95	Entry / (Exit) / Other / Items #	Long / Med / Close		room D
96	Entry / (Exit) / Other / Items #	Long / Med / Close		room D
97	Entry / (Exit) / Other / Items #	Long / Med / Close		room G
98	Entry / (Exit) / Other / Items #	Long / Med / Close		room G
99	Entry / (Exit) / Other / Items #	Long / Med / Close		room B

FD-674a (7-24-2017)

ERT PHOTOGRAPHIC LOG

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100	Entry / **Exit** / Other / Items #	Long / Med / Close		room B
101	Entry / **Exit** / Other / Items #	Long / Med / Close		room B
102	Entry / **Exit** / Other / Items #	Long / Med / Close		room B
103	Entry / **Exit** / Other / Items #	Long / Med / Close		room B
104	Entry / **Exit** / Other / Items #	Long / Med / Close		room B
105	Entry / **Exit** / Other / Items #	Long / Med / Close		45 office
106	Entry / Exit / **Other** / Items #	Long / Med / Close		3rd Floor rooms across 45 office
107	Entry / Exit / **Other** / Items #	Long / Med / Close		3rd Floor rooms across 45 office
108	Entry / Exit / **Other** / Items #	Long / Med / Close		3rd Floor rooms across 45 office
109	Entry / Exit / **Other** / Items #	Long / Med / Close		3rd Floor rooms across 45 office
110	Entry / Exit / **Other** / Items #	Long / Med / Close		3rd Floor rooms across 45 office
111	Entry / Exit / **Other** / Items #	Long / Med / Close		3rd Floor rooms across 45 office
112	Entry / Exit / **Other** / Items #	Long / Med / Close		4th Floor door
113	Entry / Exit / **Other** / Items #	Long / Med / Close		4th Floor door
114	Entry / Exit / Other / Items #	Long / Med / Close		
115	Entry / Exit / Other / Items #	Long / Med / Close		
116	Entry / Exit / Other / Items #	Long / Med / Close		
117	Entry / Exit / Other / Items #	Long / Med / Close		
118	Entry / Exit / Other / Items #	Long / Med / Close		
119	Entry / Exit / Other / Items #	Long / Med / Close		
120	Entry / Exit / Other / Items #	Long / Med / Close		
121	Entry / Exit / Other / Items #	Long / Med / Close		
122	Entry / Exit / Other / Items #	Long / Med / Close		
123	Entry / Exit / Other / Items #	Long / Med / Close		
124	Entry / Exit / Other / Items #	Long / Med / Close		
125	Entry / Exit / Other / Items #	Long / Med / Close		

FD-674a (7-24-2017)

FBI

DATE 8 / 08 / 22

CASE ID [redacted]

PHOTOGRAPHER SA [redacted] FBI 24

LOCATION Mar-a-Lago (Residence)
1100 S Ocean Blvd
Palm Beach, FL 33480

FD-674a (7-24-2017)

ERT PHOTOGRAPHIC LOG

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GENERAL INFORMATION

LOCATION Mar-a-Lago (Residence), 1100 S. Ocean Blvd. Palm Beach, FL 33480

DATE 8/8/2022 CASE ID [redacted]

CAMERA TYPE Nikon D780 CARD # 1

PREPARER/PHOTOGRAPHER [redacted] FBI 16, 24

REMARKS

Photo #	Subject (Circle One)	Range	Use Scale	Description
1	Entry / Exit / Other / Items #	Long / Med / Close		Photo log
2	(Entry) / Exit / Other / Items #	Long / Med / Close		Front door exterior entry residence
3	(Entry) / Exit / Other / Items #	Long / Med / Close		Front door exterior entry residence
4	(Entry) / Exit / Other / Items #	Long / Med / Close		Front door exterior entry residence
5	(Entry) / Exit / Other / Items #	Long / Med / Close		Foyer Entrance
6	(Entry) / Exit / Other / Items #	Long / Med / Close		Foyer - Entrance
7	(Entry) / Exit / Other / Items #	Long / Med / Close		Foyer - Entrance
8	(Entry) / Exit / Other / Items #	Long / Med / Close		Foyer - Entrance
9	(Entry) / Exit / Other / Items #	Long / Med / Close		Foyer - Entrance
10	(Entry) / Exit / Other / Items #	Long / Med / Close		Foyer - Entrance
11	(Entry) / Exit / Other / Items #	Long / Med / Close		Foyer - Bedrooms
12	(Entry) / Exit / Other / Items #	Long / Med / Close		Foyer - Bedrooms
13	(Entry) / Exit / Other / Items #	Long / Med / Close		Foyer - Bedrooms
14	(Entry) / Exit / Other / Items #	Long / Med / Close		Foyer - Bedrooms
15	(Entry) / Exit / Other / Items #	Long / Med / Close		Former First Lady Master Bedroom Suite
16	(Entry) / Exit / Other / Items #	Long / Med / Close		Former First Lady Master Bedroom Suite
17	(Entry) / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
18	(Entry) / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
19	(Entry) / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
20	(Entry) / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
21	(Entry) / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite

FD-674a (7-24-2017)

ERT PHOTOGRAPHIC LOG

22	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
23	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
24	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
25	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
26	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
27	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
28	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
29	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady Master Bedroom suite
30	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
31	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
32	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
33	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
34	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
35	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
36	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
37	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
38	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
39	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
40	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
41	Entry / Exit / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
42	Entry / Exit / Other / Items #	Long / Med / Close		Former President's Bedroom suite
43	Entry / Exit / Other / Items #	Long / Med / Close		Former president's Bedroom suite
44	Entry / Exit / Other / Items #	Long / Med / Close		Former President's Bedroom suite
45	Entry / Exit / Other / Items #	Long / Med / Close		Former President's Bedroom suite
46	Entry / Exit / Other / Items #	Long / Med / Close		Former President's Bedroom suite
47	Entry / Exit / Other / Items #	Long / Med / Close		Former President's Bedroom suite

FD-674a (7-24-2017)

ERT PHOTOGRAPHIC LOG

48	Entry / Exit / Other / Items #	Long / Med / Close		Former President's Bedroom suite
49	Entry / Exit / Other / Items #	Long / Med / Close		Closet off Bedroom Foyer
50	Entry / Exit / Other / Items #	Long / Med / Close		Closet off Bedroom Foyer
51	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
52	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
53	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
54	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
55	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
56	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
57	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
58	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
59	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
60	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
61	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
62	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
63	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
64	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
65	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
66	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
67	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
68	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
69	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
70	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
71	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
72	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
73	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom

FD-674a (7-24-2017)

ERT PHOTOGRAPHIC LOG

74	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
75	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
76	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
77	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
78	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
79	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
80	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
81	Entry / Exit / Other / Items #	Long / Med / Close		Binder from Former First Lady's Bedroom
82	Entry / Exit / Other / Items #	Long / Med / Close		Entrance to lower level of residence
83	Entry / Exit / Other / Items #	Long / Med / Close		[illegible] Hall/stairway to lower level
84	Entry / Exit / Other / Items #	Long / Med / Close		Hall/stairway to lower level
85	Entry / Exit / Other / Items #	Long / Med / Close		Hall/stairway to lower level
86	Entry / Exit / Other / Items #	Long / Med / Close		Hall/stairway to lower level
87	Entry / Exit / Other / Items #	Long / Med / Close		Hall/stairway to lower level
88	Entry / Exit / Other / Items #	Long / Med / Close		Hall/stairway to lower level
89	Entry / Exit / Other / Items #	Long / Med / Close		Hallway lower level
90	Entry / Exit / Other / Items #	Long / Med / Close		Hallway lower level
91	Entry / Exit / Other / Items #	Long / Med / Close		Hallway lower level
92	Entry / Exit / Other / Items #	Long / Med / Close		storage room off Hallway
93	Entry / Exit / Other / Items #	Long / Med / Close		storage room off Hallway
94	Entry / Exit / Other / Items #	Long / Med / Close		AC closet
95	Entry / Exit / Other / Items #	Long / Med / Close		AC closet
96	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom [illegible] suite lower level
97	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
98	Entry / Exit / Other / Items #	Long / Med / Close		Child's bedroom suite lower level
99	Entry / Exit / Other / Items #	Long / Med / Close		Child's bedroom suite lower level

FD-674a (7-24-2017)

ERT PHOTOGRAPHIC LOG

100	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
101	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
102	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
103	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
104	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
105	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
106	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
107	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
108	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
109	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
110	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
111	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
112	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
113	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
114	Entry / Exit / Other / Items #	Long / Med / Close		Hallway
115	Entry / Exit / Other / Items #	Long / Med / Close		Gym
116	Entry / Exit / Other / Items #	Long / Med / Close		Gym
117	Entry / Exit / Other / Items #	Long / Med / Close		Gym
118	Entry / Exit / Other / Items #	Long / Med / Close		closet off Hallway
119	Entry / Exit / Other / Items #	Long / Med / Close		Kitchen
120	Entry / Exit / Other / Items #	Long / Med / Close		Kitchen
121	Entry / Exit / Other / Items #	Long / Med / Close		Kitchen
122	Entry / Exit / Other / Items #	Long / Med / Close		Hallway off Kitchen
123	Entry / Exit / Other / Items #	Long / Med / Close		Hallway off Kitchen
124	Entry / Exit / Other / Items #	Long / Med / Close		office
125	Entry / Exit / Other / Items #	Long / Med / Close		office

FD-674a (7-24-2017)

ERT PHOTOGRAPHIC LOG

126	Entry / Exit / Other / Items #	Long / Med / Close		office
127	Entry / Exit / Other / Items #	Long / Med / Close		office
128	Entry / Exit / Other / Items #	Long / Med / Close		AC closet
129	Entry / Exit / Other / Items #	Long / Med / Close		stairway to Master closet
130	Entry / Exit / Other / Items #	Long / Med / Close		Entrance way/Foyer to master closet
131	Entry / Exit / Other / Items #	Long / Med / Close		Master closet
132	Entry / Exit / Other / Items #	Long / Med / Close		Master closet
133	Entry / Exit / Other / Items #	Long / Med / Close		Master closet
134	Entry / Exit / Other / Items #	Long / Med / Close		Master closet
135	Entry / Exit / Other / Items #	Long / Med / Close		Master closet
136	Entry / Exit / Other / Items #	Long / Med / Close		Master closet
137	Entry / Exit / Other / Items #	Long / Med / Close		Master closet
138	Entry / Exit / Other / Items #	Long / Med / Close		Master closet
139	Entry / Exit / Other / Items #	Long / Med / Close		closet on Bottom of stairs lower lev
140	Entry / Exit / Other / Items #	Long / Med / Close		closet off Master closet
141	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
142	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
143	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
144	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
145	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
146	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
147	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
148	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
149	Entry / Exit / Other / Items #	Long / Med / Close		child's bedroom suite lower level
150	Entry / Exit / Other / Items #	Long / Med / Close		storage closet
151	Entry / Exit / Other / Items #	Long / Med / Close		AC closet

FD-674a (7-24-2017)

ERT PHOTOGRAPHIC LOG

152	Entry / (Exit) / Other / Items #	Long / Med / Close		Gym
153	Entry / (Exit) / Other / Items #	Long / Med / Close		Gym
154	Entry / (Exit) / Other / Items #	Long / Med / Close		Storage closet
155	Entry / (Exit) / Other / Items #	Long / Med / Close		Kitchen
156	Entry / (Exit) / Other / Items #	Long / Med / Close		Hallway outside office
157	Entry / (Exit) / Other / Items #	Long / Med / Close		Hallway outside office
158	Entry / (Exit) / Other / Items #	Long / Med / Close		office
159	Entry / (Exit) / Other / Items #	Long / Med / Close		office
160	Entry / (Exit) / Other / Items #	Long / Med / Close		Mechanical closet off office
161	Entry / (Exit) / Other / Items #	Long / Med / Close		closet on Bottom of stairs lower level
162	Entry / (Exit) / Other / Items #	Long / Med / Close		Master closet
163	Entry / (Exit) / Other / Items #	Long / Med / Close		Master closet
164	Entry / (Exit) / Other / Items #	Long / Med / Close		Master closet
165	Entry / (Exit) / Other / Items #	Long / Med / Close		Master closet
166	Entry / (Exit) / Other / Items #	Long / Med / Close		Master closet
167	Entry / (Exit) / Other / Items #	Long / Med / Close		Master closet
168	Entry / (Exit) / Other / Items #	Long / Med / Close		Stairway leading to master closet
169	Entry / (Exit) / Other / Items #	Long / Med / Close		Hall/stairway to upper level
170	Entry / (Exit) / Other / Items #	Long / Med / Close		Foyer - entrance
171	Entry / (Exit) / Other / Items #	Long / Med / Close		Foyer - entrance
172	Entry / (Exit) / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
173	Entry / (Exit) / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
174	Entry / (Exit) / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
175	Entry / (Exit) / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
176	Entry / (Exit) / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
177	Entry / (Exit) / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite

FD-674a (7-24-2017)

ERT PHOTOGRAPHIC LOG

178	Entry / (Exit) / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
179	Entry / (Exit) / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
180	Entry / (Exit) / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
181	Entry / (Exit) / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
182	Entry / (Exit) / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
183	Entry / (Exit) / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
184	Entry / (Exit) / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
185	Entry / (Exit) / Other / Items #	Long / Med / Close		Former First Lady master Bedrom suite
186	Entry / (Exit) / Other / Items #	Long / Med / Close		Former First Lady master Bedroom suite
187	Entry / (Exit) / Other / Items #	Long / Med / Close		Former President's Bedroom suite
188	Entry / (Exit) / Other / Items #	Long / Med / Close		Former President's Bedroom suite
189	Entry / (Exit) / Other / Items #	Long / Med / Close		Former President's Bedroom suite
190	Entry / (Exit) / Other / Items #	Long / Med / Close		Former President's Bedroom suite
191	Entry / (Exit) / Other / Items #	Long / Med / Close		Former President's Bedroom suite.
192	Entry / (Exit) / Other / Items #	Long / Med / Close		Former President's Bedroom Suite
193	Entry / (Exit) / Other / Items #	Long / Med / Close		Former President's Bedroom suite
194	Entry / (Exit) / Other / Items #	Long / Med / Close		Foyer - Bedrooms
195	Entry / (Exit) / Other / Items #	Long / Med / Close		Foyer - Bedrooms
196	Entry / (Exit) / Other / Items #	Long / Med / Close		storage closet of Foyer - Bedrooms
197	Entry / (Exit) / Other / Items #	Long / Med / Close		Foyer - Entrance
198	Entry / (Exit) / Other / Items #	Long / Med / Close		Foyer - Entrance
199	Entry / (Exit) / Other / Items #	Long / Med / Close		Foyer - Entrance
200	Entry / (Exit) / Other / Items #	Long / Med / Close		Foyer - Entrance
201	Entry / (Exit) / Other / Items #	Long / Med / Close		Front door exterior to residence.
202	Entry / Exit / Other / Items #	Long / Med / Close		
203	Entry / Exit / Other / Items #	Long / Med / Close		

EXHIBIT 6

Per. 53 @nara.gov>

E: [EXTERNAL] FYI re NARA & "Trump Boxes"

1 message

Bratt, Jay (NSD) @usdoj.gov> Wed, Feb 9, 2022 at 3:05 PM
To: Per. 53 @nara.gov>, "Amundson, Corey (CRM)" @usdoj.gov>
Cc: "Stern, GaryM" @nara.gov>

Thank you. We're meeting with the FBI shortly to discuss how they want to approach getting access to the records. I should have an update later.

Jay

From: Per. 53 @nara.gov>
Sent: Wednesday, February 9, 2022 3:02 PM
To: Amundson, Corey (CRM) @usdoj.gov>; Bratt, Jay (NSD) @usdoj.gov>
Cc: Stern, GaryM @nara.gov>
Subject: [EXTERNAL] FYI re NARA & "Trump Boxes"

Good afternoon. Gary and I wanted to be certain you were aware of the attached, which we just received.

Thanks,

P. 53

EXHIBIT 7

AO 110 (Rev. 06/09) Subpoena to Testify Before a Grand Jury

UNITED STATES DISTRICT COURT

for the

District of Columbia

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: Custodian of Records
The Office of Donald J. Trump
1100 South Ocean Blvd.
Palm Beach, FL 33480

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA U.S. Courthouse, 3rd Floor Grand Jury #21-09 333 Constitution Avenue, N.W. Washington, D.C. 20001	Date and Time: May 24, 2022 9:00 a.m.

You must also bring with you the following documents, electronically stored information, or objects:

Any and all documents or writings in the custody or control of Donald J. Trump and/or the Office of Donald J. Trump bearing classification markings, including but not limited to the following: Top Secret, Secret, Confidential, Top Secret/SI-G/NOFORN/ORCON, Top Secret/SI-G/NOFORN, Top Secret/HCS-O/NOFORN/ORCON, Top Secret/HCS-O/NOFORN, Top Secret/HCS-P/NOFORN/ORCON, Top Secret/HCS-P/NOFORN, Top Secret/TK/NOFORN/ORCON, Top Secret/TK/NOFORN, Secret/NOFORN, Confidential/NOFORN, TS, TS/SAP, TS/SI-G/NF/OC, TS/SI-G/NF, TS/HCS-O/NF/OC, TS/HCS-O/NF, TS/HCS-P/NF/OC, TS/HCS-P/NF, TS/HCS-P/SI-G, TS/HCS-P/SI/TK, TS/TK/NF/OC, TS/TK/NF, S/NF, S/FRD, S/NATO, S/SI, C, and C/NF.

Date: May 11, 2022

The name, address, telephone number and email of the prosecutor who requests this subpoena are:

Jay I. Bratt
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
@usdoj.gov

Subpoena #GJ2022042790054

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

P. 18 GJ-000055

CO 293 (Rev. 8/91) Subpoena to Testify Before Grand Jury

RETURN OF SERVICE (1)		
RECEIVED BY SERVER	DATE	PLACE
SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		
SERVED BY (PRINT NAME)		TITLE

STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER (2)

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on ______________________
Date

____
Signature of Server

____
Address of Server

ADDITIONAL INFORMATION

(1) As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.
(2) "Fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal rules of Civil Procedure; Rule 17(d), Federal Rules of Criminal Procedure) or on behalf of
certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rule 17(b) Federal Rules of Criminal Procedure)".

Subpoena #GJ2022042790054

U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, D.C. 20530

May 11, 2022

Per. 18

Re: Grand Jury Subpoena

Dear Per. 18:

Thank you for agreeing to accept service of the grand jury subpoena on behalf of the custodian of records for the Office of Donald J. Trump.

As we discussed, in lieu of personally appearing on May 24, the custodian may comply with the subpoena by providing any responsive documents to the FBI at the place of their location. The FBI will ensure that the agents retrieving the documents have the proper clearances and will handle the materials in the appropriate manner. The custodian would also provide a sworn certification that the documents represent all responsive records. If there are no responsive documents, the custodian would provide a sworn certification to that effect.

Thank you again for your cooperation.

Very truly yours,

Jay I. Bratt
Chief
Counterintelligence and Export Control Section

@usdoj.gov

EXHIBIT 8

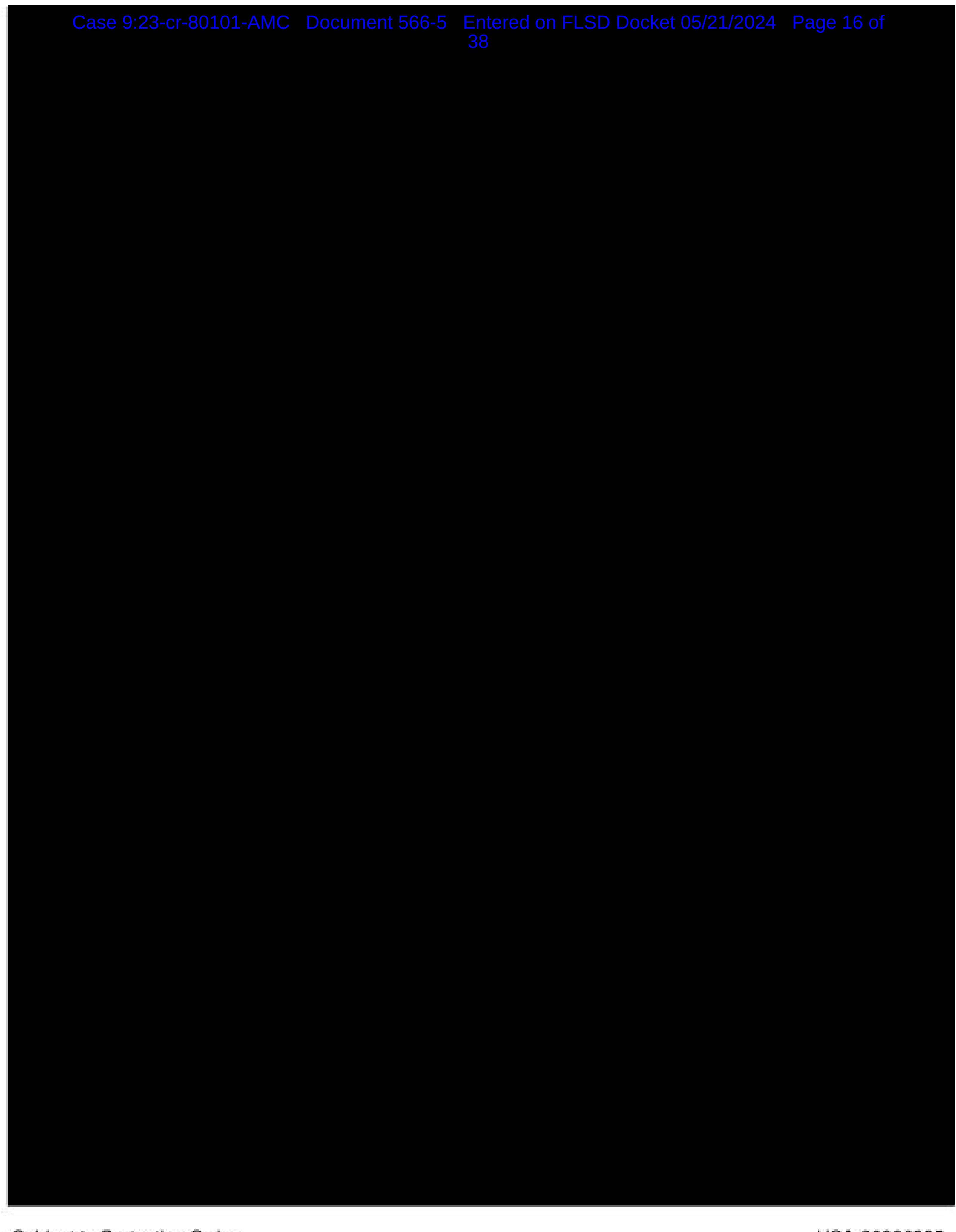


EXHIBIT 9

FD-302 (Rev. 5-8-10)

This Redacted Version Only

FEDERAL BUREAU OF INVESTIGATION

Date of entry 06/13/2022

On June 3, 2022, Per. 18, date of birth , Per. 18, with cellular phone number , was interviewed at Mar-a-Lago (MAL), 1100 South Ocean Boulevard, Palm Beach, Florida, 33480, by Federal Bureau of Investigation (FBI) Special Agent (SA) FBI 9, SA FBI 11, SA FBI 39, and Department of Justice Chief of Counterintelligence and Export Control Section (CES) Attorney Jay Bratt. Also present was Per. 12 for the Office of Donald J. Trump. After being advised of the identity of the interviewing Agents and Attorney, and the nature of the interview, Per. 18 provided the following information responsive to Grand Jury Subpoena (GJS) GJ2022042790054 request for classified records:

[AGENT NOTE: The FBI Agents and DOJ Attorney met with United States Secret Service (USSS) N/A prior to the approach to MAL in order for N/A to review the FBI and DOJ personnel credentials. N/A explained the advance review would facilitate a smooth entry into MAL, especially in light of imminent planned Protectee movement. N/A then escorted FBI and DOJ personnel onto the MAL premises. A vehicle motorcade was staged at the MAL front entrance. The FBI Agents and DOJ Attorney were escorted past the motorcade and through the main entrance of MAL, into the dining room to the right of the living room. Per. 18 and Per. 12 were seated at the far corner table in the dining room.]

Per. 18 introduced his colleague, Per. 12, as the designated Per. 12 for the Office of Donald J. Trump. On the table between Per. 12 and Per. 18 was a single Redwell envelope, completely wrapped and sealed in clear tape. Per. 12 provided the GJS certification with her signature on the bottom of the page. Per. 12 . Per. 12 does not currently maintain a security clearance, but previously held a Top Secret clearance

20471231

Investigation on 06/03/2022 at Palm Beach, Florida, United States (In Person)

File # Date drafted 06/08/2022

by FBI 11, 9, 39

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

when she worked for the Department of Homeland Security (DHS).

Former President Donald J. TRUMP entered the MAL dining room and greeted the Agents and Attorney. TRUMP advised there was very good security at MAL. TRUMP stated he wanted to be open and transparent and that he was "an open book," and there for whatever the FBI needed. TRUMP thanked the DOJ and FBI for their good work prior to departing the dining room.

Per. 18 certified all the records that came from the White House were stored in one location in MAL, in a basement storage room. The boxes of records in the basement storage room were "the remaining repository" of records from the White House. It had taken several [unnamed] staff members "most of a day" to review "all available boxes" and pull out anything that had a classification marking. Per. 18 described it as "a laborious, lengthy and dirty process." . The boxes were not marked on the outside. Any documents with classification markings were separated, maintained with their original clips or envelopes, and were not read by the staff. Per. 18 would not identify the personnel that conducted the review, and took full responsibility for the process.

There were no records in any private office space or other location in MAL, and all available boxes were searched.

No personnel at MAL currently maintain a security clearance. There is no current Sensitive Compartmented Information Facility (SCIF) at MAL, nor was there previously a permanent SCIF during the Trump Administration.

Counter to advisement from Per. 18 TRUMP gave his authorization to allow the FBI to view the basement storage space in MAL. The FBI Agents and DOJ Attorney were escorted by Per. 18 Per. 12 and USSS Agents, to include N/A and others unidentified, to a storage room located in the basement of MAL. The group was led out of the MAL dining room through the living room, outside to the pool area, and through a door to the right, into a part of the building referred to as the "Cloisters."

The group walked down a narrow, spiral staircase past a kitchen, water coolers stacked against a wall, and a hallway filled with tables, chairs and other furniture. In a central storage area with several closed doors, there was a painted gold door with a short, wooden staircase leading up to it. Beyond the gold door was a small storage room, approximately 5' wide and 12' long, which contained approximately 50 to 55 boxes, a garment rack with suits and clothes, a guitar case, large gold frames, and other assorted

items. The boxes on the long wall adjacent to the door were a mix of predominantly brown boxes, a few white and blue banker boxes, and at least one blue plastic bin. The boxes reached approximately halfway up the wall. The only visible box with writing on the outside was labeled, "ties." There were barely visible boxes on the other wall behind the clothes rack. There was also a number of boxes along the short wall adjacent to the entry door.

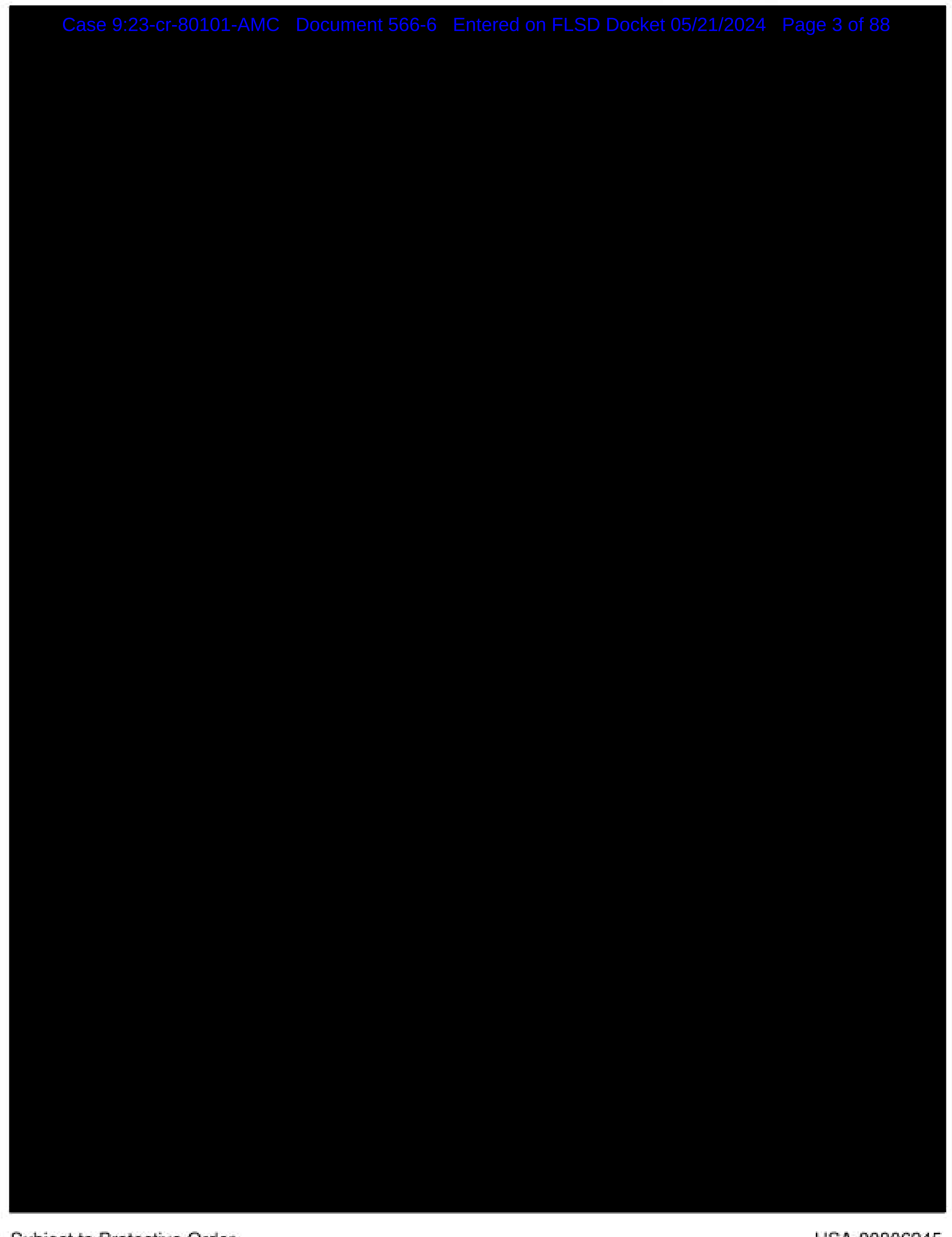
Per. 18 would not allow the FBI Agents to handle the boxes or view inside the boxes. The storage room door had a standard key lock, but Per. 12 advised the area was very secure due to the presence of USSS.

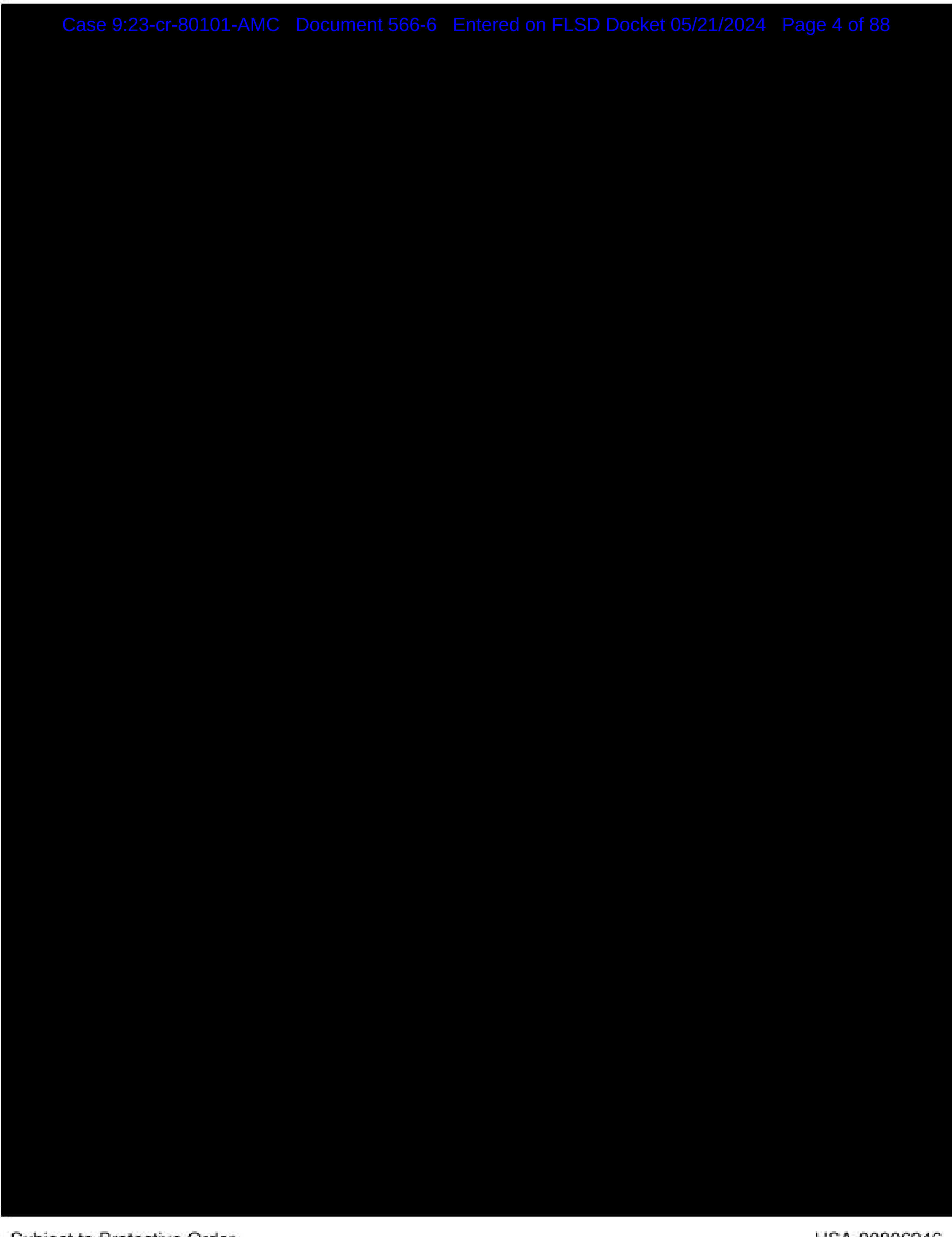
[Agent Note: FBI Agents noted several security cameras in the basement area but none inside the storage room or directly outside the storage room.]

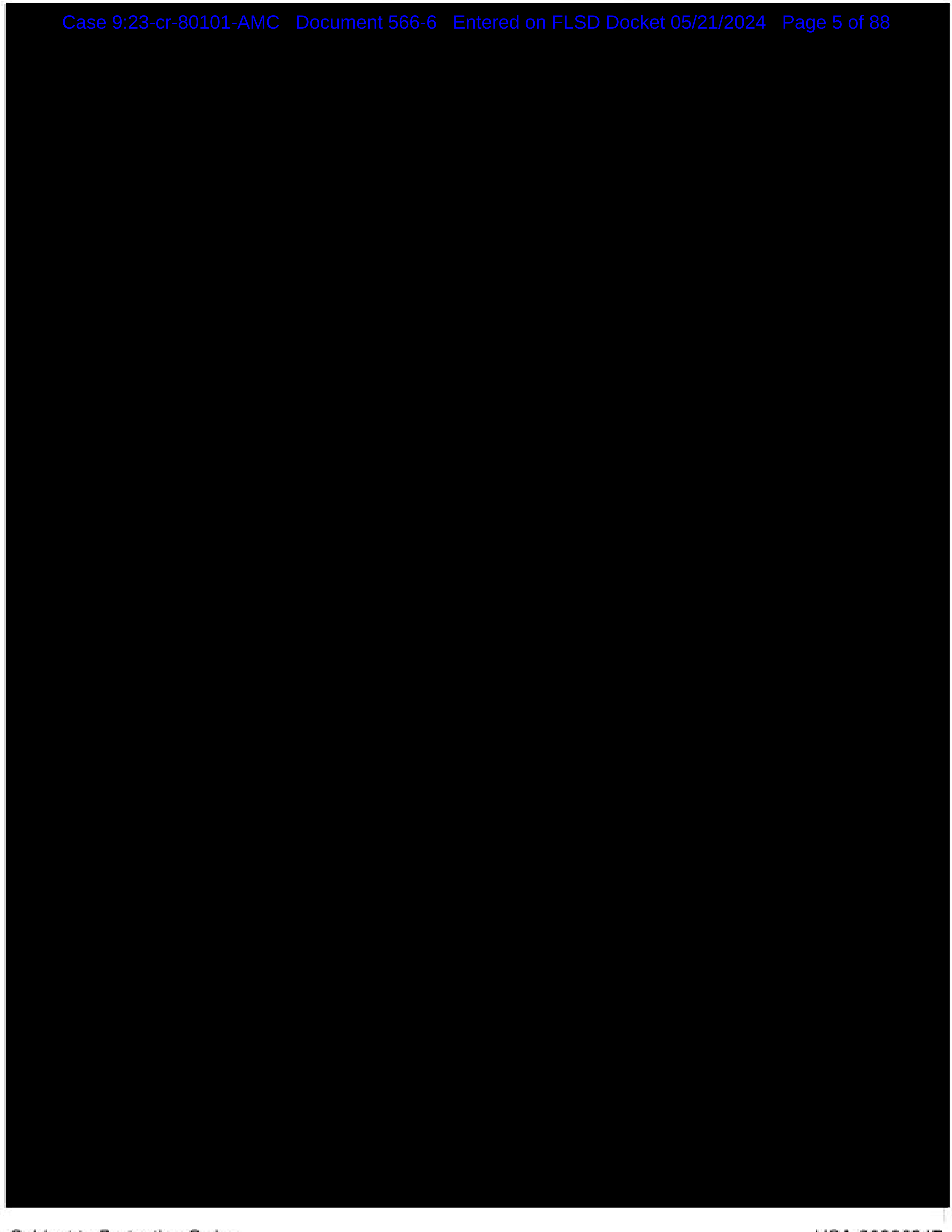
Per. 18 was unaware of records at any other properties, but advised he would be willing to inquire specifically about the Bedminster location.

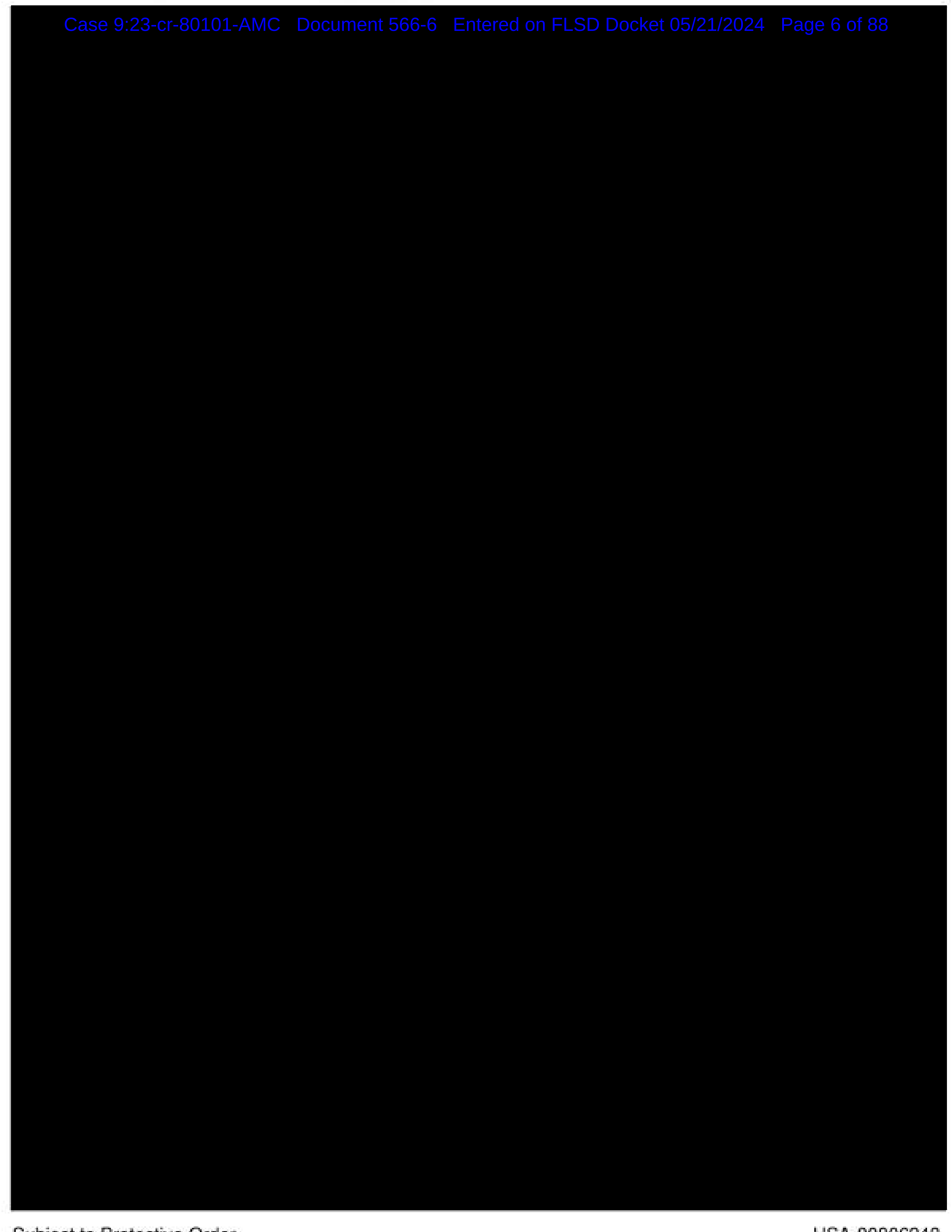
Original Agent notes taken during the interview will be maintained in the attached 1A. The GJS return and certification will be documented via separate communication.

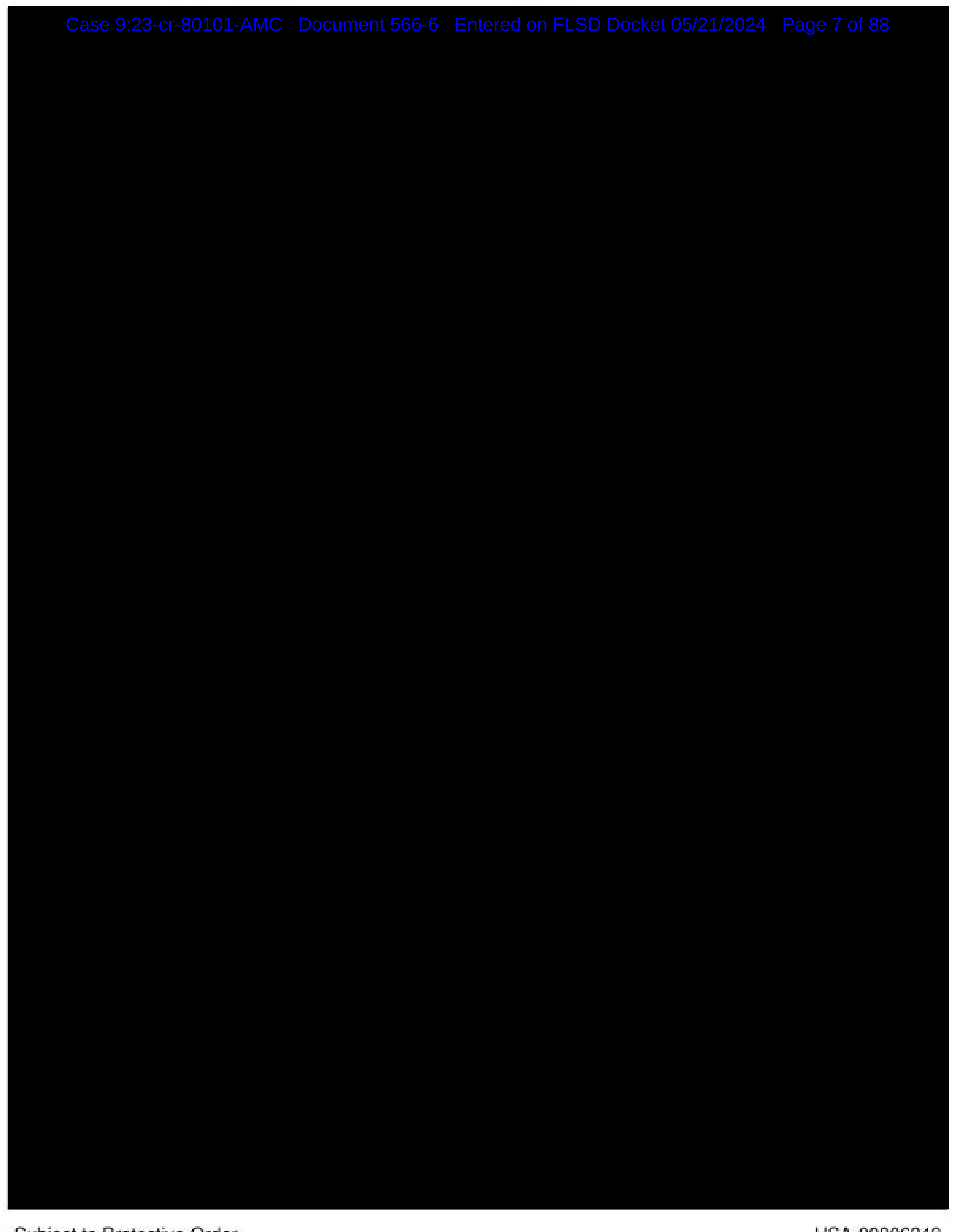
EXHIBIT 10

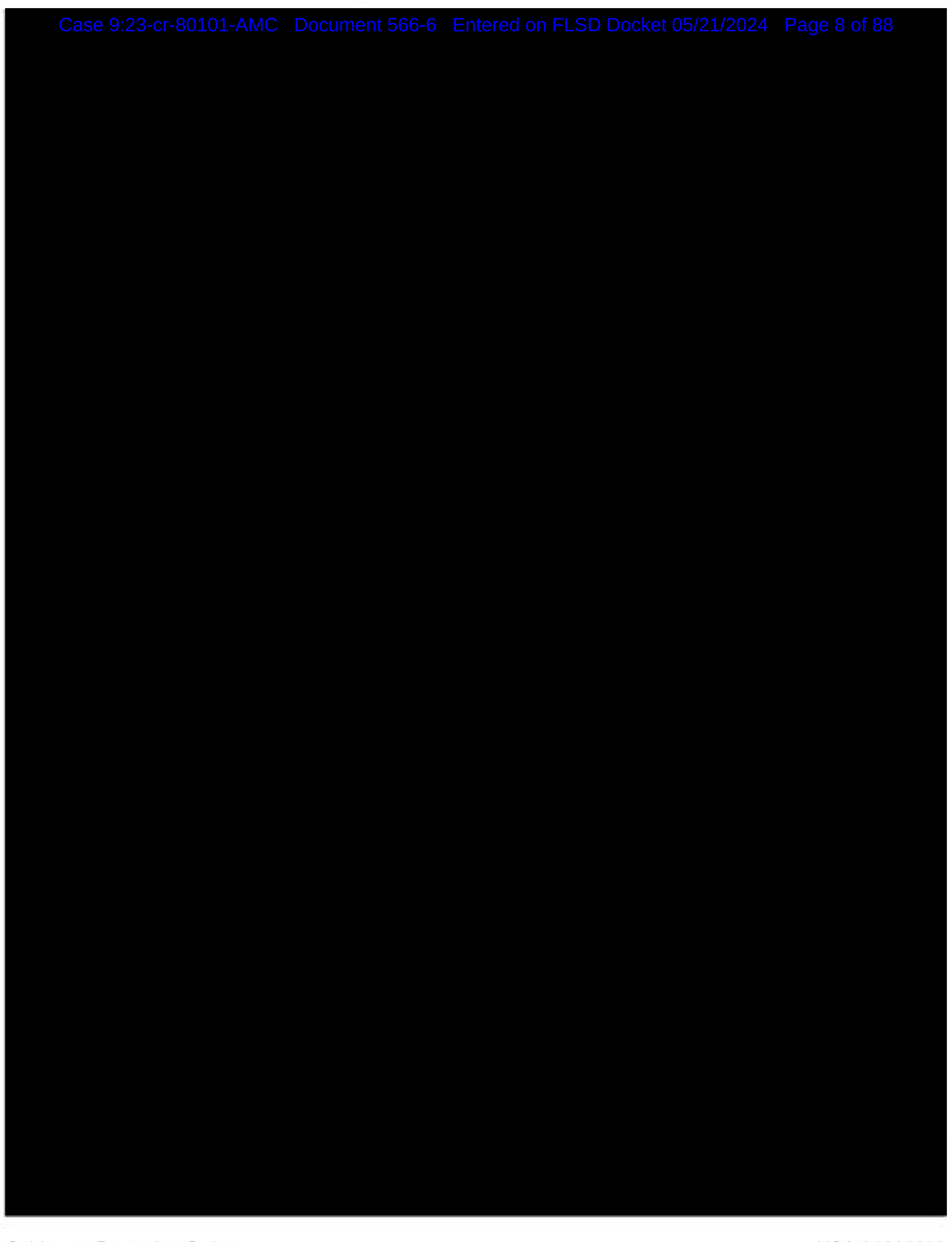


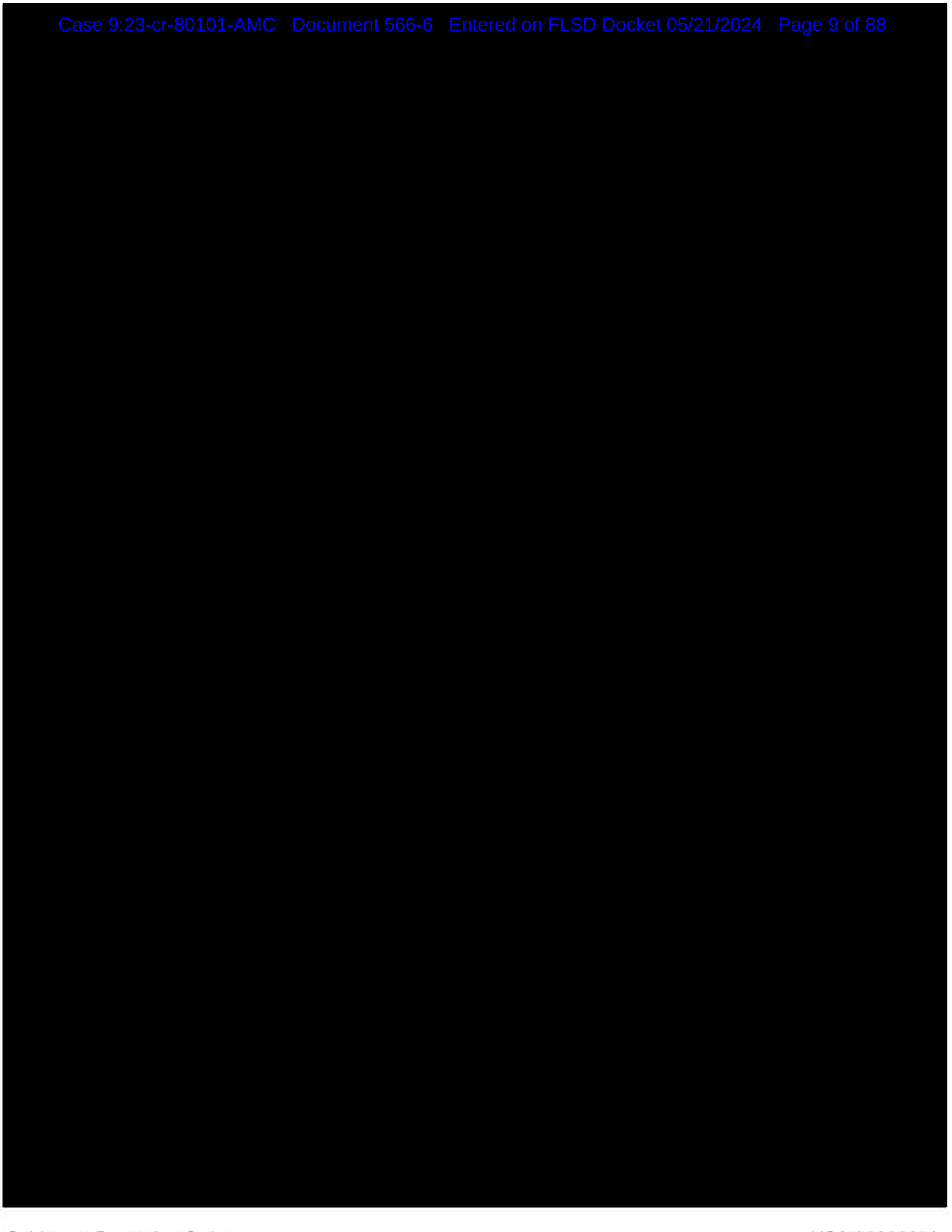


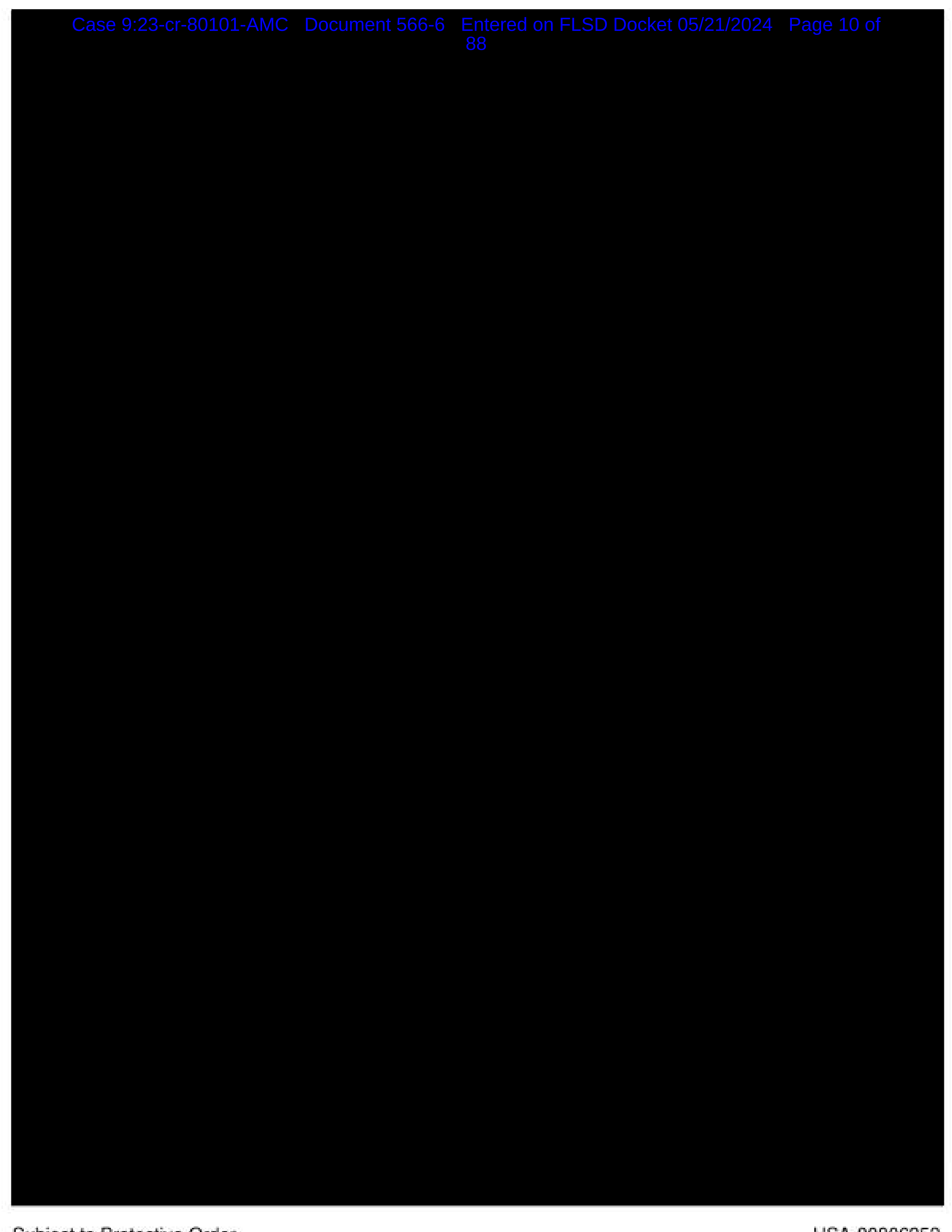












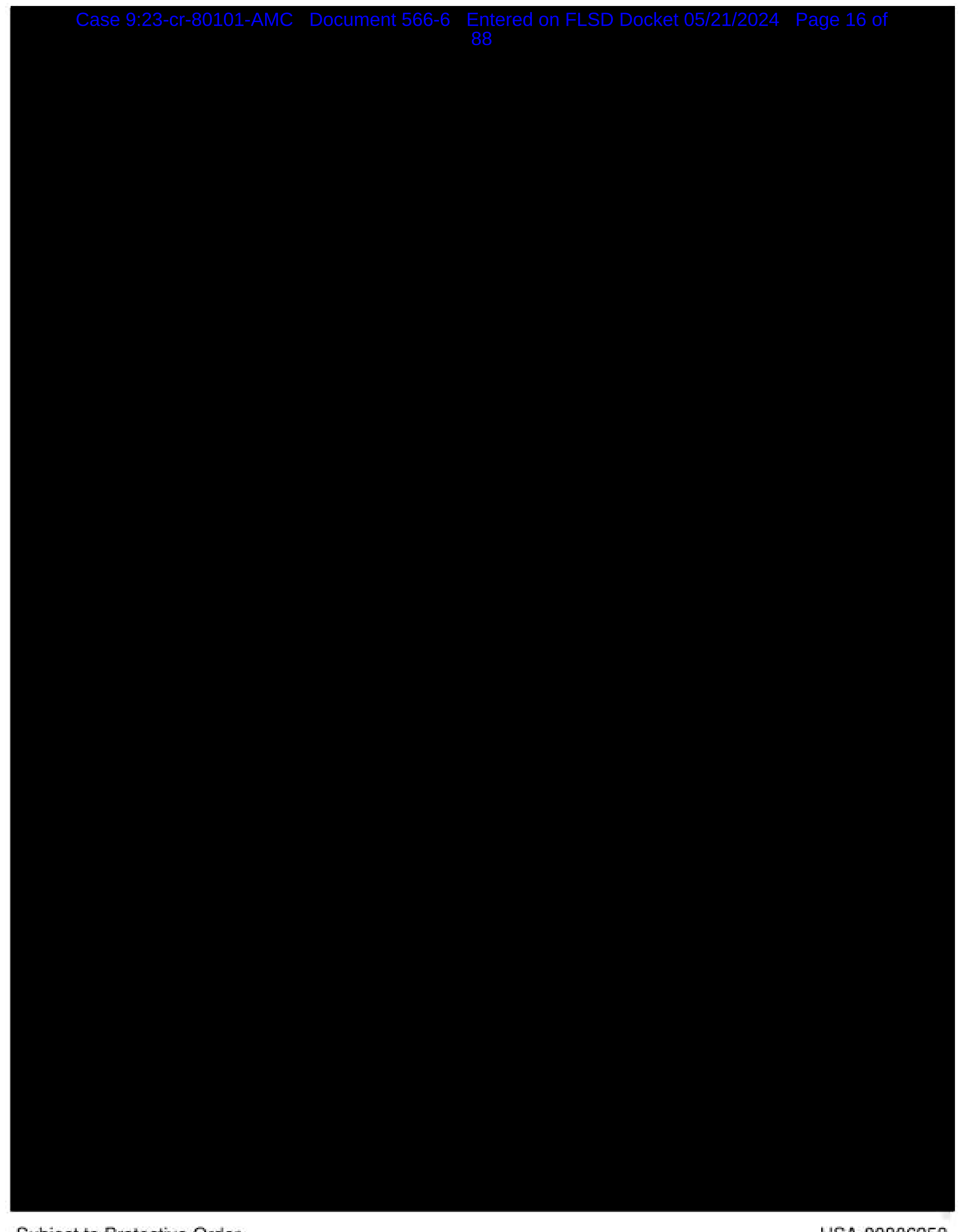
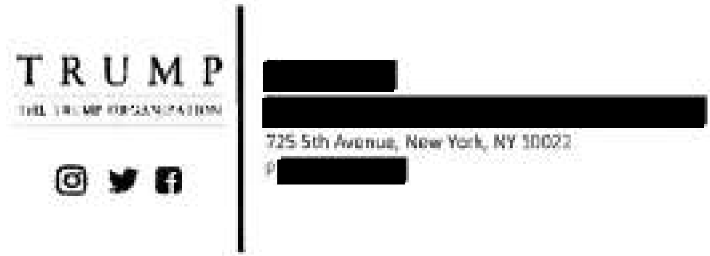


EXHIBIT 11

From: [redacted]
To: Per. 18
Cc: [redacted]
Subject: FW: Subpoena for Video Footage
Date: Wednesday, June 22, 2022 11:46:34 AM
Attachments: image002.png
image003.png
image004.png
Trump Organization GJS.pdf

Per. 18 – Please see below and attached and let me know your thoughts. Thanks. [redacted]



From: Bratt, Jay (NSD) [mailto[redacted]@usdoj.gov]
Sent: Wednesday, June 22, 2022 11:38 AM
To: [redacted]@trumporg.com
Cc: Edelstein, Julie (NSD) <[redacted]@usdoj.gov>; Reynolds, Brett (NSD) [redacted]
Subject: Subpoena for Video Footage

[redacted]

Thank you for returning my call. Attached is a draft of the subpoena. I am also copying my two colleagues on this matter, Julie Edelstein and Brett Reynolds. I look forward to discussing this with you further.

Jay

Jay I. Bratt
Chief
Counterintelligence and Export Control
Section
National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
[redacted]
[redacted]@usdoj.gov

AO 110 (Rev. 06/09) Subpoena to Testify Before a Grand Jury

UNITED STATES DISTRICT COURT

for the

District of Columbia

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: Custodian of Records
The Trump Organization
725 Fifth Avenue
New York, NY 10022

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA U.S. Courthouse, 2nd Floor Grand Jury # 22-03 333 Constitution Avenue, N.W. Washington, D.C. 20001	Date and Time: Thursday, June 30, 2022 at 9:00 AM

You must also bring with you the following documents, electronically stored information, or objects:

Any and all surveillance records, videos, images, photographs and/or CCTV from internal cameras located on ground floor (basement) and outside the room known as "Pine Hall" on the Mar-a-Lago property located at 1100 S Ocean Blvd. Palm Beach, FL 33480 from the time period of January 10, 2022 to present.

Date: June 22, 2022

CLERK OF COURT

[signature]

Signature of Clerk or Deputy Clerk

The name, address, telephone number and email of the prosecutor who requests this subpoena are:

Jay I. Bratt, Chief
Counterintelligence and Export Control Section
National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
[redacted]
[redacted]@usdoj.gov

Subpoena

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

P. 18 PRIV-030

CO 293 (Rev. 8/91) Subpoena to Testify Before Grand Jury

RETURN OF SERVICE [1]		
RECEIVED BY SERVER	DATE	PLACE
SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		
SERVED BY (PRINT NAME)		TITLE

STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER [2]

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on ______________________
Date

____
Signature of Server

____
Address of Server

ADDITIONAL INFORMATION

[1] As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.

[2] "Fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal rules of Civil Procedure; Rule 17(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rule 17(b) Federal Rules of Criminal Procedure)".

EXHIBIT 12

AO 110 (Rev. 06/09) Subpoena to Testify Before a Grand Jury

UNITED STATES DISTRICT COURT

for the

District of Columbia

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: Per. 18

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA U.S. Courthouse, 2nd Floor Grand Jury # 22-06 333 Constitution Avenue, N.W. Washington, D.C. 20001	Date and Time: Tuesday, December 8, 2022 at 9:00 AM

In addition to appearing in order to provide testimony, you must also bring with you the documents, electronically stored information, and objects listed in Attachment A. You may make arrangements to provide any such documents in advance by contacting the attorney listed below.

Date: November 21, 2022

CLERK OF COURT

[signature]

Signature of Clerk or Deputy Clerk

The name, address, telephone number and email of the prosecutor who requests this subpoena are:

Julie A. Edelstein, Deputy Chief
Counterintelligence and Export Control Section
National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
[redacted]@usdoj.gov

Subpoena 42-17

CO 293 (Rev. 8/81) Subpoena to Testify Before Grand Jury

RETURN OF SERVICE (1)			
RECEIVED BY SERVER	DATE	PLACE	
SERVED	DATE	PLACE	
SERVED ON (PRINT NAME)			
SERVED BY (PRINT NAME)			TITLE

STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER (2)

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on ______________________
Date

____
Signature of Server

____
Address of Server

ADDITIONAL INFORMATION

(1) As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.
(2) "Fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal rules of Civil Procedure; Rule 17(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rule 17(b) Federal Rules of Criminal Procedure)".

Attachment A

List of Documents, Information, and Objects Subpoenaed by Grand Jury

- Any and all documents or communications providing instructions or guidance to you related to compliance with the May 11 Subpoena, including but not limited to the location(s) that should be searched (or not searched) in response to the Subpoena and the criteria for determining a responsive document.

- Any and all documents or communications related to your search of the basement storage room at Mar-a-Lago.

- Any and all documents or communications with [REDACTED] Per. 12 [REDACTED] [REDACTED], or with any other person concerning Per. 12 [REDACTED] selection and role as custodian of records.

- Any and all billing records and records reflecting payments received related to your work pertaining to compliance by the custodian of records for the Office of Donald J. Trump with the May 11 Subpoena.

The time period for this request is May 11, 2022, until August 1, 2022.

This subpoena does not call for the production of documents protected by a valid claim of privilege, although any document over which privilege is being asserted must be preserved. Any documents withheld on grounds of privilege must be identified on a privilege log with descriptions sufficient to identify their dates, authors, recipients, and general subject matter.

EXHIBIT 13

Grand Jury Subpoena dated November 21, 2022

Privilege Log

Date	Author(s)	Recipient(s)	CC	General Subject Matter	Privilege Asserted
Undated	Per. 18			Attorney notes regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
Undated	Per. 18			Attorney notes regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
Undated	Per. 18 n			Attorney notes regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
Undated	Per. 18			Attorney notes regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
Undated		Jay Bratt		Draft correspondence regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
Undated	Per. 18			Draft document regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/11/22	Alternately Per. 18 Per. 18 and	Alternately Per. 18 Per. 18 and		Screenshot of text message exchange regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

Date	Author(s)	Recipient(s)	CC	General Subject Matter	Privilege Asserted
5/11/22 – 5/23/22	Per. 18			Attorney notes regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/12/22 5/16/22	Alternately Per. 18 Per. 18 and [redacted]	Alternately Per. 18 Per. 18 and [redacted]		Screenshot of text message exchange regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/12/22	Alternately Per. 18 Per. 18 and [redacted]	Alternately Per. 18 Per. 18 and [redacted]		Screenshot of text message exchange regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/13/22	Per. 18	[redacted]		Email with attachments regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/13/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/13/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

Date	Author(s)	Recipient(s)	CC	General Subject Matter	Privilege Asserted
5/16/22 5/17/22	Alternately Per. 18 Per. 18 and	Alternately Per. 18 Per. 18 and		Screenshot of text message exchange regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/17/22 5/18/22	Alternately Per. 18 Per. 18 and	Alternately Per. 18 Per. 18 and		Screenshot of text message exchange regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/20/22	Per. 18			Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/20/22		Per. 18		Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/22/22		Per. 18		Email with attachments regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/22/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/22/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

Date	Author(s)	Recipient(s)	CC	General Subject Matter	Privilege Asserted
5/22/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/22/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/22/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/23/22		Per. 18		Email regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/23/22 5/24/22	Alternately Per. 18 Per. 18 and Per. 5	Alternately Per. 18 Per. 18 and Per. 5		Screenshot of text message exchange regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/24/22				Attorney notes regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/25/22	Alternately Per. 18 Per. 18 and Per. 5	Alternately Per. 18 Per. 18 and Per. 5		Screenshot of text message exchange regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

Date	Author(s)	Recipient(s)	CC	General Subject Matter	Privilege Asserted
5/25/22	Per. 18	Jay Bratt	Matthew G. Olsen	Draft letter regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/25/22	Per. 18	Jay Bratt		Draft letter regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/25/22	[redacted]	Per. 18		Email chain with attachments regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/25/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/25/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/25/22	[redacted]	Per. 18		Email chain with attachments regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/25/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

Date	Author(s)	Recipient(s)	CC	General Subject Matter	Privilege Asserted
5/25/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/25/22	Per. 18			Email with attachments regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/25/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/25/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/25/22	Per. 18			Email with attachments regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/25/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/25/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

Date	Author(s)	Recipient(s)	CC	General Subject Matter	Privilege Asserted
5/25/22	Per. 18	Per. 64	[redacted]	Email with attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/25/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/25/22	Per. 18	Per. 64	[redacted]	Email with attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/25/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication
5/25/22	Per. 64	Per. 18	[redacted]	Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/25/22	Per. 18	Per. 64		Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

Date	Author(s)	Recipient(s)	CC	General Subject Matter	Privilege Asserted
5/25/22		Per. 18		Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
5/25/22	Per. 18		Per. 64	Email with attachments regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/25/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/25/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/25/22		Per. 18	Per. 64	Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/26/22	Alternately Per. 18 Per. 18 and Per. 5	Alternately Per. 18 Per. 18 and Per. 5		Screenshot of text message exchange regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

Date	Author(s)	Recipient(s)	CC	General Subject Matter	Privilege Asserted
5/26/22	Alternately Per. 18 Per. 18 and Per. 5	Alternately Per. 18 Per. 18 and Per. 5		Screenshot of text message exchange regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
5/26/22	Per. 18	Per. 5		Email chain with attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication
5/26/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication
5/26/22	Per. 18	Per. 5		Email chain with attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication
5/26/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication
6/2/22 to 6/3/22	Alternately Per. 18 Per. 18 and Per. 12	Alternately Per. 18 Per. 18 and Per. 12		Screenshot of text message exchange regarding representation of President Trump in connection with the May 11 Subpoena, Per. 12 role as custodian of records for the Office of Donald J. Trump	Attorney-Client Communication Attorney Work Product

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

Date	Author(s)	Recipient(s)	CC	General Subject Matter	Privilege Asserted
6/3/22	Alternately Per. 18 Per. 18 and Per. 12	Alternately Per. 18 Per. 18 and Per. 12		Screenshot of text message exchange regarding representation of President Trump in connection with the May 11 Subpoena, Per. 12 role as custodian of records for the Office of Donald J. Trump	Attorney-Client Communication Attorney Work Product
6/3/22, 6/29/22	Alternately Per. 18 Per. 18 and Per. 12	Alternately Per. 18 Per. 18 and Per. 12		Screenshot of text message exchange regarding representation of President Trump in connection with the May 11 Subpoena, Per. 12 role as custodian of records for the Office of Donald J. Trump	Attorney-Client Communication Attorney Work Product
6/3/22	Per. 18	Per. 12		Email with attachment regarding representation of President Trump in connection with the May 11 Subpoena, Per. 12 role as custodian of records for the Office of Donald J. Trump	Attorney-Client Communication Attorney Work Product
6/3/22	Per. 18	Per. 12		Email attachment regarding representation of President Trump in connection with the May 11 Subpoena, Per. 12 role as custodian of records for the Office of Donald J. Trump	Attorney-Client Communication Attorney Work Product

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

Date	Author(s)	Recipient(s)	CC	General Subject Matter	Privilege Asserted
6/3/22	Per. 18	Per. 12		Email with attachment regarding representation of President Trump in connection with the May 11 Subpoena, Per. 12 role as custodian of records for the Office of Donald J. Trump	Attorney-Client Communication Attorney Work Product
6/3/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena, Per. 12 role as custodian of records for the Office of Donald J. Trump	Attorney-Client Communication Attorney Work Product
6/3/22	Per. 18	Per. 12		Email with attachment regarding representation of President Trump in connection with the May 11 Subpoena, Per. 12 role as custodian of records for the Office of Donald J. Trump	Attorney-Client Communication Attorney Work Product
6/3/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena, Per. 12 role as custodian of records for the Office of Donald J. Trump	Attorney-Client Communication Attorney Work Product
June 2022	Per. 18			Attorney notes regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

Date	Author(s)	Recipient(s)	CC	General Subject Matter	Privilege Asserted
6/6/22	Per. 18	[redacted] [redacted]		Email chain with attachments regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
6/6/22				Email attachment regarding billing records related to representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
6/6/22				Email attachment regarding billing records related to representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
6/6/22	[redacted]	Per. 18	[redacted]	Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
6/6/22	[redacted]	Per. 18		Email with attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
6/6/22				Email attachment regarding billing records related to representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
6/6/22	[redacted]	Per. 18		Email with attachments regarding billing records related to representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

Date	Author(s)	Recipient(s)	CC	General Subject Matter	Privilege Asserted
6/6/22				Email attachment regarding billing records related to representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
6/6/22				Email attachment regarding billing records related to representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
6/6/22	[redacted]	President J. Trump & Save America PAC		Draft invoice regarding billing records related to representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
6/9/22	Per. 18	[redacted]		Email chain with attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
6/9/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product
6/22/22	[redacted]	Per. 18	[redacted]	Email chain with attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

Date	Author(s)	Recipient(s)	CC	General Subject Matter	Privilege Asserted
6/22/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication
6/22/22	Per. 18			Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication
6/23/33		Per. 18		Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication
6/23/22		Per. 18		Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
6/24/22	Per. 18			Email regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
6/24/22		Per. 18		Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
6/24/22	Per. 18			Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

Date	Author(s)	Recipient(s)	CC	General Subject Matter	Privilege Asserted
6/24/22	[redacted]	Per. 18	[redacted]	Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
6/26/22	[redacted]	Per. 18	[redacted]	Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
6/28/22	[redacted]	Per. 18	[redacted]	Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
6/28/22	Per. 18	[redacted], [redacted]		Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
6/29/22	Alternately Per. 18 Per. 18 and Per. 12	Alternately Per. 18 Per. 18 and Per. 12		Screenshot of text message exchange regarding representation of President Trump in connection with the May 11 Subpoena, Per. 12 role as custodian of records for the Office of Donald J. Trump	Attorney-Client Communication Attorney Work Product

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

Date	Author(s)	Recipient(s)	CC	General Subject Matter	Privilege Asserted
6/30/22	Per. 18	[redacted]		Email chain with attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
6/30/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
6/30/22	[redacted]	Per. 18		Email with attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
6/30/22				Email attachment regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
6/30/22	[redacted]	Per. 18		Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication
6/30/22	Per. 18	[redacted]		Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication
7/1/22	Per. 18			Attorney notes regarding representation of President Trump in connection with the May 11 Subpoena	Attorney Work Product

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

Date	Author(s)	Recipient(s)	CC	General Subject Matter	Privilege Asserted
7/1/22	[redacted]	Per. 18		Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
7/6/22	[redacted]	Per. 29	Per. 18 Per. 18	Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
7/7/22	Per. 29	[redacted]	Per. 18 Per. 18	Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
7/7/22	[redacted]	Per. 29 Per. 18		Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
7/7/22	[redacted]	Per. 29	Per. 18 Per. 18	Email chain regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product
7/30/22	Alternately Per. 18 Per. 18 and Walt Nauta	Alternately Per. 18 Per. 18 and Walt Nauta		Screenshot of text message exchange regarding representation of President Trump in connection with the May 11 Subpoena	Attorney-Client Communication Attorney Work Product

Fed. R. Crim. P. 6(e) Materials
Confidential Treatment Requested

EXHIBIT 14

AO 110 (Rev. 06/09) Subpoena to Testify Before a Grand Jury

UNITED STATES DISTRICT COURT
for the
District of Columbia

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: [redacted]

YOU ARE COMMANDED to appear in this United States District Court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA U.S. Courthouse, 2nd Floor Grand Jury # 22-06 333 Constitution Avenue, N.W. Washington, D.C. 20001	Date and Time: February 9, 2023 9:00 a.m.

In addition to appearing in order to provide testimony, you must also bring with you the documents, electronically stored information, and objects listed in Attachment A. You may make arrangements to provide any such documents in advance by contacting the attorney listed below.

Date: January 25, 2023

CLERK OF COURT

Signature of Clerk or Deputy Clerk

The name, address, telephone number and email of the prosecutor who requests this subpoena are:

David V. Harbach, II
Special Counsel's Office
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Rm. B-206
Washington, D.C. 20530
[redacted]@usdoj.gov

Subpoena 42-69

CO 293 (Rev. 8/91) Subpoena to Testify Before Grand Jury

RETURN OF SERVICE [1]		
RECEIVED BY SERVER	DATE	PLACE
SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		
SERVED BY (PRINT NAME)		TITLE

STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER [2]

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on ______________________
Date

____
Signature of Server

____
Address of Server

ADDITIONAL INFORMATION

[1] As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.

[2] "Fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal rules of Civil Procedure; Rule 17(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rule 17(b) Federal Rules of Criminal Procedure)".

Attachment A

List of Documents, Information, and Objects Subpoenaed by Grand Jury

- Any and all documents or communications related to the location or potential location of documents responsive to the subpoena served by the Department of Justice on the Office of Donald J. Trump on May 11, 2022 (the "May 11 Subpoena").

- Any and all documents or communications providing instructions or guidance from former President Trump or others to you and/or Per. 18 related to compliance with the May 11 Subpoena, including but not limited to the location(s) that should be searched (or not searched) in response to the May 11 Subpoena and the criteria for determining a responsive document.

- Any and all documents or communications related to Per. 18's search of the basement storage room at Mar-a-Lago for documents responsive to the May 11 Subpoena.

- Any and all documents or communications with Per. 12 concerning Per. 12 selection and role as Per. 12, or with any other person concerning Per. 12's selection and role as custodian of records.

The time period for this request is May 11, 2022, until August 1, 2022.

This subpoena does not call for the production of documents protected by a valid claim of privilege, although any document over which privilege is being asserted must be preserved. Any documents withheld on grounds of privilege must be identified on a privilege log with descriptions sufficient to identify their dates, authors, recipients, and general subject matter.

EXHIBIT 15

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

IN RE GRAND JURY SUBPOENA GJ 42-17 and GJ 42-69	)	**CASE NO. 23-gj-______**
	)	
	)	**UNDER SEAL AND EX PARTE**
	)	
	)	**GRAND JURY NO. 22-06**

UNITED STATES' EX PARTE MEMORANDUM
IN SUPPORT OF MOTION TO COMPEL

A grand jury in this district is investigating whether former President Donald J. Trump orchestrated a scheme to hide from the government and the grand jury documents with classification markings that he unlawfully retained after the conclusion of his presidency. The government has developed proof that the former President misled his attorneys about the quantity and location of documents that he retained, and caused one of those attorneys, Per. 18, to draft and provide to the government a certification falsely claiming compliance with a grand jury subpoena commanding the production of all documents with classification markings in the former President's possession or the possession of his post-presidency office.

The grand jury subpoenaed Per. 18 and [redacted]—attorneys for the former President and his post-presidential office (the Office of Donald J. Trump)—to appear and answer questions and produce documents about the steps that they and others took on behalf of the former President or his post-presidency office to comply with the grand jury subpoena. Per. 18 appeared before the grand jury and withheld testimony and documents about those topics—including testimony about the information Per. 18 received from the former President regarding his

retention of documents from his presidency and their location—on the ground that the testimony and documents should be kept secret under the attorney-client and work-product privileges. [redacted] has confirmed through [redacted] attorney that [redacted] would also withhold testimony based on the attorney-client and work-product privileges.

The former President cannot shield Per. 18's and [redacted]'s testimony and documents from disclosure to the grand jury on privilege grounds. Even assuming the testimony and documents withheld by Per. 18 and [redacted] otherwise meet the requirements for the attorney-client or work-product privileges, they are non-privileged under the crime-fraud exception. The government accordingly moves this Court for an order compelling Per. 18 and [redacted] to appear before the grand jury and provide the withheld testimony. The Court should also direct Per. 18 to provide to the Court for *in camera* review the withheld documents that he listed in a privilege log he provided to the government, and the Court should order Per. 18 to produce any non-privileged documents.[1] A proposed order is attached.

BACKGROUND

A. Former President Trump Stores Dozens of Document-Filled Boxes at Mar-a-Lago that He Had Used as an Informal Filing System During His Presidency

According to multiple witnesses, during his presidency, President Donald J. Trump had a practice of using boxes—typically the type of filing boxes known as

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[1] The subpoena issued to [redacted] has a return date of February 9, 2023, and if [redacted] ultimately withholds documents on or before that date, the government expects to file a short supplement to this motion requesting that the Court order the production of those documents for *in camera* review as well.

"bankers boxes"—to accumulate and store records in an informal filing system. *See* Exhibit 1 (Search Warrant Aff.) ¶¶ 26-31. He preferred to handle paper documents and retain hard copies of documents to review at his convenience, and it was his practice to use the boxes to store collected documents—which included both unclassified documents, such as schedules, newspapers, and memoranda, as well as documents bearing classification markings. *Id.* at ¶ 28. By the end of his presidency, he had accumulated dozens of these boxes in the White House. *See id.* ¶ 32.

Around the end of his presidency in January 2021, approximately 85 to 95 of these boxes were removed from the White House and transported to Mar-a-Lago, the former President's residence in Palm Beach, Florida. *See id.* ¶¶ 30-33; *see also id.* ¶ 32 (media photo of the move out of the White House in January 2021 showing boxes being loaded onto Marine One during the former President's departure). The former President instructed his staff to find a permanent location to store the boxes at Mar-a-Lago, and the boxes were eventually placed in a storage room on the ground floor in a hallway with other offices and storage spaces. *See id.* at ¶¶ 33-37. Also kept in the storage room were boxes containing other material such as challenge coins and memorabilia. *See id.* at ¶ 36.

B. The Former President Provides Fifteen of the Boxes to NARA But Knows There are Far More

The Presidential Records Act of 1978 makes presidential records the property of the United States and gives the Archivist of the United States responsibility to take custody and control of presidential records after the conclusion of a President's term of office. 44 U.S.C. § 2203; *see Trump v. United States*, 54 F.4th 689, 694 (11th

Cir. 2022) (per curiam). Throughout 2021, the United States National Archives and Records Administration ("NARA") had ongoing communications with representatives of former President Trump in which it sought the transfer of what it perceived were missing records from his administration. *See* Letter from David S. Ferriero, Archivist of the United States, to the Hon. Carolyn B. Maloney, at 1 (Feb. 18, 2022), *available at* https://www.archives.gov/files/foia/ferriero-response-to-02.09.2022-maloney-letter.02.18.2022.pdf; Letter from Debra Steidel Wall, Acting Archivist of the United States, to Evan Corcoran, at 1 (May 10, 2022), *available at* https://www.archives.gov/files/foia/wall-letter-to-evan-corcoran-re-trump-boxes-05.10.2022.pdf ("Wall Letter"); *see also* Exhibit 1 ¶¶ 25, 39.

After NARA pressed for months for the provision of missing records, the former President wanted to review boxes of documents before providing them to NARA. Exhibit 1 ¶ 39. From as early as November 2021 through January 17, 2022, employees carried boxes from the storage room to the former President for his review, retrieving about two to four boxes at a time and leaving them in the vestibule of the former President's personal residential suite at Mar-a-Lago. *Id.* at ¶¶ 39-42; Exhibit 2 (Nauta-Per. 34 Texts).[2] The employees selected boxes based on their proximity to the storage room door. Exhibit 1 ¶ 42. After the employees brought about 15 to 17 boxes to the former President, he instructed them to stop, telling them, "that's it." *Id.*

[2] The warrant affidavit stated that this process occurred during approximately January 1 to 17, 2022, but the government has since learned that the process commenced as early as November 2021.

On January 17, 2022, employees carried 15 boxes from the vestibule of the former President's personal residential suite and handed them over to a NARA contract driver. *Id.* at ¶ 41. The former President indicated to his staff that the 15 boxes were the only boxes that would be going to NARA and "there [were] no more." *Id.* at ¶ 43. The former President instructed an employee to tell one of his lawyers that there were no more boxes at Mar-a-Lago. *Id.* at ¶ 44. The former President knew, however, there were many more boxes in the storage room; employees provided him with a photograph of the boxes in the storage room in November 2021, when he was reviewing boxes before providing them to NARA, for the purpose of showing him the volume of boxes that remained. Exhibit 2; Exhibit 1 ¶ 46 (attaching photo). About 70 to 80 boxes remained after the 15 boxes were removed from the storage room to provide to NARA. Exhibit 1 ¶ 45.

C. NARA Finds Classified Documents in the Fifteen Boxes and Notifies the Department of Justice

"In its initial review of materials within those boxes, NARA identified items marked as classified national security information, up to the level of Top Secret and including Sensitive Compartmented Information and Special Access Program materials." Wall Letter at 1. NARA informed the Department of Justice, explaining that its preliminary review indicated that the 15 boxes contained "newspapers, magazines, printed news articles, photos, miscellaneous print-outs, notes, presidential correspondence, personal and post-presidential records, and a lot of classified records," and "[o]f most significant concern was that highly classified

records were unfoldered, intermixed with other records, and otherwise unproperly *[sic]* identified." Exhibit 1 ¶ 24 (internal quotation marks omitted).

The Department of Justice sought access to the 15 boxes through the procedures in the Presidential Records Act, both to conduct a criminal investigation and to "conduct an assessment of the potential damage resulting from the apparent manner in which these materials were stored and transported and take any necessary remedial steps." Wall Letter at 1-2 (quoting letter from Department of Justice to former President's counsel). The former President sought to delay the Department's access and prevent access by claiming executive privilege. *Id.* at 2-4. NARA eventually rejected those efforts, noting that with respect to the former President's attempt to assert executive privilege to prevent others within the Executive Branch from reviewing the documents, its decision was "not a close one." *Id.* at 3. NARA accordingly informed counsel for the former President that it would provide the Department with access to the records beginning as early as May 12, 2022. *Id.* at 4. The former President did not seek legal relief. *See* 44 U.S.C. § 2204(e) ("The United States District Court for the District of Columbia shall have jurisdiction over any action initiated by the former President asserting that a determination made by the Archivist violates the former President's rights or privileges.").

D. A Grand Jury Issues a Subpoena for the Return of Any Additional Documents with Classification Markings in the Possession of the Former President or His Office

The government had concerns that additional documents with classification markings were in the possession of the former President or his post-presidential

office, and on May 11, 2022, a grand jury in this district issued a subpoena directed to the custodian of records for the Office of Donald J. Trump. Exhibit 3 at 1 (May 11 Grand Jury Subpoena).[3] The subpoena requested "[a]ny and all documents or writings in the custody or control of Donald J. Trump and/or the Office of Donald J. Trump bearing classification markings [list of classification markings]." *Id.* The former President's counsel, Per. 18, accepted service of the subpoena via email on May 11, accompanied by a letter to Per. 18 stating that "the custodian may comply with the subpoena by providing any responsive documents to the FBI at the place of their location" and by providing a "sworn certification that the documents represent all responsive records." Exhibit 4 at 1 (5/11/22 Bratt Letter). The subpoena had a return date of May 24, 2022, which was later adjourned to June 7, 2022, by consent of the government. Exhibit 5 at 2 (6/2/22 Bratt Letter).

E. Per. 18 Collects Documents from the Storage Room to Respond to the Subpoena

According to Per. 18 he represented "President Trump, or the Office of President Donald J. Trump," Exhibit 6 at 13 (Per. 18 Grand Jury Tr.), for purposes of responding to the subpoena, *id.* at 21-22, and while he was lead counsel, he worked with two other lawyers on the matter, [redacted] and Per. 5 [redacted], *id.* at 27-28. Per. 18 spoke to the former President on the day he

[3] According to its own description, the former President's post-presidential office, the Office of Donald J. Trump, "is an organization made up of a small number of staff who assist President Trump." Memorandum Opinion, *In re Grand Jury Subpoena*, 22-gj-40, ECF No. 16, at 27 (D.D.C. Nov. 9, 2022) (internal quotation marks omitted).

received the subpoena (May 11), *id.* at 30, 32, [REDACTED] [REDACTED], *id.* at 37-39, 47, 51. Security footage from Mar-a-Lago shows that on the day before the May 23 meeting, the former President's "body man," Walt Nauta, removed one of the boxes from the storage room.[4] [REDACTED] [REDACTED] [REDACTED]. The next day, on May 24, the former President's assistant emailed the United States Secret Service and the former President's staff that the former President's departure date from Mar-a-Lago to Bedminster, New Jersey, for the summer was changed from May 28 to June 5. Exhibit 8 (Per. 34 Email); *see* Exhibit 7 (Nauta Interview Tr.) at 54 (testifying that the departure date was delayed), Exhibit 9 (Per. 10 Interview Tr.) at 47-48 (same).[5]

[REDACTED]

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[4] According to Nauta, if the former President "needs something," "then [he's] there," Exhibit 7 (Nauta Interview Tr.) at 7, and he accompanies the former President "about 95 percent of the time," *id.* at 11.; *see* Exhibit 6 at 81.

[5] The former President ultimately left Mar-a-Lago on June 3, 2022. *See* Exhibit 10 (Per. 12 Grand Jury Tr.) at 123, 128.

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[redacted]

[redacted].

Security footage from Mar-a-Lago shows that between Per. 18's meeting with the former President on May 23 and his return on June 2 to conduct a review for responsive documents, Walt Nauta—the former President's "body man" and perhaps "closest assistant" who is with the former President "all [the] time" and "accompanies [him] everywhere"—removed approximately 64 boxes from the storage room but brought only 25 to 30 boxes back to the room. Exhibit 1 ¶ 66; Exhibit 6 at 81.[6] The substantial box movement began on May 24, 2022, the day following Per. 18 and [redacted]'s meeting with the former President. That day, Nauta removed three boxes. Exhibit 1 ¶ 66. On May 30, 2022, four days after Nauta submitted to a voluntary interview with the FBI during which the location of boxes at Mar-a-Lago was a significant subject of questioning,[7] and within an hour after

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[6] The government obtained footage from a security camera at Mar-a-Lago that recorded entry and exit into a room that leads to the storage room. Exhibit 1 ¶ 65.

[7] The FBI interviewed Nauta on May 26, 2022, asking him multiple questions about the 15 boxes provided to NARA, where those boxes had been stored at Mar-a-Lago, who moved them to the vestibule of the former President's residence, and whether any other boxes were stored at Mar-a-Lago. *See, e.g.*, Exhibit 7 at 24 (Question: "[I]s there any other place [other than the vestibule of the former President's residence] that the President could have kept boxes?" Answer: "Not—not to my knowledge."); *id.* at 25 (Question: "Okay, but as far as you know no rooms have held or did hold like boxes similar to what you brought, brought onto the truck [to NARA]." Answer: "As far as I know, no."); *id.* at 27 ("If we wanted to find out, hey are there like, were these boxes stored somewhere, like who would be the person to—to ask about?" Answer: "I wouldn't know."); *id.* at 37 (Question: "We were talking about a year, so can—can you guess where they [the 15 boxes] could have been or where they could have come from?" Answer: "I don't want to guess. I

Nauta spoke on the phone with the former President,[8] he began removing approximately 50 bankers boxes. *Id.* The former President instructed Nauta to put the boxes in his residence, where he (the former President) intended to "pick from them." Exhibit 11 (Nauta-Per. 30 Texts).[9] Two days later, on June 1, 2022, Nauta carried eleven brown cardboard boxes out of the storage room; one box did not have a lid on it and appeared to contain papers. Exhibit 1 ¶ 66. Nauta and a Mar-a-Lago employee (Carlos de Oliveira) then moved approximately 25 to 30 boxes—bankers boxes and brown cardboard boxes—back into the storage room from the former President's residential suite on June 2, 2022. *Id.*; Exhibit 12 (de Oliveira Grand Jury Tr.) at 52-55, 66-68.[10]

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just, I just, my answer is I don't know."); *id.* at 38 (Question: "But even within Mar-a-Lago . . . [i]s there a place where boxes could be stored?" Answer: "There's many storage units that I haven't, you know that I assume that I haven't even, that could be places that aren't even storage units that I . . . You know? There's a lot of doors on Mar-a-Lago."); *id.* at 41 (Question: "So, you . . . had no idea how they [the 15 boxes] got there [in the vestibule of the former President's residence] before?" Answer: "No.").

[8] Phone toll records show that Nauta and the former President had a phone call lasting about 30 seconds at 9:08 a.m. on May 30, 2022, and the former President had a phone call with Per. 5 that lasted over two minutes at 9:29 a.m. on May 30. The time stamp from security footage at Mar-a-Lago shows that Nauta started moving the boxes from the storage room at 9:54 a.m. that day.

[9] When the former President's Per. 30 complained to Nauta that there would not be enough room on the plane for the boxes when they left Mar-a-Lago by plane for Bedminster on June 3, Nauta responded that it was his understanding that the former President "wanted to pick from them" and did not "want[] to take the boxes." Exhibit 11.

[10] Per. 18 talked to the former President by phone the day before, on June 1, 2022. Exhibit 6 at 66.

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Per. 18 arrived at Mar-a-Lago a few hours after Nauta and de Oliveira had moved boxes—a smaller set than Nauta had previously removed—into the storage room on June 2. Exhibit 1 ¶ 66; Exhibit 6 at 77; Exhibit 12 at 52-55. After Per. 18 met with the former President for about ten minutes at approximately 3 p.m., Nauta escorted Per. 18 to the storage room. Exhibit 6 at 77-78, 85.

F. The Former President's Representatives Obtain a Certification from a Custodian with No Personal Knowledge

That same evening, June 2, 2022, Per. 5 called Per. 12 and asked Per. 12 to be at Mar-a-Lago the next morning. Exhibit 10 (Per. 12 Jury Tr.) at 19-21, 25. Per. 12 , when Per. 12 left for work in television. *Id.* at 12. The former President then hired Per. 12 Per. 12 where, according to Per. 12 Per. 12 "report[ed] to" and "work[ed] for" the former President. *Id.* at 8-9.

Per. 5—whom Per. 12 described as an Per. 5 —told Per. 12 that there was an open matter in Washington, D.C., and that "we," which Per. 12 understood to mean Per. 5 and Save America, had hired Per. 18 to handle the matter. *Id.* at 19-21, 25, 28-29, 31-32. Per. 5 told Per. 12 that Per. 18 had handled everything—a search had been conducted, the search for responsive documents had been completed, and responsive documents had been collected. *Id.* at 20-21, 25, 35. Per. 5 said that Per. 12 did not need to do anything but that "we" (Per. 5 and Save America) needed someone on site at Mar-a-Lago to meet with the FBI the next morning—even though Per. 18 was already there. *Id.* at 19-21, 25, 32-33, 35. Per. 12 agreed, despite Per. 12 lack of any prior knowledge of the subpoena or the location of documents responsive to the subpoena. *Id.* at 6-11, 18-19. According to Per. 12 it was during this conversation with Per. 5 that Per. 12 was "designated" to serve as the custodian of

records. *Id.* at 19. Per. 5 then connected Per. 18 and Per. 12 by text. *Id.* at 25, 36.

[11]

G. Per. 18 and Per. 12 Provide the False Certification to the Government

[redacted]

[redacted].

Per. 18 and Per. 12 met with three FBI agents and an attorney from the Department of Justice (Jay Bratt) and turned over the certification and the Redweld containing the documents. *See* Exhibit 1 ¶ 55. The certification signed by Per. 12 (and drafted by Per. 18 stated that "[b]ased upon the information that has been provided to me, I am authorized to certify, on behalf of the Office of Donald J. Trump," that "[a] diligent search was conducted of the boxes that were moved from the White House to Florida," the search was conducted "in order to locate any and all documents that are responsive to the subpoena," and "[a]ny and all responsive documents accompany this certification." Exhibit 13 (Per. 12 Certification) at 1.

At the meeting, Per. 18 stated that the documents in the Redweld had been found during a review of the boxes located in Mar-a-Lago's basement storage room. Exhibit 1 ¶ 55; *see* Exhibit 6 at 172 (recollecting that he told Bratt that the storage room was the place searched "because that was the place where responsive documents would be found" since "that's where the boxes from the White House ended up"). Per. 18 stated that he had been advised that all the records that came from the White House were stored in the basement storage room at Mar-a-Lago, which comprised the "remaining repository" of records from the White House. Exhibit 1 ¶ 56.

The former President joined the meeting for a few minutes before leaving to fly to Bedminster for the summer. Exhibit 10 at 118-21, 123, 128; Exhibit 6 at 164-

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65. The former President indicated that he wanted to be cooperative with the FBI. Exhibit 10 at 118-19. After the former President left, Mr. Bratt asked if he and the agents could look at the storage room. Exhibit 6 at 166. Per. 18 responded that he would not let them look in the storage room if it were up to him, but the former President had instructed him to allow it. Exhibit 10 at 122; Exhibit 6 at 166. Per. 18 let Mr. Bratt and the agents observe the storage room but instructed them not to look inside the boxes. Exhibit 6 at 166-67, 175-76; Exhibit 10 at 123. The agents observed approximately 50-55 boxes. Exhibit 1 ¶ 56. Per. 18 estimated [redacted]. Exhibit 6 at 95.

Once in a secure government setting, the FBI conducted a review of the documents contained in the Redweld. That review revealed 38 unique documents bearing classification markings, most of which were marked SECRET or TOP SECRET. The FBI agents further observed markings reflecting sensitive compartments and dissemination controls.

H. Nauta Travels to Mar-a-Lago Shortly After Per. 18 and the Former President Speak on June 24

On June 24, the grand jury issued a subpoena to the Trump Organization for security-camera footage from Mar-a-Lago. Exhibit 14 (Trump Org. Subpoena). Mr. Bratt had discussed the subpoena with the Trump Organization's [redacted] [redacted] on June 22 and emailed Garten a draft of the subpoena. Exhibit 15 (Bratt-[redacted] Email). According to the privilege log Per. 18 has provided to the government, [redacted] emailed Per. 18 that day (June 22). Exhibit 16 (Per. 18

Privilege Log) at 13-14.[12] And on June 23, Per. 18 emailed with Nauta and an assistant to the former President to set up a ten-minute call with the former President for the following day. Exhibit 17 (Per. 34 - Per. 18 -Nauta Emails). According to toll records, on June 24, the former President and Per. 18 spoke on the phone beginning at 1:25 p.m. for nearly nine minutes.

At the time, Nauta was scheduled to travel with the former President the following day to a rally in Illinois, but after the phone call between the former President and Per. 18 Nauta instead booked a flight to Florida. *See* Exhibit 18 (Nauta Illinois Travel Email); Exhibit 19 (Nauta Flight to Palm Beach Email). Nauta told others that he was rearranging his plans because of a family emergency, but he described the trip has work-related when seeking reimbursement for the travel. *See* Exhibit 20 (Nauta-[redacted] Texts); Exhibit 21 (Nauta-Per. 15 Texts); Exhibit 22 (Nauta-[redacted] Texts).

Around 4:10 p.m. the following day (June 25), Nauta texted de Oliveira that he had just landed in Florida, and he asked de Oliveira to meet him at Mar-a-Lago around 5:15 p.m. Exhibit 23 (Nauta-de Oliveira Texts). Security footage from Mar-a-Lago shows Nauta and de Oliveira entering the area near the storage room for about 30-45 seconds at around 5:50 p.m.[13]

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[12] June 22 is the earliest date of any communication between [redacted] and Per. 18 listed on the privilege log, and according to the log, Per. 18 and [redacted] continued to communicate through July 7. Exhibit 16 at 13-17.

[13] Nauta had testified before the grand jury four days earlier (before the government received the video footage showing Nauta moving boxes out of and into the storage room between May 22 and June 2, 2022), and the movement of boxes

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I. The Government Obtains and Executes a Warrant to Search Mar-a-Lago and Finds Over 100 Documents Bearing Classification Markings

Through further investigation, the government uncovered multiple sources of evidence indicating that the response to the May 11 grand jury subpoena was incomplete and that classified documents remained at Mar-a-Lago, notwithstanding the sworn certification made to the government on June 3. Among other things, the government obtained the security footage from Mar-a-Lago showing that in the days leading up to Per. 18's review for responsive documents, approximately 64 boxes had been removed from the storage room but only 25 to 30 boxes had been returned.

On August 5, 2022, the government applied in the Southern District of Florida for a warrant to search certain areas of Mar-a-Lago. A magistrate judge approved the warrant after finding probable cause that evidence of three crimes—willful retention of national defense information (18 U.S.C. § 793), concealment or removal of government records (18 U.S.C. § 2071), and obstruction of a federal investigation (18 U.S.C. § 1519)—would be found at Mar-a-Lago. Exhibit 1 at 4.

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and the storage room were significant subjects of questioning. When asked to identify the occasions on which he had entered the storage room after October 2021, Nauta testified that "a lot of times" he would store "shirts, and hats, [and] stickers" in the storage room at the former President's behest. Exhibit 24 (Nauta Grand Jury Tr.) at 39. When asked if he had removed anything from the storage room at any time, he testified that "recently"—which, in context, referred to "within the last month" prior to his testimony on June 21, 2022—he had removed a box of "challenge coins" from the storage room that he took to the former President's office. *Id.* at 35-42; Exhibit 1 ¶¶ 68-69. He did not mention the movement of boxes during the prior month.

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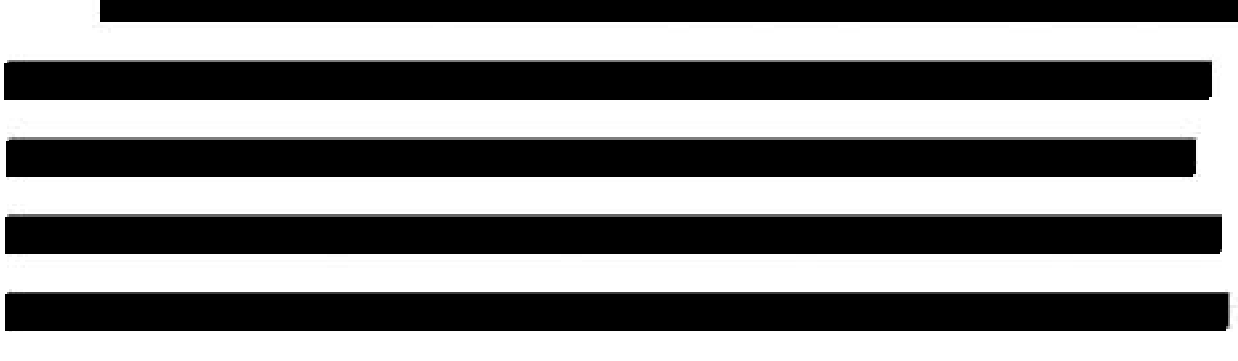
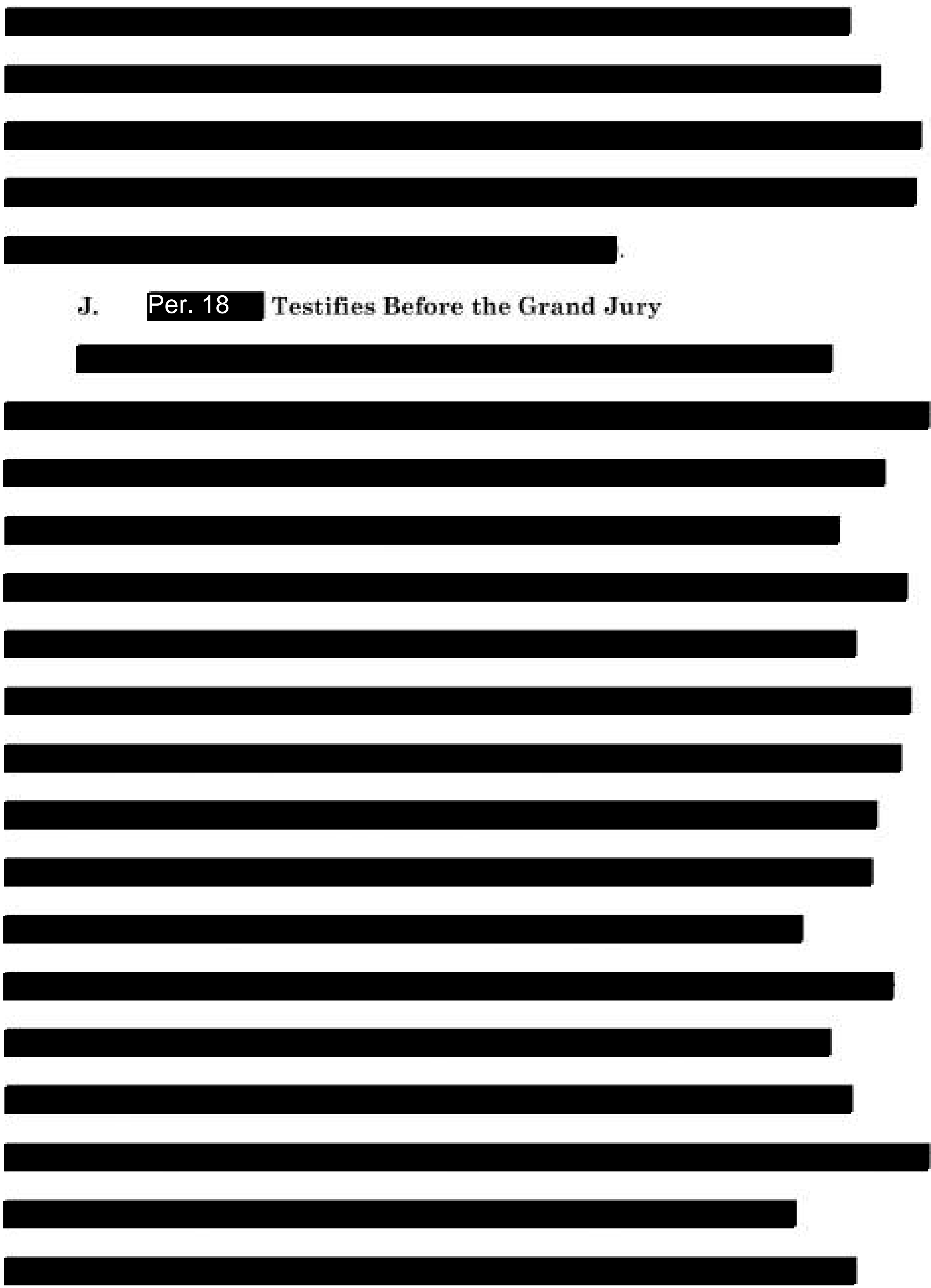
During the execution of the warrant on August 8, 2022, agents seized thirteen boxes or containers containing documents with classification markings, and in all, over 100 unique documents with classification markings. In the storage room alone, agents found 76 documents bearing classification markings, indicating that the documents had likely been transferred into that room only after Per. 18 conducted his review. At the time of the search, 73 boxes were in the storage room.[14] And notwithstanding Per. 18's prior representation that all materials from the White House were located in the storage room, the search located documents with classification markings not only in the storage room but also in the former President's office, including in the former President's desk and closet. Certain of the documents had conspicuous colored cover sheets indicating their classification status. The classification levels ranged from CONFIDENTIAL to TOP SECRET, and certain documents included additional sensitive compartments that signify very limited distribution.



[14] Notably, this number is higher than the number of boxes the FBI agents and Per. 18 estimated were in the storage room on June 3, *i.e.*, around 50 to 55 (the agents) or (Per. 18 The security footage reviewed by the government to date does not depict movement of boxes into the storage room between June 3 and August 8.



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J. Per. 18 Testifies Before the Grand Jury

1.

2.

[15]

3.

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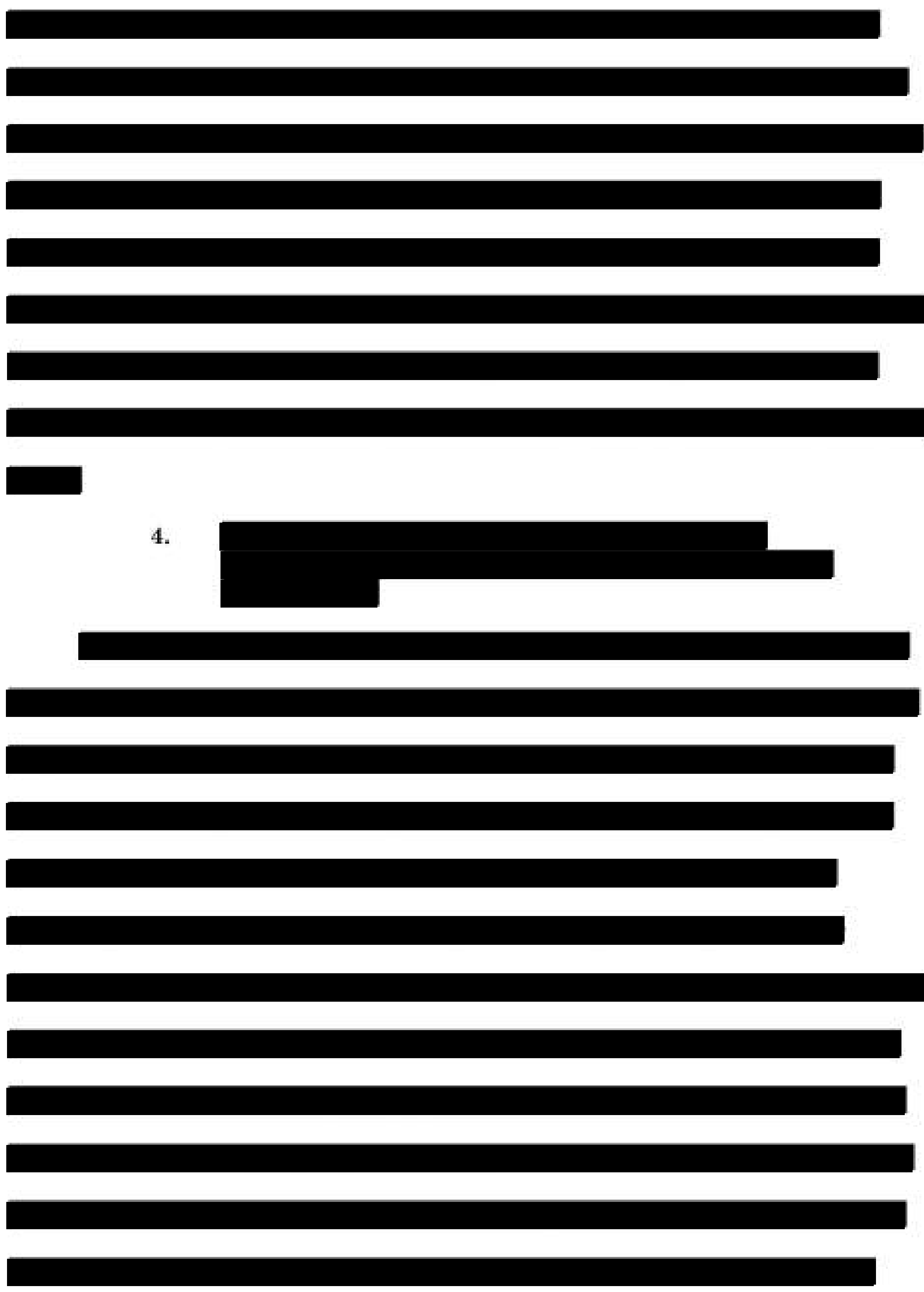

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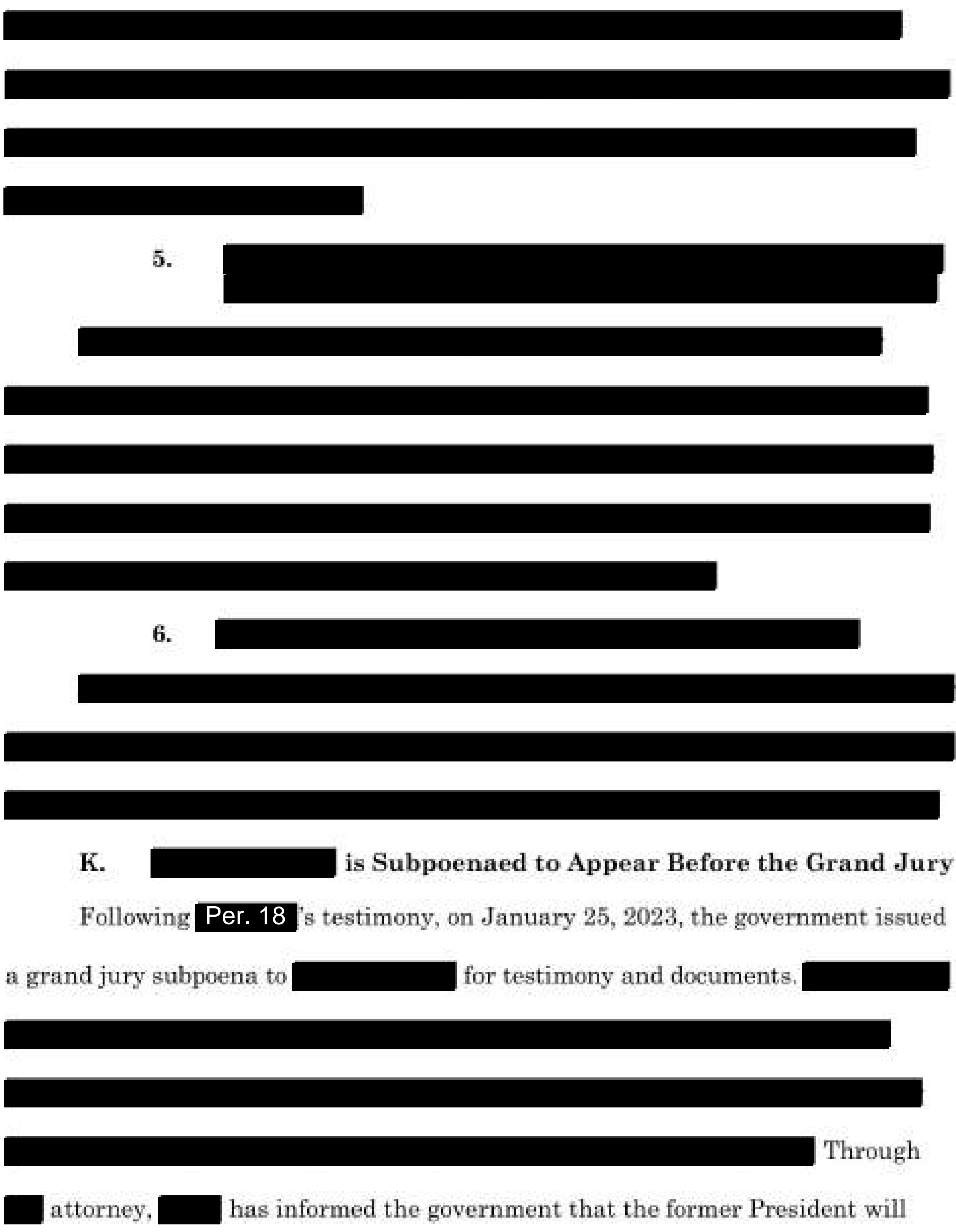

5.

6.

K. is Subpoenaed to Appear Before the Grand Jury

Following Per. 18's testimony, on January 25, 2023, the government issued a grand jury subpoena to for testimony and documents.

Through attorney, has informed the government that the former President will

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assert attorney-client privilege and that [redacted] will withhold testimony from the grand jury based on that privilege assertion.

ARGUMENT

The government seeks an order compelling Per. 18 and [redacted] to answer questions and produce documents on six topics: (1) [redacted]; (2) [redacted]; (3) circumstances surrounding the selection of Per. 12 [redacted] as custodian of records; (4) [redacted] (5) [redacted]; and (6) the phone call between Per. 18 and the former President on June 24. The crime-fraud exception to the attorney-client and work-product privileges requires Per. 18 and [redacted] to answer questions and produce documents on each of these topics.

The evidence summarized above, together with the attached supporting documents, shows that the former President, alone or with others acting with him or on his behalf, or on behalf of his post-presidential office, engaged in criminal conduct and communicated and consulted with Per. 18 and [redacted] on these six topics in furtherance of that criminal conduct.[16] The Court should enter an order

[16] The government has reason to believe that [redacted] through [redacted] participation in the three-hour meeting on May 23, can testify about communications or consultations on at least the first two topics. Although the government does not currently have evidence directly indicating that [redacted] participated in communications or consultations on the remaining four topics, if [redacted] in fact can

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compelling Per. 18 and ████ to testify as set forth in the attached proposed order. The Court should also direct Per. 18 to produce to the Court for *in camera* review the documents listed in the privilege log he provided to the government; and after conducting that review, the Court should—as set forth in the attached order—order Per. 18 to provide to the government any non-privileged documents subject to the crime-fraud exception.[17]

I. Legal Background

A. The Attorney-Client and Work-Product Privileges

The "longstanding principle that the public has a right to every man's evidence . . . is particularly applicable to grand jury proceedings," which constitute a critical public means for ascertaining truth. *Branzburg v. Hayes*, 408 U.S. 665, 688 (1972) (ellipsis and internal quotation marks omitted). In criminal cases, "[t]he very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence." *United States v. Nixon*, 418 U.S. 683, 709 (1974). "When the grand jury is performing its investigatory function into a general problem area[,] society's interest is best served by a thorough and extensive investigation," which requires "every available clue [to be] run down . . . to find if a crime has been committed." *Branzburg*, 408 U.S. at

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testify on those topics, ██ testimony would be non-privileged under the crime-fraud exception for the reasons discussed herein.

[17] As described above, as of the date of this filing, ████ has not withheld documents from the grand jury, but if she does so after this motion is filed, the government expects to file a short supplement requesting that the Court order ████ to provide those documents to the Court for *in camera* review.

701 (internal quotation marks omitted). There are exceptions for "constitutional, common-law, or statutory privilege[s]," but "[w]hatever their origins, these exceptions to the demand for every man's evidence are not lightly created nor expansively construed, for they are in derogation of the search for truth." *Nixon*, 418 U.S. at 709-10 (internal quotation marks omitted). "[A]ny [evidentiary] privilege must 'be strictly construed.'" *University of Pennsylvania v. EEOC*, 493 U.S. 182, 189 (1990) (quoting *Trammel v. United States*, 445 U.S. 40, 50 (1980)).

The attorney-client privilege is a long-recognized common-law privilege. *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). The attorney-client privilege "applies to a confidential communication between attorney and client if that communication was made for the purpose of obtaining or providing legal advice to the client." *In re Kellogg Brown & Root, Inc.*, 756 F.3d 754, 757 (D.C. Cir. 2014). The work-product privilege, first recognized by the Supreme Court in *Hickman v. Taylor*, 329 U.S. 495 (1947), "is broader than the attorney-client privilege, but less absolute," *In re Sealed Case*, 107 F.3d 46, 51 (D.C. Cir. 1997), covering "tangible material or its intangible equivalent in unwritten or oral form, other than underlying facts, prepared by a lawyer for litigation then in progress or in reasonable anticipation of future litigation." Restatement (Third) of the Law Governing Lawyers § 87(1) (2000).

"It is well established that the proponent of a privilege bears the burden of demonstrating facts sufficient to establish the privilege's applicability." *In re Subpoena Duces Tecum Issued to Commodity Futures Trading Comm'n*, 439 F.3d

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740, 750 (D.C. Cir. 2006); *see In re Lindsey*, 158 F.3d 1263, 1270 (D.C. Cir. 1998) (per curiam) (attorney-client privilege); *United States v. ISS Marine Servs., Inc.*, 905 F. Supp. 2d 121, 134 (D.D.C. 2012) (work-product privilege). Moreover, both the attorney-client and work-product privileges are subject to the crime-fraud exception. *In re Sealed Case*, 676 F.2d 793, 807 (D.C. Cir. 1982); *see In re Sealed Case*, 107 F.3d at 51.

B. The Crime-Fraud Exception

The crime-fraud exception applies when "a privileged relationship is used to further a crime, fraud, or other fundamental misconduct." *In re Sealed Case*, 676 F.2d at 807. To overcome a claim of attorney-client privilege based on the crime-fraud exception, the government "must first make a prima facie showing of a violation sufficiently serious to defeat the privilege." *In re Sealed Case*, 754 F.2d 395, 399 (D.C. Cir. 1985). "[T]he government's burden of proof is satisfied 'if it offers evidence that if believed by the trier of fact would establish the elements of an ongoing or imminent crime or fraud.'" *In re Grand Jury*, 475 F.3d 1299, 1305 (D.C. Cir. 2007) (quoting *In re Sealed Case*, 754 F.2d at 399). Next, the government must "establish some relationship between the communication at issue and the prima facie violation." *In re Sealed Case*, 754 F.2d at 399. This requirement is satisfied if it is shown that the client communicated with the attorney "to further an unlawful or fraudulent act," *In re Sealed Case*, 107 F.3d at 49, or "sought the advice of counsel to further the [criminal or fraudulent] scheme," *In re Sealed Case*, 754 F.2d at 399.

With respect to the work-product privilege, the crime-fraud inquiry is "somewhat different." *In re Sealed Case*, 107 F.3d at 51. When determining whether

there is "some valid relationship between the work product under subpoena and the prima facie violation," *In re Sealed Case*, 676 F.2d at 814-15 (opinion of Wright, J.), the focus is "not on the client's intent regarding a particular communication, but on the client's intent in consulting the lawyer or in using the materials the lawyer prepared." *In re Sealed Case*, 107 F.3d at 51. "The question is: Did the client consult the lawyer or use the material for the purpose of committing a crime or fraud?" *Id.* "[A]s with the privilege, the interests in favor of work product immunity are overcome when the client uses the attorney to further a crime or fraud." *Id.*

The crime-fraud exception is not limited to abuse of the attorney-client relationship to further conduct that violates a criminal statute; it also applies when the privileged relationship is used to further a "fraud" or "other type of misconduct fundamentally inconsistent with the basic premises of the adversary system." *In re Sealed Case*, 676 F.3d at 812 (opinion of Wright, J.); *see* 1 Paul R. Rice et al., *Attorney-Client Privilege in the United States* § 8:12 (2022) ("[T]he rationale for the exception—precluding clients from benefitting from their abuse of the attorney-client relationship—does not justify limiting its application to criminal activity.") (footnote omitted). Moreover, the focus is on the client's bad intent, *see In re Sealed Case*, 107 F.3d at 49, and the privilege is vitiated even if the attorney is entirely innocent or ignorant of the client's bad intent; "a guilty client may not use the innocence or ignorance of its attorney to claim the court's protection against a grand jury subpoena." *In re Sealed Case*, 676 F.2d at 812 (opinion of Wright, J.); *see Clark*

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v. United States, 289 U.S. 1, 15 (1933) ("The attorney may be innocent, and still the guilty client must let the truth come out.").[18]

Courts have regularly ordered attorneys to provide documents or testimony under the crime-fraud exception, including when clients used their attorneys to convey false or misleading statements to the government or a grand jury. The D.C. Circuit affirmed an order, for example, requiring Monica Lewinsky's lawyer to provide documents and testimony about an affidavit containing false statements that Lewinsky signed and submitted in federal court. *In re Sealed Case*, 162 F.3d 670, 672-74 (D.C. Cir. 1998). The D.C. Circuit similarly affirmed an order requiring disclosure of conversations between a corporate executive and corporate counsel about "a back-dated fraudulent document produced to mislead the government in connection with its ongoing grand jury investigation." *In re Grand Jury*, 475 F.3d at 1305-06. And this Court ordered an attorney to provide testimony about her legal representation of two clients that caused her to submit two letters to the Department of Justice containing false and misleading information. *In re Grand*

[18] Similarly, "[t]he crime-fraud exception overcomes protection for both ordinary . . . and opinion . . . work product." Restatement (Third) of the Law Governing Lawyers § 93 cmt. a. Even "[i]f the client alone has the requisite criminal or fraudulent intent, work-product immunity is lost despite the innocence of the lawyer." *Id.* cmt. c; *cf. In re Sealed Case*, 162 F.3d 670, 672-73 (D.C. Cir. 1998) (affirming order to compel attorney testimony over claims of attorney-client and work-product privileges and dismissing attorney's appeal for lack of jurisdiction). "Once the required [crime-fraud] showing is made, opinion work product of an innocent lawyer is subject to disclosure along with opinion work product of the client and ordinary work product of both client and lawyer." Restatement (Third) of the Law Governing Lawyers § 93 cmt. c.

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Jury Investigation, No. 17-MC-2336, 2017 WL 4898143, at *1, *7-*10 (D.D.C. Oct. 2, 2017).

II. The Crime-Fraud Exception Forecloses Per. 18 and [redacted] from Withholding Testimony and Documents About the Six Identified Topics

The crime-fraud exception forecloses Per. 18 and [redacted] from withholding testimony and documents regarding the six topics. The evidence here establishes that the former President, either alone or in connection with others, engaged in a crime, fraud, or other fundamental misconduct—a scheme to hide from the FBI and the grand jury documents with classification markings that he unlawfully retained after the conclusion of his presidency. And the evidence further shows that the former President sought to further that criminal scheme when he, or others acting together with him or on his behalf, communicated and consulted with Per. 18 and [redacted][19]

This Court's "determination that a prima facie showing has been made lies within [its] sound discretion." *In re Sealed Case*, 754 F.2d at 399. In exercising that discretion, the Court can—and should—permit the former President and his post-

[19] It is also likely that much of the testimony withheld by Per. 18 is not privileged because the attorney-client privilege covers "only communications that seek legal advice," *In re Lindsey*, 158 F.3d at1270 (internal quotation marks omitted). "Since questions about the adequacy of the search" to locate documents in response to a grand jury subpoena "do not entail legal advice, the topic is not off limits just because an attorney plays a role." *In re Feldberg*, 862 F.2d 622, 627 (7th Cir. 1988); *see In re Grand Jury Proceeding*, 68 F.3d 193, 196 (7th Cir. 1995). The attorney-client privilege does not attach to questions about the "who, how, when, where" of a search for responsive documents conducted by an attorney. *Feldberg*, 862 F.2d at 628. Many of the questions Per. 18 refused to answer on the six topics identified by the government were unprotected communications of this sort.

presidential office to provide an explanation for their conduct through evidence and argument, which the Court should then consider when determining whether a prima facie showing has been made. *See* 1 Rice, *Attorney-Client Privilege in the United States* § 8:7 (discussing cases in which courts permitted the party invoking the privilege to provide explanations and "to present evidence and make arguments that should be considered with the content of the withheld communications"). The Court, however, should avoid minitrials that improperly increase the government's burden. *See In re Sealed Case*, 754 F.2d at 402 n.7. The Court should therefore require the former President and his post-presidential office to provide any evidence it wishes this Court to consider expeditiously and without undue delay.

Moreover, the Court can—and should—order Per. 18 to produce to the Court for *in camera* review the withheld materials listed in his privilege log. That procedure is appropriate where, as here, the evidence establishes that *in camera* review of the materials may reveal evidence to establish application of the crime-fraud exception. *See United States v. Zolin*, 491 U.S. 554, 574-75 (1989); *In re Sealed Case*, 107 F.3d at 50 n.6. The court should consider those materials to determine whether the crime-fraud exception applies both to the withheld documents and testimony. And after conducting the review, the Court should order Per. 18 to turn over any withheld documents subject to the exception. Although the following discussion focuses on the testimony that Per. 18 withheld and that he should be ordered to provide, the same reasoning applies to the withheld documents listed in the privilege log. It is likely that most, if not all, of the

documents identified in the log are not shielded by the attorney-client or work-product privileges.

1. The Government Has Presented Ample Evidence Establishing a Crime, Fraud, or Other Fundamental Misconduct

The evidence summarized above—supported by the attached materials—establishes "a prima facie showing of a violation sufficiently serious to defeat the privilege." *In re Sealed Case*, 754 F.2d at 399. That evidence strongly supports a finding that the former President, and potentially those working for him or on his behalf, unlawfully retained classified documents containing national defense information, concealed or covered up his unlawful retention of documents with classified markings, and impeded or obstructed the government's efforts to locate and retrieve the documents with classified markings and investigate potential criminal violations arising from the former President's retention of the documents. *See* 18 U.S.C. §§ 793, 1001, 1512, 1519; *see also* 18 U.S.C. § 2 (commanding or inducing commission of an offense or "willfully caus[ing] an act to be done which if directly performed by him or another would be an offense against the United States").

A federal magistrate judge found that the government's affidavit submitted in support of a warrant to search Mar-a-Lago established that crimes have been committed—including violations of 18 U.S.C. § 793 and § 1519—and that evidence of those crimes would be found at Mar-a-Lago. According to the D.C. Circuit, "there is little practical difference between" the prima-facie standard and probable cause, as "[b]oth require that a prudent person have a reasonable basis to suspect the

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perpetration or attempted perpetration of a crime or fraud." *In re Sealed Case*, 754 F.2d at 399 n.3 (internal quotation marks omitted). An independent review of the warrant affidavit, together with additional evidence discovered afterwards, establishes that the magistrate judge's probable-cause determination was correct. All of those facts support application of the crime-fraud exception here.

The former President knew that boxes containing documents with classification markings were held in the storage room at Mar-a-Lago. He had reviewed the 15 boxes that contained documents with classification markings before turning them over to NARA in January 2022, tasking his staff, including body man Walt Nauta, with bringing them to his residence for his review. In addition to his own review, NARA informed him that the 15 boxes contained documents with classification markings and that it had referred the matter to the Department of Justice. And the former President was provided with a photograph of the boxes in the storage room, which confirms he knew about the large volume of additional document-filled boxes that he retained.

The former President knew that his Office received a grand jury subpoena on May 11 for any other documents with classification markings in the possession of the former President or his post-presidential office. He met with Per. 18 and [redacted] for three hours on May 23 about the subpoena and by the next day had delayed his departure from Mar-a-Lago from May 28 to June 5 [redacted] the former President's close assistant (Nauta) went to

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the storage room containing the remaining boxes and removed 64 of them. Indeed, Nauta began removing 50 boxes from the storage room within an hour after a phone call with the former President on the morning of May 30, 2022. According to contemporaneous text messages between Nauta and the former Per. 30 the former President "told [Nauta] to put [the boxes] in the room," *i.e.*, the former President's residence, where the former President planned to "pick from them." Exhibit 11. Then, three days later, after the former President had an opportunity to "pick from" the boxes, Nauta and de Oliveira (the Mar-a-Lago employee) moved 25 to 30 boxes back into the storage room from the vestibule in the former President's residential suite, just a few hours before Per. 18 arrived to review for responsive documents.

Nauta, whose job was to perform whatever tasks the former President requested, would not have moved the boxes without the former President's knowledge and direction. Nauta brought Per. 18 to the storage room to search for responsive documents straight from a meeting with the former President, and according to Per. 18 [redacted] [redacted]. And when Nauta was interviewed by FBI agents and questioned in the grand jury about moving boxes at Mar-a-Lago, he dissembled. This series of events strongly reflects a scheme to retain documents with classification markings and avoid compliance with a subpoena for the production of all such documents in the possession of the former President and his post-presidential office.

The circumstances surrounding the certification signed by Per. 12 further reflect such a scheme. The certification falsely stated that "[a] diligent search was conducted of the boxes that were moved from the White House to Florida" and that "[a]ny and all responsive documents accompany this certification." Exhibit 13 at 1. Per. 18 refused to sign the certification himself and instead found someone else to sign it who [redacted] and had no knowledge of the subpoena (indeed never saw the subpoena prior to signing the certification), no knowledge about the storage of documents at Mar-a-Lago, and no prior experience responding to grand jury subpoenas. [redacted]

This evidence readily establishes a prima facie showing of illegality that justifies application of the crime-fraud exception. A prudent person would certainly

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have a reasonable basis from this evidence to conclude that the former President, alone or possibly with others working for him or on his behalf, perpetrated or attempted to perpetrate an illegal scheme to continue to retain classified documents and obstruct and impede the government from finding and recovering those documents and investigating their unlawful retention.

2. The Government Has Amply Demonstrated the Requisite Connection Between the Violation and Any Communications or Consultations with Per. 18 and [redacted] Within the Six Identified Subject Areas

The evidence establishes a direct relationship between the prima facie violation and the attorney-client communications and attorney work product withheld by Per. 18 and [redacted] The evidence fully supports a conclusion that Per. 18s and [redacted] communications and consultations with the former President or those working on his behalf on the six topics the government has identified were intended to further or facilitate the unlawful retention of documents with classification markings and the obstruction of the government's efforts to recover those documents and investigate their unlawful retention. [redacted]

[redacted]

[redacted]

[redacted]. And the evidence shows that this representation was false and that the former President's communications and

consultations with Per. 18 and [redacted] in late May and early June—either directly or through intermediaries—led directly to that false representation.[20]

[redacted]

[redacted] And as confirmed by the government's subsequent search of Mar-a-Lago pursuant to the warrant, which uncovered over 100 additional documents with classified markings, the storage room was not the only place that documents with classified markings were located at the time Per. 18 conducted his search. The evidence thus easily sustains the conclusion that Per. 18's and [redacted] communications and consultations about where responsive documents may be located, and [redacted]

[20] [redacted]

Those communications and consultations permitted the former President to retain the documents with classification markings despite the grand jury subpoena calling for their production and to obstruct the criminal investigation conducted by the grand jury and the government.

The evidence likewise supports a finding that the communications and consultations about the certification Per. 12 signed were similarly intended to further criminal conduct. Per. 12 had no personal knowledge of any efforts to comply with the grand jury's subpoena and was brought in at the last minute to sign a certification containing false and misleading statements regarding compliance with the subpoena.

Per. 18's communications and consultations around Per. 12 selection and the contents and use of the false certification facilitated obstruction of justice and the continued retention of documents with classification markings at Mar-a-Lago.

Finally, the evidence supports a finding that Per. 18 s communications with the former President during the nine-minute call on June 24 furthered the former President's criminal conduct. The evidence shows that boxes and classified documents went back into the storage room at Mar-a-Lago sometime between Per. 18 and the execution of the search warrant on August 8.

[REDACTED]. The former President's closest assistant—Nauta, who had previously moved the boxes out of the storage room prior to Per. 18's review on June 2, presumably at the former President's direction, and who had dissembled when the government questioned him on the topic of boxes and the storage room—then changed his travel plans at the last minute to redirect to Mar-a-Lago, misrepresenting the reason for his change of plans. Nauta then went to the area near the storage room within an hour of arriving at Mar-a-Lago. The government should be permitted to ask Per. 18 what he discussed with the former President on June 24 that prompted this series of events, including whether Per. 18 informed the former President about the government's request for security camera footage during that phone call.

CONCLUSION

The Court should order Per. 18 and [REDACTED] to appear before the grand jury and answer questions about (1) [REDACTED]; (2) [REDACTED]; (3) the circumstances surrounding the selection of Per. 12 as the custodian of records; (4) the circumstances surrounding the statements in the certification signed by Per. 12 (5) the knowledge or approval of the certification by the former President or anyone in his Office; and (6) the June 24 phone call between Per. 18 and the former President. The Court should also order Per. 18 and (if she

withholds documents) [redacted] to produce any documents about the same subject matters. The crime-fraud exception vitiates any claim of attorney-client or work-product privilege with respect to Per. 18's and [redacted] testimony and documents on those topics. A proposed order is attached.

Respectfully submitted,

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February 7, 2023

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EXHIBIT 16

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

IN RE GRAND JURY SUBPOENA GJ 42-17 and GJ 42-69	)))))	**CASE NO. 23-gj-10** **UNDER SEAL** **GRAND JURY NO. 22-06**

UNITED STATES' SEALED REPLY IN FURTHER SUPPORT OF MOTION TO COMPEL

The crime-fraud exception forecloses two of President Donald J. Trump's attorneys, Per. 18 and [redacted], from withholding evidence about their communications and consultations with the former President on the six topics identified in the government's motion to compel. The government has conclusively demonstrated, appropriately supported by an *ex parte* submission, that the former President or those working for him or on his behalf communicated and consulted with these attorneys to further or facilitate a crime, fraud, or other fundamental misconduct. Nothing in the former President's or Per. 18 oppositions undermines that showing. Nonetheless, because Per. 18 independent assertion of the work-product privilege raises unsettled questions about the application of the crime-fraud exception to opinion work product, the government seeks only Per. 18 fact work product, which in any event constitutes most, if not all, of what the government's motion to compel seeks. Absent this narrow exception, however, the Court should order Per. 18 and [redacted] to provide to the grand jury all other testimony and documents regarding communications or consultations on the identified topics.

I. The Crime-Fraud Exception Vitiates Any Claims of Attorney-Client or Work-Product Privilege in This Case

The attorney-client privilege and work-product privilege cede to a grand jury subpoena for testimony or documents when the attorney-client "relationship is used to further a crime, fraud, or other fundamental misconduct." *In re Sealed Case*, 676 F.2d 793, 807 (D.C. Cir. 1982). To obtain evidence under the crime-fraud exception, the government must first make a prima facie showing of a crime, fraud, or other fundamental misconduct, which is satisfied if the government offers evidence that, if believed by a trier of fact, would establish a crime or fraud. *See, e.g.*, *In re Sealed Case*, 754 F.2d 395, 399 (D.C. Cir. 1985). The government must then establish "some relationship" between the otherwise privileged material and the prima facie violation. *Id.*; *see In re Sealed Case*, 676 F.2d at 814-15. With respect to communications otherwise covered by the attorney-client privilege, this requirement is satisfied if the client communicated with or sought the advice of counsel to further the crime or fraud. *See In re Sealed Case*, 107 F.3d 46, 49 (D.C. Cir. 1997); *In re Sealed Case*, 754 F.2d at 399. With respect to work-product material, this requirement is satisfied if the government establishes that "the client consult[ed] the lawyer or use[d] the material for the purpose of committing [the] crime or fraud." *In re Sealed Case*, 107 F.3d at 51.

In short, neither the attorney-client privilege nor the work-product privilege provides a basis to keep attorney-client communications and consultations secret "when the client uses the attorney to further a crime or fraud." *In re Sealed Case*, 107 F.3d at 51. The crime-fraud exception recognizes that there is a strong "public

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interest in preventing clients from attempting to misuse the client-lawyer relationship for seriously harmful ends." Restatement (Third) of the Law Governing Lawyers § 82 cmt. b (2000) (hereafter "Restatement"); *see id.* § 93 cmt. b ("[T]he crime-fraud exception for work-product immunity recognizes that crime and fraud do not warrant such protection.").

The former President's and Per. 18 arguments in opposition to the government's motion fail to undermine the government's showing that the crime-fraud exception compels Per. 18 and [redacted] to provide testimony and documents on the six identified topics. Both contend that the government cannot use an *ex parte* submission to support application of the crime-fraud exception. The former President also argues that the motion is not ripe as to [redacted] and that the government has failed to satisfy either component of the two-part crime-fraud standard. And Per. 18 contends that his separate assertion of the work-product privilege forecloses application of the crime-fraud exception to testimony and documents covered by that privilege. These arguments do not withstand scrutiny.

A. *Ex Parte* Procedures Are Appropriate Here

A district court appropriately may ensure grand jury secrecy through "provisions for sealed, or when necessary *ex parte*, filings." *In re Grand Jury*, 121 F.3d 729, 757 (D.C. Cir. 1997). More than forty years ago, the D.C. Circuit recognized that a court adjudicating a crime-fraud motion "will not be able to receive a complete adversary presentation" because "one of the parties will not be privy to the information at hand." *In re Sealed Case*, 676 F.2d at 814. Indeed, "courts often use *in camera, ex parte* proceedings to determine the propriety of a

grand jury subpoena or the existence of a crime-fraud exception to the attorney-client privilege when such proceedings are necessary to ensure the secrecy of ongoing grand jury proceedings." *In re Sealed Case No. 98-3077*, 151 F.3d 1059, 1075 (D.C. Cir. 1998); *accord In re Grand Jury Subpoena, Judith Miller*, 438 F.3d 1141, 1151 (D.C. Cir. 2006). Every court of appeals to address the issue has rejected the argument that the government's use of an *ex parte* submission to support application of the crime-fraud exception in grand jury proceedings violates the client's due process rights. *See In re Grand Jury Subpoena*, 223 F.3d 213, 219 (3d Cir. 2000) ("We today join the ranks of our sister circuits in holding that it is within the district courts' discretion, and not violative of due process, to rely on an ex parte government affidavit to determine that the crime-fraud exception applies and thus compel a target-client's subpoenaed attorney to testify before the grand jury.") (citing cases).

These longstanding approved practices contradict the former President's claim (Opp. 4, 9, 10, 11, 13) that the government's *ex parte* submission is "extraordinary" and violates his due process rights. This precedent also forecloses the requests by the former President (Opp. 18) and Per. 18 (Opp. 8, 11) to be granted access to the government's *ex parte* submission. The *ex parte* submission here appropriately safeguards the secrecy of an ongoing grand jury investigation, and neither the former President nor Per. 18 should be permitted to review it. Indeed, this Court has appropriately followed these procedures when considering prior crime-fraud motions, *see, e.g.*, *In re Grand Jury Investigation*, No. 17-2336,

2017 WL 4898143, at *7 (D.D.C. Oct. 2, 2017), and it should do the same here. What would be extraordinary would be to deviate from these established practices and permit the former President and Per. 18 access to grand jury materials during an ongoing criminal investigation.

The sole case on which the former President relies (Opp. 9), *United States v. Rezaq*, 899 F. Supp. 2d 697 (D.D.C. 1995), lends no support to his claim that the *ex parte* submission here violates his due process rights. In *Rezaq*, the government sought reconsideration of an "absolute prohibition" on *ex parte* submissions for certain discovery matters. *Id.* at 706. While observing that *ex parte* communications between a party and the court are "greatly discouraged" and infrequently permitted, the district court nonetheless acknowledged that potential "national security issues" in that case could warrant such *ex parte* filings, and thus granted the government's reconsideration motion. *Id.* at 707. The *ex parte* submission here, filed to protect the secrecy of the grand jury's investigation, is entirely consistent with *Rezaq*, not to mention the precedent in this circuit and elsewhere repeatedly confirming the propriety of *ex parte* proceedings when the government seeks an order compelling testimony or document production for compliance with a grand jury subpoena.[1]

[1] As the government noted in its motion (Sealed Mot. at 15), the former President may also avail himself of *ex parte* procedures to offer evidence in opposition to the government's crime-fraud motion. It appears that he has chosen not to do so.

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B. The Former President's Arguments Lack Merit

Stripped of its recitation of largely uncontroversial legal principles and irrelevant invective, such as claims (Opp. 9-10) about the "public perception" of the Federal Bureau of Investigation, the former President's opposition appears to advance three arguments. First, he contends (Opp. 4-5) that any crime-fraud motion seeking testimony or documents from [redacted] is unripe. Second, he claims (Opp. 11-12) that the government has failed to make a prima facie showing of a crime or fraud. Finally, he asserts (Opp. 12-15) that even if the government has demonstrated a prima facie violation, the government does not seek communications and consultations that were intended to further a crime or fraud. Each of these arguments fails.

1. The Government's Motion is Ripe as to [redacted]

The government's motion to compel testimony and documents from [redacted] is fully ready for this Court's resolution. After the grand jury issued a subpoena to [redacted] for testimony and documents, the government conveyed to counsel for [redacted] the categories of information about which it intended to question Little. Counsel for [redacted] communicated to the government that [redacted] after consulting with her client (the former President), would not waive any applicable attorney-client or work-product privileges that the former President continued to assert. [redacted]'s counsel also informed the government that [redacted] would withhold a single document as privileged. That exchange of communications identifying the relevant fields of inquiry and [redacted]'s intention to withhold evidence on those topics is sufficient to enable the Court to decide the crime-fraud motion. *See In re Grand Jury*

Investigation, 2017 WL 4898143, at *3-*5 (deciding crime-fraud motion because exchange of letters between the Special Counsel's Office and counsel for the witness was sufficient to establish the witness would invoke the attorney-client privilege to withhold testimony).

Neither of the cases the former President cites (Opp. 5) is apposite. In *Pursley v. City of Rockford*, No. 18-CV-50040, 2020 WL 4931394 (N.D. Ill. Aug. 20, 2020), the magistrate judge refused to accept a deponent's blanket assertion of the privilege against self-incrimination because Federal Rule of Civil Procedure 37(a)(3)(B)(i) permitted an order to compel testimony only after the deponent failed to answer a question, and that had not yet occurred. *Id.* at *3. But no similar rule governs in the grand-jury context, as this Court has recognized. *See In re Grand Jury Investigation*, 2017 WL 4898143, at *3-*5. Similarly, in *United States v. Moreno*, 536 F.2d 1042 (5th Cir. 1976), the court deemed a witness's "blanket refusal to testify" inadequate to invoke the privilege against self-incrimination, instead requiring a "particularized inquiry" to determine whether the invocation was "well-founded." *Id.* at 1049. By contrast here, the former President cannot meaningfully contend that [redacted]'s assertion of attorney-client and work-product privileges was improper, any more than he could claim that Per. 18 assertions were improper; the former President does not claim, for example, that [redacted] was mistaken or that he has actually waived the privileges. Moreover, the areas of the government's proposed inquiry with [redacted] are clearly identified and specific. No further particularization is necessary. The government filed the motion to compel

without requiring [redacted] to appear before the grand jury to avoid delay and preserve judicial resources. No legal authority forecloses this procedure.

2. The Government Has Made a Prima Facie Showing of a Crime or Fraud

The evidence as set forth in the government's *ex parte* submission far exceeds the threshold prima facie standard. That evidence amply establishes the commission of a crime or fraud. The sealed motion alone explains that the former President possessed boxes of documents at Mar-a-Lago containing documents with classification markings (Sealed Mot. 2-4); [redacted]

[redacted] and evidence indicates that prior to Per. 18's search, government records were removed from the storage room and were not returned prior to Per. 18 review (*id.* at 6). The evidence in the government's *ex parte* submission provided extensive additional details regarding these events demonstrating the commission of a crime or fraud. *See* 18 U.S.C. §§ 793, 1001, 1512, 1519; *see also* 18 U.S.C. § 2 (commanding or inducing commission of an offense or

"willfully caus[ing] an act to be done which if directly performed by him or another would be an offense against the United States").

The former President's efforts to explain away these inculpatory circumstances are divorced from the facts and unconvincing. The former President contends (Opp. 10-11), for example, that the government has merely demonstrated that "there are additional responsive documents that Per. 18's initial search did not discover" and that the certification was "inaccurate." For the reasons described above and in the government's *ex parte* submission, that characterization of the facts is far from complete or correct. Rather, the evidence indicates intentional concealment and falsification. The former President similarly suggests (Opp. 3) that the government "effectively ended" a "compliance conversation" on June 8, 2022, but that assertion ignores both the outstanding May 11 grand jury subpoena that unambiguously required the production of all documents bearing classified markings *and* the demonstrably false certification that Per. 18 provided on June 3 that "*any and all* responsive documents accompany this certification." Sealed Mot., Ex. 1 ¶ 55 (quoting certification) (emphasis added). Additionally, the former President characterizes (Opp. 3) as "conflicting" and "inaccurate" statements Per. 18 made at the June 3 meeting between him and the government, but the statements in [redacted]

—are not inconsistent, and the former President provides no basis for his claim

that they are both "inaccurate." The former President thus falls far short of demonstrating there is an innocuous interpretation of the evidence defeating a prima facie showing.

3. The Government Has Demonstrated That the Evidence it Seeks to Compel Reflects Communications and Consultations Intended to Further the Crime or Fraud

The evidence also amply supports the requisite connection between the former President's communications and consultations and the prima facie violation. As the government explained in its motion, the evidence fully supports a conclusion that Per. 18's and [redacted]'s communications and consultations with the former President or those working on his behalf on the six topics the government has identified were intended to further or facilitate a crime, fraud, or other fundamental misconduct.

The former President contends (Opp. 12) that a mere "temporal nexus" between a client's prima facie violation and that client's communications or consultations with his attorney is insufficient to satisfy the crime-fraud exception. The former President correctly states a legal principle that has no application to this case. The evidence discussed in the government's *ex parte* submission establishes far more than a mere temporal linkage between the crime and the former President's interactions with Per. 18 and [redacted] rather, it demonstrates how the former President or those working on his behalf consulted or communicated with those two attorneys in order to further or facilitate a crime, fraud, or other fundamental misconduct.

Reiterating another "temporal" objection to the government's crime-fraud showing, the former President argues (Opp. 14-15) that even if the crime-fraud exception applies, the government is "not entitled to disclosure of communications and work product simply because they were 'contemporaneous' with" a crime, fraud, or other fundamental misconduct. *Id.* at 14. That argument takes on a strawman not advanced in the government's motion. Rather, the motion to compel seeks testimony and documents in six discrete categories while Per. 18 and [redacted] represented the former President, but does not target "prior acts or confessions beyond the scope of the continuing fraud." *In re Sealed Case*, 754 F.2d at 403.

Finally, the former President's "bootstrap" argument (Opp. 13) misapprehends controlling authority and the government's motion to compel. In the former President's view, the government seeks testimony and documents from Per. 18 and [redacted] to make out the prima facie case for the crime-fraud exception, a step that would, if permitted, render the attorney-client privilege "virtually worthless." *Id.* (citing *In re Richard Roe, Inc.*, 68 F.3d 38, 40 (2d Cir. 1995)). In fact, the Supreme Court and the D.C. Circuit have recognized that subpoenaed documents may, in appropriate circumstances, be considered by a court to determine whether to apply the crime-fraud exception. *United States v. Zolin*, 491 U.S. 554, 572 (1989); *In re Sealed Case*, 676 F.2d at 814. In any event, the evidence discussed in the *ex parte* submission does not rely on any privileged communications or consultations from Per. 18 and [redacted] precisely because those attorneys have invoked attorney-client and work-product privilege when asked about the six

identified topics. The *ex parte* memorandum therefore describes evidence obtained through other investigative steps that is entirely independent of any asserted privileges—evidence that meets and surpasses the showing needed to make out a prima facie violation.

C. Per. 18's Arguments Lack Merit

Per. 18 contends that he can foreclose the government from obtaining work-product materials pursuant to the crime-fraud exception because he is innocent of wrongdoing[2] and possesses the ability to assert the work-product privilege on his own behalf separate from any assertion by the former President. The crime-fraud exception extends to all materials covered by the work-product privilege, both fact and opinion work product, though some courts have held that the crime-fraud exception only encompasses fact work product when a blameless attorney invokes the work-product privilege on his or her own behalf. Because most (if not all) of the work-product material the government seeks here will qualify as fact work product, in order to avoid unnecessary litigation that could delay its investigation, the government does not seek opinion work product. Per. 18's separate assertion of the work-product privilege on his own behalf therefore provides no basis to withhold the lion's share of documents and testimony sought by the government.

[2] For the reasons discussed below, the Court need not resolve the issue of whether Per. 18 is complicit in the criminality described in the *ex parte* submission in order to decide the government's motion to compel.

Subject to Protective Order

1. Legal Background

The work-product privilege covers "material 'obtained or prepared by an adversary's counsel' in the course of his legal duties, provided that the work was done 'with an eye toward litigation.'" *In re Sealed Case*, 676 F.2d at 809 (quoting *Hickman v. Taylor*, 329 U.S. 495, 511 (1947)). "Unlike the attorney-client privilege, which exists solely for the benefit of the client, and can be asserted and waived exclusively by him, the work-product privilege creates a legally protectable interest in non-disclosure in two parties: lawyer and client." *Moody v. IRS*, 654 F.2d 795, 801 (D.C. Cir. 1981). Moreover, courts distinguish between "ordinary" (or "fact") work product and "opinion" work product: "Opinion work product consists of the opinions or mental impressions of a lawyer; all other work product is ordinary work product." Restatement § 87(2). Whereas a party "can discover fact work product upon showing a substantial need for the materials and an undue hardship in acquiring the information any other way," opinion work product is "virtually undiscoverable." *Dir., Off. of Thrift Supervision v. Vinson & Elkins, LLP*, 124 F.3d 1304, 1307 (D.C. Cir. 1997).

As set forth in the Restatement, "[t]he crime-fraud exception overcomes protection for both ordinary . . . and opinion . . . work product." Restatement § 93 cmt. a. Furthermore, even "[i]f the client alone has the requisite criminal or fraudulent intent, work-product immunity is lost despite the innocence of the lawyer." *Id.* cmt. c. "Once the required [crime-fraud] showing is made, opinion work product of an innocent lawyer is subject to disclosure along with opinion work product of the client and ordinary work product of both client and lawyer." *Id.*

Subject to Protective Order

Contrary to the Restatement, however, some courts have held that when the government seeks work-product material from a blameless attorney through the crime-fraud exception, and the blameless lawyer separately asserts the work-product privilege, the crime-fraud exception only covers ordinary work product and may not compel disclosure of opinion work product. *See, e.g., In re: Green Grand Jury Proceedings*, 492 F.3d 976, 980 (8th Cir. 2007). The D.C. Circuit has not addressed this issue, although its precedents suggest that, at least in some circumstances, opinion work product may be discoverable under the crime-fraud exception even when a blameless attorney asserts his own work-product privilege. *See Moody*, 654 F.2d at 801 (court must weigh competing interests when lawyer engaged in misconduct and the blameless client asserts the work-product privilege). Regardless, the case law is unanimous that even when the lawyer is blameless, the crime-fraud exception covers fact work product. *See, e.g., In re Grand Jury Proc. #5 Empanelled Jan. 28, 2004*, 401 F.3d 247, 252 (4th Cir. 2005).

2. The Crime-Fraud Exception Applies to Per. 18 Opinion Work Product, but the Government Here Seeks Only His Fact Work Product

The Restatement is correct in "not accept[ing]" the position that "where the client alone is guilty waiver of the immunity for ordinary work product results from the client's complicity, but opinion work product of the innocent lawyer remains immune." Restatement § 93 cmt. c., reporter's note. "The public interest in deterring wrongful acts outweighs the innocent lawyer's interest in privacy." *Id.* cmt. c. As the D.C. Circuit has observed, the work-product privilege "is not to protect any interest of the attorney, who is no more entitled to privacy or protection than any other

Subject to Protective Order

person, but to protect the adversary trial process itself." *Moody*, 654 F.2d at 800 (internal citation and quotation marks omitted). And when the client uses an attorney to facilitate a crime or fraud, "the policy favoring disclosure outweighs the [lawyer's] legitimate interest in secrecy." *Id.* at 801 (discussing client's secrecy interests).

The government, however, does not request access to Per. 18's opinion work product. Most (if not all) of the testimony and documents that the government seeks from Per. 18 regarding the six identified topics will not qualify as opinion work product, if it qualifies as work product at all. As a result, in the interest of avoiding unnecessary collateral litigation that will unduly delay the government's investigation, to the extent the government seeks Per. 18's work product pursuant to the crime-fraud exception, it only seeks Per. 18's fact work product.

Opinion work product consists of the "mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation." *F.T.C. v. Boehringer Ingelheim Pharms., Inc.*, 778 F.3d 142, 151 (D.C. Cir. 2015) (citation omitted). But "not every item which may reveal some inkling of a lawyer's mental impressions . . . is protected as opinion work product." *Id.* (citing *In re San Juan Dupont Plaza Hotel Fire Litig.*, 859 F.2d 1007, 1015 (1st Cir.1988)). Where the attorney has not "sharply focused or weeded the materials," *In re Sealed Case*, 124 F.3d 230, 236 (D.C. Cir. 1997), *rev'd on other grounds sub nom. Swidler & Berlin v. United States*, 524 U.S. 399 (1998), and the materials do not otherwise "reflect[] the attorney's focus in a meaningful way," *Boehringer*

Ingelheim Pharms., 778 F.3d at 151, the materials do not qualify as opinion work product. Where materials may contain both fact and opinion work product, "the court must examine whether the factual matter may be disclosed without revealing the attorney's opinions." *Boehringer Ingelheim Pharms.*, 778 F.3d at 152.

To the extent the information in the six categories sought from Per. 18 qualifies as attorney work product at all, it would amount to fact work product. The analysis that follows addresses the six categories, combining the first two.

- (

See *In re Grand Jury Investigation*, 2017 WL 4898143, at *14. With respect to locating responsive documents, Per. 18 functioned principally as a records custodian, and neither he nor the former President can "throw the veil of privilege over details of how files were searched, and by whom, through the expedient of involving a lawyer in the process." *In re Feldberg*, 862 F.2d 622, 628 (7th Cir. 1988). Although *Feldberg* addressed the attorney-client (and not attorney work-product) privilege, Per. 18 cites no authority for the proposition that a lawyer undertaking the work of a records custodian thereby transforms "questions about the mechanics (who, how, when, where) of the search," *id.*, into questions that seek to elicit privileged attorney work product. At best, such information would amount to discoverable fact work product because it requires Per. 18 to identify (i)

who provided him information about potentially responsive documents; (ii) the location(s) he was told that such documents would (or would not) be found; (iii) with whom he spoke about any such locations; and (iv) any other steps he took in order to locate such documents.

- (3) circumstances surrounding the selection of Per. 12

The questions related to the selection of Per. 12 similarly call only for factual information. The government seeks to ask Per. 18 about the circumstances of Per. 12's selection through questions such as (i) who put Per. 18 in touch with Per. 12 (ii) who selected Per. 12 ; (iii) who provided Per. 12 Per. 18 ; (iv) whether anyone other than Per. 12; (v) ; and (vi) . The factual content of Per. 18's statement to Per. 12 does not implicate or seek to elicit any mental impressions from Per. 18 who in any event "could be expressly instructed to omit any impressions from [his] responses." *In re Grand Jury Subpoena*, 870 F.3d 312, 322 (4th Cir. 2017) (Niemeyer, J., concurring in part and dissenting in part).

- (4)

In the June 3 meeting between Per. 18 Per. 12 and the government, Per. 18 and Per. 12 provided a certification that she had signed indicating that

"based on information that has been provided to [Per. 12]," she was "authorized to certify" that "[a] diligent search was conducted of the boxes that were moved from the White House to Florida" and that "[a]ny and all responsive documents accompany this certification." Sealed Mot., Exhibit 1 ¶ 55. The August 8 search, which recovered over 100 documents bearing classified markings, established that a diligent search had not occurred and that "any and all responsive documents" had not been produced. Per. 18 can testify regarding his discussions with Per. 12 about the certification, including what Per. 18 told Per. 12 about the search he conducted, without revealing any mental impressions or legal theories that Per. 18 may also have had in mind. He should also be compelled to answer factual questions related to the certification's creation and editing, such as (i) what language in the certification changed between the first and final drafts; (ii) the basis for his belief he had searched all the boxes moved from the White House to Florida; and (iii) the basis for representing that "[a]ny and all responsive documents accompany this certification." Those questions solely seek to elicit factual information and thus appropriately focus not on the importance, if any, that Per. 18 attributed to the conversation but instead on the information exchanged. *See In re Grand Jury Investigation*, 2017 WL 4898143, at *14.

- (5) [redacted]

Per. 18 should be compelled to testify whether the former President knew that Per. 18 would be submitting a certification. The answer to that straightforward yes-or-no question, if privileged under the work-product doctrine at

all, would constitute fact work product. Equally permissible would be follow-up questions eliciting what the former President said about the certification and whether the former President authorized the filing.

- (6) the phone call between Per. 18 and the former President on June 24

Recounting factually what Per. 18 and the former President discussed on June 24—while excising any mental impressions—would not implicate opinion work product.

***

Because the questions described above seek factual information that the crime-fraud exception exempts from any work-product privilege, this Court need not consider whether the government has established "a substantial need for the materials and an undue hardship in acquiring the information any other way," *Dir., Off. of Thrift Supervision*, 124 F.3d at 1307, which requires a "showing only that 'adequate reasons' exist to compel the [w]itness's testimony." *In re Grand Jury Investigation*, 2017 WL 4898143, at *14 (quoting *Boehringer Ingelheim Pharms.*, 778 F.3d at 152); *see In re Grand Jury Subpoena*, 870 F.3d at 320 n.5 (not addressing whether the government established substantial need or hardship because the crime-fraud exception exempted factual information). But even if such a showing were required, *see In re Grand Jury Investigation*, 2017 WL 4898143, at *14 (undertaking substantial need analysis), it is easily met here. "Nowhere is the public's claim to each person's evidence stronger than in the context of a valid grand jury subpoena." *In re Sealed Case*, 676 F.2d at 806. Accordingly, the government has satisfied its burden by showing that "any protected material is relevant to

establishing criminal activity" and that the other plausible source for the information—the former President himself—"likely would be unwilling to testify before the grand jury." *In re Grand Jury Investigation*, 2017 WL 4898143, at *14.

II. The Court Should Order Per. 18 and [redacted] to Produce Documents for *In Camera* Review

As the government noted in its motion to compel, Per. 18 produced a log listing the documents that he withheld from the grand jury based on the attorney-client or work-product privileges. Since the government filed its motion, [redacted] has informed the government that [redacted] possesses one responsive document that [redacted] is withholding based on the former President's assertion of privilege. The Court should order Per. 18 and [redacted] to produce those documents—all documents from the original privilege log, not merely those in the revised log submitted with Per. 18's opposition—for *in camera* review. A proposed order that includes this requested relief is attached.

In camera review is appropriate when the government establishes a "factual basis adequate to support a good faith belief by a reasonable person, that *in camera* review of the materials may reveal evidence to establish the claim that the crime-fraud exception applies." *Zolin*, 491 U.S. at 572. Moreover, with respect to the documents withheld by Per. 18—but not [redacted] because she has not separately claimed the work-product privilege on her own behalf—*in camera* review is also

appropriate to separate out any opinion work product. *See Boehringer Ingelheim Pharms.*, 778 F.3d at 152.[3]

Per. 18 argues (Opp. 13-15) that the government's motion fails to satisfy the "[t]hreshold [s]howing" (*id.* at 13) required for this Court to review any documents *in camera*. As the Supreme Court has explained, however, the standard for *in camera* review "implicates a much more lenient standard of proof than the determination to apply the crime/fraud exception." *Zolin*, 491 U.S. at 572. Thus, because the government has established the prerequisites for application of the crime-fraud exception, it necessarily follows that *in camera* review is appropriate. The Court should enter the government's proposed order.

III. Conclusion

The government has demonstrated that the former President and/or those working on his behalf communicated and consulted with Per. 18 and ████ to further a crime, fraud, or other fundamental misconduct. The Court should order Per. 18 and ████ to provide to the grand jury all testimony and documents regarding communications or consultations on the identified topics, other than those items from Per. 18 that the Court determines constitute opinion work product.

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[3] In a footnote, Per. 18 contends (Opp. 13 n.4) that the government is not entitled to any notes that he drafted solely for his own use. To the extent those notes reflect factual information responsive to the six identified categories, they must be disclosed.

Respectfully submitted,

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By: *<u>/s/ James I. Pearce</u>*
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February 26, 2023

Subject to Protective Order

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

IN RE GRAND JURY SUBPOENA	)	**CASE NO. 23-gj-10**
GJ 42-17 and GJ 42-69	)	
	)	**UNDER SEAL**
	)	
	)	**GRAND JURY NO. 22-06**

REVISED PROPOSED ORDER

Per. 18 and [redacted], attorneys for former President Donald J. Trump and his post-presidential office (the Office of Donald J. Trump), withheld testimony and documents from the grand jury, citing the attorney-client privilege and the work-product privilege, prompting the government to file the pending Motion to Compel. Upon consideration of the government's motion and its *ex parte* supplement and the exhibits thereto, the responses submitted by the former President and Per. 18 the government's reply brief, and the entire record herein, the Court finds that (1) the government has established a prima facie showing of a violation sufficiently serious to defeat the attorney-client and work-product privileges (a crime, fraud, or other fundamental misconduct), and (2) the communications and/or consultations on the six topics below were in furtherance of the crime, fraud, or other fundament misconduct; and, accordingly, it is hereby—

1. **ORDERED** that the United States' Motion to Compel is **GRANTED**; it is further

2. **ORDERED** that Per. 18 and [redacted] are ordered to appear before the Grand Jury of the United States District Court for the District of Columbia and give testimony, which they have previously withheld, relating to any

communications or consultations regarding the below topics, and any similar such communications or consultations, with the exception of testimony encompassing opinion work product by Per. 18

a. [REDACTED]

b. [REDACTED].

c. The selection of Per. 12 [REDACTED] to respond to the May 11 subpoena, including the identities of the persons involved in the process of selecting Per. 12 [REDACTED], the reasons for Per. 12's selection, and all communications between Per. 18 and anyone else related to the selection of Per. 12 [REDACTED]

d. [REDACTED]

e. [REDACTED]

[REDACTED];

f. The June 24 call between the former President and Per. 18 it is further

3. **ORDERED** that the Court has reviewed the documents previously withheld by [REDACTED] and Per. 18 *in camera* and determined that the attached documents reflect communications or consultations that are unprivileged under the crime-fraud exception and do not constitute Per. 18's opinion work product; it is further

4. **ORDERED** that the United States submit to the Court, by ______________, any proposed redactions to the accompanying Memorandum Opinion that are necessary before disclosure of the Memorandum Opinion to the former President, the former President's post-presidential office, Per. 18, [REDACTED] [REDACTED] and their counsel.

SO ORDERED.

DATE:

BERYL A. HOWELL
CHIEF JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

IN RE GRAND JURY SUBPOENA GJ 42-17 and GJ 42-69	)	**CASE NO. 23-gj-10**
	)	
	)	**UNDER SEAL**
	)	
	)	**GRAND JURY NO. 22-06**

PROPOSED ORDER FOR *IN CAMERA* REVIEW

Per. 18 and [redacted], attorneys for former President Donald J. Trump and his post-presidential office (the Office of Donald J. Trump), withheld documents from the grand jury, citing the attorney-client privilege and the work-product privilege, prompting the government to file the pending Motion to Compel. Upon consideration of the government's motion and its *ex parte* supplement and the exhibits thereto, the responses submitted by the former President and Per. 18 the government's reply brief, and the entire record herein, the Court finds that there is factual basis adequate to support a good faith belief by a reasonable person that *in camera* review of the withheld documents may reveal evidence to establish the claim that the crime-fraud exception applies; and, accordingly, it is hereby—

1. **ORDERED** that Per. 18 will provide to the Court the documents listed in the privilege log he provided to the government; it is further

2. **ORDERED** that [redacted] will provide to the Court the document that she has withheld from the grand jury.

SO ORDERED.

DATE:

____
BERYL A. HOWELL
CHIEF JUDGE

Subject to Protective Order

EXHIBIT 17

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE GRAND JURY SUBPOENA GJ 42-17 and GJ 42-69	Case No. 23-gj-10 (BAH) Chief Judge Beryl A. Howell **UNDER SEAL**

ORDER

Per. 18 and (the "Witnesses"), attorneys who have represented former President Donald J. Trump, received grand jury subpoenas for documents and testimony and declined to comply in full because of the former president's invocation of attorney-client privilege and the work-product doctrine, as well as, in Per. 18 s case, the attorney's own independent claim to the protection of his opinion work product. The government filed the instant Motion to Compel, ECF No. 1, together with an *ex parte* supplement in support of the Motion, ECF No. 2, seeking an order to compel the Witnesses to give testimony and produce documents previously objected to by Per. 18 and the former president.

Upon consideration of the government's Motion and its *ex parte* supplement and the exhibits thereto; the oppositions submitted by the former president and Per. 18 the government's reply brief; the extensive supplemental briefing filed at the Court's direction by the former president, Per. 18 and the government; the March 9, 2023 hearing involving arguments from counsel for the former president, Per. 18 and the government; Per. 18 s *in camera, ex parte* submission of the documents he withheld from the government; and the entire record herein, the Court finds that (1) the government has made a prima facie showing that the former president committed criminal violations; (2) the crime-fraud exception applies to pierce any attorney-client privilege and fact work-product doctrine protection that would otherwise

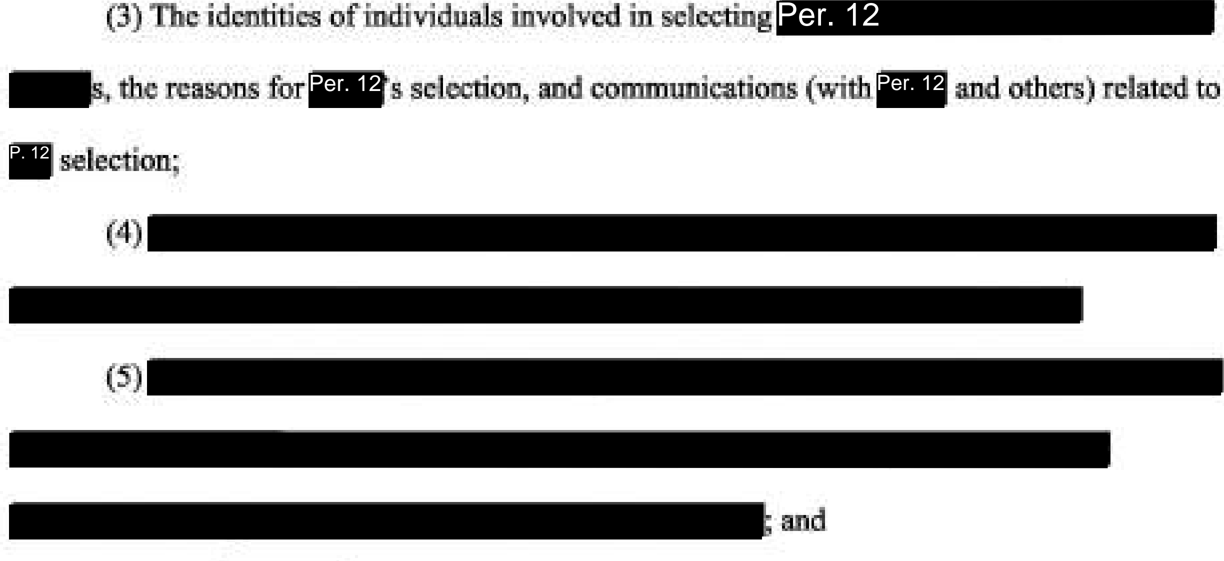
protect (a) all six topics, as enumerated below, upon which the government seeks testimony from the Witnesses, with the exception, for of the final topic, (b) documents withheld by Per. 18 reflecting his efforts to comply with the grand jury subpoena issued to the Office of Donald J. Trump on May 11, 2022, and (c) documents withheld by Per. 18 that may have informed his knowledge of the June 24, 2022 grand jury subpoena issued to the Trump Organization in advance of his conversation with the former president in the afternoon of June 24, 2022; and (3) Per. 18 may withhold certain responsive documents in their entirety and others in part from the government on the basis of his independent claim to opinion work product protection, which the government does not presently argue is vitiated by the crime-fraud exception, as set forth in the attached Appendices. Accordingly, it is hereby—

ORDERED that the government's Sealed Motion to Compel Testimony, ECF No. 1, is **GRANTED IN PART** and **DENIED IN PART**; it is further

ORDERED that Per. 18 is to appear before the Grand Jury of the U.S. District Court for the District of Columbia and give testimony, which has previously been the subject of an assertion by the former president of the attorney-client privilege and work-product doctrine protection, as well as an assertion by Per. 18 of opinion work product protection as to his own testimony, relating, but not limited to, any communications and meetings regarding the following six topics, and any similar such communications or meetings:

(1)

(2) ;



(3) The identities of individuals involved in selecting Per. 12 s, the reasons for Per. 12's selection, and communications (with Per. 12 and others) related to P. 12 selection;

(4)

(5) ; and

(6) What Per. 18 discussed with former President Donald J. Trump in a phone call on June 24, 2022; and it is further

ORDERED that is to appear before the Grand Jury of the U.S. District Court for the District of Columbia and give testimony, which has previously been the subject of an assertion by the former president of the attorney-client privilege and work-product doctrine protection, relating, but not limited to, the first five of the above-enumerated topics; and it is further

ORDERED that, by noon on March 20, 2023, Per. 18 shall produce to the government: (1) the documents listed in Appendix A, (2) the documents listed in Appendix B-1 with Per. 18's proposed redactions executed, and (3) the documents listed in Appendix B-2 as redacted by the Court, which are appended as Attachments 1 and 2 to a separate Order filed *ex parte* with disclosure only to Per. 18 and the government; and it is further

ORDERED that the government's motion is DENIED as to the single withheld document by unless such document is a duplicate of any documents withheld by Per. 18 upon which this Court has ruled and ordered production, in part or in full; and it is further

ORDERED that, by 10 a.m. on March 20, 2023, the government shall redact the accompanying Memorandum Opinion as necessary to protect matters occurring before the grand jury and the ongoing investigation, and disclose the resulting redacted Opinion, through counsel, to the Witnesses and former president, and file the redacted Opinion on the docket by the same time.

SO ORDERED.

Date: March 17, 2023

BERYL A. HOWELL
Chief Judge

APPENDIX A:
NON-PRIVILEGED DOCUMENTS
THAT MUST BE PRODUCED

	P. 18	
1		PRIV-002
2		PRIV-003
3		PRIV-004
4		PRIV-005
5		PRIV-006
6		PRIV-007
7		PRIV-009
8		PRIV-010
9		PRIV-011
10		PRIV-012
11		PRIV-013
12		PRIV-014
13		PRIV-015
14		PRIV-016
15		PRIV-017
16		PRIV-021
17		PRIV-022
18		PRIV-023
19		PRIV-024
20		PRIV-025
21		PRIV-026
22		PRIV-028
23		PRIV-029
24		PRIV-030
25		PRIV-037
26		PRIV-038
27		PRIV-041
28		PRIV-042
29		PRIV-043
30		PRIV-044
31		PRIV-047
32		PRIV-050
33		PRIV-053
34		PRIV-055
35		PRIV-057
36		PRIV-058
37		PRIV-059
38		PRIV-060

	P. 18	
39		-PRIV-064
40		-PRIV-067
41		-PRIV-068
42		-PRIV-069
43		-PRIV-070
44		-PRIV-081
45		-PRIV-084
46		-PRIV-085
47		-PRIV-086
48		-PRIV-087
49		-PRIV-088
50		-PRIV-089
51		-PRIV-091
52		-PRIV-092
53		-PRIV-093
54		-PRIV-094
55		-PRIV-099
56		-PRIV-102
57		-PRIV-103
58		-PRIV-104

APPENDIX B-1:
DOCUMENTS THAT MUST BE PRODUCED
WITH OPINION WORK PRODUCT REDACTIONS
AS PROPOSED BY Per. 18

The following documents must be produced with the redactions proposed by Per. 18

1	P. 18-PRIV-027
2	-PRIV-031
3	-PRIV-036
4	-PRIV-039
5	-PRIV-063
6	-PRIV-095
7	-PRIV-096
8	-PRIV-097
9	-PRIV-098
10	-PRIV-101

**

APPENDIX B-2:
DOCUMENTS THAT MUST BE PRODUCED
WITH OPINION WORK PRODUCT REDACTIONS
AS MADE BY THE COURT

The following documents must be produced as redacted by the Court in the versions attached to the separate *ex parte* Order.

1	P. 18-PRIV-082
2	-PRIV-083

**APPENDIX C:
DOCUMENTS THAT MAY BE
ENTIRELY WITHHELD**

		Per. 18	
1			PRIV-001
2			PRIV-008
3			PRIV-018
4			PRIV-019
5			PRIV-020
6			PRIV-032
7			PRIV-033
8			PRIV-034
9			PRIV-035
10			PRIV-040
11			PRIV-045
12			PRIV-046
13			PRIV-048
14			PRIV-049
15			PRIV-051
16			PRIV-052
17			PRIV-054
18			PRIV-056
19			PRIV-061
20			PRIV-062
21			PRIV-065
22			PRIV-066
23			PRIV-071
24			PRIV-072
25			PRIV-073
26			PRIV-074
27			PRIV-075
28			PRIV-076
29			PRIV-077
30			PRIV-078
31			PRIV-079
32			PRIV-080
33			PRIV-090
34			PRIV-100

EXHIBIT 18

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE GRAND JURY SUBPOENA GJ 42-17 and GJ 42-69	Case No. 23-gj-10 (BAH) Chief Judge Beryl A. Howell **UNDER SEAL** **EX PARTE TO GOVERNMENT ONLY**

MEMORANDUM OPINION

In November 2022 and January 2023, a grand jury sitting in this District issued subpoenas for testimony and documents to Per. 18 and ██████, respectively, both of whom have served as attorneys for former president Donald J. Trump and his post-presidential office, as part of an investigation into whether the former president orchestrated a scheme unlawfully to retain and hide from the government documents bearing classification markings. In January 2023, Per. 18 appeared before the grand jury and declined to respond to certain questions by invoking attorney-client privilege and the work product doctrine, pursuant to directions by former president Trump and Per. 18 own independent claim of opinion work-product protection. He also produced a privilege log listing documents responsive to the subpoena that he withheld on these bases. ███ has not appeared before the grand jury. Instead, through counsel, she informed the government that she intended to adhere to the former president's instructions to withhold one document and decline to answer certain questions on the basis of attorney-client privilege and the work-product doctrine. The government now moves to compel both witnesses' withheld testimony and documents because the attorneys' client, the former president, used their services to further a criminal scheme.

For the reasons explained below, the government's motion is granted in part and denied in part.

Subject to Protective Order

I. BACKGROUND

Summarized below is factual and procedural background relevant to consideration of the instant motion, with factual information distilled from a sworn affidavit supporting a search warrant issued in the Southern District of Florida, sworn grand jury testimony, and video, documentary, email and text evidence obtained by the government over the course of this investigation.

A. The Former President's Document Retention System

According to several witnesses interviewed by the Federal Bureau of Investigation ("FBI"), during the former president's administration, his record-keeping system utilized "Bankers boxes," a type of white and blue cardboard box with a separate lid, to store records and review them at his convenience. *See* Gov't's *Ex Parte* Mem. in Supp. of Mot. Compel ("Gov't's *Ex Parte* Mem."), Ex. 1, Aff. of FBI Special Agent in Supp. Appl. Under Rule 41 for Search & Seizure Warrant at Mar-a-Lago (S.D. Fla. Aug. 5, 2022) ("MAL Warrant Aff.") ¶¶ 26–31, 32 (photograph of "FPOTUS [Former President of the United States] aides loading boxes onto Marine One on January 20, 2021, as FPOTUS departed the White House"), ECF No. 2. The witnesses referenced are described as a representative of the former president, "WITNESS █ *id.* ¶ 26; a former employee of the former president, "WITNESS █ *id.* ¶ 27; two current employees of the former president, "WITNESS █ and "WITNESS 5," *id.* ¶¶ 28, 31; and a current employee of Mar-a-Lago, "WITNESS █ *id.* ¶ 30.[1] The former president's boxes commingled unclassified documents—including schedules, daily task lists, newspapers, memoranda, briefing books, economic reports, draft press statements, and draft letters—with classified documents—

[1] The witnesses described in the MAL Warrant Affidavit as WITNESSES █ and █ remain unidentified to this Court, but WITNESS █ is █ Per. 34 █, and WITNESS 5 is Waltine Nauta, the former president's "body man" and personal aide, who was interviewed by the FBI on May 26, 2022, and later testified before the grand jury on June 21, 2022. *See* Gov't's *Ex Parte* Mem. at 9 & n.7; *id.*, Ex. 24, Transcript of Waltine Nauta Grand Jury Testimony (June 21, 2022) ("Nauta GJ Tr.") at 3, ECF No. 2. Other witness numbers mentioned in this opinion do not appear in the MAL Warrant Affidavit.

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including daily briefing books that contained classified information, decision memo packages with classified material attached, talking points for State Department calls that were classified, and other documents bearing classification markings. *Id.* ¶¶ 28–29.

According to WITNESS █ WITNESS █ and WITNESS 5, at the end of the Trump Administration in January 2021, approximately 85 to 95 Bankers boxes were moved from the White House to Mar-a-Lago, the former president's residence in Palm Beach, Florida. *Id.* ¶¶ 30–33. WITNESS 5, who accompanies the former president in case he "needs something," Gov't's *Ex Parte* Mem., Ex. 7, Transcript of Witness 5 FBI Interview (May 26, 2022) ("Witness 5 FBI Interview") at 7, 11, ECF No. 2, described that period as "literally chaos" as he recalled "packing all the personal items" in the White House with another colleague while "everyone else was just shoving everything in a box," *id.* at 40.

Several months later, in May 2021, WITNESS █ was aware that the former president directed his staff to locate a permanent storage location for the boxes, and in late August or early September 2021, boxes were kept in an unlocked storage room on the ground floor of Mar-a-Lago. MAL Warrant Aff. ¶ 34. WITNESS █ described that room being in a hallway with other offices and storage spaces, behind an unmarked door, and accessible by several staircases. *Id.* ¶ 35. Also kept in that storage room were boxes containing challenge coins, garment bags, and memorabilia from Mar-a-Lago, including photograph frames, other décor items, and "gifts from the White House deemed too valuable to store off-site." *Id.* ¶¶ 36–37. WITNESS █ observed that a lock was eventually installed on the storage room door. *Id.* ¶ 34.

B. January 2022 Production of Documents and National Archives and Records Administration's Referral to U.S. Department of Justice

The Presidential Records Act requires, "[u]pon the conclusion of a President's term of office, . . . [that] the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President. 44 U.S.C. §

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2203(g)(1). Pursuant to that authority, the National Archives and Records Administration ("NARA") communicated with the former president's staff throughout 2021 to coordinate the transfer of presidential records previously or still missing from NARA following the end of the Trump Administration. *See* Letter from David S. Ferriero, Archivist of the United States, to the Hon. Carolyn B. Maloney at 1 (Feb. 18, 2022), https://www.archives.gov/files/foia/ferriero-response-to-02.09.2022-maloney-letter.02.18.2022.pdf; *see also* Letter from Debra Steidel Wall, Acting Archivist of the United States, to Evan Corcoran ("Wall Letter") at 1 (May 10, 2022), https://www.archives.gov/files/foia/wall-letter-to-evan-corcoran-re-trump-boxes-05.10.2022.pdf; MAL Warrant Aff. ¶ 25. Specifically, NARA made its initial request for missing records around May 6, 2021, and continued making requests until late December 2021, when NARA was informed that twelve boxes with missing materials were available for retrieval from Mar-a-Lago. *Id.* ¶ 39.

According to WITNESS █ the former president "wanted to review the boxes before providing them to NARA," so WITNESS █ WITNESS 5, and another employee of the former president collected, over time, a total of around fifteen boxes from the storage room and delivered them to the entryway of former president's personal residential suite at Mar-a-Lago, an anteroom known as Pine Hall. *Id.* From November 2021 to mid-January 2022, these three individuals brought two to four boxes at a time from the storage room and placed them just outside the former president's suite; WITNESS █ believed that the former president would then review those boxes' contents. *Id.* ¶¶ 39, 40; Gov't's *Ex Parte* Mem., Ex. 2, Texts between WITNESS █ and WITNESS 5 sent in Nov. 2021 ("WITNESS █ and WITNESS 5 Texts"), ECF No. 2.[2] After receiving fifteen to seventeen boxes from the storage room, the former president

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[2] On November 25, 2021, for example, WITNESS █ texted WITNESS 5 that she had "delivered some [boxes], but I think he may need more. Could you ask if he'd like more in pine hall?" to which Witness 5 replied

instructed WITNESS █ WITNESS 5, and the other employee to stop, stating, "that's it." MAL Warrant Aff. ¶ 42.[3]

NARA scheduled to retrieve the boxes from the former president's possession on January 17, 2022. *Id.* ¶ 39. That day, WITNESS █ observed fifteen boxes in Pine Hall, which WITNESS █ and WITNESS 5 transferred to WITNESS 5's car and then delivered to the NARA contract driver. *Id.* ¶¶ 39, 41. Following that delivery, the former president informed his staff that the fifteen boxes were the only ones going to NARA and "there are no more," according to WITNESS █ *Id.* ¶ 43. Around that time, the former president also directed WITNESS █ to inform one of the former president's lawyers that there were no more boxes at Mar-a-Lago. *Id.* ¶ 44.

All the while, the former president was aware that more boxes were in the storage room that he had not reviewed. In November 2021, the former president was shown a photo of boxes stacked to the ceiling in the storage room, numbering far more than fifteen boxes. Gov't's *Ex Parte* Mem., Ex. 2, WITNESS █ and WITNESS 5 Texts; *see also* MAL Warrant Aff. ¶ 46 (reproducing the photo). In fact, approximately 70 to 80 boxes remained in the storage room following the delivery of the fifteen boxes to NARA. *Id.* ¶ 45.

Upon receipt of the fifteen boxes, NARA reviewed their contents and uncovered "items marked as classified national security information, up to the level of Top Secret and including Sensitive Compartmented Information and Special Access Program materials," Wall Letter at 1, which were "unproperly [*sic*] identified," and interspersed with non-classified items, including

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the same day that "[h]e has one he's working on in pine hall[.] Knocked out 2 boxes yesterday." Gov't's *Ex Parte* Mem., Ex. 2, WITNESS █ and WITNESS 5 Texts.

[3] In an interview with the FBI on May 26, 2022, WITNESS 5 engaged in patent dissembling. He denied ever having seen the boxes before delivering them to NARA on January 17, 2022, *see* WITNESS 5 FBI Interview at 25, 35; claimed not to know where the former president kept the boxes, *id.* at 17, 27, 36, 41; and denied knowing how the boxes got to Pine Hall. *Id.* at 3 (continuation of interview) (Q: "But you have no idea how those boxes got there or where they were before and you [*sic*]." WITNESS 5: "No.").

"newspapers, magazines, printed news articles, photos, miscellaneous print-outs, notes, presidential correspondence, personal and post-presidential records," MAL Warrant Aff. ¶ 24. NARA notified the Department of Justice ("DOJ") about the discovery of classified documents, and DOJ requested that NARA provide access to the fifteen boxes for further investigation. Wall Letter at 1.

NARA alerted the former president, through counsel, of its intent to provide such access, but the former president objected, seeking additional time to review the boxes for any information protected by executive privilege. *Id.* at 2–4. After careful consideration and consultation with various agencies, NARA denied the former president's request, stating that the question of whether a former president "could successfully assert a claim of executive privilege to prevent an Executive Branch agency from having access to Presidential records for the performance of valid executive functions . . . in this case is not a close one." *Id.* at 3. NARA then informed the former president that it would provide the boxes to the FBI beginning on May 12, 2022. *Id.* at 4. According to the government, the former president "did not seek legal relief" following that decision. Gov't's *Ex Parte* Mem. at 6.

C. Issuance of, and Response to, May 11, 2022 Grand Jury Subpoena

After receipt of NARA's referral, the government's subsequent investigation raised "concerns that additional documents with classification markings were in the possession of the former President or his post-presidential office." Gov't's Mot. Compel ("Gov't's Mot.") at 4, ECF No. 1. Consequently, a grand jury in this District issued a subpoena on May 11, 2022 to the custodian of records for the Office of Donald J. Trump ("the Office"). Gov't's Mot., Ex. 2, Subpoena to Testify Before a Grand Jury (May 11, 2022) ("May 2022 Subpoena"), ECF No. 1. The Office is statutorily authorized under the Former President's Act, which states that every former president may establish an office at a location of his choosing, with staff paid for by the

government, and extra funds made available "to pay fees of an independent contractor who is not a member of the staff of the office of a former President for the review of Presidential records of a former President in connection with the transfer of such records to the National Archives and Records Administration or a Presidential Library without regard to the limitation on staff compensation set forth herein." 3 U.S.C. § 102 note (b) (selection, compensation, and status of office staff to former presidents). A custodian of the Office would serve that statutory role.

Ensuring compliance with the May 2022 Subpoena has been slow-going, prompting the government to seek and execute a search warrant at Mar-a-Lago, additional government motions regarding inadequate compliance, repeat visits to this Court, and new searches conducted and updated certifications filed, with the compliance effort dragging into mid-December 2022, when additional classified documents were recovered from a closet in the Office's designated space at Mar-a-Lago. Key events in this compliance saga are summarized below.

1. *May 11, 2022 Grand Jury Subpoena*

The subpoena required the following documents be produced by May 24, 2022:

> Any and all documents or writings in the custody or control of Donald J. Trump and/or the Office of Donald J. Trump bearing classification markings, including but not limited to the following: Top Secret, Secret, Confidential, Top Secret/SI-G/NOFORN/ORCON, Top Secret/SI-G/NOFORN, Top Secret/HCS-O/NOFORN/ORCON, Top Secret/HCS-O/NOFORN, Top Secret/HCS-P/NOFORN/ORCON, Top Secret/HCS-P/NOFORN, Top Secret/TK/NOFORN/ORCON, Top Secret/TK/NOFORN, Secret/NOFORN, Confidential/NOFORN, TS, TS/SAP, TS/SI-G/NF/OC, TS/SI-G/NF, TS/HCS-O/NF/OC, TS/HCS-O/NF, TS/HCS-P/NF/OC, TS/HCS-P/NF, TS/HCS-P/SI-G, TS/HCS-P/SI/TK, TS/TK/NF/OC, TS/TK/NF, S/NF, S/FRD, S/NATO, S/SI, C, and C/NF.

May 2022 Subpoena at 1. In short, the subpoena demands production of documents with classification markings, regardless of any claim by the Office or the former president that the latter declassified documents before leaving office. The subpoena contains no geographic

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limitation and therefore makes responsive all documents possessed by the Office or the former president that bear classification markings, including those potentially stored at Mar-a-Lago or elsewhere in their possession.

On May 11, 2022, the subpoena was served on counsel to the former president and the Office, Per. 18, who confirmed authority to receive it. Gov't's Mot., Ex. 3, Letter from Jay Bratt, DOJ, to Per. 18, counsel to the former president and the Office (May 11, 2022) ("May 2022 Bratt Letter"), ECF No. 1; *see also* Gov't's *Ex Parte* Mem., Ex. 6, Transcript of Per. 18 Grand Jury Testimony (Jan. 12, 2023) ("Per. 18 GJ Tr.") at 13, ECF No. 2 (Per. 18 confirming his representation). In lieu of personally appearing to produce responsive documents on May 24, 2022, the government offered that compliance with the subpoena could be accomplished "by providing any responsive documents to the FBI at the place of their location," leaving the FBI with the responsibility to ensure that "the agents retrieving the documents" had the proper clearances and training on the appropriate handling of classified documents. May 2022 Bratt Letter. Should this alternative method of compliance with the grand jury subpoena be used, the government directed that "[t]he custodian . . . provide a sworn certification that the documents represent all responsive records [and] [i]f there are no responsive documents, the custodian would provide a sworn certification to that effect." *Id.* The alternative method of subpoena compliance offered by the government—namely, FBI agents picking up any responsive classified documents and a custodian's certification—was the method the Office later adopted on June 3, 2022. *See infra* Part I.C.5.

Through subsequent correspondence, the Office requested additional time to respond to the subpoena, stating that classified documents "that were once in the White House" were "unknowingly included among the boxes brought to Mar-a-Lago by the movers" and then transferred to NARA, and stressing that "President Trump readily and voluntarily agreed" to

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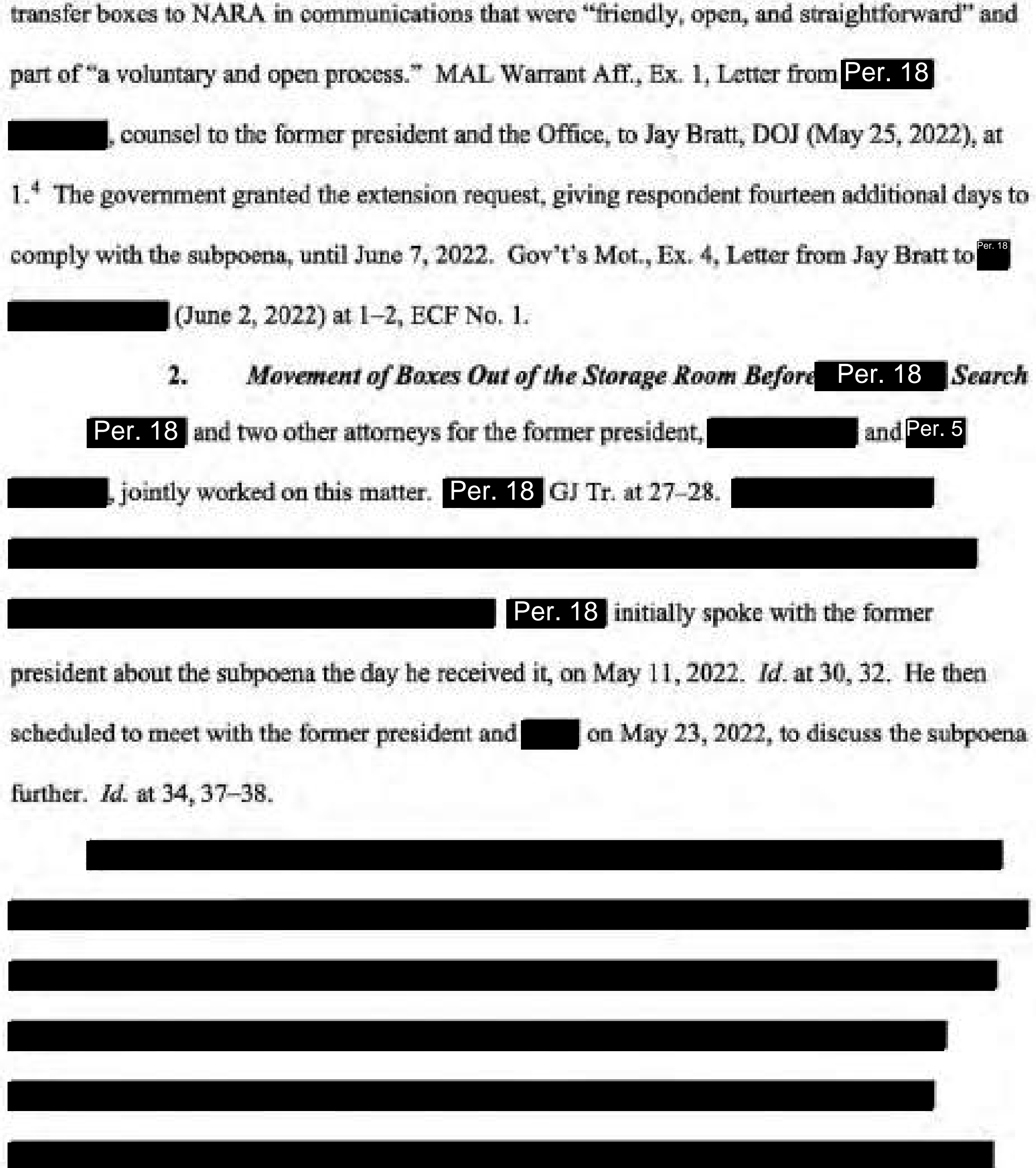

transfer boxes to NARA in communications that were "friendly, open, and straightforward" and part of "a voluntary and open process." MAL Warrant Aff., Ex. 1, Letter from Per. 18 , counsel to the former president and the Office, to Jay Bratt, DOJ (May 25, 2022), at 1.[4] The government granted the extension request, giving respondent fourteen additional days to comply with the subpoena, until June 7, 2022. Gov't's Mot., Ex. 4, Letter from Jay Bratt to Per. 18 (June 2, 2022) at 1–2, ECF No. 1.

2. *Movement of Boxes Out of the Storage Room Before* Per. 18 *Search*

Per. 18 and two other attorneys for the former president, and Per. 5 , jointly worked on this matter. Per. 18 GJ Tr. at 27–28. Per. 18 initially spoke with the former president about the subpoena the day he received it, on May 11, 2022. *Id.* at 30, 32. He then scheduled to meet with the former president and on May 23, 2022, to discuss the subpoena further. *Id.* at 34, 37–38.

[4] Per. 18 letter went on "to note a few bedrock principles," regarding, *inter alia*, "[a]ny attempt to impose criminal liability on a President or former President" for handling of classified documents and to request that this defensively-framed letter be presented "to any judicial officer who is asked to rule on any motion pertaining to this investigation, or any application made in connection with any investigative request concerning this investigation," and as "exculpatory evidence to a grand jury." MAL Warrant, Ex. 1, Letter from Per. 18 , counsel to the former president and the Office, to Jay Bratt, DOJ (May 25, 2022), at 3. The government has acceded to this request made on behalf of former president Trump and his Office, and the May 25, 2022 letter has been presented both to the magistrate judge issuing the MAL Warrant, as well as to this Court.

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Between the May 23, 2022 counsel meeting with the former president and the June 2, 2022 search conducted by Per. 18, employees of the former president moved approximately 64 boxes from the storage room to the former president's personal suite and returned only 25 to 30 boxes to the storage room. MAL Warrant Aff. ¶ 66. On May 24, 2022, the day after the counsel meeting with the former president, an assistant emailed the former president's staff and the U.S. Secret Service informing them of a change in the former president's travel schedule: He would delay his scheduled departure from Mar-a-Lago to Bedminster, New Jersey from May 28, 2022, to June 5, 2022. *See* WITNESS 5 FBI Interview at 54 (testifying to the change in the former president's departure date); Gov't's *Ex Parte* Mem., Ex. 8, Email from WITNESS █ (May 24, 2022, at 7:18 p.m.), ECF No. 2.

Security camera footage reveals that box movement began on May 22, 2022, the day before Per. 18 and ███'s meeting with the former president; cameras capturing a partial view of the hallway outside of the Mar-a-Lago storage room show WITNESS 5 moving a box from the storage room. *See* Gov't's *Ex Parte* Mem. at 8; Transcript of Sealed Hearing (March 9, 2023) ("March 9, 2023 Hr'g Tr.") at 44:4–6 (government counsel noting, *ex parte*, that "you can't actually see [people] enter" the storage room "because of where the cameras are located"). Then, on May 24, 2022, the day after the meeting, WITNESS 5 moved three boxes from the storage room to the former president's suite. MAL Warrant Aff. ¶ 66. At some point that same day, WITNESS 5 also brought some boxes to the 45 Office within Mar-a-Lago, which WITNESS █ who works for the former president's Office, assumed were intended "to move to

Bedminster." Gov't's *Ex Parte* Mem., Ex. 9, Transcript of WITNESS █ FBI Interview (Jan. 13, 2023) ("WITNESS █ Interview Tr.") at 172–74, ECF No. 2.[5]

WITNESS 5 was interviewed by the FBI on May 26, 2022 regarding "the location of boxes at Mar-a-Lago," Gov't's *Ex Parte* Mem. at 9, and four days later and within an hour of speaking with the former president by phone, WITNESS 5 moved approximately 50 boxes from the storage room to the former president's suite, MAL Warrant Aff. ¶ 66; *see also* Gov't's *Ex Parte* Mem. at 10 n.8 (noting a phone call, on May 30, 2022 at 9:08 a.m., between WITNESS 5 and the former president; a phone call shortly thereafter, at 9:29 a.m., between the former president and Per. 5 and security camera footage less than thirty minutes later, at 9:54 a.m., showing WITNESS 5 moving boxes from the storage room). On June 1, 2022, WITNESS 5 moved eleven boxes from the storage room, one of which appeared to contain papers. MAL Warrant Aff. ¶ 66. In WITNESS 5's words in a text to Per. 30, the former president wished to review the boxes and "pick from them." Gov't's *Ex Parte* Mem., Ex. 11, Texts between WITNESS 5 and Per. 30 (May 30, 2022), ECF No. 2. Then on June 2, 2022, WITNESS 5 and WITNESS █ a Mar-a-Lago property manager, moved approximately 25 to 30 boxes from the former president's residential suite to the storage room, MAL Warrant Aff. ¶ 66; Gov't's *Ex Parte* Mem., Ex. 12, Transcript of WITNESS █ Grand Jury Testimony (Jan. 20, 2023) ("WITNESS █ GJ Tr.") at 52–55, 66–68, ECF No. 2, leaving unaccounted for about 34 to 39 previously moved boxes.[6]

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[5] WITNESS █ is Per. 10 at the Office of Donald J. Trump. *See* Aff. of FBI Special Agent in Supp. of Appl. for a Search Warrant (D.D.C. Jan. 12, 2023) ¶ 11, Case No. 23-sw-7, ECF No. 1.

[6] WITNESS █ is Carlos de Oliveira, a Mar-a-Lago employee. *See* Gov't's *Ex Parte* Mem., Ex. 12, Transcript of Carlos de Oliveira Grand Jury Testimony (Jan. 20, 2023) ("WITNESS █ GJ Tr.") at 106–07, ECF No. 2.

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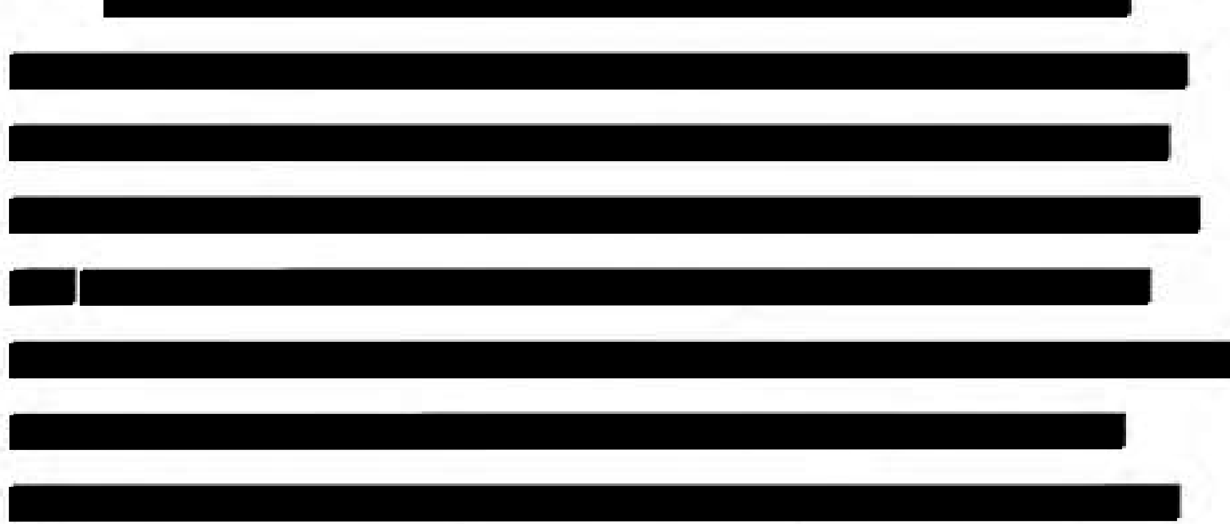
Despite contrary evidence, WITNESS 5 told FBI investigators, on May 26, 2022, repeatedly that he had no knowledge of various locations of responsive records, nor any boxes in which they were kept, and that he was not aware of who would know that information. *See* WITNESS 5 FBI Interview at 24–25 (stating that he did not know where the former president could have kept boxes and listing other individuals who may know that information), 27 (repeating that he "wouldn't know" where boxes would be stored), 37–38 (claiming not to know from where boxes located in Pine Hall would have come), 41 (same). WITNESS █ swore to the same, despite prior knowledge. *See* WITNESS █ GJ Tr. at 66–68 (The government: "Sir, would [you] ever move the former president's boxes without his permission?" WITNESS █ "I was never told to move any boxes."). During his subsequent grand jury testimony on June 21, 2022, when asked if he had moved items from the storage room at any time, WITNESS 5 replied that "within the last month" he moved a box of "challenge coins" from the storage room to the former president's office, *see* Gov't's *Ex Parte* Mem., Ex. 24, Transcript of WITNESS 5 Grand Jury Testimony (June 21, 2022) ("WITNESS 5 GJ Tr.") at 35–42, ECF No. 2, omitting any mention of the movement of boxes from the end of May to early June 2022.

3. ***June 2, 2022 Search of Storage Room***



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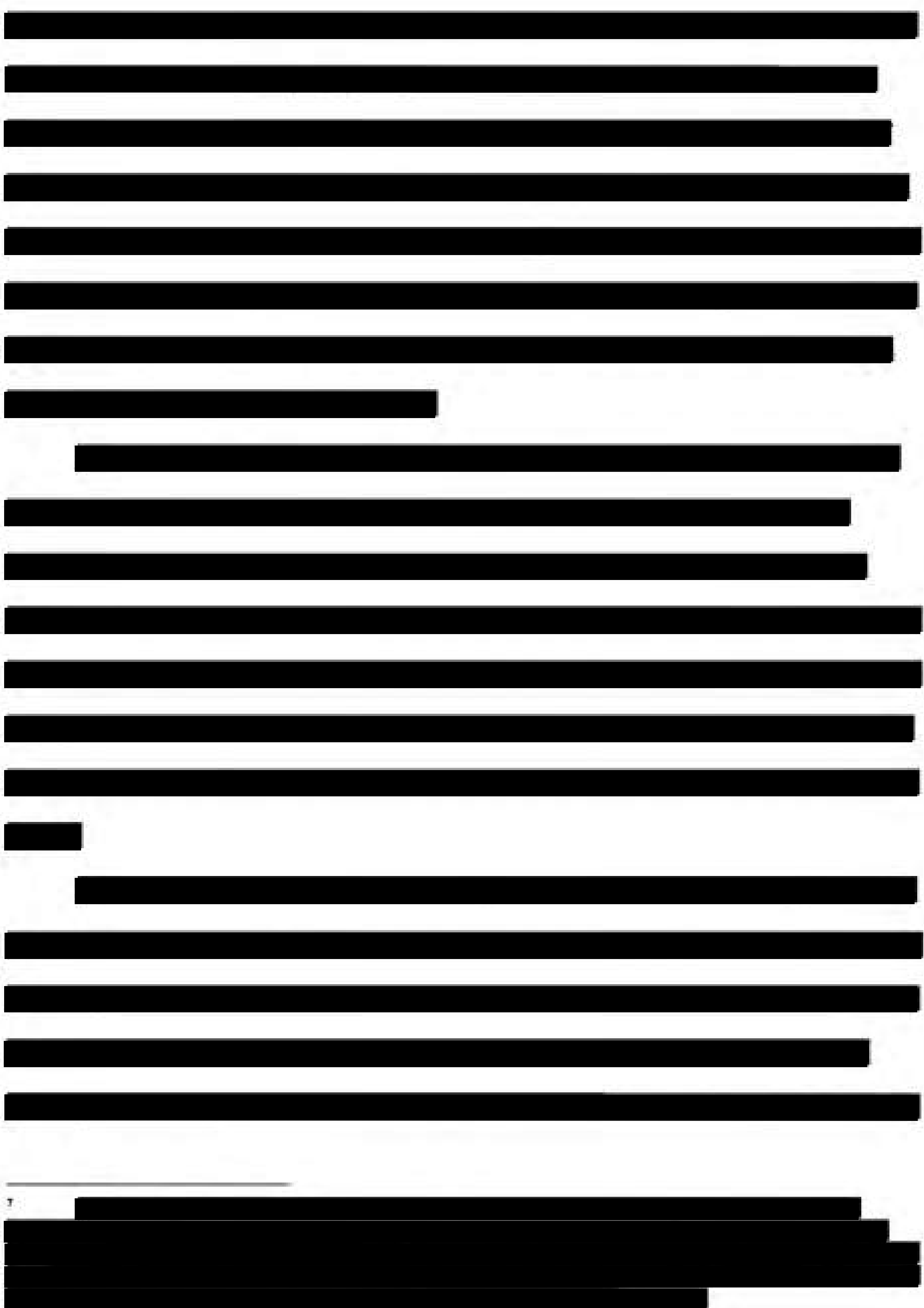

4. Per. 12 *Agrees to Serve as Custodian of Records and Preparation of Custodian's Certification*

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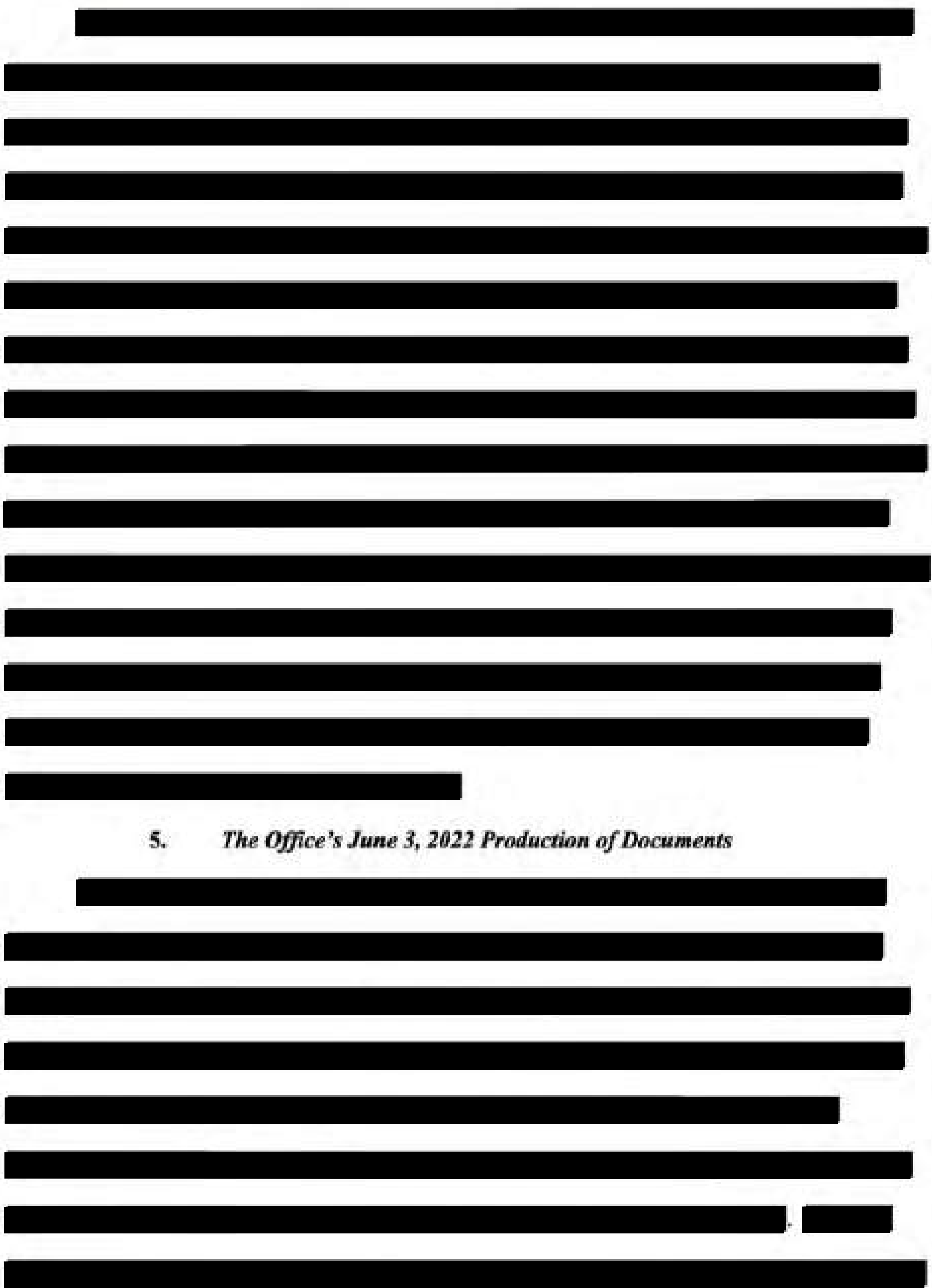
After speaking with Per. 12 Per. 18 informed the FBI that he found documents responsive to the subpoena and he scheduled for the FBI's retrieval of the documents the next day, June 3, 2022. Per. 18 GJ Tr. at 152–53.



5. *The Office's June 3, 2022 Production of Documents*

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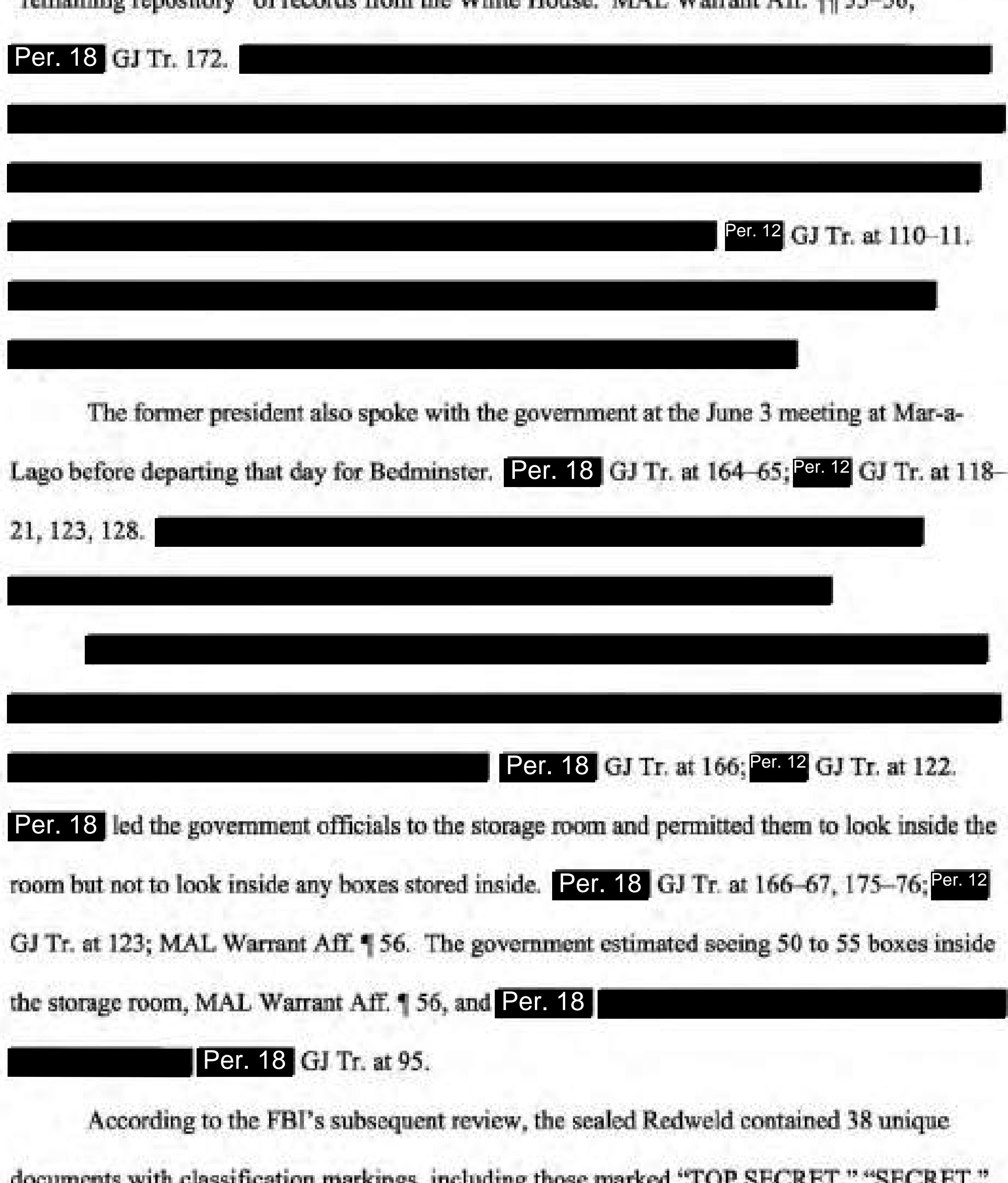
Three FBI agents and a DOJ attorney arrived at Mar-a-Lago to accept receipt of responsive materials. MAL Warrant Aff. ¶ 55. At the meeting with the government officials, Per. 18 and Per. 12 provided the government with the sealed Redweld of responsive documents found by Per. 18 and the signed certification, which stated, in relevant part, "Based upon the information that has been provided to me, I am authorized to certify, on behalf of the Office of Donald J. Trump, the following: [1] A diligent search was conducted of the boxes that were moved from the White House to Florida; . . . [2] This search was conducted after receipt of the subpoena, in order to locate any and all documents that are responsive to the subpoena; . . . [3] Any and all responsive documents accompany this certification; and . . . [4] No copy, written notation, or reproduction of any kind was retained as to any responsive document." Gov't's *Ex Parte* Mem., Ex. 13, Certification ("June 3, 2022 Certification"), ECF No. 2.

. At the meeting with the DOJ official and FBI agents, Per. 18 stated that the documents were found in boxes inside a storage room in the basement of Mar-a-Lago, and that the boxes in this storage room were the



"remaining repository" of records from the White House. MAL Warrant Aff. ¶¶ 55–56; Per. 18 GJ Tr. 172. Per. 12 GJ Tr. at 110–11.

The former president also spoke with the government at the June 3 meeting at Mar-a-Lago before departing that day for Bedminster. Per. 18 GJ Tr. at 164–65; Per. 12 GJ Tr. at 118–21, 123, 128. Per. 18 GJ Tr. at 166; Per. 12 GJ Tr. at 122. Per. 18 led the government officials to the storage room and permitted them to look inside the room but not to look inside any boxes stored inside. Per. 18 GJ Tr. at 166–67, 175–76; Per. 12 GJ Tr. at 123; MAL Warrant Aff. ¶ 56. The government estimated seeing 50 to 55 boxes inside the storage room, MAL Warrant Aff. ¶ 56, and Per. 18 Per. 18 GJ Tr. at 95.

According to the FBI's subsequent review, the sealed Redweld contained 38 unique documents with classification markings, including those marked "TOP SECRET," "SECRET," and "CONFIDENTIAL" and documents with markings indicating that they contained information subject to additional compartmentalization and caveats. MAL Warrant Aff. ¶ 58.

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D. The June 24, 2022 Grand Jury Subpoena

On June 24, 2022, the grand jury issued a subpoena to the Trump Organization, addressed to the custodian of records, seeking testimony and the production of "[a]ny and all surveillance records, videos, images, photographs and/or CCTV from internal cameras located on [the] ground floor (basement) and outside the room known as 'Pine Hall'" at Mar-a-Lago. Gov't's *Ex Parte* Mem., Ex. 14, Subpoena to Testify Before a Grand Jury (June 24, 2022) ("June 2022 Subpoena"), ECF No. 2. The government had transmitted a draft version of the subpoena to the Chief Legal Officer of the Trump Organization two days earlier, on June 22, 2022, *see also id.*, Ex. 15, Email from Jay Bratt, DOJ, to (June 22, 2022, at 11:38 a.m.), ECF No. 2 (transmitting a draft of the June 2022 subpoena to counsel for the Trump Organization), who then emailed Per. 18 that day, *see* Per. 18 *Ex Parte* Suppl. Resp. to Court's March 11, 2023 Min. Order, Exhibit B, Third Revised Privilege Log ("Per. 18 Privilege Log") at 25, ECF No. 16-2.

On June 23, 2022, the following day, Per. 18 coordinated with an assistant of the former president and WITNESS 5 to schedule a phone call with the former president the next day. Gov't's *Ex Parte* Mem., Ex. 17, Emails between Per. 18, WITNESS and WITNESS 5 (June 23, 2022), ECF No. 2. The former president and Per. 18 then spoke on the phone on June 24, 2022, at 1:25 p.m. for approximately nine minutes. Gov't's *Ex Parte* Mem. at 17.

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Shortly after the call, WITNESS 5 rearranged his travel schedule, choosing to fly to Florida on June 25, 2022, instead of Illinois with the former president as previously scheduled. *See* Gov't's *Ex Parte* Mem., Ex. 18, Email from Per. 15, Office of Donald J. Trump, Regarding the Former President's Daily Schedule for June 25, 2022 (June 24, 2022, 5:16 p.m.), ECF No. 2 (showing that the former president was scheduled to travel from Bedminster to Mendon, Illinois with WITNESS 5 on June 25, 2022, at 4:10 p.m.); *id.*, Ex. 19, Email from JetBlue Reservations to WITNESS 5 (June 28, 2022, 9:29 p.m.), ECF No. 2 (showing WITNESS 5's flight reservations from New York to West Palm Beach, Florida on June 25, 2022, and from West Palm Beach to Newark, New Jersey on June 28, 2022). WITNESS 5 told colleagues that the change of plans was due to a family emergency, *id.*, Ex. 21, Texts between WITNESS 5 and Per. 15 (June 24, 2022), ECF No. 2; *id.*, Ex. 22, Texts between WITNESS 5 and June 24–25, 2022), ECF No. 2; however, he later described the trip as work-related when seeking travel reimbursement, *id.*, Ex. 20, Texts between WITNESS 5 and (June 24, 2022, 9:26 p.m.), ECF No. 2 ("Hi I have to fly out tonight for work. I can't book a flight through the portal, can I do it on my personal then give you the receipt for reimbursement?").

At 4:10 p.m. on June 25, 2022, WITNESS 5 texted WITNESS stating that he had landed in Florida and requesting that WITNESS meet him at Mar-a-Lago at around 5:15 p.m. that day, to which WITNESS agreed. *Id.*, Ex. 23, Texts between WITNESS 5 and WITNESS (June 25, 2022), ECF No. 2. Security camera footage shows WITNESS 5 and WITNESS entering the area near the Mar-a-Lago storage room at 5:50 p.m. for approximately 30–40 seconds on June 25, 2022. Gov't's *Ex Parte* Mem. at 17.

Then, in response to the June 24, 2022 subpoena, on July 6, 2022, the Trump Organization provided the government with a hard drive, which stored "video footage from four

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cameras in the basement hallway of [Mar-a-Lago] in which the door to the STORAGE ROOM is located" spanning from April 23, 2022 to June 24, 2022. MAL Warrant Aff. ¶ 64.[8] The government's review of the footage revealed WITNESS 5 moving 64 boxes out of the anteroom leading to the storage room from May 24, 2022, to June 1, 2022, then moving 25 to 30 boxes into the anteroom on June 2, 2022. *Id.* ¶ 66.

E. Search Warrant Issued by the Southern District of Florida

Following the June 3, 2022 meeting between the government, Per. 18 and Per. 12 the government's investigation revealed a need to search Mar-a-Lago for any retained documents with classification markings that were responsive to the May 2022 Subpoena but were not provided to the government. Gov't's Mot. at 6; *see, e.g., supra* Part I.C.2 (describing witness accounts of boxes moved from the storage room shortly before Per. 18 review). Specifically, despite Per. 18 assurance that any responsive records would be in the storage room and the certification attesting that all responsive records were being turned over on June 3, 2022, the government uncovered video evidence of what appeared to be efforts to conceal and remove records from the storage room prior to Per. 18 search, raising concern about potential obstruction of the government's investigation. *See* Gov't's Mot. at 6; *see also, e.g.*, Part I.D

[8] The video footage produced in response to the June 24, 2022, subpoena ended on June 24, 2022, and the government obtained later video footage in response to subsequent legal process. Transcript of Sealed Hearing (Mar. 9, 2023) at 45–46.

(describing the video footage showing boxes moved from the storage room before Per. 18 review).

These developments of counsel's representations and the certification being demonstrably, at best, incorrect and unreliable, or, at worst, intentional misrepresentations, prompted the government, on August 5, 2022, to apply for a warrant to search and seize records responsive to the May 2022 Subpoena at Mar-a-Lago, which warrant was granted the same day by a magistrate judge in the U.S. District Court for the Southern District of Florida, upon finding that probable cause existed to believe that evidence of violations of 18 U.S.C. § 793 (gathering, transmitting, or losing of national defense information), 18 U.S.C. § 2071 (concealment, removal, or mutilation generally of government records), and 18 U.S.C. § 1519 (destruction, alteration, or falsification of records in federal investigations), would be on the property. Gov't's Mot., Ex. 1, Redacted Aff. of FBI in Supp. Appl. Under Rule 41 for Search & Seizure Warrant (S.D. Fla. Aug. 5, 2022) ("Redacted MAL Warrant Aff.") ¶ 6, ECF No. 1; *see generally* MAL Warrant Aff.

In executing the warrant on August 8, 2022, FBI seized thirteen boxes or containers that included over 100 unique documents with classification markings—ranging from "CONFIDENTIAL" to "TOP SECRET" levels with additional sensitive compartments signaling very limited distribution—all responsive to the May 2022 Subpoena. Gov't's Mot. at 7. Specifically, FBI agents found 76 documents with classification markings in the Mar-a-Lago storage room, despite Per. 18 statements and Per. 12 certification that no such documents were retained at that location. *Id.* Within the storage room, they discovered 73 boxes in total—exceeding the estimates by Per. 18 and FBI agents [redacted] and 50–55 boxes, respectively, located in the same room two months earlier, on June 3, 2022. Gov't's *Ex Parte* Mem. at 19 & n.14. In addition, agents recovered documents with classification markings in the nonpublic,

more intimate locations within the former president's private residence at Mar-a-Lago—inside his desk and closet in his personal office. *Id.*

F. **Government's Motion to Compel Full Compliance with May 2022 Subpoena**

The seizure of documents with classification markings from Mar-a-Lago revealed that the Office did not comply fully with the May 2022 Subpoena. Fearing that additional responsive records may exist beyond those uncovered through execution of the search warrant, the government contacted the Office, on September 15, 2022, offering another opportunity to provide responsive documents or certify that none remained in either the Office's or the former president's possession. *In re Grand Jury Subpoena*, Case No. 22-gj-40, Memorandum Opinion at 3 (Nov. 9, 2022), ECF No. 16 ("Nov. 2022 Mem. Op.") (opinion regarding the Court's grant of the government's motion to compel the Office to comply with the May 2022 grand jury subpoena). The Office refused either to conduct another search for responsive records or provide the requested certification, citing that the act of producing the documents violated its Fifth Amendment privilege against self-incrimination and challenging the validity of the subpoena's terms and scope. *Id.* Consequently, on October 4, 2022, the government filed a Motion to Compel Compliance with the Grand Jury Subpoena, arguing that the Fifth Amendment privilege against self-incrimination does not apply to the Office, a collective entity, and to the act of

producing government-owned documents, and that nothing about the subpoena is faulty. *Id.* at 11–12. The parties briefed the matter and appeared for a sealed hearing on the motion on October 27, 2022. *Id.* at 12–13.

Minutes before the hearing began, respondent's counsel circulated to the government and the Court a last-minute, undocketed declaration from Timothy C. Parlatore, presumably counsel for the Office (although his exact representation was unclear from the declaration), dated October 26, 2022. *Id.* at 13; *see In re Grand Jury Subpoena*, No. 22-gj-40, Declaration of Timothy C. Parlatore, Esq. ("Parlatore Decl."), ECF No. 9. After reiterating statements from respondent's opposition, the Parlatore Declaration, for the first time, advised that just two days before the scheduled hearing, "[o]n October 25, 2022, a search authorized by President Donald J. Trump was undertaken on the premises at Bedminster" by "elite" but unnamed "professionals[,] who have military training and experience as well as prior experience searching for sensitive documents and contraband" in national security matters, "supervised by legal counsel." Parlatore Decl. at 2. At the hearing, counsel for respondent, James Trusty, identified himself as the counsel referenced in the Parlatore Declaration as supervising the Bedminster search and he then elaborated on the search team's efforts to find responsive documents. *In re Grand Jury Subpoena*, No. 22-gj-40, Transcript of Sealed Hearing (Oct. 27, 2022) ("Oct. 2022 Hr'g Tr.") at 74:14–81:2. Additionally, respondent's counsel argued, *inter alia*, that the former president may unilaterally deem documents with classification markings generated by federal government agencies to be declassified and to be his personal property, and that unilateral action by the former president is sufficient to render those documents no longer the property of the federal government—an argument presented for the first time in opposition to the government's motion when made orally at the hearing. *See id.* at 68:23–71:2.

For its part, the government explained that the Office's proposal for the government to withdraw the motion to compel in exchange for the chance to observe the Office's search for responsive documents at the former president's Bedminster, New Jersey golf club was rejected as unacceptable. The proffered search was limited only to "a specific location within a property, that is, the office at Bedminster . . . one of a number of the former President's properties," without mention of whether this was the former president's personal office or a satellite location for the Office of Donald J. Trump. *Id.* at 29:10–20. In addition, the Office's offer did not include the submission of a sworn certification describing the search, which was necessary in the government's view given the "deficiencies" of the June 3, 2022 production and certification. *Id.* at 30:10–31:3. The government also articulated at the hearing what a fulsome certification would entail, namely "a declaration submitted by a custodian who had personal knowledge of the search that was conducted" in response to the subpoena. *Id.* at 23:9–13. The government added that the certification should "make clear that a diligent search was done at all locations where responsive documents to the subpoena may expect to be found," *id.* at 23:14–18, listing the specific locations searched, not limited to a single location or room, *id.* at 24:18–25. It should also certify that respondent retained no copies of the responsive documents. *Id.* at 24:14–17.

In view of the Office's newly raised arguments at the hearing, the Court permitted the parties to submit any supplemental briefing responding to or supporting those arguments, which had not been addressed in prior briefing. *See* Nov. 2022 Mem. Op. at 14. In an *ex parte* submission, the government provided certain evidence supporting concerns that responsive documents likely remained in the Office's possession, contrary to Per. 18 statements and Per. 12 certification on June 3, 2022. *See In re Grand Jury Subpoena*, Case No. 22-gj-40, Gov't's *Ex Parte* Suppl. Filing, ECF No. 12 (discussing information also outlined in *supra* Parts I.C–D). In comparison, the Office used the supplemental submission to complain bitterly about

being given the opportunity to explain its arguments and reasoning, and simply ducked addressing any relevant case law to bolster new arguments asserted at the hearing or oppose any of the government's supplemental arguments. *See* Nov. 2022 Mem. Op. at 32.

After review of the parties' briefing and arguments presented at the hearing, the Court granted the government's motion to compel on November 9, 2022, holding that the May 2022 grand jury subpoena was valid and enforceable, no Fifth Amendment privilege applied to block the Office's custodian of records from complying with the subpoena, citing *Braswell v. United States*, 487 U.S. 99 (1988), and "a custodian with first-hand knowledge of the Office's diligent and comprehensive efforts to locate responsive documents and with the ability to certify that no additional responsive records remain in the Office's possession, must comply with the subpoena." *In re Grand Jury Subpoena*, Case No. 22-gj-40, Order Granting Gov't's Mot. Compel Compliance Grand Jury Subpoena at 2 ("Nov. 2022 Order"), ECF No. 15. The November 2022 Order directed that, by November 18, 2022, the Office provide the government with a new certification and that a custodian be made available to appear before the grand jury. *Id.* at 2–3.

G. The Office's Efforts to Comply with the Court's November 2022 Order

Following the Court's November 2022 Order to comply fully with the May 2022 Subpoena, the Office took another 37 days, an additional Order of this Court, and another sealed hearing in its apparent efforts to comply. Those efforts are described below.

1. *November 15, 2022 Status Report*

On November 15, 2022, Parlatore—the individual who provided the surprise declaration at the October 2022 sealed hearing—filed a status report on behalf of the Office describing the Office's efforts to search for all documents responsive to the subpoena and, indeed, discovering two additional responsive records in an Office off-site, leased storage unit. *See In re Grand Jury*

Subpoena, Case No. 22-gj-40, Status Report on the Court's Order (Nov. 15, 2022) ("Nov. 2022 Status Report") ¶ 12, ECF No. 19. [redacted] the November 2022 Report stated that the Office "identified five locations to search for potentially responsive documents": (1) the Office located at Mar-a-Lago along with the former president's residence at the same location; (2) the former president's private golf resort at Bedminster; (3) seven General Services Administration ("GSA") rental storage units in a commercial facility in West Palm Beach, Florida; (4) the Office's GSA-leased office space in West Palm Beach, Florida—a separate location than Mar-a-Lago; and (5) areas used by the former president in Trump Tower in New York City. *Id.* ¶ 4. It also described how the Office "assembled a team" of former DOJ employees "who possess security clearances and extensive training and experience in Sensitive Site Exploitation" to conduct searches for responsive documents at Bedminster, Trump Tower, the West Palm Beach GSA office, and the GSA storage units. *Id.* ¶¶ 5–6. Notably, the Office determined that Mar-a-Lago need not be searched again following the FBI execution of the August 5, 2022, search warrant. *Id.* As of November 15, 2022, the Office's search team, supervised by James Trusty, another attorney for the Office, searched Bedminster on October 25, 2022, the GSA storage units on November 14–15, 2022, and the GSA-leased office location on November 15, 2022, *id.* ¶¶ 6, 8–16, and found in a GSA-leased storage unit "[t]wo documents . . . which appear to be potentially responsive to the subpoena . . . in a box that appears to have been packed and shipped by GSA," *id.* ¶¶ 12. The report concluded that only Trump Tower remained to be searched by the team. *Id.* at 17.

2. *November 23, 2022 Revised Certification*

On November 17, 2022, on the eve of the Office's deadline to submit a final certification, the Office requested eleven additional days to complete a search of Trump Tower. *See In re*

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Grand Jury Subpoena, Case No. 22-gj-40, Resp't's Mot. Extension of Time (Nov. 17, 2022) at 1, ECF No. 20. The Office claimed that more time was needed to "bring the searchers and supervising attorney together at the additional search location" and to account for the intervening Thanksgiving holiday. *Id.* Opposing any extension, the government argued that, in the nearly six months that had passed since the Office received the May 2022 subpoena, the Office had multiple opportunities to comply and the two responsive documents found by the Office, as disclosed in the November 2022 Status Report, "underscores the critical need for prompt compliance with the subpoena and the Court's order" and illustrates "the national security risks present if documents bearing classification markings are stored in unsecure locations." *In re Grand Jury Subpoena*, Case No. 22-gj-40, Gov't's Resp. in Opp'n Mot. for Extension at 1 (Nov. 18, 2022), ECF No. 21. The government requested that, if any extension were granted, the Office be required to submit another update on the status of compliance. *Id.* at 1–2.

The Office's extension request was granted in part and denied in part. *See In re Grand Jury Subpoena*, Case No. 22-gj-40, Min. Order (Nov. 18, 2022). Finding the Office's request to be "grossly excessive," given the six-month delay in responding to the May 2022 Subpoena, the two-month period since the government's filing of its motion to compel, and the "unacceptable" risk to national security of storing classified documents outside of appropriately secured conditions, plus the "obvious concern" that the Office's Nov. 2022 Status Report was submitted by an attorney who did not attest to be "a custodian of records with personal knowledge of respondent's efforts to comply with the grand jury subpoena"—a requirement of both the May 2022 Subpoena and the Court's November 2022 Order—the Office was given only five, rather than the requested eleven, additional days to comply in full, until November 23, 2022. *Id.* The Office was directed to report on the status of compliance that day, and to arrange for the "prompt

delivery of the materials to the government, which delivery must occur as soon as practicable upon the discovery of any materials—national holiday notwithstanding." *Id.*

On November 23, 2022, Parlatore submitted a "Certification on Behalf of Respondent," pursuant to the Court's Orders issued on November 9, 2022, and November 18, 2022. *See In re Grand Jury Subpoena*, Case No. 22-gj-40, Certification on Behalf of Respondent ("Nov. 23, 2022 Certification") (Nov. 23, 2022), ECF No. 22. Parlatore submitted the certification as an attorney for "President Donald J. Trump" with "personal knowledge of [the Office's] efforts with regard to the [May 2022] Subpoena." *Id.* ¶¶ 1–4. He did not claim to be a custodian of records for the Office.

Largely reiterating the information in the November 15, 2022 Status Report, the November 23, 2022 Certification stated that Parlatore's search team, led by Trusty, completed searches of Bedminster, the seven GSA-leased storage units in Florida, the GSA-leased office of the Office of Donald J. Trump in Florida, and Trump Tower. *Id.* ¶ 8. It confirmed that Mar-a-Lago was not searched pursuant to the Court's November 2022 Order given the government's August 8, 2022 search warrant execution. *Id.* ¶ 15. Adding to the details provided in the earlier November 2022 Status Report, the new certification summarized the contents of each storage unit—which contained furniture, clothing, gifts, photos, and documents—and detailed that the two documents responsive to the subpoena were found in Unit 2083. *Id.* ¶ 22. Those documents had "red 'Secret' covers" and "were secured in double-wrapped, sealed envelopes and kept within the locked unit until being turned over to FBI agents at approximately 6:00 a.m. on November 16, 2022," the morning after their discovery. *Id.* Also newly reported in the November 23, 2022 Certification was information about the search of Trump Tower, conducted on November 21, 2022. *Id.* ¶ 28. Due to a "scheduling conflict," Parlatore himself supervised that search instead of Trusty, which included searching the former president's office and his

personal residence, and no records responsive to the subpoena or the Court's Order were found. *Id.* ¶¶ 29–34.

The certification concluded with a section titled "Role of Certificant," explaining that the Office was under no obligation to use a custodian of records and, to the extent a custodian was used, that custodian was Per. 12. *See id.* ¶¶ 35–41. Specifically, the certification stated that "nothing in the Former President's Act," the statute providing for the GSA-funded office space for former presidents, "requires that a custodian of records be designated," *id.* ¶ 35, and instead the Act merely "permit[s]" the Office to retain an independent contractor to coordinate with NARA on the transfer of presidential records, and that the Office had not retained such a contractor, *id.* ¶ 36 (emphasis omitted). Nonetheless, Per. 12 "for purposes of testimony and documents subject to subpoena #GJ20222042790054" and had been "made available to the Government for interview and testimony," *id.* ¶ 37, which had been scheduled for December 1, 2022, *id.* ¶ 40. As of November 23, 2022, the Office "ha[d] no full-time custodian of records" and so the certification made by "an individual with personal knowledge of the searches and documents in the custody and control of the Respondent fulfills that role." *Id.* ¶ 39. Parlatore then offered to testify "to the limited information contained" in the certification, "without any further waiver of privilege[,]" although the Office's position was that "no further testimony should be necessary." *Id.* ¶ 40; *accord id.* ¶ 41.

No additional details were provided to clarify that qualifying language, leaving the government guessing as to what information exactly Parlatore would provide during any subsequent testimony—*e.g.*, whether his testimony would include details not specifically provided in the certification or whether the Office planned to instruct Parlatore to invoke privileges not previously asserted in this litigation, such as attorney-client privilege, work-

product privilege, or executive privilege, should he be questioned about any matter outside the four corners of the certification.

3. *Government's Motion for an Order to Show Cause and Subsequent Hearing*

Seven days after service of the revised certification, the government moved for an Order requiring the Office "to show cause why it should not be held in civil contempt for failure to comply with the Court's November 9, 2022 Order." *In re Grand Jury Subpoena*, Case No. 22-gj-40, Gov't's Mot. Order to Show Cause at 1 (Dec. 2, 2022), ECF No. 23. The government argued that the Office "blatantly ignored the Court's clear and explicit instructions regarding what is required in a custodial certification and who should serve as the custodian." *Id.* In particular, according to the government, the Office still had not (1) produced a custodian of records to attest to the Office's efforts responding to the subpoena, and instead provided "an attorney claiming not to waive privilege;" (2) attested to searching for responsive documents "wherever located" as required by the May 2022 Subpoena, and instead only searched certain locations; (3) provided sufficient details regarding the searches, instead offering only "disparate levels of detail on the search locations and methodology employed at each location;" and (4) produced a custodian to testify before the grand jury, instead stating that no further testimony was necessary and offering Parlatore's testimony without mention of whether he would testify to anything not expressly stated in the November 23, 2022 Certification. *Id.* at 4. Given that the Office had already delayed full compliance with the May 2022 subpoena for seven months, the government argued that any further delay to the investigation amounted to "deliberate lack of compliance with the [May 2022] Subpoena" and supported a holding of contempt. *Id.* at 5.

The government's motion to show cause why the Office should not be held in contempt was granted, along with a scheduling order for briefing and a sealed hearing on the motion on December 9, 2022. *See In re Grand Jury Subpoena*, Case No. 22-gj-40, Min. Order (Dec. 2,

2022). The Office defended the steps taken to comply with the Court's November 2022 Order, which steps included conducting searches of certain locations the Office identified and submission of a certification from "a supervisory attorney with personal knowledge of the searchers, locations, and methods" as to these efforts. *In re Grand Jury Subpoena*, Case No. 22-gj-40, Resp't's Opp'n Mot. for Order to Show Cause at 2–3, 7–8 (Dec. 6, 2022), ECF No. 24. Further, the Office indicated that the supervisory attorney, Parlatore, Per. 12 [redacted] were both available to testify, *id.* at 4, 8–9, while complaining that the government did not "articulate[] exactly what would constitute full compliance" and chose not to weigh in on which locations still needed to be searched, instead deferring to the Office's determination of locations to be searched, *id.* at 6.

At the December 9, 2022, sealed hearing, both parties clarified the tasks yet to be done to constitute full compliance with the May 2022 Subpoena. *See generally In re Grand Jury Subpoena*, Case No. 22-gj-40, Transcript of Sealed Hearing (Dec. 9, 2022) ("Dec. 2022 Hr'g Tr.").[9] After much back-and-forth between the parties regarding what had and had not been provided by the Office thus far, the Court ascertained the following terms for the Office's full compliance: (1) Parlatore would testify before the grand jury regarding the Office's efforts and due diligence to respond to the May 2022 subpoena, including testifying to information not already mentioned in the revised certification and details regarding how Parlatore determined which locations needed to be searched and when, why certain locations were selected to be searched and others not, efforts by Per. 12 to prepare to sign the June 3, 2022 certification, the

[9] The Court did not issue a contempt citation against the Office at that time, given the productive discussion about expectations for additional searches and the contents of a certification for compliance with the May 2022 subpoena and the Court's Orders issued on November 9 and 18, 2022, and the Office's apparent willingness to try to meet those expectations. *See* Dec. 2022 Hr'g Tr. at 2–9; *see also id.* at 9 (Government counsel: "[T]oday you want us to see where the areas of agreement and disagreement are. And if another hearing is necessary, you'll hold one, but perhaps we can come to a way forward that doesn't involve contempt proceedings. You view this as a motion for an order to show cause rather than contempt proceedings itself?" The Court: "Correct. That's how I view it.").

identities of the search-team members, and those members' exact search methodologies, *id.* at 12–13, 22, 31–32, 34–35, 38; (2) the revised certification as well as Parlatore's grand jury testimony would discuss accommodations the Office made for the "shell game," as coined by the government, whereby documents could be moved between locations based on scheduled dates for searches of those locations, to avoid detection of those responsive records, *id.* at 14–15, 37; and (3) Parlatore, or any individual put forward to the grand jury regarding the May 2022 subpoena, need not be labeled a "custodian" as long as they possess all the required first-hand information, *id.* at 18–19. The Court suggested that the Office add Mar-a-Lago to the list of locations to be searched again, *id.* at 37–38 (Court, to counsel for the former president: "I think it would be incumbent on you to do another diligent search of Mar-a-Lago just to make sure.").

The scope of information the government sought had one clear sticking point. The government made clear that Parlatore, or any other witness made available to testify about the conduct of the search for responsive documents, might be asked questions about the content of direct conversations with the former president. *See, e.g.*, *id.* at 24 (The Court: "[A]re you going to be asking about direct conversations with the former President and about where he may or may not have put or seen or took with him classified marked records?" The government: "I think those are fair questions to ask of a purported custodian."), 25 (The Court: "[T]his one piece of information about what Donald J. Trump told the certifier or declarant, that's going to be a difficult pillar to support a whole contempt finding." The government: "I think we would have to make that decision based on what other information we are able to obtain in the grand jury."), 31 (Respondent's counsel: "[Parlatore] is willing to . . . testify in the grand jury and address each of the items that you have identified today. If a question comes up with regard to specific conversations with [Parlatore's] client, President Trump, that may involve a different issue.").

The parties acknowledged the potential need for additional litigation regarding counsel testifying to conversations with the former president. *See id.* at 25, 31.

The hearing concluded with issuance of an Order requiring the Office to supplement the November 23, 2022 Certification by December 16, 2022, with all additional details discussed at the hearing. *Id.* at 47; *see also In re Grand Jury Subpoena*, Case No. 22-gj-40, Min. Order (Dec. 9, 2022) (directing the Office to submit the supplemental certification by December 16, 2022, by 5 p.m.).

4. ***December 16, 2022 Revised Certification***

The Office filed its final Certification of Compliance on December 16, 2022. *See In re Grand Jury Subpoena*, Case No. 22-gj-40, Certification of Compliance (Dec. 16, 2022) ("Dec. 16, 2022 Certification"), ECF No. 34. The certification, sworn by Parlatore on behalf of the Office, details the June 2, 2022 search of the Mar-a-Lago storage room, *id.* ¶¶14–18, the locations and methods of other searches conducted, including the expertise of the two former-government agents hired to perform the searches at Bedminster, GSA-leased storage units, GSA-leased office space, and Trump Tower, *id.* ¶¶ 20, 25–47, and noted that an additional search of Mar-a-Lago was conducted on December 15–16, 2022, including searching the living quarters of the former president and his family, the former president's office, and the storage room, *id.* ¶¶ 48–50.[10] Attached to the certification were 49 pages of reports summarizing the searches

[10] In subsequent litigation, during a holiday period, from December 21, 2022 to January 4, 2023, the Court denied the Office's request to supplement the existing Protective Order to permit the Office to keep secret the full names of the two members of the search team. *See generally In re Grand Jury Subpoena*, No. 22-gj-40, Resp't's Sealed Mot. for Supplemental Protective Order (Dec. 21, 2022), ECF No. 28; *In re Grand Jury Subpoena*, No. 22-gj-40, Order Denying Resp't's Mot. for Supplemental Protective Order (Dec. 29, 2022), ECF No. 30. The Court further denied the Office's motion to reconsider that ruling, *In re Grand Jury Subpoena*, No. 22-gj-40, Resp't's Mot. for Reconsideration (Dec. 30, 2022), ECF No. 31; *In re Grand Jury Subpoena*, No. 22-gj-40, Memorandum Opinion & Order Denying Resp't's Mot. for Reconsideration (Jan. 4, 2023), ECF No. 35, and pursuant to that Order, the Office provided a Notice of Compliance on January 4, 2023, confirming the disclosure of the searchers' full identities to the government that day, *In re Grand Jury Subpoena*, No. 22-gj-40, Resp't's Notice of Compliance (Jan. 5, 2023), ECF No. 37.

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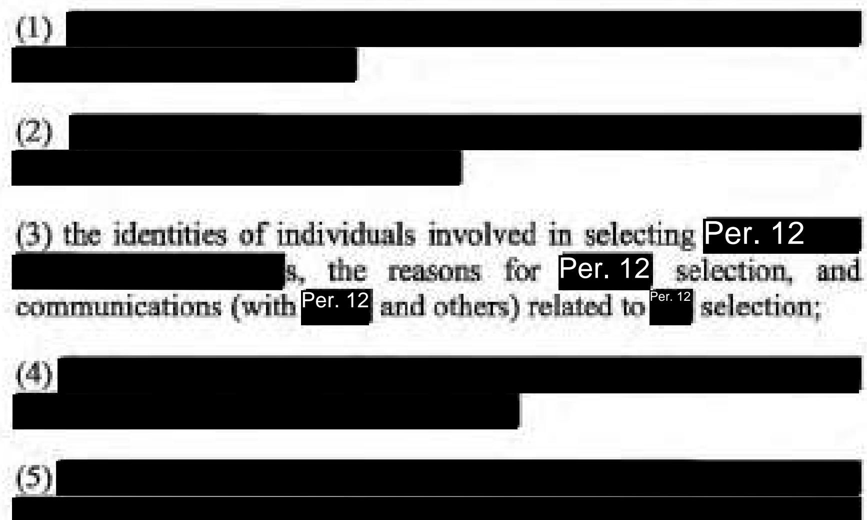
conducted, including the dates of the searches; the exact search locations including rooms, offices, and pieces of furniture; individuals present for the search; all search methods down to whether both sides of documents were examined and whether sealed items were opened and analyzed; and whether responsive records were uncovered. *See generally* Dec. 16, 2022 Certification, Exs. A–D, ECF Nos. 34-1–34-4. The reports note that no responsive records were found at Bedminster and in the GSA-leased spaces other than the two previously uncovered documents from a GSA-leased storage unit and provided to the government in November 2022. *See* Dec. 16, 2022 Certification, Ex. A at 1 (no responsive records found at Bedminster); *id.*, Ex. B at 6 (regarding GSA-leased storage units and office space, only two responsive documents found in total from those two locations); *id.*, Ex. C at 1–6 (no responsive records found at Trump Tower).

Remarkably, the report regarding the Mar-a-Lago search, conducted on December 15–16, 2023, uncovered four more responsive records. *See id.*, Ex. D at 1–15 (four responsive records found at Mar-a-Lago on December 15–16, 2022). The certification misleadingly refers to these documents as "low-level ministerial documents" without any explicit mention whether they had classification markings, indicating only that one document includes "an explanation that it was no longer deemed 'classified' if not connected to the attachment, and this document had no attachment." *Id.* ¶ 49. To be clear, the four documents were responsive to the May 2022 subpoena: "On or about December 15, 2022," the former president's counsel informed the government that "a box containing four documents or partial documents, totaling six pages, with classification markings were found in a closet" of the Office's designated space at Mar-a-Lago and "[t]hose documents contained markings at the Secret level." Aff. of FBI Special Agent in Supp. of Appl. for a Search Warrant (D.D.C. Jan. 12, 2023) ¶ 54, Case No. 23-sw-7, ECF No. 1.

The Office provided the entire box in which the four responsive records were located to the FBI on approximately January 5, 2023, in compliance with another subpoena. *Id.*[11] That was still not the end of the production of responsive records. In complying with the subpoena to produce that box, the Office also provided the FBI with two additional documents responsive to the May 2022 subpoena: "one empty folder and another mostly empty folder marked 'Classified Evening Summary'" that were found in the former president's bedroom at Mar-a-Lago. *Id.*

H. Per. 18 Grand Jury Testimony

On January 12, 2023, Per. 18 testified before the grand jury in response to a subpoena. *See generally* Per. 18 GJ Tr. He also produced over 300 documents to the government as requested by the subpoena, *id.* at 12, as well as a privilege log detailing documents withheld from the government based on attorney-client privilege and the work-product doctrine, *see generally* Per. 18 Privilege Log, ECF No. 16-2. During Per. 18 nearly six-hour testimony, the government identified the following six topics over which Per. 18 asserted privilege:



(1) [redacted]

(2) [redacted]

(3) the identities of individuals involved in selecting Per. 12 [redacted]s, the reasons for Per. 12 selection, and communications (with Per. 12 and others) related to Per. 12 selection;

(4) [redacted]

(5) [redacted]

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[11] Relatedly, on January 6, 2023, the former president's counsel informed the government that, in 2021, WITNESS █ scanned the contents of the box—produced on January 5, 2023, and previously containing classified documents—onto a laptop in her possession owned by the Save America Political Action Committee ("PAC"), a PAC formed by the former president in 2020. *See* Aff. of FBI Special Agent in Supp. of Appl. for a Search Warrant (D.D.C. Jan. 12, 2023) ¶ 55, Case No. 23-sw-7. The former president's counsel saved those scans onto a thumb drive and provided the thumb drive to the government that day.

(6) what Per. 18 discussed with the former President in a phone call on June 24.

Gov't's *Ex Parte* Mem. at 20–21; *see also id.* at 21–24 (providing more details about each topic). Those topics include Per. 18 own understanding animating his actions, individuals with whom he spoke to inform his understanding and the factual bases on which to advise his clients, and direct communications with the former president about the May 2022 subpoena and subpoena compliance efforts. *See id.*

I. Grand Jury Subpoena Issued to

On January 25, 2023, the government issued a grand jury subpoena to for testimony and documents relevant to her representation of the former president and the Office in response to the May 2022 subpoena. *See supra* Part I.C.2. informed the government, through counsel, that the former president will invoke attorney-client privilege over her testimony and that she will withhold testimony based on that privilege. Gov't's Mot. at 8. did not comply with the subpoena by its February 9, 2023, return date, *see* Former President Donald J. Trump's Sealed Opp'n to Gov't's Sealed Mot. Compel ("Resp't's Opp'n") at 4–5, ECF No. 6, and informed the government that she would withhold one responsive document, Gov't's Reply at 6, ECF No. 7.

J. Procedural History

Following the witnesses' refusal to comply in full with their subpoenas for testimony and records, the government filed the instant Motion to Compel, ECF No. 1. Along with the motion, the government simultaneously requested a protective order authorizing limited disclosure and imposing protection for the purpose of guarding grand jury litigation and secrecy, under Federal Rule of Criminal Procedure 6(e) and Local Criminal Rule 6.1. Gov't's Sealed Mem. Regarding

Mot. Compel Filings & Mot. for Order Authorizing Limited Disclosure and Imposing Protection, ECF No. 1-1. The Court issued the protective order that day. *See* Order Authorizing Limited Disclosure, Imposing Protection, and Entering Briefing Schedule ("Protective Order"), ECF No. 3.[12]

On February 21, 2023, Per. 18 and the former president filed separate oppositions to the motion to compel, both requesting a hearing on the motion, *see* Sealed Resp. of Per. 18 to Gov't's Sealed Mot. Compel ("Per. 18 Opp'n"), ECF No. 5; Resp't's Opp'n, which request was granted with a hearing held on March 9, 2023. In advance of the hearing, the Court ordered additional briefing by Per. 18 to identify which documents he withheld on the basis of opinion work product and the degree to which such opinion work product is severable from any fact work product in the documents, as well as to clarify why the "Revised Privilege Log" submitted as Exhibit A to his opposition was approximately half the size of the privilege log he provided the government in January. Court's Min. Order (March 4, 2023). The government was directed to supplement the record with the subpoena issued to Per. 18 as well as to clarify its position on (1) the application of the crime-fraud exception to Per. 18 own opinion work product and (2) whether Per. 18 "Revised Privilege Log" comprised the full extent of the documents sought by the government. *Id.* On March 6, 2023, Per. 18 and the government filed separate responses to the Court's Minute Order. Sealed Resp. of Per. 18 to Court's March 4, 2023 Min. Order ("Per. 18 Resp."), ECF No. 8; Gov't's Sealed Resp. to Court's Request for Clarification ("Gov't's Resp."), ECF No. 9; Gov't's Sealed *Ex*

[12] The Protective Order permits the government to serve on Per. 18 the former president, and the Office, through counsel, the Protective Order, the government's motion to compel, and proposed order granting the motion to compel. Protective Order ¶¶ 1–2. The Protective Order forbids the parties from disclosing to the public "the existence of this proceeding, any papers or orders filed in this proceeding, or the substance of anything occurring in this proceeding." *Id.* ¶ 4. The Order also restricts attorneys of record from disclosing this proceeding, and related papers and orders, to anyone other than their clients and individuals necessary to litigate the issues presented, and any further disclosure requires a court order. *Id.* ¶ 5.

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Parte Suppl. to Resp. to Court's Request for Clarification ("Gov't's *Ex Parte* Suppl. Resp."), ECF No. 10.

Counsel for Per. 18 former President Trump, and the government attended a sealed hearing on March 9, 2023. The nearly three-hour hearing, though largely adversarial, also included a series of *ex parte* arguments: (1) from the government, in the presence of counsel for the former president, but without Per. 18 or his counsel; (2) from the government alone, and (3) from Per. 18 counsel, in the presence of counsel for the former president, but without the government. At the conclusion of the hearing, the Court issued an oral ruling finding that the government had satisfied its evidentiary burden set out in *United States v. Zolin*, 491 U.S. 554 (1989), permitting the Court to review Per. 18 withheld documents *in camera*.

After the hearing, the Court ordered additional briefing by all three parties before the Court, *see* Court's Min. Order (March 9, 2023), as follows: (1) the government was ordered to file supplemental briefing setting out the elements of each of the criminal violations alleged to serve as the basis for application of the crime-fraud exception to the attorney client privilege; (2) the former president was ordered to clarify the legal basis for his invocation of the attorney-client privilege in response to questions seeking purely logistical information about Per. 18 search in response to the May 2022 Subpoena and to supplement the record with the transcript of attorney Timothy Parlatore's December 22, 2022 grand jury testimony, which is quoted in the former president's opposition; and (3) Per. 18 was ordered to provide for *in camera* review the withheld documents listed on his January 11, 2023-dated privilege log. *Id.* The parties complied on March 10, 2023. Gov't's Suppl. *Ex Parte* Mem. Supp. Mot. Compel ("Gov't's March 10, 2023 *Ex Parte* Suppl. Mem."); Former President Donald J. Trump's Sealed Suppl. Opp'n to Gov't's Mot. Compel ("Resp't's Suppl. Mem."), ECF No. 12; Sealed *Ex Parte* Suppl. Filing of Per. 18 Resp. Court's March 9, 2023 Min. Order ("Per. 18 March 10, 2023 *Ex*

Parte Suppl. Mem."), ECF No. 14. Finally, at the Court's direction, Per. 18 filed an updated privilege log, formatted to permit the Court to determine which claims corresponded to which documents submitted for *in camera* review. Court's Min. Order (March 11, 2023); Sealed *Ex Parte* Suppl. Filing of Per. 18 Resp. Court's March 11, 2023 Min. Order (" Per. 18 March 12, 2023 *Ex Parte* Suppl. Mem."), ECF No. 16.

The government's motion is now ripe for review.

II. APPLICABLE LEGAL PRINCIPLES

"Nowhere is the public's claim to each person's evidence stronger than in the context of a valid grand jury subpoena." *In re Sealed Case ("In re Sealed Case (1982)")*, 676 F.2d 793, 806 (D.C. Cir. 1982). "Only a very limited number of recognized privileges provide legitimate grounds for refusing to comply with a grand jury subpoena, and each of these is firmly anchored in a specific source—the Constitution, a statute, or the common law." *Id.* The attorney-client privilege and work-product doctrine are two such grounds, but such "exceptions to the demand for every man's evidence are not lightly created nor expansively construed, for they are in derogation of the search for truth." *United States v. Nixon*, 418 U.S. 683, 710 (1974); *see also Federal Trade Comm'n v. Boehringer Ingelheim Pharms., Inc.*, 892 F.3d 1264, 1269 (D.C. Cir. 2018) (Pillard, J., concurring) (noting that the "attorney-client privilege must be strictly confined within the narrowest possible limits consistent with the logic of its principle" (quoting *In re Lindsey*, 158 F.3d 1263, 1272 (D.C. Cir. 1998))); *United States v. Zubaydah*, 142 S. Ct. 959, 994 n.12 (2022) (Gorsuch, J. dissenting) (observing that privileges generally "should be recognized only within the narrowest limits defined by [the] principle[s]" animating them (internal quotation marks omitted)).

The attorney-client privilege protects communications between attorneys and their clients. It is "the oldest of the privileges for confidential communications known to the common law." *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 169 (2011) (quoting *Upjohn Co. v.*

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United States, 449 U.S. 383, 389 (1981)). As the Supreme Court explained, "[b]y assuring confidentiality, the privilege encourages clients to make 'full and frank' disclosures to their attorneys, who are then better able to provide candid advice and effective representation," and "[t]his, in turn, serves 'broader public interests in the observance of law and administration of justice.'" *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 108 (2009) (quoting *Upjohn Co.*, 449 U.S. at 389). Thus, the privilege covers a communication "between attorney and client if that communication was made for the purpose of obtaining or providing legal advice to the client." *In re Kellogg Brown & Root, Inc.*, 756 F.3d 754, 757 (D.C. Cir. 2014) (Kavanaugh, J.).

The work-product doctrine protects a different category of materials: only "documents and tangible things that are prepared in anticipation of litigation" by a party or its representative, including the party's attorney. *United States v. Deloitte LLP*, 610 F.3d 129, 135 (D.C. Cir. 2010) (quoting FED. R. CIV. P. 26(b)(3)(A)). Unlike the attorney-client privilege, which is held only by the client, "the work product privilege protects both the attorney-client relationship and a complex of individual interests particular to attorneys that their clients may not share," *In re Sealed Case (1982)*, 676 F.2d at 809, and resultantly, work product's protection "belongs to the lawyer as well as the client." *Id.* at 812, n.75. The doctrine emerged as a common law privilege in the civil litigation context, *see generally Hickman v. Taylor*, 329 U.S. 495 (1947), and has been extended to apply to criminal matters, *see United States v. Nobles*, 422 U.S. 225, 236–38 (1975), with codification in both the federal civil and criminal procedural rules, *see* FED. R. CIV. P. 26(b)(3) and FED. R. CRIM. P. 16(b)(2). The D.C. Circuit has not clarified whether FED. R. CIV. P. 26(b)(3)—which by its own terms applies to discovery—creates the substance of the work-product doctrine in the context of grand jury subpoenas, but "[b]ecause of [the] apparent identity between the common law standard and that of Rule 26(b)(3), it appears to make little difference" where the work product doctrine in this context is substantively rooted. *In re Sealed*

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Case ("In re Sealed Case (August 1997)"), 124 F.3d 230, 236 n.7 (D.C. Cir. 1997), *rev'd on other grounds by Swidler & Berlin v. United States*, 524 U.S. 399 (1998); *see also In re Grand Jury Subpoena Dated July 6, 2005*, 510 F.3d 180, 185 (2d Cir. 2007) (explaining that neither rule "is a perfect fit in the grand jury context").

"[T]he showing of need required to discover another party's work product depends on whether the materials at issue constitute 'fact' work product or 'opinion' work product." *United States v. Clemens*, 793 F. Supp. 2d 236, 244 (D.D.C. 2011). Opinion work product, comprising written materials prepared by counsel that reflect the attorney's "mental impressions, conclusions, opinions, or legal theories," is "virtually undiscoverable," *Deloitte*, 610 F.3d at 135 (quoting *Dir., Off. Thrift Supervision v. Vinson & Elkins, LLP*, 124 F.3d 1304, 1307 (D.C. Cir. 1997)). In contrast, "[t]o the extent that work product contains relevant, nonprivileged facts, the *Hickman* doctrine merely shifts the standard presumption in favor of discovery and requires the party seeking discovery to show 'adequate reasons' why the work product should be subject to discovery." *In re Sealed Case (1982)*, 676 F.2d at 809.

The crime-fraud exception at issue here pierces the shields of both the attorney-client privilege and work-product doctrine upon the proper showing that "a privileged relationship [was] used to further a crime, fraud, or other fundamental misconduct." *Id.* at 807. "Attorney-client communications are not privileged if they 'are made in furtherance of a crime, fraud, or other misconduct.'" *In re Grand Jury*, 475 F.3d 1299, 1305 (D.C. Cir. 2007) (quoting *In re Sealed Case ("In re Sealed Case (1985)")*, 754 F.2d 395, 399 (D.C. Cir. 1985)). "To establish the exception . . . the court must consider whether the client 'made or received the otherwise privileged communication with the intent to further an unlawful or fraudulent act,' and establish that the client actually 'carried out the crime or fraud.'" *In re Sealed Case ("In re Sealed Case (2000)")*, 223 F.3d 775, 778 (D.C. Cir. 2000) (quoting *In re Sealed Case ("In re Sealed Case*

(March 1997)"), 107 F.3d 46, 49 (D.C. Cir. 1997)). "To establish the exception to the work-product privilege, courts ask a slightly different question, focusing on the client's general purpose in consulting the lawyer rather than on his intent regarding the particular communication: 'Did the client consult the lawyer or use the material for the purpose of committing a crime or fraud?'" *In re Sealed Case (2000)*, 223 F.3d at 778 (quoting *In re Sealed Case (March 1997)*, 107 F.3d at 51).

To satisfy its burden of proof as to the crime-fraud exception, the government must offer "evidence that if believed by the trier of fact would establish the elements of an ongoing or imminent crime or fraud." *In re Grand Jury*, 475 F.3d at 1305 (quotation marks omitted). It "need not prove the existence of a crime or fraud beyond a reasonable doubt." *In re Sealed Case (1985)*, 754 F.2d at 399. Instead, the D.C. Circuit has "described the required showing in terms of establishing a 'prima facie' case," *In re Sealed Case (March 1997)*, 107 F.3d at 49 (tracing this "formulation . . . to the Supreme Court's opinion" in *Clark v. United States*, 289 U.S. 1, 14 (1933)). "The determination that a prima facie showing has been made lies within the sound discretion of the district court," *In re Sealed Case (1985)*, 754 F.2d at 399, which must "independently explain what facts would support th[e] conclusion" that the crime-fraud exception applies. *Chevron Corp. v. Weinberg Grp.*, 682 F.3d 96, 97 (D.C. Cir. 2012).

While recognizing that "*in camera, ex parte* submissions generally deprive one party to a proceeding of a full opportunity to be heard on an issue," *In re Sealed Case No. 98-3077*, 151 F.3d 1059, 1075 (D.C. Cir. 1998) (quotation marks omitted), the D.C. Circuit has approved the use of that process "to determine the propriety of a grand jury subpoena or the existence of a crime-fraud exception to the attorney-client privilege when such proceedings are necessary to ensure the secrecy of ongoing grand jury proceedings," *id; see also Zolin*, 491 U.S. at 556

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(holding that *in camera* review may be used to probe crime-fraud challenges to attorney-client privilege).

III. DISCUSSION

The government contends that the application of the crime-fraud exception prevents Per. 18 and [redacted] from standing on the attorney-client privilege or work product doctrine to withhold testimony and documents regarding the lawyers' efforts, taken on behalf of the former president, to comply with a grand jury subpoena commanding the production of all documents with classification markings in the former President's or office of the former President's possession. According to the government, Per. 18 and [redacted] client, former President Trump, "engaged in a crime, fraud, or other fundamental misconduct and communicated and consulted with Per. 18 and [redacted] on these six topics in furtherance of that conduct," vitiating any claims of attorney-client privilege or work-product doctrine protection. Gov't's Mot. at 9. The former president urges that no crimes were contemplated, and that his consultations with lawyers in seeking to comply with a grand jury subpoena "simply are not, in and of themselves, evidence that they are in furtherance of any crime." Resp't's Opp'n at 11. Per. 18 for his part, additionally argues that, because he has asserted his own claim to work-product protection, and because the government has not argued that Per. 18 was complicit in the alleged crimes of his client, his work product cannot be pierced by the operation of the crime-fraud exception. *See* Per. 18 Opp'n at 2.

This discussion proceeds in four parts. The first part clarifies the nature of this proceeding by addressing—and rejecting—Trump's argument that he has a due process right to review the government's *ex parte* submission in support of its motion to compel. Second, before addressing the thrust of the parties' briefings as to the application of the crime-fraud exception, the threshold inquiry is considered of whether the withheld documents and testimony should be

considered privileged at all. Next, the focus turns to the heart of the dispute: whether the crime-fraud exception applies to pierce the privileged communications and work-product subject to the government's November 21, 2022 and January 25, 2023 subpoenas to Per. 18 and [redacted] respectively, given the nature of the prima facie burden that the government must satisfy to invoke the crime-fraud exception. As part of this analysis, the first prong of the crime-fraud exception is examined to conclude that the government has sufficiently demonstrated that former President Trump's apparent actions or omissions in response to the May 11, 2022 grand jury subpoena may trigger criminal culpability, followed by consideration of the exception's second prong requiring a nexus between the privileged communications or work product and the previous prong's criminal conduct, and a finding that this second prong is also satisfied as to the withheld testimony and most of the withheld documents. Finally, because the government presently agrees not to seek to compel production of attorney opinion work product, the final part defines the proper scope of that doctrine as applied to the withheld testimony and documents.

A. Due Process and *Ex Parte* Proceedings

As a threshold matter, Trump contends that his inability to review the government's *ex parte* submission in support of its motion to vitiate his claims of attorney-client privilege and work-product protection is unfair, urging that "[c]onstitutional due process requires that President Trump and the Office receive notice of the facts the Government relies upon to make its extraordinary request." Resp't's Opp'n at 11. To be sure, *in camera, ex parte* submissions "'generally deprive one party to a proceeding of a full opportunity to be heard on an issue' . . . and thus should only be used where a compelling interest exists," but the D.C. Circuit has held that proceedings attendant to ongoing grand jury investigations—where secrecy is paramount—satisfy that high bar. *In re Sealed Case No. 98-3077*, 151 F.3d at 1075 (quoting *In re John Doe Corp.*, 675 F.2d 482, 490 (2d Cir.1982)).

The grand jury is an institution separate from the courts and government prosecutors—"a constitutional fixture in its own right," *United States v. Williams*, 504 U.S. 36, 47 (1992) (internal quotation marks omitted)—that depends on secrecy in order to "serv[e] as a kind of buffer or referee between the Government and the people," *id.* Among the reasons for the grand jury's need for secrecy are the following:

> First, if preindictment proceedings were made public, many prospective witnesses would be hesitant to come forward voluntarily, knowing that those against whom they testify would be aware of that testimony. Moreover, witnesses who appeared before the grand jury would be less likely to testify fully and frankly, as they would be open to retribution as well as to inducements. There also would be the risk that those about to be indicted would flee, or would try to influence individual grand jurors to vote against indictment.

Douglas Oil v. Petrol Stops Northwest, 441 U.S. 211, 219 (1979). As a result, courts have consistently held that submissions in support of motions to apply the crime-fraud exception in the context of a grand jury subpoena are appropriately filed *ex parte*. *See In re Grand Jury Subpoena, Judith Miller*, 438 F.3d 1141, 1179–80 (D.C. Cir. 2006) (Tatel, J., concurring) ("In this circuit . . . we have approved the use of '*in camera, ex parte* proceedings to determine the propriety of a grand jury subpoena or the existence of a crime-fraud exception to the attorney-client privilege when such proceedings are necessary to ensure the secrecy of ongoing grand jury proceedings.'" (quoting *In re Sealed Case No. 98-3077*, 151 F.3d at 1075); *In re Grand Jury Subpoena*, 223 F.3d 213, 217–19 (3d Cir. 2000); *In re John Doe, Inc.*, 13 F.3d 633, 635–36 (2d Cir. 1994); *In re Grand Jury Proceedings*, 33 F.3d 342, 352–53 (4th Cir. 1994).

Having reviewed the government's *ex parte* memorandum and exhibits submitted in support of its motion, the Court is satisfied that maintenance of secrecy is necessary to safeguard the grand jury's ongoing investigation. The former president's citation to *United States v. Rezaq* is inapposite as this case merely stands for the undisputed principle that "[*e*]*x parte* communications between a district court and the prosecution in a criminal case are greatly discouraged," 899 F. Supp. 697, 707 (D.D.C. 1995). At present, *there is no criminal case*—only

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a grand jury proceeding, which "is not an adversary hearing where guilt or innocence is adjudicated but an *ex parte* investigation to determine if there is probable cause to believe a crime has been committed." *In re Grand Jury Subpoena*, 223 F.3d at 216. Should the government proceed by asking the grand jury to return an indictment and should the grand jury decide to return an indictment and a criminal prosecution ensue, the bar for any evidence to be presented *ex parte* will be far higher, in accordance with the principle articulated in *Rezaq*. Nor does the former president's status as a former president or presidential candidate earn him across-the-board special treatment, *see* Resp't's Opp'n at 9—an argument advanced by the former president that appears to be more offensive to the rule of law than the use of *ex parte* proceedings. To be sure, courts sometimes make particularized accommodations for sitting presidents based on carefully balancing the principle that the "President . . . does not stand exempt from the general provisions of the constitution" against the need to safeguard the "President's ability to perform his vital functions." *See generally Trump v. Vance*, 140 S. Ct. 2412 (2020) (internal quotation marks omitted). This does not amount to a carte-blanche entitlement to exceptional treatment.[13]

Doubling-down on his status as the former president, the former president accuses the government of a "common goal of damaging the political viability of one person, President Donald J. Trump," who is "a major political opponent of the current president," and characterizes the pending motion as asking the Court "to ignore that context and receive an *ex*

[13] The former president further urges that the government's *ex parte* submissions not be relied upon because, in the examination before the grand jury of another of the former president's attorneys, Timothy Parlatore, a prosecutor repeatedly attempted to elicit testimony protected by the attorney-client privilege and, at one point, asked why the former president would not waive his privilege if he really were "so cooperative." Resp't's Suppl. Mem. at 2. The former president is correct that "[i]f a witness exercises some right or privilege, it is generally agreed that it is improper to suggest that adverse inferences should be drawn." SARAH SUN BEALE, GRAND JURY LAW & PRACTICE § 9:2 (2d ed. 2022). The relationship between this single exchange with a different lawyer before the grand jury and the instant matter is attenuated, however, and does not justify the former president's request for unfettered access to the government's *ex parte* submission.

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parte submission from the Government as gospel." Resp't's Opp'n at 9–10. This argument is long on theatrics and short on substance. Taking an assertion "as gospel" is generally understood as accepting it as true on the basis of *faith*, without other factual evidence as support. That is a far cry from what is occurring here. The government's *ex parte* submission consists of documentary and sworn testimony, the normal forms of evidence, and any inferences to be drawn from that evidence are not based on faith or speculation, as the former president fears, but stem from reason, context, and facts. The former president expresses concern about being personally targeted by the executive branch in the course of this investigation, but the design of the criminal justice system sets out checks and balances, including the roles of the grand jury and this Court, two institutions that sit outside of the executive branch. Moreover, the government has provided ample insight into its theory supporting the application of the crime-fraud exception—that the subject communications may reveal a deliberate scheme by the former president to provide the government a false certification that no classified documents remained in the former president or his office's possession—for him to have provided rebuttal evidence to the Court *ex parte*, offering an innocent explanation for the government's indication that "government records were likely concealed and removed from the storage room . . . to obstruct the government's investigation." Gov't's Mot. at 6. No such explanations have been offered and, while, certainly, the burden rests with the government to justify application of the crime-fraud exception, the former president's suggestion that he has *no* "notice of the factual basis for asserting the crime/fraud exception," Resp't's Opp'n at 13—is simply incorrect.

B. Attorney-Client Privilege as a Threshold Matter

In moving to compel the witnesses' testimony and documents, the government avoids the more painstaking approach of arguing which subject communications are not protected at all by the attorney-client privilege by instead arguing that, "[e]ven assuming the testimony and

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documents withheld by Per. 18 and ████ otherwise meet the requirements for the attorney-client or work-product privileges," the crime-fraud exception vitiates those privileges regardless. Gov't's Mot. at 1. At the same time, the government urges in a footnote that "much of" Per. 18 testimony does not concern privileged communications at all because the testimony would not reveal communications seeking or providing legal advice. *See id.* at 14 n.4. Though not entirely clear due to the lack of specifics, the government appears to overstate the degree to which Per. 18 testimony falls outside the privilege.

Certainly, not all exchanges between an attorney and his client fall within the protection of the attorney-client privilege—particularly where, as here, the attorney performs both legal and non-legal functions. The attorney-client privilege protects only communications for which "obtaining or providing legal advice was *one of* the significant purposes of the attorney-client communication." *Boehringer*, 892 F.3d at 1267 (quoting *Kellogg*, 756 F.3d at 759) (emphasis in original). *Matter of Feldberg* is particularly instructive for defining the contours of the privilege when a lawyer is closely involved in the mechanics of a search in response to a grand jury subpoena. *See* 862 F.2d 622 (7th Cir. 1988). In *Matter of Feldberg*, an attorney played a key role in the search for documents in response to a subpoena, which search yielded a suspiciously incomplete return of the client's files. Judge Easterbrook held that "[t]here is no need for a privilege to cover information exchanged in the course of document searches, which are mostly mechanical yet which entail great risks of dishonest claims of complete compliance. Dropping a cone of silence over the process of searching for documents would do more harm than good." *Id.* at 627. At the same time, when the attorney served both "mechanical and advisory" functions, line-drawing as to privilege protection might not be clear-cut, since "questions about the mechanics (who, how, when, where) of the search" fell outside the privilege, but other questions about the search—such as the substance of the attorney's conversation with the client,

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or how the attorney concluded that the files produced were complete, might be protected. *Id.* at 628 (remanding as to the latter questions).

Contrary to the government's cursory assertion, many of the questions that Per. 18 declined to answer on the basis of the privilege appear to elicit privileged attorney-client communications of an advisory, rather than mechanical, nature.

At the same time, most questions seeking what Judge Easterbrook would call mechanical information about Per. 18 task, such as how, when, and where he conducted the search, were properly answered without an invocation of privilege, *see, e.g., id.* at 94:25–95:11; 96:10–100:8.

On the other side of the line, however, rest the government's inquiries as to the identities of the individuals with whom Per. 18 spoke to determine the location of potentially responsive documents. *See, e.g., id.* at 58:1–20. This assertion of attorney-client privilege fails because the

fact that Per. 18 sought out the input of certain individuals—without revealing the substance of those interactions—does not reveal "any litigation strategy or other specifics of the representation or any confidential client communications." *United States v. Naegele*, 468 F. Supp. 2d 165, 171 (D.D.C. 2007) (holding that billing statements not privileged for this reason); *United States v. Halliburton Co.*, 74 F. Supp. 3d 183, 190 (D.D.C. 2014) (noting that "the fact of the consultation" between an attorney and client is not privileged). Perhaps Per. 18 invoked the attorney-client privilege in this context because he contacted individuals recommended by his client, and revealing those identities would thus reveal the contents of a client communication—but this justification fails, too. The attorney-client privilege protects only the "*communication* of facts" when those facts are conveyed for the purpose of seeking legal advice, not the "underlying facts" themselves. *Boehringer*, 892 F.3d at 1268; *see also Alexander v. FBI*, 192 F.R.D. 12, 16 (D.D.C. 2000) (Lamberth, J.) (holding no attorney-client privilege where privilege claimant failed to provide factual basis that "questions would 'necessarily' reveal the content of [privileged] communications"). The prosecutor does not over-step on the attorney-client privilege by querying the identities of individuals with whom Per. 18 spoke in his efforts to respond to the May 2022 Subpoena; the prosecutor would only elicit privileged communications if she asked whom the former President told Per. 18 to contact, or what the resultant conversations entailed.[14] In short, whether the crime-fraud exception applies, Per. 18 must answer questions about the identities of the persons with whom he spoke to prepare for responding to the May 2022 Subpoena.

[14] The former president further urges that the list of individuals questioned by Per. 18 constitutes opinion work product, even if the attorney-client privilege does not attach. *See* Resp't's Suppl. Mem. at 3–5. As discussed *infra* in Part III.D, Per. 18 opinion work product is not sought by the government, and the scope of testimony and documents properly shielded behind this doctrine is addressed in that part of this Memorandum Opinion.

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C. Application of the Crime-Fraud Exception

The crime-fraud exception involves a two-pronged inquiry, requiring first that the movant make a prima facie showing that the client committed a crime or fraud, and second, that the attorney-client communications or work product at issue furthered the criminal scheme. A discussion of how the exception's requirements are met here follows review of the nature of the prima facie standard against which the government's evidence is measured.

1. *The Prima Facie Standard*

The crime-fraud exception applicable to overcome the attorney-client privilege was first set out by the Supreme Court in *Clark v. United States*, which held that, "[t]o drive the privilege away, there must be something to give colour to the charge; there must be prima facie evidence that it has some foundation in fact." 289 U.S. at 15 (quotation marks omitted). Thereafter, the D.C. Circuit and Supreme Court have both acknowledged the "confusion" arising from the "prima facie" standard for finding the crime-fraud exception. *See, e.g., In re Sealed Case (March 1997)*, 107 F.3d at 49 ("What was the nature of [the government's burden to apply the crime-fraud exception]? Here we encounter some confusion."); *Zolin*, 491 U.S. at 564 n.7 (noting, without offering resolution, that the *Clark* Court's concept of a "prima facie" standard had "caused some confusion," because this standard is typically used in civil litigation as merely a burden of production, which when satisfied, shifts the burden of proof to the opposing party—rather than a standard that, as in the crime-fraud exception context, "is used to dispel the privilege altogether"). The prima facie standard is "among the most rubbery of all legal phrases; it usually means little more than a showing of whatever is required to permit some inferential leap sufficient to reach a particular outcome." *In re Grand Jury*, 705 F.3d 133, 152 (3d Cir. 2012) (quoting *In re Grand Jury Proceedings*, 417 F.3d 18, 22–23 (1st Cir. 2005)).

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Tasked with applying the standard in practice, federal courts have offered a range of interpretations as to the burden the movant must satisfy. The First and Third Circuits have required a "reasonable basis to believe that the lawyer's services were used by the client to foster a crime or fraud." *In re Grand Jury Proceedings*, 417 F.3d at 23; *see also In re Grand Jury*, 705 F.3d at 153 (adopting reasonable basis standard in the Third Circuit). Other courts have described the standard as one of more rigorous probable cause. *See United States v. Jacobs*, 117 F.3d 82, 87 (2d Cir. 1997); *In re Grand Jury Proceedings, G.S., F.S.*, 609 F.3d 909, 913 (8th Cir. 2010). Yet others have conceived of the standard in terms of burden-shifting between the parties, where the movant must "produc[e] evidence that will suffice until contradicted and overcome by other evidence" as to the applicability of the exception. *In re Boeing Co.*, Case No. 21-40190, 2021 WL 3233504, *2 (5th Cir. July 29, 2021); *see also United States v. Boender*, 649 F.3d 650, 655–56 (7th Cir. 2011) (describing that, after the government presents its prima facie case, the defendants may "come forward with an explanation for the evidence," an explanation that the district court then accepts or rejects). The D.C. Circuit, for its part, has rejected the probable cause articulation, instead requiring the government to offer "evidence that if believed by the trier of fact would establish the elements of an ongoing or imminent crime or fraud." *In re Sealed Case (March 1997)*, 107 F.3d at 49–50 (quotation marks omitted) (criticizing the D.C. Circuit's earlier dicta in *In re Sealed Case (1985)*, 754 F.2d at 399 n.3, indicating that "there was little practical difference" between its stated prima facie standard and the Second Circuit's probable cause standard).

What is clear is that the invocation of the crime-fraud exception is not an invitation for the Court to usurp the role of a petit jury in finding that the government has proven its case beyond a reasonable doubt, nor even the task of a grand jury in finding probable cause to believe that a crime was committed and the person charged committed that crime. As the D.C. Circuit

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has written in the context of the application of the crime-fraud exception to materials subject to a grand jury subpoena, "[t]he point is not to convict anyone of a crime or to anticipate the grand jury, but only to determine whether the possibility that a privileged relationship has been abused is sufficient to alter the balance of costs and benefits that supports the privilege." *In re Sealed Case (1982)*, 676 F.2d at 814; *see also Matter of Feldberg*, 862 F.2d at 626 ("The question here is not whether the evidence supports a verdict but whether it calls for inquiry.") The Circuit has acknowledged certain practical realities, including that "[i]n making this determination courts will not be able to receive a complete adversary presentation of the issues, since one of the parties will not be privy to the information at issue," and, further, that "[a]ny system that requires courts to make highly refined judgments—perhaps concerning volumes of documents—will most likely collapse under its own weight." *In re Sealed Case (1982)*, 676 F.2d at 814. Consequently, "courts do not require proof beyond a reasonable doubt that someone has committed a crime or fraud." *Id.*

Thus, the government's evidentiary showing in this posture is "not a particularly heavy one," *In re Grand Jury*, 705 F.3d at 153 (internal quotation marks omitted), and it does not require the Court to conduct a "minitrial," *In re Sealed Case (1985)*, 754 F.2d at 402 n.7. Indeed, a grand or petit jury, having heard the evidence presented by the government and the former president on a more fulsome record, assessed the credibility of the witnesses, and weighed potential defenses asserted, including by any claimant of the privilege, may reasonably come to a different conclusion than this Court.

2. *Prong One: Evidence of Criminal Violations*

The government has satisfied its burden of showing "evidence that if believed by the trier of fact would establish the elements" of criminal violations. *In re Grand Jury*, 475 F.3d at 1305. The government contends that the former president "orchestrated a scheme to hide from the

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government and the grand jury documents with classification markings that he unlawfully retained," including by knowingly misleading his attorneys—including Per. 18 —and causing those attorneys to provide the government with a false certification in response to a grand jury subpoena. Gov't's *Ex Parte* Mem. at 1; *accord* Gov't's Reply at 8–9. Specifically, the government cites as the criminal statutes the former president may have violated: 18 U.S.C. §§ 793(e) (willful and unauthorized retention of national defense information), 1001(a)(1)–(2) (false statements), 1512(b), 1512(c)(1), and 1519 (obstruction of justice), as well as 18 U.S.C. § 2 (liability for causing crime to be committed). Gov't's *Ex Parte* Mem. at 33; *see generally* Gov't's March 10, 2023 *Ex Parte* Suppl. Mem. The elements of the unauthorized retention statute, followed by the elements of the obstruction statutes, are considered in turn.

a) Unauthorized Retention of National Defense Information

Section 793(e) criminalizes the "unauthorized possession of . . . any document . . . relating to the national defense" when an individual "willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it." 18 U.S.C. § 793(e). As a result, proof of this criminal violation requires evidence that (1) the defendant "lack[ed] authority to possess, access or control (2) information relating to the national defense (3) in either tangible or intangible format, and (4) willfully (5) [undertook] the [] conduct" proscribed by the statute, including failing to deliver the information. *United States v. Aquino*, 555 F.3d 124, 130–31 (3d Cir. 2009); *see also* Gov't's March 10, 2023 *Ex Parte* Suppl. Mem. at 2 (describing the same elements with a slightly different formulation).

The first element—whether the former president "lack[ed] authority to possess, access or control" the documents—is not dispositive, because a prima facie violation of a crime is made out either way: Section 793(d) criminalizes exactly the same conduct where the perpetrator is in lawful possession of the documents. *Compare* 18 U.S.C. 793(d) *with* 793(e); *see also* Gov't's

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March 10, 2023 *Ex Parte* Suppl. Mem. at 4, n.3; *United States v. Kiriakou*, 898 F. Supp. 2d 921, 923 n.2 (E.D. Va. 2012) (noting the minor difference that, under Section 793(e), failing to return the documents is criminalized even when there has been no demand for their return). In any case, the government has made a sufficient prima facie showing that the former president was not authorized to retain the documents. The former president would have been authorized to possess classified information only upon the current administration's waiver of the need-to-know requirement and only so long as the "information [was] safeguarded in a manner consistent with" Exec. Order No. 13, 526, but the classified documents were stored in unauthorized and unsecured locations. Gov't's March 10, 2023 *Ex Parte* Suppl. Mem. at 4 n. 2 (quoting Nov. 2022 Mem. Op. at 30–31); *see also* MAL Warrant Aff. ¶ 61(noting that government counsel sent Trump's counsel a letter that "reiterated that [Mar-a-Lago] [is] not authorized to store classified information")..

The government has proffered sufficient evidence that the former president possessed tangible documents containing national defense information (elements two and three), and further that he failed to deliver those documents to an officer entitled to receive them (element five). The former president's Office received a subpoena on May 11, 2022 for all documents with classification markings in his and his office's possession; in response, they provided the government—via Per. 18 and Per. 12—only a small fraction of the classified documents in his possession, as outlined *supra*, in Parts I.C. & E. Two months after the former president yielded 38 unique classified documents to the government on June 3, 2022, the government discovered over 100 additional classified documents stored in Mar-a-Lago during execution of the August 8, 2022 search warrant that the former president had failed to deliver. The documents were classified to levels as high as TOP SECRET, with some documents bearing additional sensitive compartment indications, *see supra* Part I.C; undoubtedly, these documents contained national

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defense information. *See United States v. Abu-Jihaad*, 630 F.3d 102, 135 (2d Cir. 2010) (holding that, because document related to Navy ship movements was classified as "confidential," there "can be no question that this information related to the national defense"); Gov't's Suppl. *Ex Parte* Mem. at 5 n.4 (representing that "[d]ozens of documents recovered by the government on August 8" would be "potentially damaging to the United States" if disclosed). More classified-marked documents still were uncovered in November 2022 in a leased storage unit, in December 2022 in the Office at Mar-a-Lago, and apparently sometime thereafter in the former president's own bedroom at Mar-a-Lago.

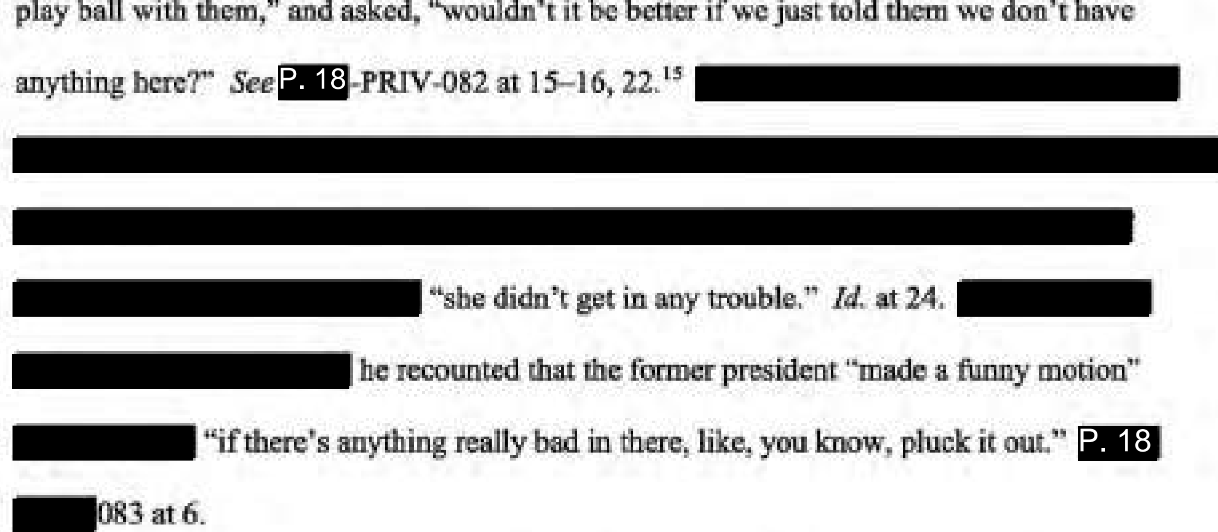
As to the *mens rea* element of the statute, which requires that the former president retained the classified documents "willfully," the government has also provided sufficient evidence to meet its burden. As detailed *supra* in Part I.C.3, the government provided evidence that the former president knew that Per. 18 limited his search for responsive documents on June 2, 2022 to Mar-a-Lago's storage room: he met with Per. 18 both before and after the lawyer's search. The former president also knew that all of the boxes potentially containing classified information were not located in the storage room at the time of Per. 18 search. Between May 22, 2022 and June 1, 2022, WITNESS 5 moved over sixty boxes from the storage room to the former president's suite. *See supra* at Part I.C.2. By June 1, 2022, the boxes in the suite had grown so numerous that Per. 30 expressed concern to WITNESS 5 that their plane would not have room for them—to which WITNESS 5 responded that the former president "told [him] to put them in the room," where he believed "Trump wanted to pick from them," rather than bring them on the plane. Gov't's *Ex Parte* Mem., Ex. 11, Texts between WITNESS 5 and Per. 30 (May 30, 2022). The next day, mere hours before Per. 18 arrived to search the storage room, WITNESS 5 and WITNESS █ returned only about 25 to 30 of the boxes back to the storage room. The timing of this choreography of box movements—which

WITNESS 5 directly attributed to the former president's orders—is strong evidence that the former president intended to hide boxes from his attorney's search efforts to comply with the grand jury subpoena, and resultantly, unlawfully to retain any classified documents contained inside any of the boxes purposely removed from the attorney search.

Other evidence demonstrates that the former president willfully sought to retain classified documents when he was not authorized to do so, and knew it. First, even before the issuance of the May 11, 2022 subpoena, he deliberately curtailed his staff's efforts to comply with NARA's requests to return missing presidential records. As described *supra* in Part I.B, in the months leading up to January 2022, the former president reviewed only fifteen to seventeen of the boxes retrieved from his storage room before telling his staff, "that's it," and instructing WITNESS to tell one of the former president's lawyers that no more boxes remained at Mar-a-Lago. The former president knew at the time that he had only reviewed a fraction of the total boxes in the storage room, because his staff had showed him a picture of the floor-to-ceiling stacks numbering over sixty boxes. *See* MAL Warrant Aff. ¶ 46. The former president's misdirection of NARA was apparently a dress rehearsal for his actions in response to the May 11, 2022 subpoena.

Second, the documents submitted by Per. 18 for the Court's *in camera* review reveal the former president's desire to conceal classified information in his possession from the government in response to the subpoena—as well as his being advised that doing so was wrongful. *See Zolin*, 491 U.S. at 569–70 (holding that communications considered *in camera* may be used for the purpose of establishing the crime-fraud exception).

"we just don't respond at all or don't



play ball with them," and asked, "wouldn't it be better if we just told them we don't have anything here?" *See* P. 18-PRIV-082 at 15–16, 22.[15] "she didn't get in any trouble." *Id.* at 24. he recounted that the former president "made a funny motion" "if there's anything really bad in there, like, you know, pluck it out." P. 18 083 at 6.

Without discussing any criminal statute specifically, the former president contends that the "mere fact that the [June 3, 2022 Certification] post hoc is claimed by the Government to be inaccurate" does not suffice for the crime-fraud exception to apply. Resp't's Opp'n at 12. This Court agrees, but the problem for the former president is that the first inaccurate certification is not the sole factual basis presented by the government to invoke the exception.

At the March 9th hearing, his counsel urged that the former president's later efforts to comply with the May 11, 2022 subpoena—including the searches of five different locations, including Mar-a-Lago, across October through December of 2022, *see supra* Part I.G—demonstrate the former president's diligent efforts to provide the government "everything they could ever ask"—even if those efforts were admittedly undertaken "under the shadow of Court contempt." March 9, 2023 Hr'g Tr. at 60:8–24. He urged that the December 2022 discovery of

[15] A key principle of the crime-fraud exception, as discussed *infra*, is that it does not strip the attorney-client privilege from consultations in which "a client seeks counsel's advice to determine the legality of conduct before the client takes any action," *United States v. White*, 887 F.2d 267, 272 (D.C. Cir. 1989). If a client expresses an interest in an illegal course of conduct, is advised against it by his lawyer, and then decides to take his lawyer's advice, then the attorney-client relationship has worked exactly as intended and deserves the utmost protection. For this reason, one of the crime-fraud exception's requirements is that client must have "actually 'carried out the crime or fraud.'" *In re Sealed Case (2000)*, 223 F.3d at 778 (quoting *In re Sealed Case (March 1997)*, 107 F.3d at 49). The former president's statements to Per. 18 taken alone may be insufficient to establish the applicability of the crime-fraud exception—but they are relevant in resolving the discrete question here: whether evidence is sufficient for a prima facie showing that Trump acted willfully in retaining the classified documents.

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four documents with classification markings in the Office's designated space within the Mar-a-Lago compound did not demonstrate the former president's intent to retain the records, emphasizing that the box was in the possession of a young staffer who believed it contained "essentially daily summaries of the President's activities," and who stored it in a closet, apparently of her own accord. *Id.* at 63:16–65:3.

To be sure, the government has not provided direct evidence that the former president deliberately retained, or was even aware of, the particular classified-marked documents located by his counsel at Mar-a-Lago in December 2022. Again, if the uncovering of these four classified-marked documents, even combined with the inaccurate June 3, 3022 Certification, were the only evidence of the former president's retention of classified documents, the government would have failed to make a prima facie showing of willfulness. That is not the limited scope of the factual record before this Court, however. Notably, no excuse is provided as to how the former president could miss the classified-marked documents found in his own bedroom at Mar-a-Lago. Instead, the government has provided evidence to demonstrate that the full arc of the criminal violation had already concluded more than six months before this search of Mar-a-Lago, when the evidence demonstrates that the former president intentionally failed to provide all of the classified documents in his possession to the government with the June 3, 2022 Certification. As the government correctly argues, the former president's later efforts to uncover additional classified documents do not undermine that showing. *See* Gov't's Suppl. *Ex Parte* Mem. at 15.

Accordingly, the Court finds that the government has made a sufficient prima facie showing that the former president violated 18 U.S.C. § 793(e).

b) Obstruction of Grand Jury Investigation

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The government contends that the former president's conduct in responding to the May 11, 2022 subpoena can be viewed through another lens of criminal liability: obstruction of justice. By apparently causing Per. 18 to provide the government with the June 3, 2022 Certification, the government argues, the former president obstructed a grand jury's ongoing investigation and made false statements to government officials, in violation of 18 U.S.C. §§ 1001(a)(1), 1001(a)(2), 1512(b)(2)(A), 1512(c)(1), and 1519.

First, making deliberate false representations to the government is criminalized under 18 U.S.C. §§ 1001. The first two subsections of the statute prohibit "knowingly and willfully . . . falsif[ying], conceal[ing], or cover[ing] up by any trick, scheme, or device a material fact" or "mak[ing] any materially false, fictitious, or fraudulent statement or representation" in matters within the jurisdiction of any branch of the United States government. 18 U.S.C. §§ 1001(a)(1)–(2). The elements of these criminal violations that the government must satisfy are that: (1) "the defendant had a duty to disclose material information," *United States v. Craig*, 401 F. Supp. 3d 49, 62–63 (D.D.C. 2019) (quoting *United States v. White Eagle*, 721 F.3d 1108, 1116 (9th Cir. 2013)); (2) the defendant either falsified, concealed, or covered up such a fact by trick, scheme, or fraud, for § 1001(a)(1), or the defendant made "any . . . false, fictitious, or fraudulent statement or representation," for § 1001(a)(2); (3) "the falsified, concealed, or covered up fact was material," *Craig*, 401 F. Supp. 3d at 62–63; (4) "the falsification and/or concealment was knowing and willful," *id.*; and (5) "the material fact was within the jurisdiction of the Executive Branch," *id.*

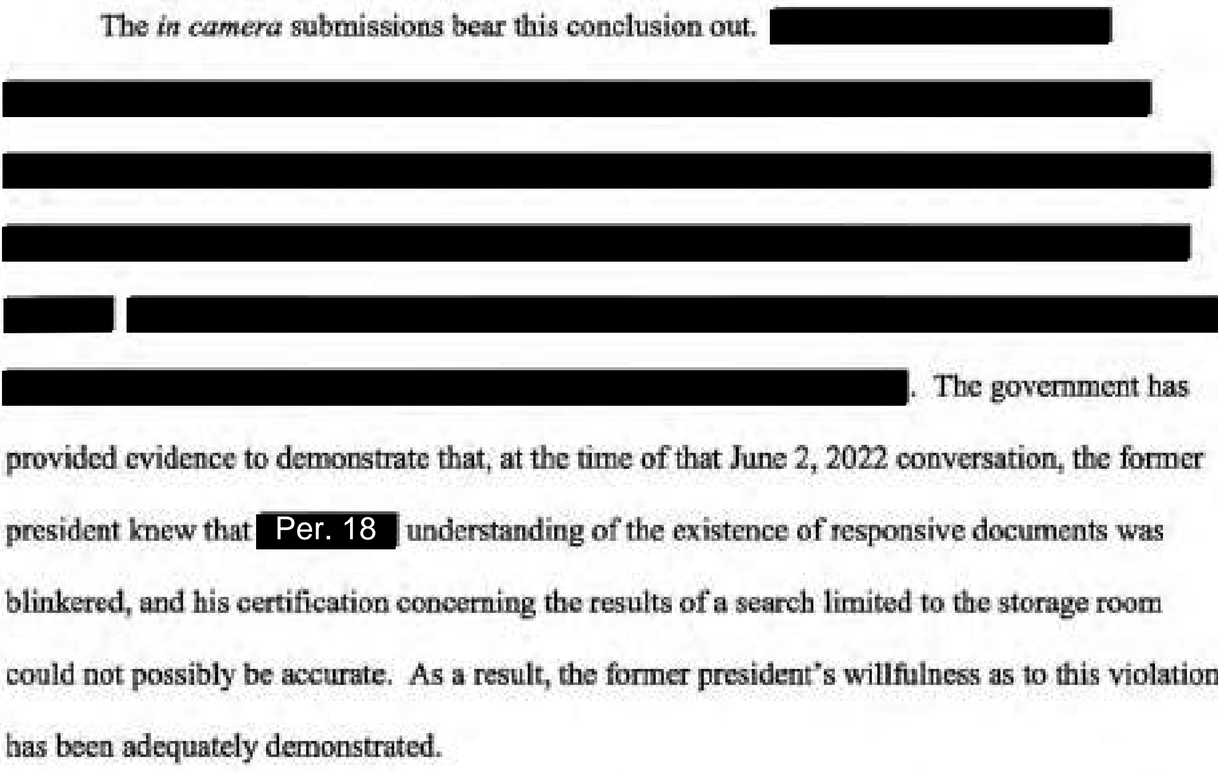
The government has sufficiently demonstrated all four *actus reus* elements of the two offenses. First, the former president had a duty to disclose his possession of any classified documents in response to the May 11, 2022 subpoena, which sought "[a]ny and all documents or writings in the custody or control of Donald J. Trump and/or the Office of Donald J. Trump

bearing classification markings." May 2022 Subpoena at 1. The June 3, 2022 Certification, however, represented that, after a "diligent search was conducted of the boxes that were moved from the White House to Florida . . . Any and all responsive documents accompany this certification." June 3, 2022 Certification at 1. In this way, the certification satisfies the second element of both (a)(1) and (a)(2) of the statute by both covering up the fact that the former president continued to retain the documents, and effecting that cover-up in the form of a false statement. *See Craig,* 401 F. Supp. 3d at 63 ("[T]he law is clear that both the making of false statements and the deliberate withholding of material facts in the face of a duty to disclose them can be among the necessary affirmative acts" for the purposes of proving a violation of Section 1001(a)(1).) As to the third and fifth elements, the misrepresented fact was clearly material to the grand jury and FBI's investigation of whether additional classified-marked documents remained unlawfully in the former president's possession. *See* Gov't's *Ex Parte* Suppl. Mem. at 9–10.

As to whether the former president made or aided and abetted the making of the false statements contained in the June 3, 2022 Certification knowingly and willfully, the same reasons that support the Court's finding that his retention of the classified documents was willful support a parallel finding of intent here. In the context of this particular violation, however, the former president might claim that he did not know what Per. 18 and Per. 12 wrote in the June 3, 2022 Certification. After all, the certification was signed by Per. 12 not the former president, and no documentation or testimony to date indicates that the former president was shown or told about the contents of the certification. The extent of the former president's awareness of the substance of the certification is one of the precise topics upon which the government presently seeks Per. 18 testimony. *See supra* Part I.H. Still, even without proof that the former president read or was advised about the contents of, the certification, the government has sufficiently

demonstrated that he knew Per. 18 intended to inform the government that the responsive documents located in the storage room provided a comprehensive response to the May 2022 Subpoena—a representation that the former president, for the reasons already detailed, knew to be wrong.

The *in camera* submissions bear this conclusion out.



. The government has provided evidence to demonstrate that, at the time of that June 2, 2022 conversation, the former president knew that Per. 18 understanding of the existence of responsive documents was blinkered, and his certification concerning the results of a search limited to the storage room could not possibly be accurate. As a result, the former president's willfulness as to this violation has been adequately demonstrated.

Second, Section 1519 criminalizes altering or destroying records in order to obstruct justice. The statute prohibits "knowingly alter[ing], destroy[ing], mutilat[ing], conceal[ing], cover[ing] up, falsif[ying], or mak[ing] a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of" the United States government. 18 U.S.C. § 1519. This offense has three elements, as relevant here: the defendant (1) knowingly, (2) concealed or covered up a record, document, or tangible object, (3) with the intent to "impede, obstruct or influence [an] investigation." *United States v. Hassler*, 992 F.3d 243, 247 (4th Cir. 2021) (quoting *United*

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States v. Powell, 680 F.3d 350, 356 (4th Cir. 2012)); *accord* Gov't's March 10, 2023 *Ex Parte* Suppl. Mem. at 12–13 (articulating a slightly different formulation).

The government has sufficiently demonstrated all three elements of this obstruction statute by providing evidence that the former president intentionally concealed the existence of additional documents bearing classification markings from Per. 18 knowing that such deception would result in Per. 18 providing an unknowingly false representation to the government. As a result, the former president's actions were intended to impede the FBI's investigation of his unlawful retention of classified documents—establishing a prima facie violation of Section 1519.[16]

3. *Prong Two: The "In Furtherance" Requirement*

A prima facie showing of unlawful or fraudulent conduct alone does not strip away the attorney-client privilege; rather, the government must also establish "some relationship between the communication at issue and the prima facie violation" for the privilege's protection of the communications to be pierced. *In re Sealed Case (1985)*, 754 F.2d at 399. This second requirement "defines the extent to which the privilege is lost once the exception is shown to apply, because only those individual documents that a court finds to have been prepared in preparation for, or in furtherance of, fraudulent activity are excepted from the privilege's protection." PAUL RICE, ATTORNEY-CLIENT PRIVILEGE IN THE UNITED STATES § 8:14 (2022) (footnote omitted). For this condition to be satisfied, "the client must have made or received the otherwise privileged communication with the intent to further an unlawful or fraudulent act," *In re Sealed Case (March 1997)*, 107 F.3d at 49. *See also Zolin*, 491 U.S. at 556 (noting the exception only applies to "communications in furtherance of future illegal conduct").

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[16] The Court need not address the government's arguments that it has also demonstrated prima facie showings that the former president violated Sections 1512(b)(2)(A) and (c)(1), given its satisfactory showing as to the other criminal statutes cited.

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The D.C. Circuit has staked two clear guideposts in the proper application of this nexus requirement. At one end, as an upper limit on the movant's burden, the government need not "make a specific showing of the client's intent in consulting the attorney," *In re Sealed Case (1985)*, 754 F.2d at 402; nor a "specific showing of . . . the attorney's intent in performing his or her duties," *In re Sealed Case (1982)*, 676 F.2d at 815. Any stiffer burden would "lead to either the kind of 'minitrial' forbidden by the Supreme Court in *United States v. Dionisio*, 410 U.S. 1 (1973), or a near evisceration of the exception." *In re Sealed Case (1985)*, 754 F.2d at 402 n.7. At the other end, the D.C. Circuit has repeatedly affirmed that merely "[s]howing temporal proximity between the communication and a crime is not enough." *In re Sealed Case (March 1997)*, 107 F.3d at 50; *accord In re Sealed Case (1985)*, 754 F.2d at 402 ("mere coincidence in time" not sufficient to link crime and communications).

In addition, the crime-fraud exception pierces the attorney-client privilege even when the attorney is an unknowing tool of his client. The attorney need not have the intent of furthering the misconduct; rather, "[t]he privilege is the client's, and it is the client's fraudulent or criminal intent that matters." *In re Sealed Case (March 1997)*, 107 F.3d at 49. In *In re Sealed Case (1985)*, for example, a tax-exempt non-profit destroyed and altered evidence sought by subpoenas and civil discovery requests, and through its lawyers, filed false declarations and presented perjured testimony and altered documents in civil litigation. *See* 754 F.2d at 396–98. In holding that the crime-fraud exception applied to require two of the organization's lawyers to testify before a grand jury about the destruction and alteration of evidence, the D.C. Circuit held that the lawyers' "knowledge of the cover-up . . . need not be established in order for the government to sustain its burden," because the law is "well settled that an attorney's ignorance of his client's misconduct will not shelter that client from the consequences of his own wrongdoing." *Id.* at 402. The key is that the lawyers were "instrumentalities in the ongoing

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cover-up whether they realized it or not," and thus, the privilege was defeated as to communications regarding criminal violations that occurred while the lawyers represented the organization. *Id.* at 402–403.

The nexus requirement operates differently in the context of the work-product doctrine in two key ways. First, the D.C. Circuit has articulated a looser standard for work product, requiring that a court only "find some valid relationship between the work product under subpoena and the prima facie violation," emphasizing that "the standard [need] not be too precise or rigorous." *In re Sealed Case (1982)*, 676 F.2d at 814–15. Courts focus on the "client's general purpose in consulting the lawyer rather than on his intent regarding the particular communication." *In re Sealed Case (2000)*, 223 F.3d at 778. Second, as Per. 18 correctly argues, the work-product doctrine, unlike the attorney-client privilege, is held—and may be independently invoked—by both the client and the attorney. Per. 18 Opp'n at 2, 8–11.

Here, the government does not seek attorney opinion work product, *see* Gov't's Resp. at 1–2, ECF No. 9, and thus the focus is on fact work product.[17] Several courts of appeals have held that while an innocent attorney may independently stand on the work-product doctrine as to his opinion work product, "fact work product . . . may be discovered upon prima facie evidence of a crime or fraud as to the client only and thus even when the attorney is unaware of the crime or fraud." *In re Grand Jury Proceedings #5*, 401 F.3d 252, 252 (4th Cir. 2005). *See also In re Green Grand Jury Proceedings*, 492 F.3d 976, 981 (8th Cir. 2007); *In re Grand Jury*

[17] Nor does the government appear to dispute that the work-product doctrine applies as a threshold matter in this context, even though litigation was not pending at the time of the materials and topics subject to the government's motion. The Court assumes for the purposes of this decision that, in the wake of the receipt of the May 2022 Subpoena, Per. 18 work product was created "in anticipation" of litigation, *Deloitte*, 610 F.3d at 135. *See In re Sealed Case*, 29 F.3d 715, 718 (D.C. Cir. 1994) (holding that attorney work product may be created with an eye toward litigation even before a grand jury investigation has begun, such as in the context of an attorney investigating suspected criminal violations). This conclusion is supported by Per. 18 reference to potential "motion[s] pertaining to this investigation" in his May 25, 2022 letter to a Department of Justice official regarding the May 2022 Subpoena. *See* MAL Warrant Aff., Ex. 1, Letter from Per. 18 [redacted], to Jay Bratt, DOJ (May 25, 2022) at 3.

Proceedings, 867 F.2d 539, 541 (9th Cir. 1989); *In re Antitrust Grand Jury*, 805 F.2d 155, 168 (6th Cir. 1986); *In re Special September 1978 Grand Jury (II)*, 640 F.2d 49, 52 (7th Cir. 1980)). As a result, whether claimed by the former president, Per. 18 or ███ the fact work-product sought by the government may be disclosed upon the proper showing of relatedness.

With the contours of the nexus requirement established, Per. 18 and ███ withheld testimony, followed by their withheld documents, are each evaluated.

a) Per. 18 *Withheld Testimony*

As described *supra* in Part I.H, Per. 18 withheld testimony from the grand jury regarding five topics related to his efforts to respond to the May 11, 2022 subpoena and his creation of the June 3, 2022 certification, as well as a sixth topic regarding Per. 18 June 24, 2022 phone call with Trump. The government has made a sufficient showing that his testimony as to all six of these topics reflects communications "made in furtherance of a crime." *In re Grand Jury*, 475 F.3d at 1305. Consequently, so long as the government tailors its questions to elicit only testimony regarding fact work product and communications that would otherwise be attorney-client privileged, the crime-fraud exception vitiates Per. 18 claims.

The former president contends that Per. 18 actions were "undertaken in an effort to appropriately respond to the Government's subpoena," Resp't's Suppl. Mem. at 7, ECF No. 12, and where an attorney's advice is "'intended to prevent unlawful conduct' . . . even inaccurate or wavering advice does not constitute a communication rendered in furtherance of a crime or fraud," *id.* (quoting *United States v. White*, 887 F.2d 267, 271 (D.C. Cir. 1989)). Trump leans heavily on *United States v. White*, a bribery case in which the D.C. Circuit reversed a criminal conviction because key evidence presented at trial was protected by the attorney-client privilege. There, a former government official defendant Lester Finotti introduced evidence that, during a meeting with a co-defendant William White—one of the businessmen accused of bribing him—

and White's lawyer, the lawyer had told Finotti that the scheme would be legal with Finotti's superiors' approval. 887 F.2d at 269. The government introduced evidence that, later that day, the same lawyer privately told White the opposite: that the arrangement was illegal regardless. *Id.* The district court had ruled pretrial that the crime-fraud exception was inapplicable to the afternoon conversation, but at trial reversed course, citing the exception as a basis for permitting the government to introduce testimony regarding the afternoon conversation. *Id.* at 271–72. On appeal, the D.C. Circuit rejected the application of the crime-fraud exception to the afternoon conversation, writing that the district court's "second thoughts on the crime-fraud exception would deny White the privilege where even its stern critics acknowledge that the justifications for the shield are strongest—where a client seeks counsel's advice to determine the legality of conduct *before* the client takes any action." *Id.* at 272 (emphasis in original).[18]

White does not bear the weight that the former president attempts to assign it. As the district court's decision makes clear, the lawyer's involvement in the scheme was limited to "what essentially amounts to a single conversation or consultation . . . [that] began . . . with White and others before lunch, and [that] went on immediately after lunch . . . with White alone." *United States v. Finotti*, 701 F. Supp. 830, 834 (D.D.C. 1988). *White* illustrates the

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[18] The D.C. Circuit was plainly troubled by the procedural history in the case, where the district court had a change of heart mid-trial as to the crime-fraud exception's applicability to the afternoon attorney-client consultation. Before trial, the trial Judge granted a motion *in limine* by White and a fellow corporate executive co-defendant that sought to exclude consultations with the lawyer as protected by the attorney-client privilege. *See United States v. Finotti*, 701 F. Supp. 830, 832 (D.D.C. 1988). The morning consultation, however, was not privileged due to the presence of third parties, and Finotti was permitted to elicit testimony at trial regarding that exchange. In response, the government sought to elicit testimony regarding the afternoon consultation, prompting the two corporate executive co-defendants to seek exclusion of that evidence in reliance on the pretrial ruling. The Judge denied their motion on the basis of waiver, though no such waiver occurred, and by holding that the "door was opened," *id.* at 833, which was door-opening was done by Finotti, not the privilege-holder defendants, and, thirdly, noted that "if there were no other way to prevent the unjust result of permitting the defendants to place before the jury legal advice that was retracted within an hour or two . . . the Court would be prepared to reexamine its [pre-trial] ruling" and hold that the afternoon consultation was "in furtherance of the criminal enterprise." *Id.* at 836. The D.C. Circuit's discomfort with the ends-justified flip by the district court permeates the D.C. Circuit opinion. *See White*, 887 F.2d 267 at 269 (noting the trial court's "readiness to overturn an earlier ruling"); *id.* at 271 (holding that the lawyer's advice did not further the crime, "in line with the district court's initial ruling"); *id.* at 272 (describing the district court's "second thoughts on the crime-fraud exception").

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principle that, where an attorney's advice vis-à-vis a proposed criminal scheme is the type a Magic 8 Ball might provide (*e.g.*, "yes," "no," "try again"), the crime-fraud exception does not apply. As the Third Circuit has explained, if a client who intends to undertake an illegal course of action "tells the attorney the proposed course of action, and the attorney advises that the course of action is illegal," the consultation remains privileged; so too when the same client shops out the idea to another attorney, who says the course of conduct is legal. *In re Grand Jury Subpoena*, 745 F.3d 681, 693 (3d Cir. 2014). In both cases, "because the attorneys merely opined on the lawfulness of a particular course of conduct, [] this advice cannot be used 'in furtherance' of the crime." *Id.*

An attorney's services further his client's crime, however, where the attorney does something more, such that "the lawyer's advice or other services were misused." *In re Grand Jury Investigation*, 445 F.3d at 279. Courts have found this requirement satisfied where an attorney elaborated upon his advice by "provid[ing] information about the types of conduct that violate the law" such that the client could "shape the contours of conduct intended to escape the reaches of the law." *In re Grand Jury Subpoena*, 745 F.3d at 693. Also sufficient was an attorney's communications with his client informing her of the government's interest in certain emails, which advice she used to delete (or acquiesce in the deletion of) them. *See In re Grand Jury Investigation*, 445 F.3d at 279. Other courts, including the D.C. Circuit, have been satisfied where a client "took advantage of his attorney's expertise in aid of his endeavor to mislead others with a false cover-story regarding his conduct." *In re Green Grand Jury Proceedings*, 492 F.3d at 986; *see also In re Sealed Case (1985)*, 754 F.2d at 402; *see also In re Grand Jury Investigation*, Case No. 17-mc-2336 (BAH), 2017 WL 4898143, *7–10 (D.D.C. Oct. 2, 2017) (applying the crime-fraud exception where an attorney submitted false Foreign Agent

Registration Act filings on behalf of her clients, based on the clients' material omissions and misleading information).

Per. 18 "legal advice or other services" in his efforts to comply with the May 11, 2022 subpoena, unlike the lawyer's advice in *White*, "were misused" by the former president omitting to alert Per. 18 that the Mar-a-Lago storage room was not the only repository with boxes transferred from the White House. *In re Grand Jury Investigation*, 445 F.3d at 279. The government has proffered sufficient evidence to show that the former president—much like the non-profit organization in *In re Sealed Case (1985)*—used Per. 18 as an "instrumentalit[y]" or a "front m[a]n" to obstruct the government's investigation and perpetuate the former president's unlawful retention of any classified documents contained in boxes transferred from the White House that he knew had been removed from the storage room at the time of Per. 18 search. 754 F.2d at 402.

As described *supra* in Part I.C.2–5, Per. 18 and Per. 12 provided the government with a response to the May 11, 2022 subpoena that turned out to be wholly inaccurate. Contrary to the June 3, 2022 Certification's attestations, Per. 18 had not searched all of the boxes moved to Florida from the White House—instead, many had been surreptitiously removed from the storage room before his arrival— paled in comparison to the over 100 documents responsive to the subpoena that the government ultimately located as the result of executing a search warrant on Mar-a-Lago two months later. *See supra* Part I.E. The government has not demonstrated that Per. 18 was aware his search was incomplete, but it has shown that his legal services to his client between May 11, 2022 and the provision of the June 3, 2022 Certification— —may have directly

furthered his client's criminal conduct. Thus, to the extent that the first five topics of testimony sought by the government reveal attorney-client privileged communications, [redacted]

[redacted]

[redacted] all actions that, unknowingly or not, furthered his client's criminal actions. To the extent this withheld testimony reveals any fact work-product—such as information Per. 18 collected as to the potential locations of responsive documents, *see, e.g.*, Per. 18 GJ Tr. 58:21–23 (withholding testimony on this issue)—the even lower standard of "some valid relationship between the work product under subpoena and the prima facie violation," *In re Sealed Case (1982)*, 676 F.2d at 814–15, is satisfied.

The sixth topic—the substance of Per. 18 phone call with the former president on June 24, 2022—stands alone as occurring outside the period of Per. 18 efforts to respond to the May 11, 2022 subpoena and at a time that Per. 18 was likely considering a response to a different subpoena, issued on June 24, 2022 for security camera footage from within Mar-a-Lago. The government contends that this conversation furthered a different stage of the former President's ongoing scheme to foil the government's attempts to retrieve all classified-marked documents responsive to the subpoena. During an *ex parte* portion of the March 9, 2023 hearing, the government explained its view of the linkage between the June 24, 2022 phone call and ongoing criminal violations as follows.

As recounted *supra* in Part I.D, shortly after Per. 18 phone call with the former president, and on the same day as service of the government's subpoena for Mar-a-Lago security footage from the area around the storage room, WITNESS 5 rearranged his travel to fly to West Palm Beach the following day, falsely telling his colleagues that the change in plans was for personal reasons. Within two hours of landing in Florida, WITNESS 5 and WITNESS [redacted] entered

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the storage room, and WITNESS █ can be seen gesturing toward the camera. March 9, 2023 Hr'g Tr. at 44:4–12. The government urged that this scramble to Mar-a-Lago in the wake of the June 24, 2022 phone call reflects the former president's realization that the removal of the boxes from the storage room before Per. 18 search was captured on camera—and his attempts to ensure that any subsequent movement of the boxes back to the storage room could occur off-camera. *Id.* at 44:13–45:2. This theory draws support from the curious absence of any video footage showing the return of the remaining boxes to the storage room, which necessarily occurred at some point between June 3, 2022—when the room had approximately █ boxes, according to FBI agents and Per. 18 —and the execution of the search warrant on August 8, 2022—when agents counted 73 boxes. *Id.* at 44:8–22 (Government counsel: "We have the footage from the relevant time period. And at least on those cameras—and we have requested additional footage—we never see the boxes or the documents being returned to the storage room." (*ex parte*)); Gov't's *Ex Parte* Mem. at 19 n.14 ("The security footage reviewed by the government to date does not depict movement of boxes into the storage room between June 3 and August 8.").

The government has provided sufficient evidence to demonstrate that the June 24, 2022 phone call may have furthered the former president's efforts to obstruct the government's investigation. The Third Circuit's *In re Grand Jury Investigation* case, 445 F.3d at 278–280, is directly on point. There, the attorney informed his client about the contents of a new government subpoena—information which the client then used to delete, or acquiesce in the deletion of, responsive emails. *Id.* █

█, setting into motion WITNESS 5's

frenzied return to Mar-a-Lago.[19] ██████ Per. 18 provided information to the former President that he could misuse to "shape the contours of conduct intended to escape the reaches of the law," *In re Grand Jury Subpoena*, 745 F.3d at 693—specifically, as the government urges, by likely instructing his agents to avoid the surveillance cameras he then understood to have been deputized by the government. Indeed, just four days before his trip to Mar-a-Lago, WITNESS 5 had testified before a grand jury that he was aware of the use of security cameras there, but he did not "know exactly where they're all at." WITNESS 5 GJ Tr. at 42–43. As a result, the government has sufficiently demonstrated that the final topic reflects communications that furthered the criminal scheme.

b) Per. 18 *Withheld Documents*

As described *supra* in Part I.J, Per. 18 has submitted for the Court's *in camera* review the 104 documents that he determined to be responsive to the grand jury subpoena but withheld on the basis of attorney-client privilege or the work-product doctrine.[20] Having reviewed these

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[19] More than mere "temporal proximity between the communication and a crime" has been demonstrated here. *In re Sealed Case (March 1997)*, 107 F.3d at 50. ██████ *See, e.g.*, P. 18-PRIV-037 (Per. 18 [██████ ██████). *See also Zolin*, 491 U.S. at 569–70 (holding that communications considered *in camera* may be used for the purpose of establishing the crime-fraud exception).

[20] Five different privilege logs prepared by Per. 18 have been submitted in the record and clarification is in order as to the privilege log used by the Court in making the determinations described in the text. First, the government provided to the Court, as Exhibit 16 of the *ex parte* supplement to its motion to compel, what it described as the privilege log provided by Per. 18 to the government in response to the subpoena. *See* Gov't's *Ex Parte* Mem., Ex. 16, Privilege Log, ECF No. 2. Later, in a March 6, 2023 supplemental filing, the government clarified that its earlier submission actually reflected a privilege log Per. 18 provided the government on January 6, 2023—which contained a mistake corrected by Per. 18 in a new privilege log on January 11, 2023—and submitted the correct, January 11, 2023 privilege log. Gov't's *Ex Parte* Suppl. Resp., ECF No. 10. Third, in opposition to the government's motion, Per. 18 attached a "Revised Privilege Log" listing approximately 52 documents, winnowing down the January 11, 2023 privilege log to list only documents Per. 18 counsel understood to be responsive to the six topics of withheld testimony described in the government's motion. *See* Per. 18 Opp'n at 4–5; Per. 18 Opp'n, Ex. A, Revised Privilege Log, ECF No. 5-1. This "Revised Privilege Log" also reflected withdrawn assertions of attorney work product doctrine as to four documents. In response to this Court's March 4, 2023 Minute Order, Per. 18 submitted a fourth privilege log, the "Second Revised Privilege Log," identifying whether each withheld document on the "Revised Privilege Log" contained fact or opinion work product, and whether any opinion work product was severable. Per. 18 Resp., Ex. A, Second Revised Privilege Log, ECF No. 8-1. Then, the government, in response to this Court's order, clarified that it sought "all withheld documents that satisfy the crime-fraud exception, *i.e.*, all documents listed in Per. 18 privilege log from January

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documents, and in light of the Court's findings *supra* in Part III.C.2 regarding the nature of the former president's prima facie criminal violations, and the sufficiency of the evidence showing the former president's misuse of Per. 18 legal services to perpetrate those violations, the Court is satisfied that eighty-eight of the documents withheld by Per. 18 were sufficiently "in furtherance" of the former president's criminal scheme that any attorney-client privilege or fact work-product is vitiated by the crime-fraud exception.

i. Communications and Work Product in Furtherance of May 2022 Subpoena Compliance

Of the 104 records withheld, 81 clearly concern Per. 18 representation of the former president in connection with the May 2022 Subpoena. *See generally* Per. 18 *Ex Parte* Suppl. Resp. to Court's March 11, 2023 Min. Order, Ex. B, Third Revised Privilege Log ("Per. 18 Privilege Log"), ECF No. 16-2.[21] Any attorney-client privilege or fact work-product protection that would shield these documents from production is vitiated by the crime-fraud exception.

These documents cover the lifespan of Per. 18 work in response to the May 2022 Subpoena, including correspondence, handwritten notes, invoices reflecting his work on the matter, and transcriptions of his audio recordings.

11, 2023—except for those documents or portions of documents that contain opinion work product—that reflect communications and consultations intended to further or facilitate the prima facie violations identified in the government's motion." Gov't's Resp. at 2–3. Given the coterminous subject matter of the subpoena document request and the six topics of Per. 18 withheld testimony and records, the Court ordered Per. 18 to provide *all* withheld documents on his January 11, 2023 privilege log for *in camera* review, Min. Order (March 9, 2023), and a privilege log for each of those documents with the same information reflected on the Second Revised Privilege Log, Min. Order (March 11, 2023). Per. 18 then filed a fifth log, titled "Third Revised Privilege Log," providing the same information as to all 104 documents, and further, identifying each document on the privilege log by the file names with which they were submitted to the Court. Per. 18 March 12, 2023 *Ex Parte* Suppl. Mem., Ex. B, Third Revised Privilege Log, ECF No. 16-2. The upshot of this tortured process is simple: the operative privilege log is the fifth, final one.

[21] These documents are identified by their file names—given that they were submitted without Bates stamps or other identifying markings on the face of the documents—as the following: P. 18-PRIV-002 to –7; P. 18-PRIV-009 to –17; P. 18-PRIV-021 to -27; P. 18-PRIV-031 to -36; P. 18-PRIV-039; P. 18-PRIV-043 to –70; P. 18-PRIV-079 to –89; P. 18-PRIV-091 to -99; and P. 18-PRIV-0101 to –104.

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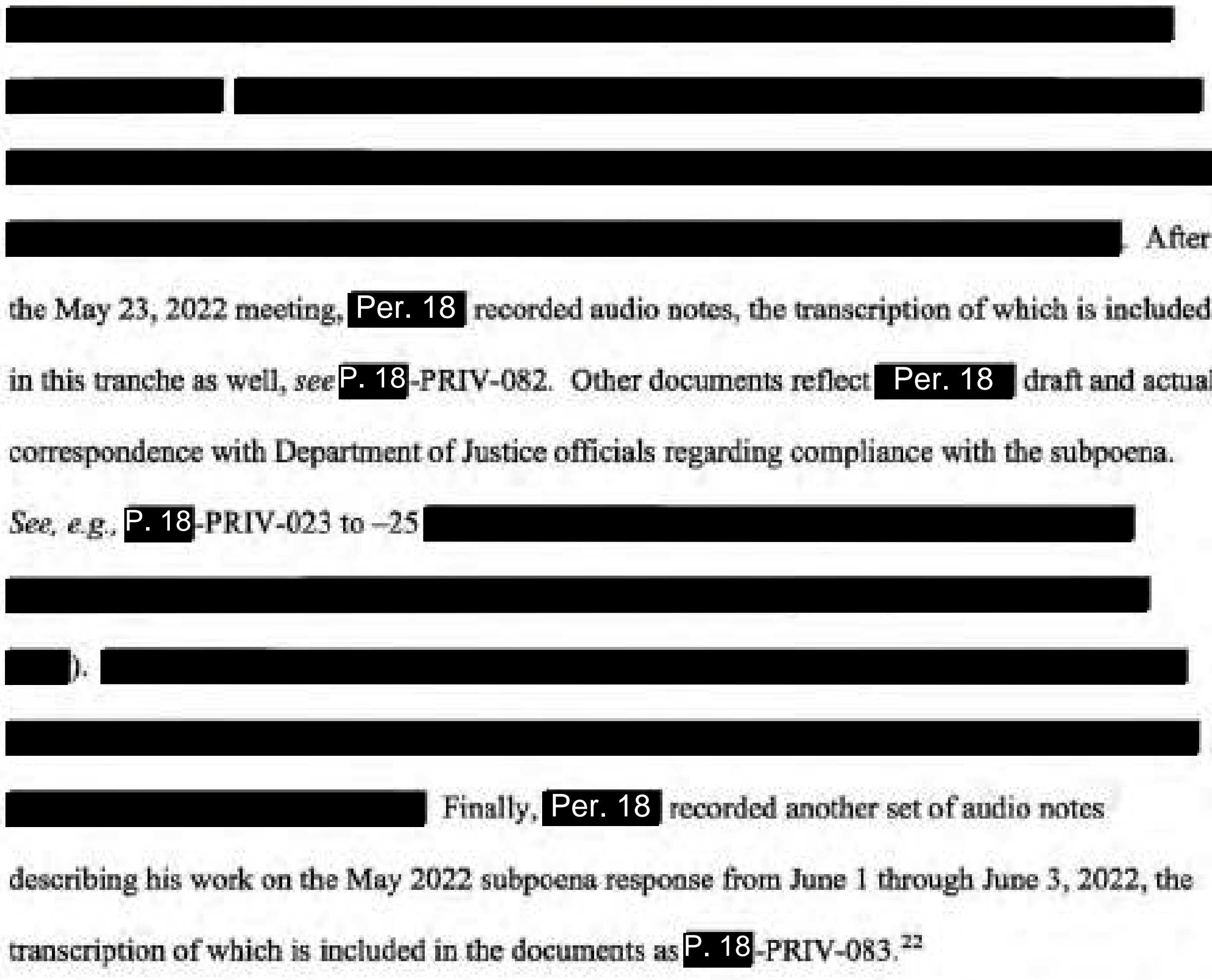

After the May 23, 2022 meeting, Per. 18 recorded audio notes, the transcription of which is included in this tranche as well, *see* P. 18-PRIV-082. Other documents reflect Per. 18 draft and actual correspondence with Department of Justice officials regarding compliance with the subpoena. *See, e.g.*, P. 18-PRIV-023 to –25). Finally, Per. 18 recorded another set of audio notes describing his work on the May 2022 subpoena response from June 1 through June 3, 2022, the transcription of which is included in the documents as P. 18-PRIV-083.[22]

The government has adequately demonstrated that all 81 of these documents were "in furtherance of future illegal conduct," *Zolin*, 491 U.S. at 556, because they reflect Per. 18 services on behalf of the former president to respond to the May 2022 Subpoena—the very work that the government has shown that the former president appears to have subverted in service of his own criminal scheme. The scope of the crime-fraud exception's reach in *In re Sealed Case (1985)* is instructive: there, the D.C. Circuit affirmed the lower court's order requiring the "front men" attorneys to answer "any questions which the grand jury may ask in connection with the

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[22] The document is titled "May 24, 2022 Attorney Notes of Per. 18," but this appears to be an attorney error, as -PRIV-082 is titled the same. The contents of this document recount Per. 18 activities during June 1 through June 3, 2022, and Per. 18 describes these events as taking place giving rise to the inference that the recording was made sometime during the week of June 6, 2022.

alleged violations," which the D.C. Circuit interpreted to refer only to violations occurring at the time that the attorneys represented (and were misused by) the organization. 754 F.2d at 402–03. In order to distinguish between testimony regarding "prior acts or confessions beyond the scope of the continuing fraud," which remained privileged, and "prior acts forming the basis of the ongoing cover-up," the D.C. Circuit further held that a "question-by-question determination" was required. *Id.* at 403. Here, too, the crime-fraud exception properly pierces any privilege that would otherwise protect all documents arising from Per. 18 work on behalf of the former president and his Office in response to the May 2022 Subpoena—a determination that this Court has made upon review of each of these documents.

Per. 18 Privilege Log at 30, but the Court is unable to discern any connection between this out-of-context screenshot and Per. 18 efforts to comply with the May 2022 Subpoena. Rather, as the privilege log indicates, this exchange occurred over a month after Per. 18 provided the government with the June 3, 2022 Certification. As a result, the Court can discern no basis to pierce the attorney-client privilege or fact work product claims protecting this communication.

ii. Communications and Work Product Related to June 24 Subpoena

Twenty-two of the withheld documents reflect Per. 18 communications or work product related to the June 2022 Subpoena seeking video footage from Mar-a-Lago.[23] In contrast to the subverted nature of the attorney-client relationship in Per. 18 representation of

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[23] These documents are identified in their file names—though they were submitted without Bates stamps or other identifying markings on the face of the documents—as the following: P. 18-PRIV-001; P. 18-PRIV-008; P. 18-PRIV-018 to -20; P. 18-PRIV-028 to -30; P. 18-PRIV-037 to -38; P. 18-PRIV-040 to -42; P. 18-PRIV-071 to -78; and P. 18-PRIV-090.

the former president in connection with the May 2022 Subpoena—where the government has demonstrated the former president used Per. 18 as an unknowing instrumentality of his apparent criminal scheme—the case for the former president's misuse of Per. 18 work in response to the June 2022 Subpoena is far narrower, mainly turning on a single phone call. As a result, Per. 18 communications concerning the June 2022 Subpoena only furthered the former president's criminal violations to the extent that they informed Per. 18 conversation with the former president on June 24, 2022.

Resultantly, the crime-fraud exception only pierces any attorney-client privilege and fact work product protection over a small fraction of this category of documents. The six documents labeled as P. 18-PRIV-028, -29, -37, -38, -41, and -42 comprise six emails in the same chain. [redacted]. These seven documents (comprising the emails and the attachment) informed Per. 18 preparations for his phone call with the former president that the government has sufficiently demonstrated provided his client with information furthering the former president's ongoing scheme to misrepresent full compliance with the May 2022 Subpoena, and thus, lose protection due to the application of the crime-fraud exception. The remaining fifteen documents in this tranche may be withheld as not in furtherance of the criminal scheme for which a prima facie showing has been made.

c) [redacted] Intent to Withhold Testimony and Document

The findings that vitiate the former president's asserted privilege over Per. 18 testimony apply with equal force to [redacted] whose role in the efforts to comply with the May 2022 Subpoena was more circumscribed. Consequently, she may not stand on the attorney-client privilege to withhold testimony regarding the five topics related to the May 2022 Subpoena.[24] There is no indication on the record, however, that [redacted] had any connection to the sixth topic, concerning Per. 18 June 24, 2022 phone call with the former president, *see* Gov't's *Ex Parte* Mem. at 25, n. 16 (indicating the government only has reason to believe that [redacted] can testify as to the first two topics for which testimony is sought, based on her attendance at the May 23, 2022 meeting). Thus, what privileged communications, exactly, the government seeks to pierce—and whether those communications furthered the apparent criminal scheme—are unclear.

Also too underdeveloped by the government is the single document withheld by [redacted] The government has not indicated on the record to what topic the withheld document pertains, nor even provided to the Court the subpoena issued to [redacted] to clarify the scope of the documents responsive to the subpoena. The crime-fraud exception cannot be wielded in the dark, and here, the record supplied by the government is an insufficient basis for the Court to make a *Zolin* finding as to this mystery document. Accordingly, although the former president's privilege claims cannot shield [redacted] testimony on the five topics related to efforts to comply

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[24] The former president's contention that the government's motion to compel is not ripe as to [redacted] is unpersuasive. Resp't's Opp'n at 5. [redacted] has declared her intent to withhold testimony on the basis of the former president's attorney-client and work-product privileges and to withhold a responsive document. Gov't's Reply at 6. The former president's assertion that the Court would be compelling a witness to respond to "hypothetical questions" is a mischaracterization, Resp't's Opp'n at 5, given that the topics about which [redacted] is compelled to testify are clearly set out, and the Court has made "a particularized inquiry, deciding, in connection with each specific area that the questioning party wishes to explore, whether or not the privilege is well-founded." *United States v. Melchor Moreno*, 536 F.2d 1042, 1049 (5th Cir. 1976) (cited in Resp't's Opp'n at 5). The cases cited in support of the former president's argument concern the privilege against self-incrimination, which is not relevant here.

with the May 2022 Subpoena, the government failed it discharge its burden to overcome any privilege protecting the final topic of testimony and withheld document.[25]

D. The Appropriate Scope of Per. 18 Withheld Opinion Work Product

Having determined the legitimate metes and bounds of the crime-fraud exception's application to the attorneys' withheld testimony and documents, a final question arises: the validity of Per. 18 claims in defense of his own opinion work-product—materials Per. 18 prepared reflecting his own "mental impressions, conclusions, opinions, or legal theories . . . concerning the litigation," *Deloitte*, 610 F.3d at 135. The government does not seek Per. 18 opinion work product, *see* Gov't's Resp. at 2; as a result, the question here is not whether the attorney's opinion work product claims may be pierced by the crime-fraud exception, but rather, whether the doctrine is properly invoked at the outset.

The opinion work product doctrine emerged to create a zone of privacy in which attorneys could strategize for litigation. The work product doctrine's originating case, *Hickman v. Taylor*, 329 U.S. 495 (1947), did not distinguish fact from opinion work product, but its emphasis on the need for an attorney to "assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference" laid the groundwork. *Id.* at 511. The Supreme Court in *Hickman*, and later, in *Upjohn Co. v. United States*, 449 U.S. 383 (1981), evinced particular protectiveness over oral statements by witnesses memorialized in an attorney's notes, writing that such documents "tend[] to reveal the attorney's mental processes," *id.* at 399, such as "what he saw fit to write down," *id.* (quoting *Hickman*, 329 U.S. at 513). As the D.C. Circuit has written, the key

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[25] A small number of the documents withheld by Per. 18 and reviewed by the Court *in camera* are communications involving ████. If the mystery document withheld by ████ is merely a duplicate of any of these documents, for which the Court has already ruled that the crime-fraud exception applies to vitiate the former president's privilege claims, then that finding applies.

distinction between opinion and fact work product—including in the context of an attorney's written recollections of witness interviews—is whether "the lawyer has [] sharply focused or weeded the materials." *In re Sealed Case (Aug. 1997)*, 124 F.3d at 237 (holding that portions of a lawyer's notes from a meeting with his client "could be classified as opinion only on a virtually omnivorous view of the term"). *See also Clemens*, 793 F. Supp. 2d at 244–53 (exhaustively mapping the boundaries between fact and opinion work product).

This Part first evaluates the former president's claim that the identities of the individuals Per. 18 contacted regarding the potential whereabouts of responsive documents fall within this protected category, then proceeds to Per. 18 document-by-document redactions on the basis of his own invocation of opinion work-product.

1. Per. 18 *Withheld Testimony on Pre-Search Contacts*

During his grand jury appearance, Per. 18 repeatedly declined to reveal the identities of the individuals with whom he spoke to determine the location of potentially responsive documents, citing attorney-client privilege and the work-product doctrine. Per. 18 GJ Tr. at 58:1–20; 134:2–8. Having determined, *supra*, in Part III.B, that the attorney-client privilege does not shield Per. 18 testimony in response to this question, the Court further holds that this testimony does not reveal opinion work product.

The former president urges adoption of the reasoning in the forfeiture action *United States v. All Assets Held at Bank Julius Baer & Co.*, where the government's request was denied for an interrogatory answer from a claimant to disclose the identities of the individuals the claimant interviewed, holding the answer was shielded by the work product doctrine. 270 F. Supp. 3d 220, 222–26 (D.D.C. 2017). *See* Resp't's Suppl. Mem. at 3–5. The former president described Per. 18 as "adopt[ing] a legal strategy by undertaking a diligent search for responsive documents," which "guided his decision to consult with certain individuals regarding

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the search [for] potentially responsive documents." *Id.* at 5. In so arguing, the former president seeks to distinguish *Savignac v. Jones Day*, which reached the opposite conclusion in the context of a defendant seeking the identities of the individuals consulted by plaintiff in anticipation of the civil litigation. 586 F. Supp. 3d 16, 17–22 (D.D.C. 2022).

The former president has it backwards. In *All Assets Held at Bank Julius Baer*, the government's request sought "to narrow a list of several hundred individuals that Claimant has identified as knowledgeable about the facts of this case by identifying for Plaintiff those individuals that Claimant's counsel determined were worth interviewing." 270 F. Supp. 3d at 225. There, government's sole justification was to "cull[] down the voluminous number of witnesses" identified by the parties—an attempt to discern which witnesses its adversary had deemed "most important, or problematic" to use as a "valuable filter." *Id.* at 225. Clearly, this is not the reason for the government's queries in the instant matter, which are motivated by the government's need to discern [REDACTED] Unlike in *All Assets Held at Bank Julius Baer*, the identities of the individuals Per. 18 contacted would not reveal whom Per. 18 deemed more or less important or problematic for his legal strategy; for all the government knows, many of the individuals he contacted may have provided no useful information. Nor would the list serve the purpose of giving the government a chance to leapfrog off its adversary's work. Rather than serving the improper purpose of helping the government "cull" potential witnesses, the information sought is directly relevant to a key issue in the pending investigation—whether Per. 18 was intentionally misled by the former president into believing only the storage room contained potentially responsive documents. *Accord Savignac*, 586 F. Supp. 3d at 20 (holding that list of contacted individuals was not work product where the list would neither "reveal anything about [plaintiffs'] strategy for the case," nor "borrow the benefit of Plaintiffs' trial preparation to save

Defendants from engaging in the litigation-related leg work that Plaintiffs have previously devoted to their cause"); *Alexander*, 192 F.R.D. at 18–19 ("[C]ertain information, such as whether investigators have talked to certain individuals in the course of their investigations, is not protected by the attorney work-product doctrine").

Thus, Per. 18 has no valid basis to withhold testimony in response to the government's queries as to the identities of the individuals with whom he spoke to discern the location of potentially responsive documents.

2. *Documents Withheld on Basis of Opinion Work Product*

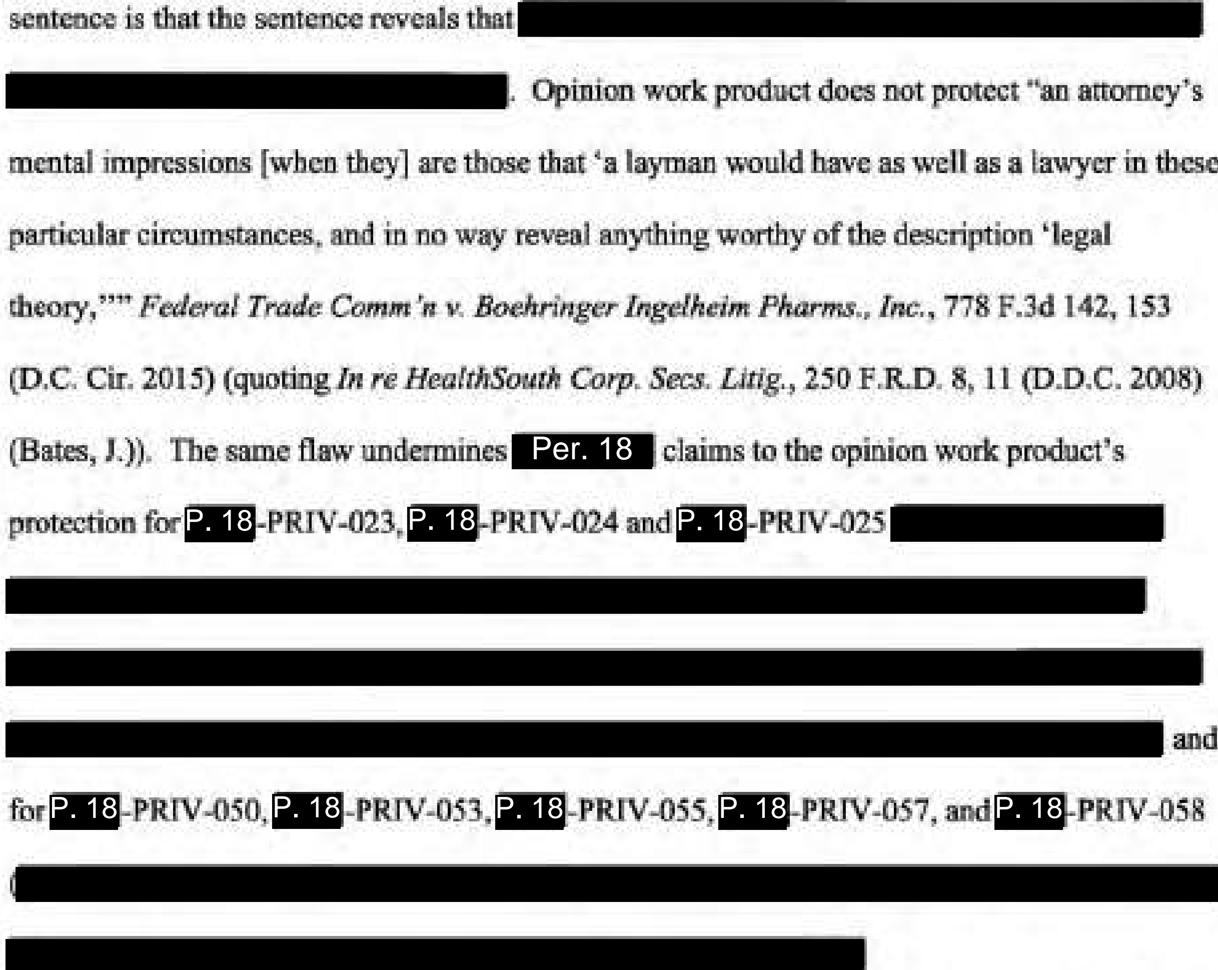
In Part III.C.3.b., the Court determined that the crime-fraud exception vitiated any attorney-client privilege or fact work-product claims protecting 88 of Per. 18 withheld documents from disclosure. Per. 18 has one final card to play, however, because the government concedes that it does not seek the lawyer's independent opinion work product. Of these 88 documents, Per. 18 peels off 18 more that consist entirely of his opinion work product, which may be withheld. A further twelve documents contain severable opinion work product and must be disclosed with redactions.

Most of Per. 18 claims that the documents contain opinion work product are valid, but the Court disagrees with several of his proposed redactions—minor instances of overreach that can largely be attributed to Per. 18 attempt to shield statements that fail to reveal any substantive opinions or legal theories related to his legal services. The proposed redactions within the documents titled P. 18-PRIV-012, P. 18-PRIV-047, and P. 18-PRIV-059—all emails in the same chain between Per. 18 and an associate at his law firm—illustrate. [redacted]

[redacted]

[redacted]

[redacted] The most generous interpretation of Per. 18 attempt to withhold this



sentence is that the sentence reveals that [redacted]. Opinion work product does not protect "an attorney's mental impressions [when they] are those that 'a layman would have as well as a lawyer in these particular circumstances, and in no way reveal anything worthy of the description 'legal theory,''" *Federal Trade Comm'n v. Boehringer Ingelheim Pharms., Inc.*, 778 F.3d 142, 153 (D.C. Cir. 2015) (quoting *In re HealthSouth Corp. Secs. Litig.*, 250 F.R.D. 8, 11 (D.D.C. 2008) (Bates, J.)). The same flaw undermines Per. 18 claims to the opinion work product's protection for P. 18-PRIV-023, P. 18-PRIV-024 and P. 18-PRIV-025 [redacted] and for P. 18-PRIV-050, P. 18-PRIV-053, P. 18-PRIV-055, P. 18-PRIV-057, and P. 18-PRIV-058 ([redacted]

Per. 18 claims that the document titled P. 18-PRIV-089, containing Per. 18 undated, brief handwritten notes is entirely protected as opinion work product, but he has failed to meet Per. 18 burden to claim the doctrine's protection. *See United States v. ISS Marine Servs., Inc.*, 905 F. Supp. 2d 121, 127 (D.D.C. 2012) ("It is well established that the proponent of a privilege bears the burden of demonstrating facts sufficient to establish the privilege's applicability." (quoting *In re Subpoena Duces Tecum Issued to Commodity Future Trading Comm'n*, 439 F.3d 740, 750 (D.C. Cir. 2006)). No context is provided to understand whether this document entirely reflects Per. 18 "mental processes," or comprises "purely factual material." *In re Sealed Case (Aug. 1997)*, 124 F.3d at 236.

Finally, Per. 18 has proposed redactions to two documents, P. 18-PRIV-082 and P. 18-PRIV-083, that contain transcriptions of Per. 18 audio recordings reflecting on Per. 18 work related to the May 2022 Subpoena. [redacted] Per. 18 proposed redactions are rooted in three bases, all of which the Court finds valid and largely adopts: Per. 18 own opinion work product, [redacted] opinion work product, and highly personal details. The few instances in which the Court departs from Per. 18 redactions are explained in brief.

[redacted] Nothing distinguishes this exchange—which largely comprises Per. 18 quotations of the former president—from Per. 18 many recollected quotations of the former president in the same document over which no opinion work product claim is asserted. Instead, in the context of Per. 18 apparently comprehensive attempt to memorialize Per. 18 experiences, Per. 18 straightforward recounting of this particular exchange—with the minimal redactions retained by the Court— does not reflect any particular "sharply focus[ing] or weed[ing]" of the materials. *In re Sealed Case (Aug. 1997)*, 124 F.3d at 236.

The document titled P. 18-PRIV-083 contains several instances of overextended opinion work product claims. [redacted]. An

attorney's logistical updates to his client may fall within the ambit of the attorney-client privilege, but such statements hardly fall within the uniquely private domain of an attorney's materials reflecting his or her preparation for litigation via the assembly and analysis of information or preparation of legal theories or strategy. *See Hickman*, 329 U.S. at 511. P. 18 description of the contents of the boxes he searched, located on pages four and five, is also not opinion work product, as it merely recounts his visual observations rather than revealing any of the attorney's opinions, theories, or impressions regarding the litigation. So too for P. 18 recollection of the former president's communicative hand "motion" located on page six. Finally, one sentence of Per. 18 proposed redaction on page nine is not necessary, as it reveals nothing about Per. 18 mental impressions regarding the matter.

The Court's document-by-document determinations of what may be withheld or redacted are reflected in the accompanying Order's appendices.

IV. CONCLUSION

Based on the foregoing analysis, the crime-fraud exception entirely vitiates the attorney-client and work-product privileges that Per. 18 has invoked to withhold testimony regarding the six topics identified by the government; the exception vitiates any privileges intended to be invoked by the former president as to [redacted] testimony on the first five of those topics. Further, 58 of the documents over which Per. 18 claimed privilege have been pierced by the crime-fraud exception and do not comprise opinion work-product. An additional twelve documents that Per. 18 withheld have been pierced by the crime-fraud exception, but contain severable opinion work product that may be redacted before disclosure.

Accordingly, the government's motion to compel testimony from these two grand jury witnesses is GRANTED IN PART AND DENIED IN PART.

Date: March 17, 2023

BERYL A. HOWELL
Chief Judge

EXHIBIT 19

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE GRAND JURY SUBPOENA GJ 42-17 and GJ 42-69	Case No. 23-gj-10 (BAH) Chief Judge Beryl A. Howell **UNDER SEAL** **EX PARTE TO GOVERNMENT AND Per. 18 ONLY**

ORDER

In accordance with the conclusions detailed in the Court's Memorandum Opinion, the Court has redacted P. 18-PRIV-082 and P. 18-PRIV-083 to remove Per. 18's opinion work product, which redacted versions are attached to this Order as Attachment 1 and Attachment 2, respectively. It is hereby **ORDERED** that counsel for Per. 18 and the government shall file, by 2 p.m. on March 20, 2023, their positions as to whether the attachments may be released to former President Donald J. Trump and his counsel.

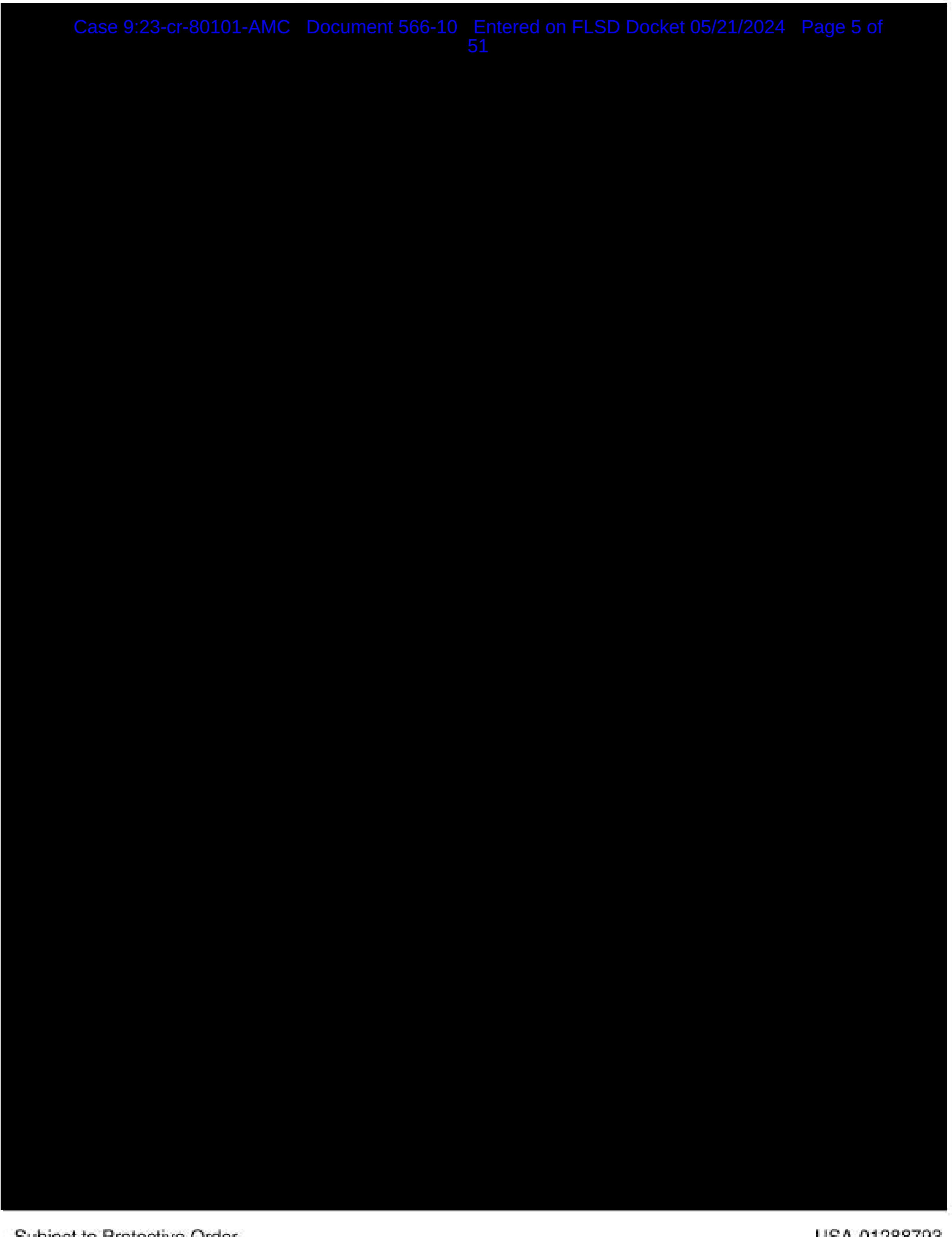
SO ORDERED.

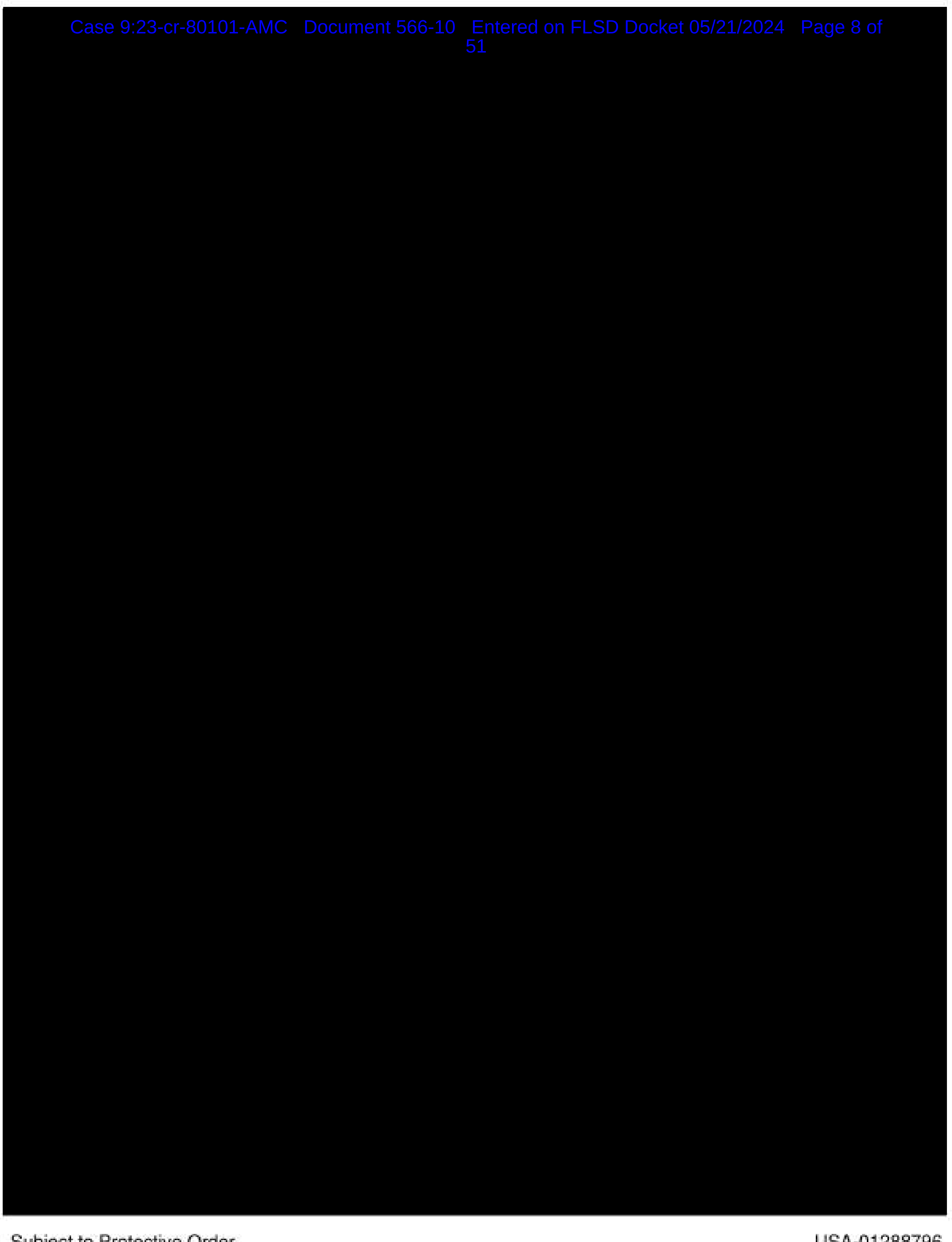
Date: March 17, 2023

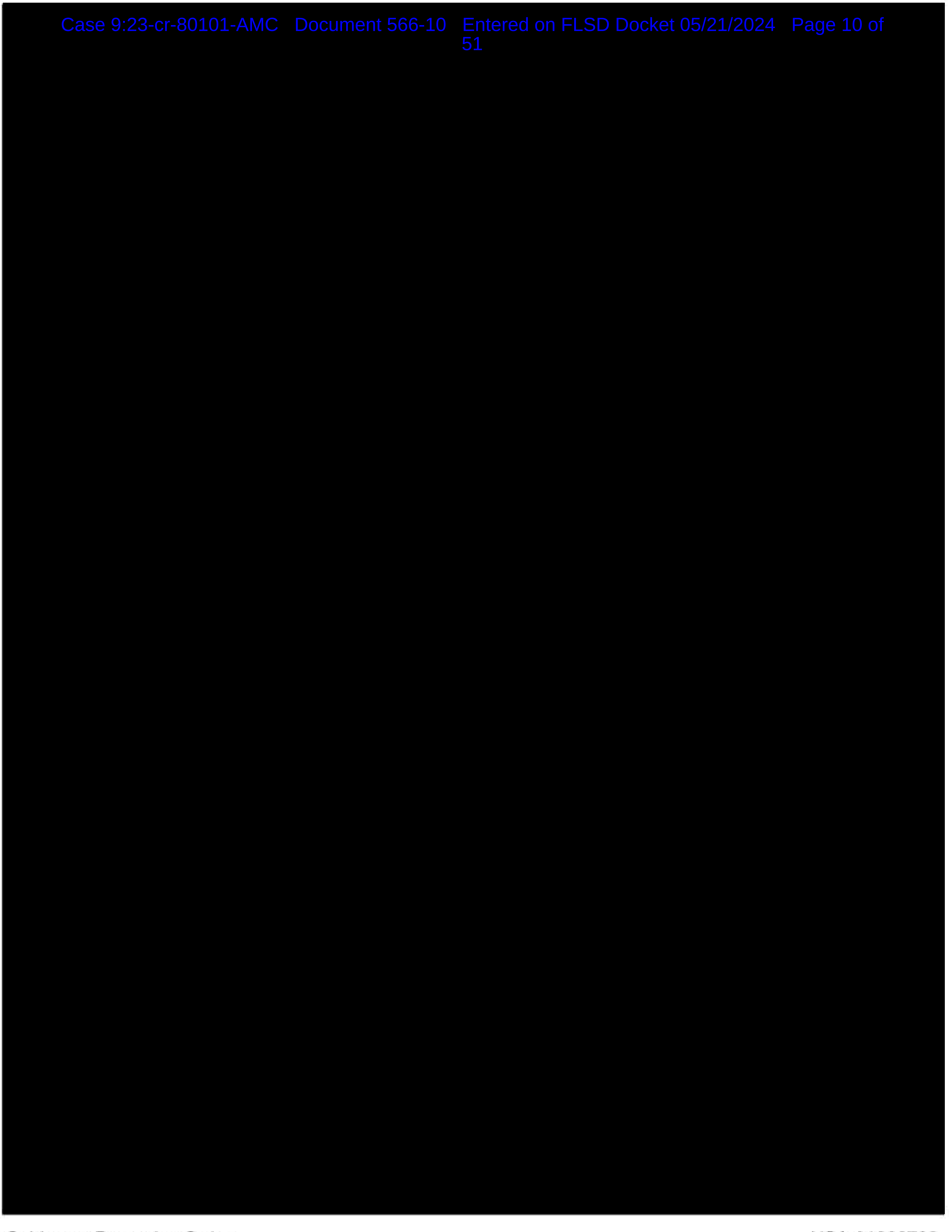
BERYL A. HOWELL
Chief Judge

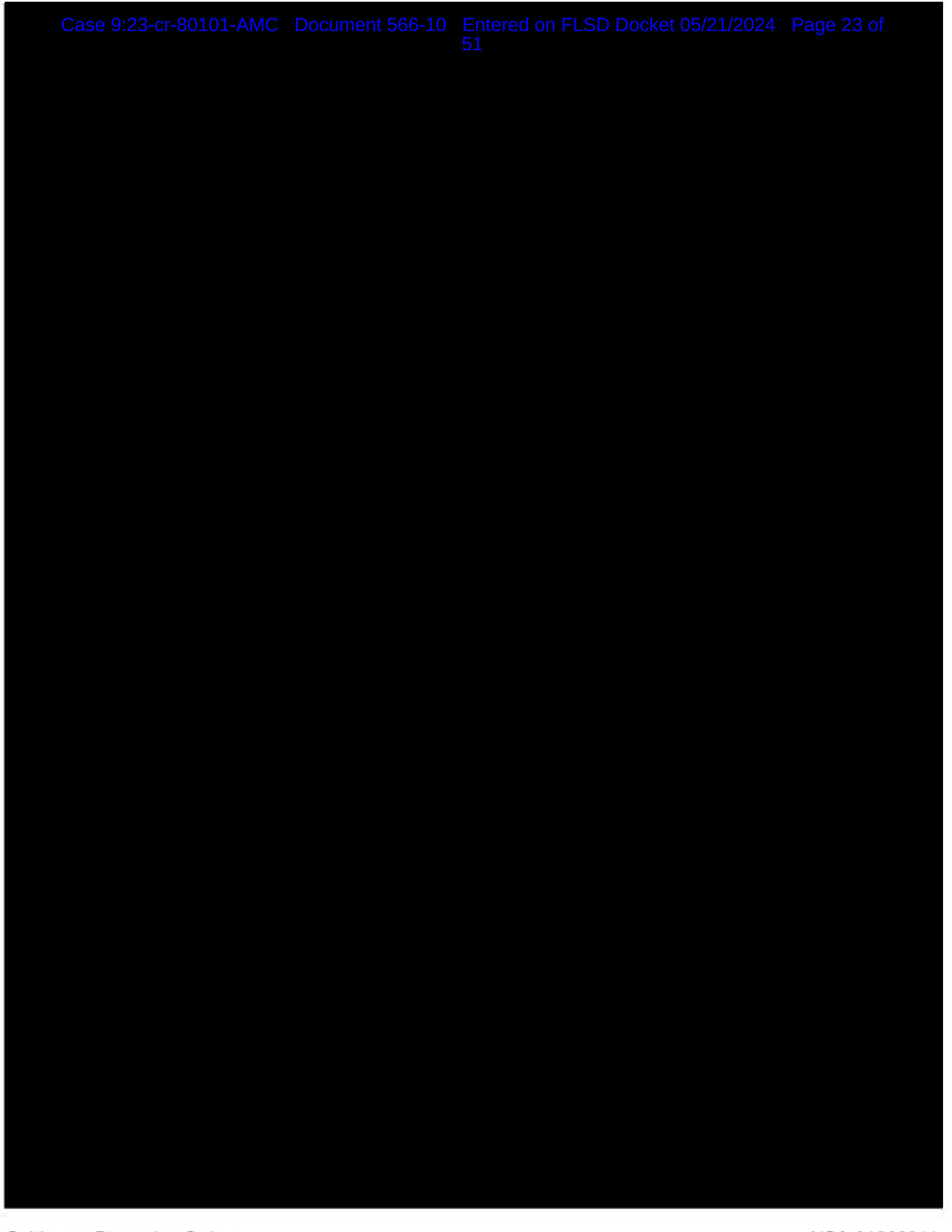
ATTACHMENT 1

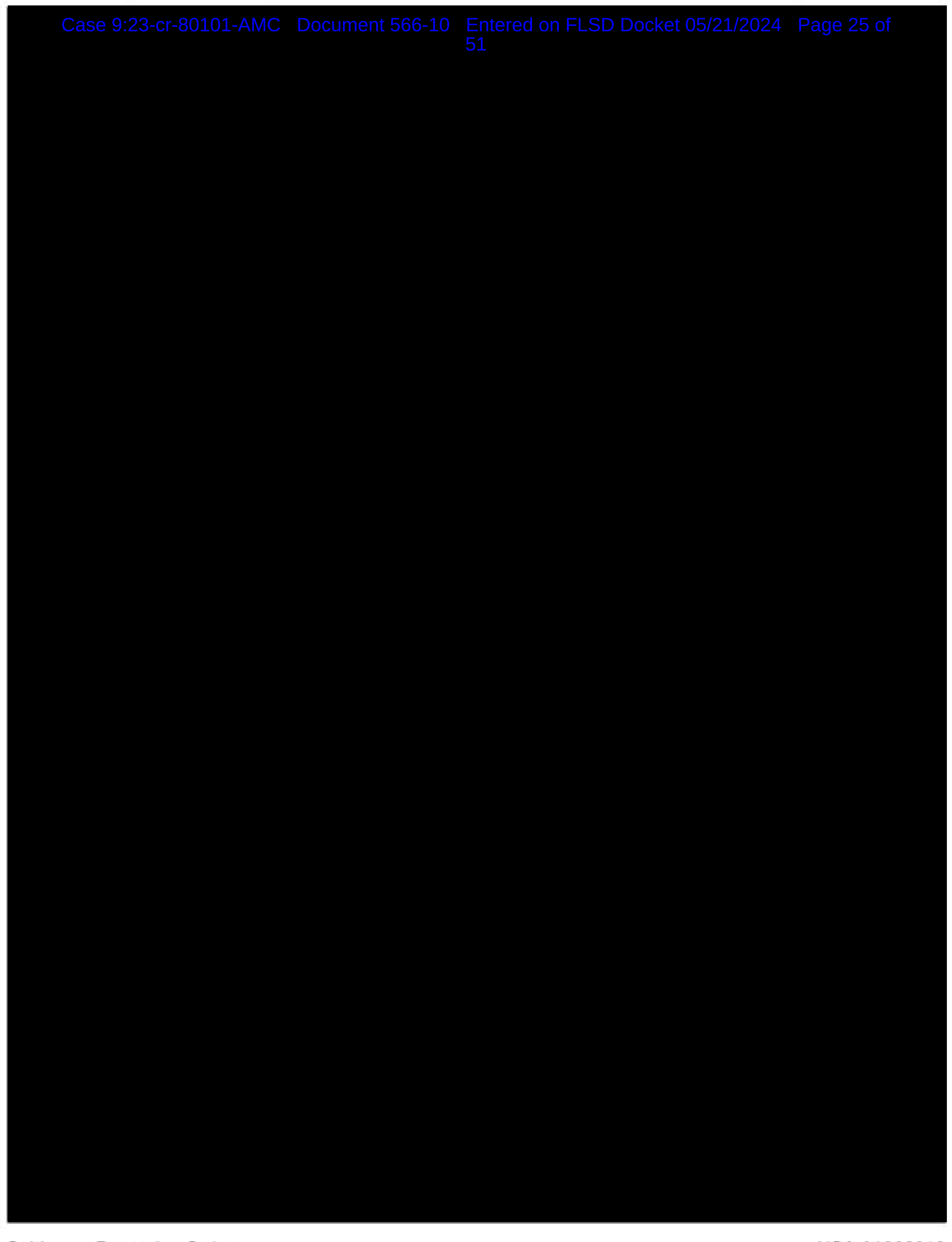
REDACTED P. 18-PRIV-082

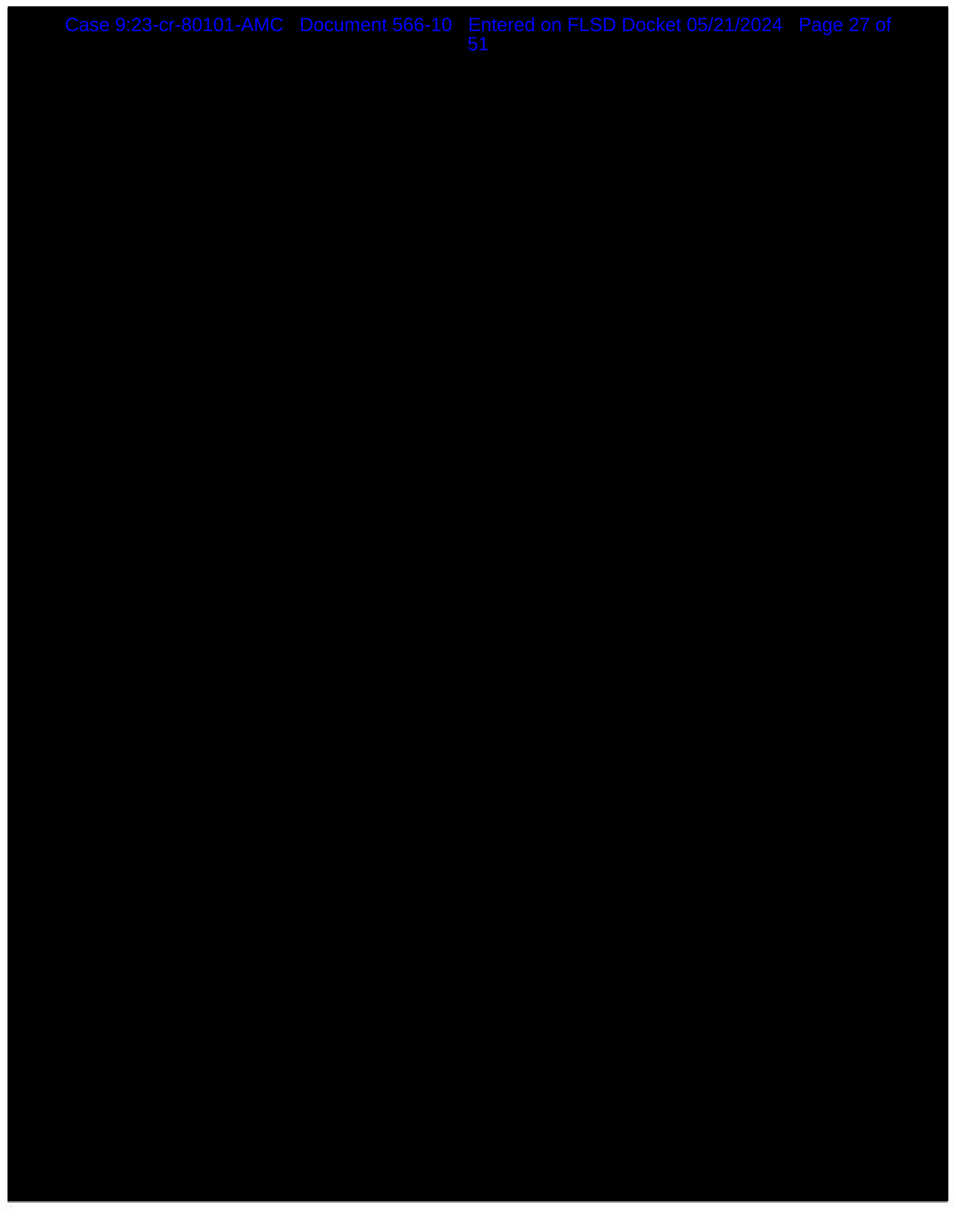


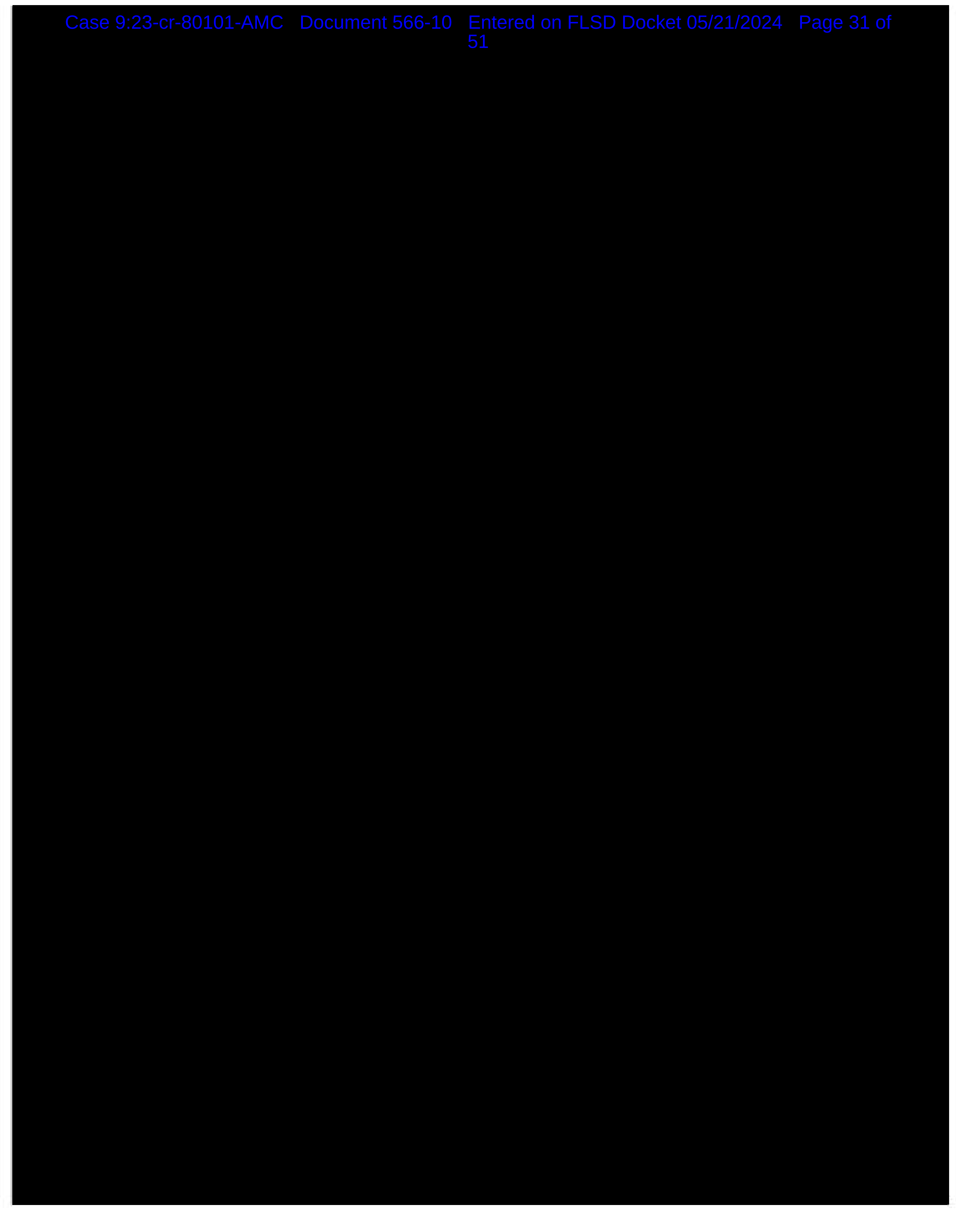






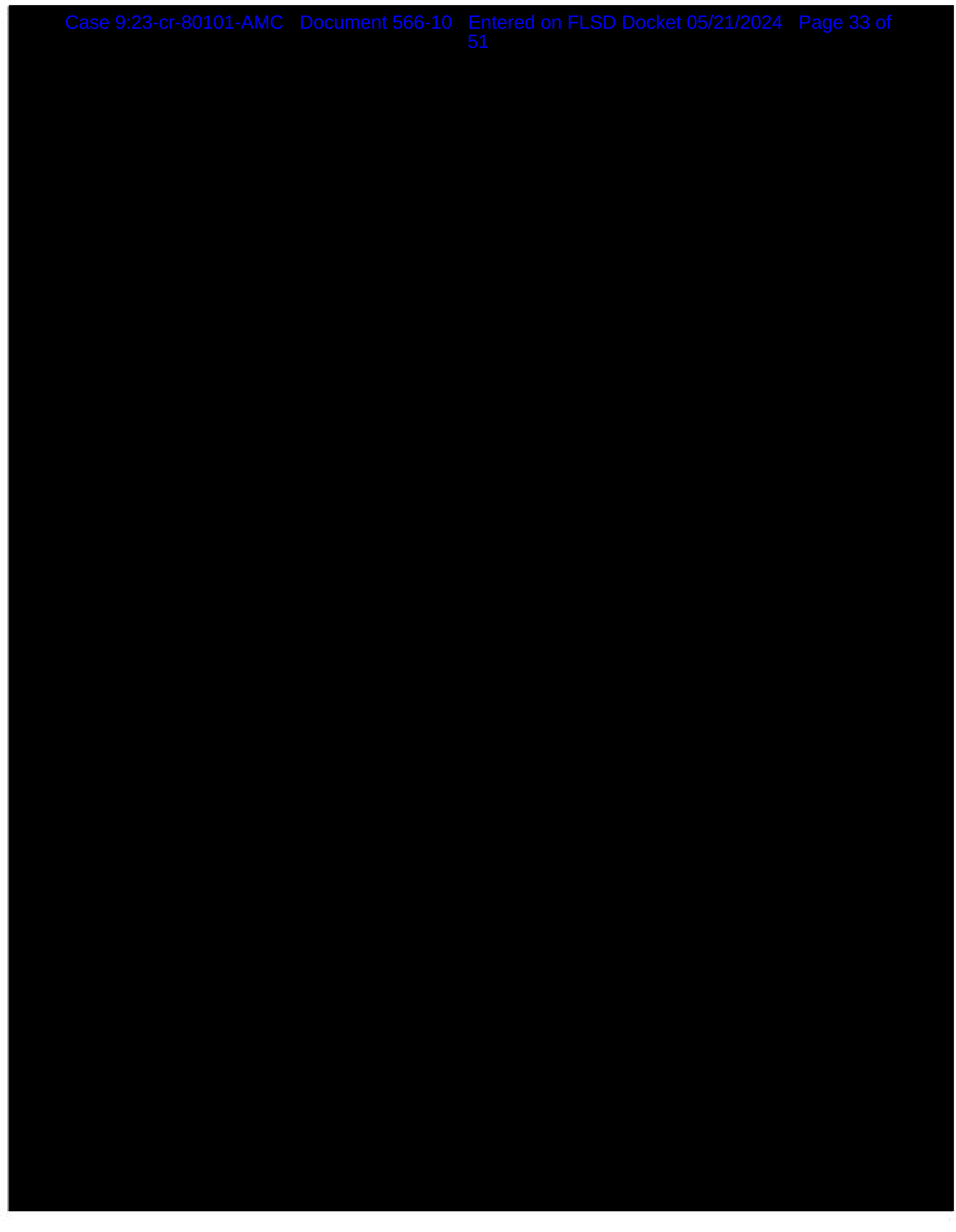


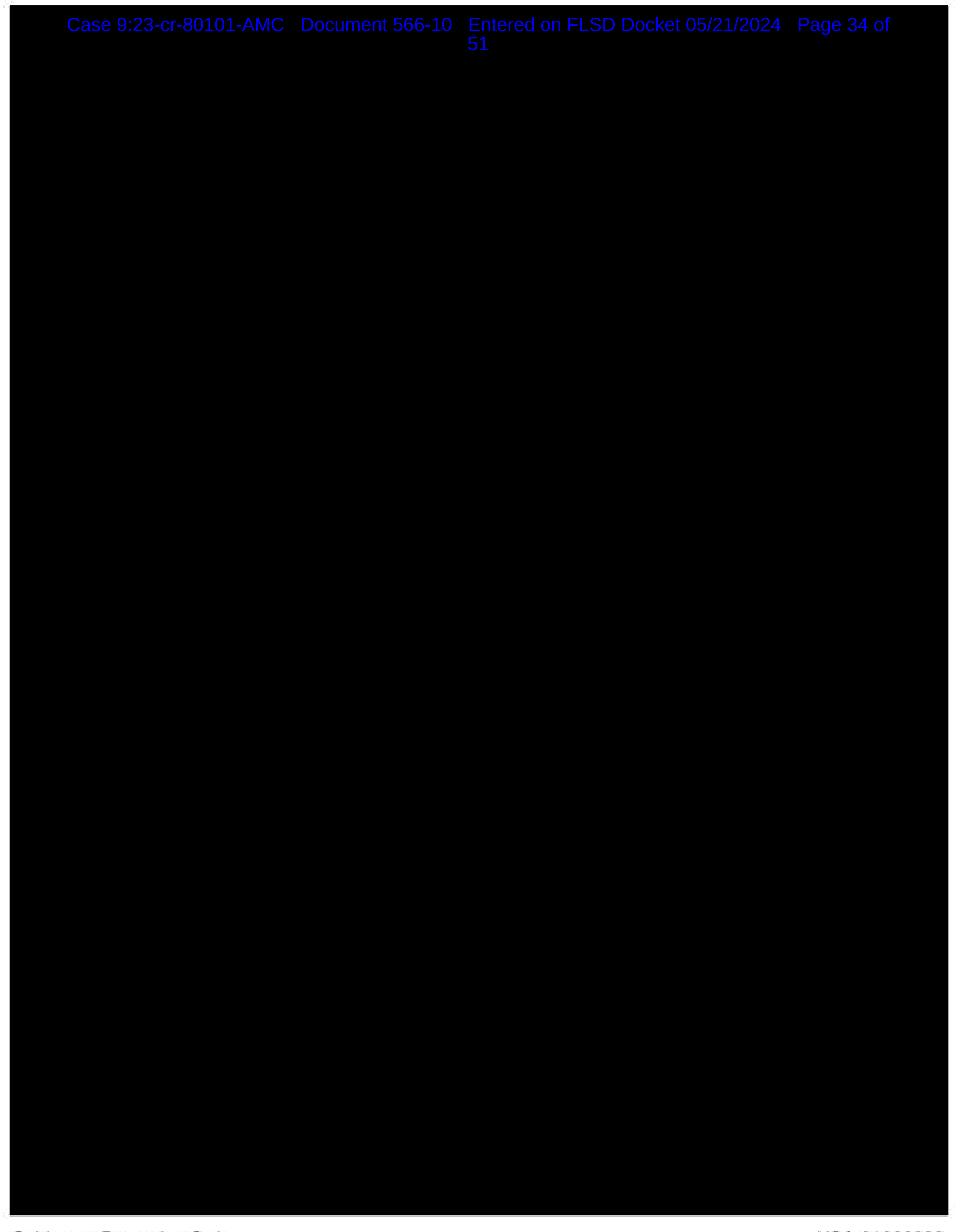


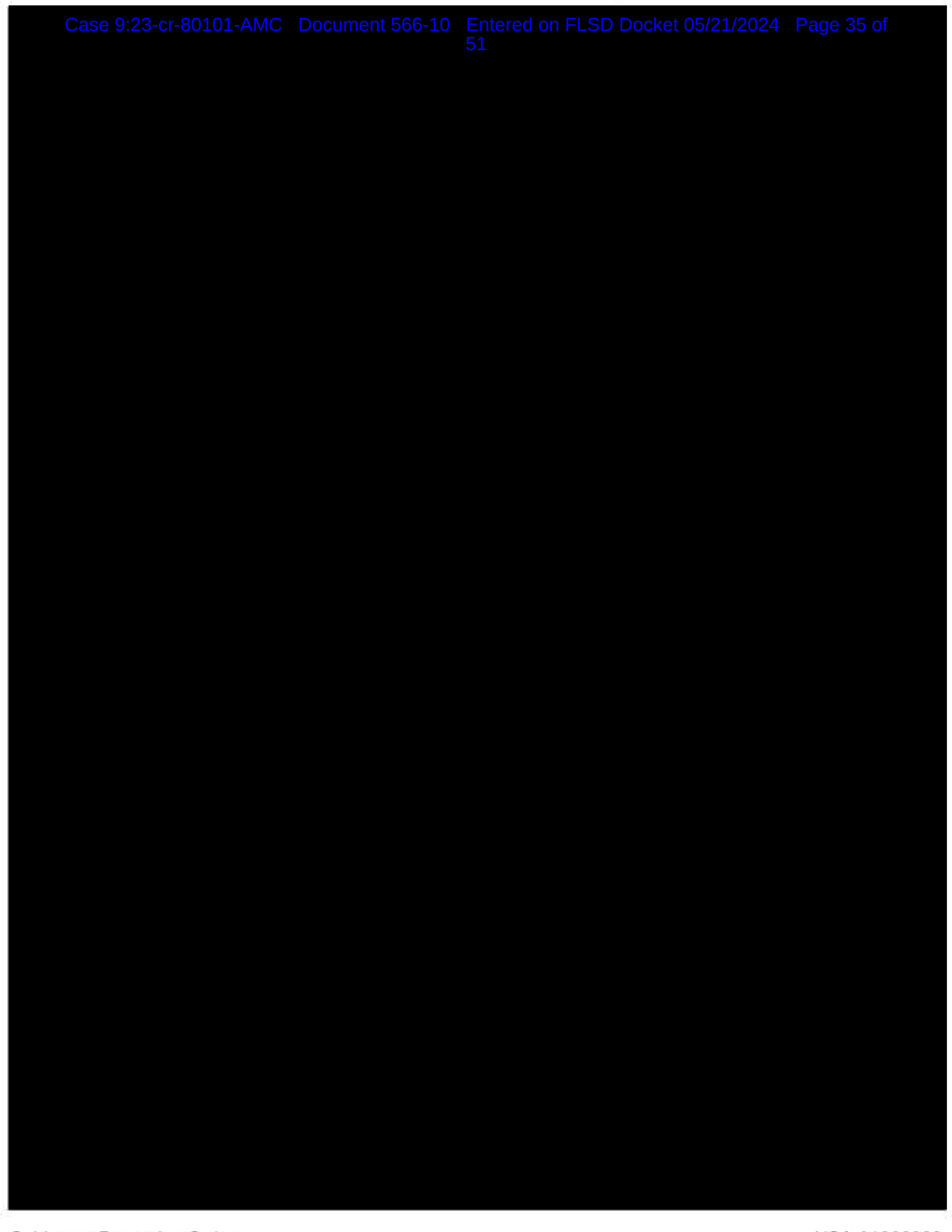


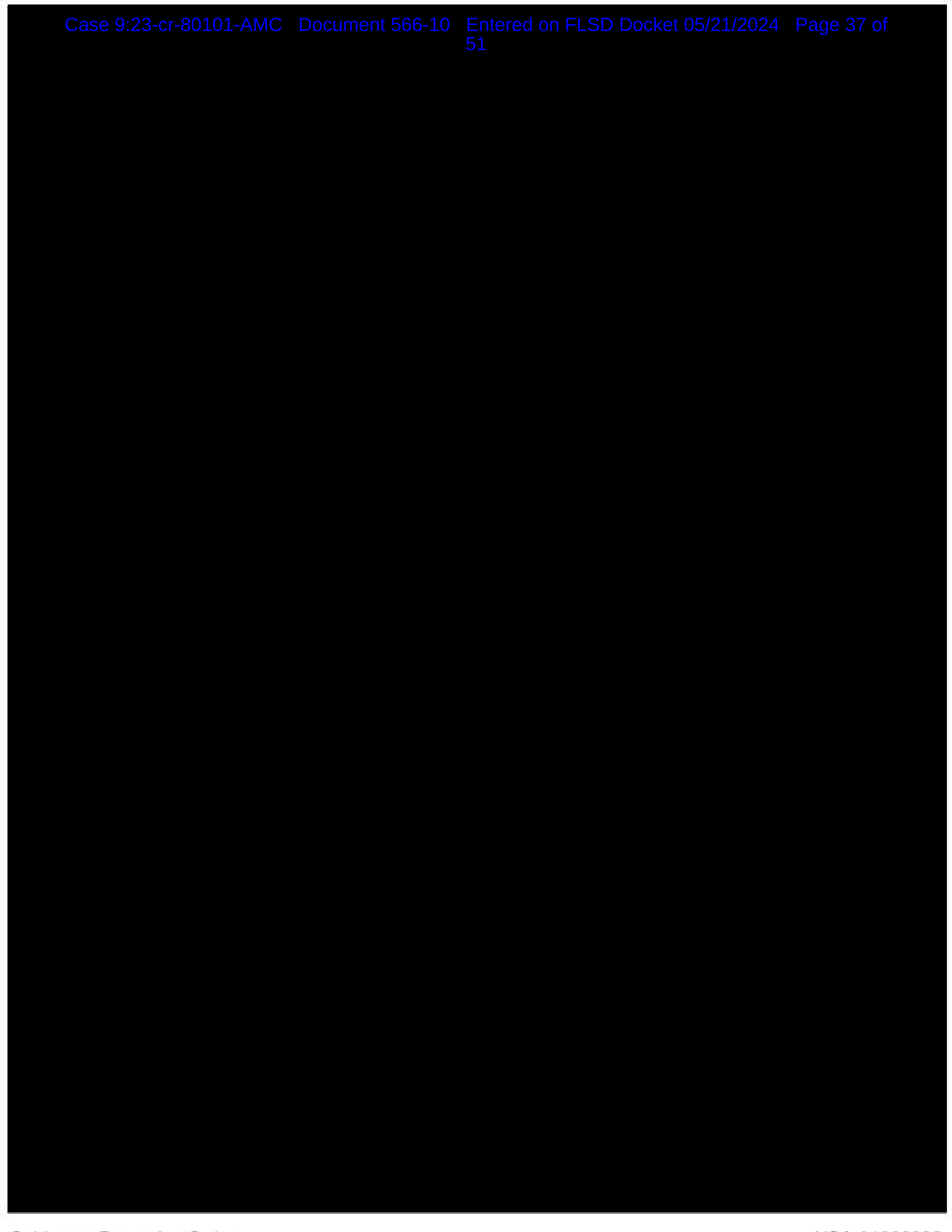
ATTACHMENT 2

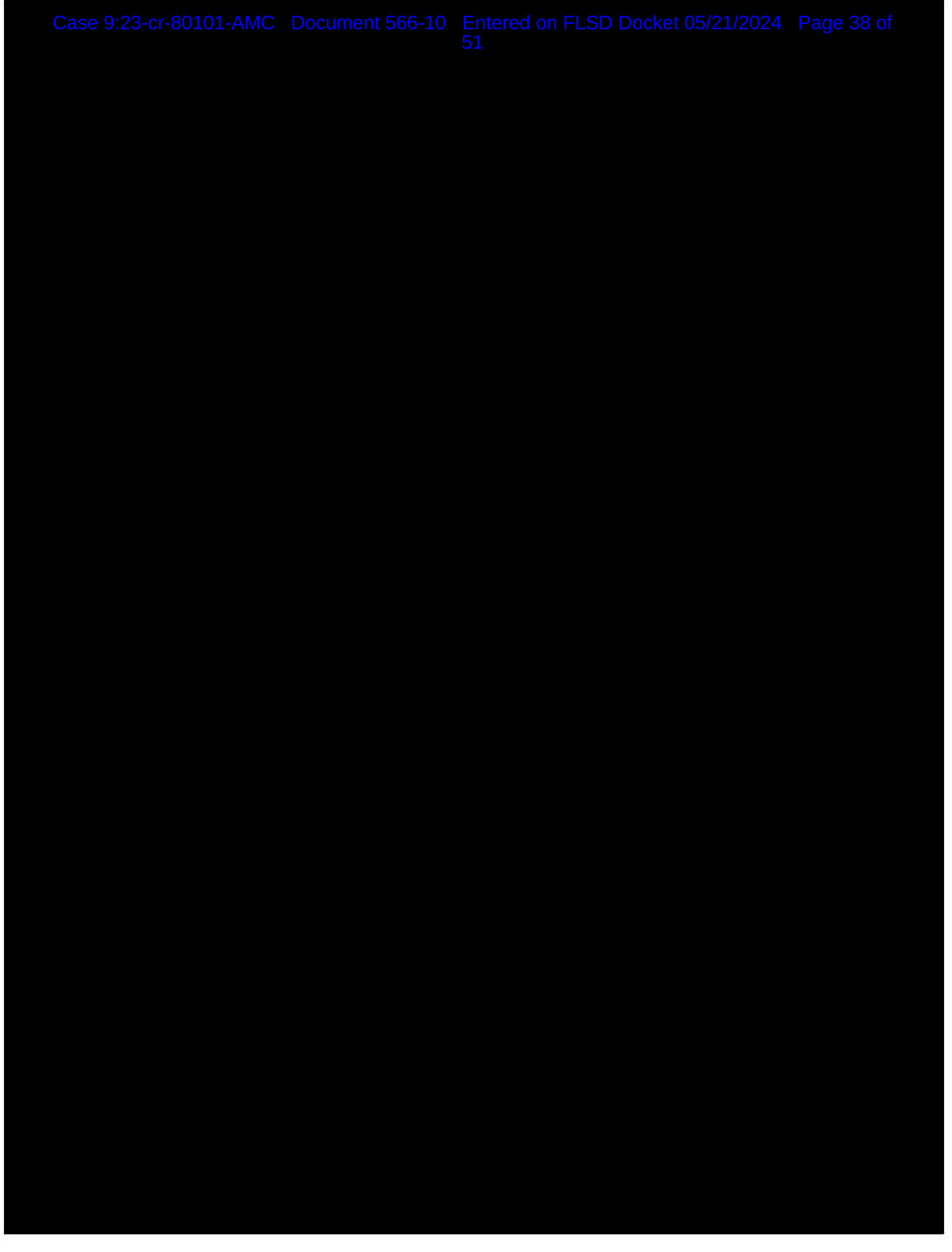
REDACTED P. 18-PRIV-083

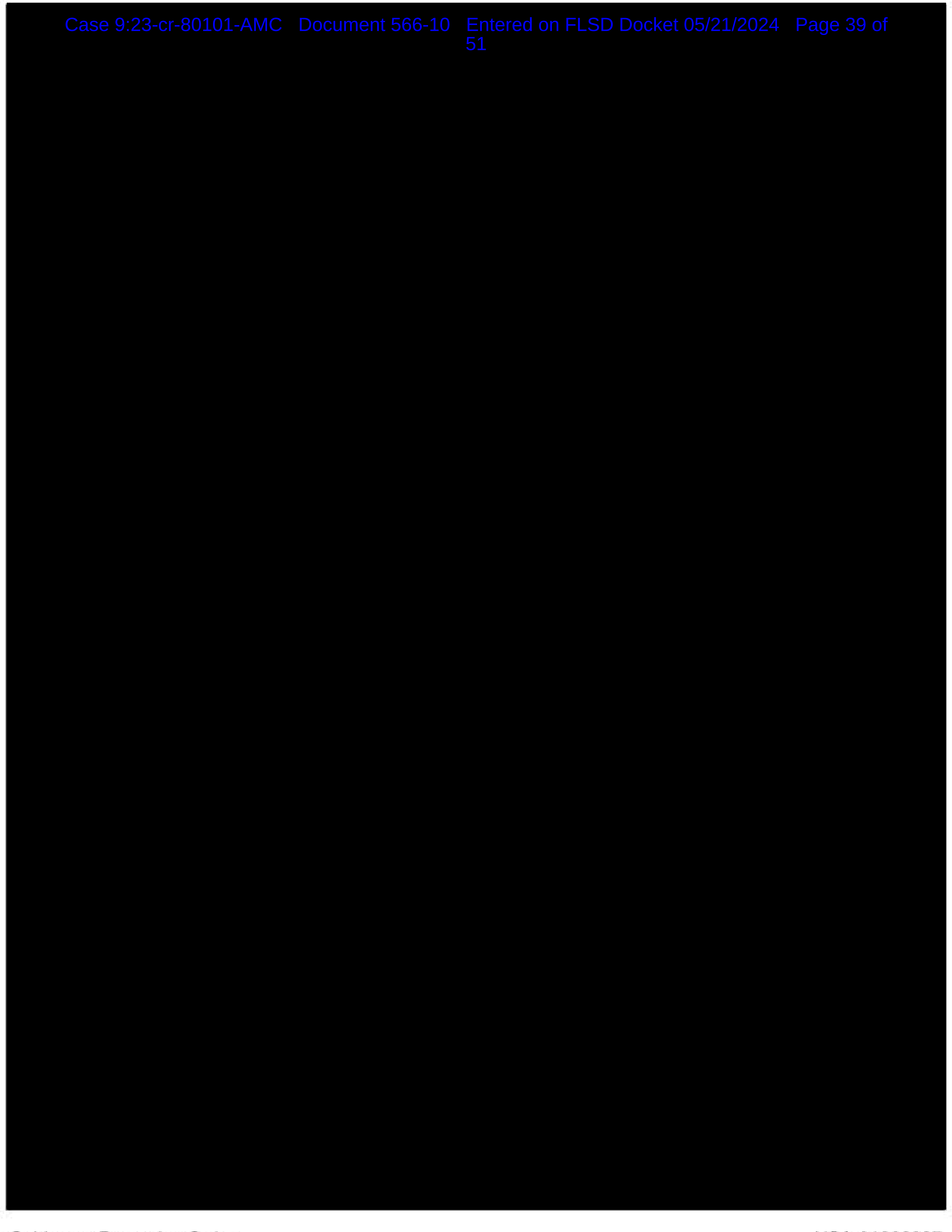


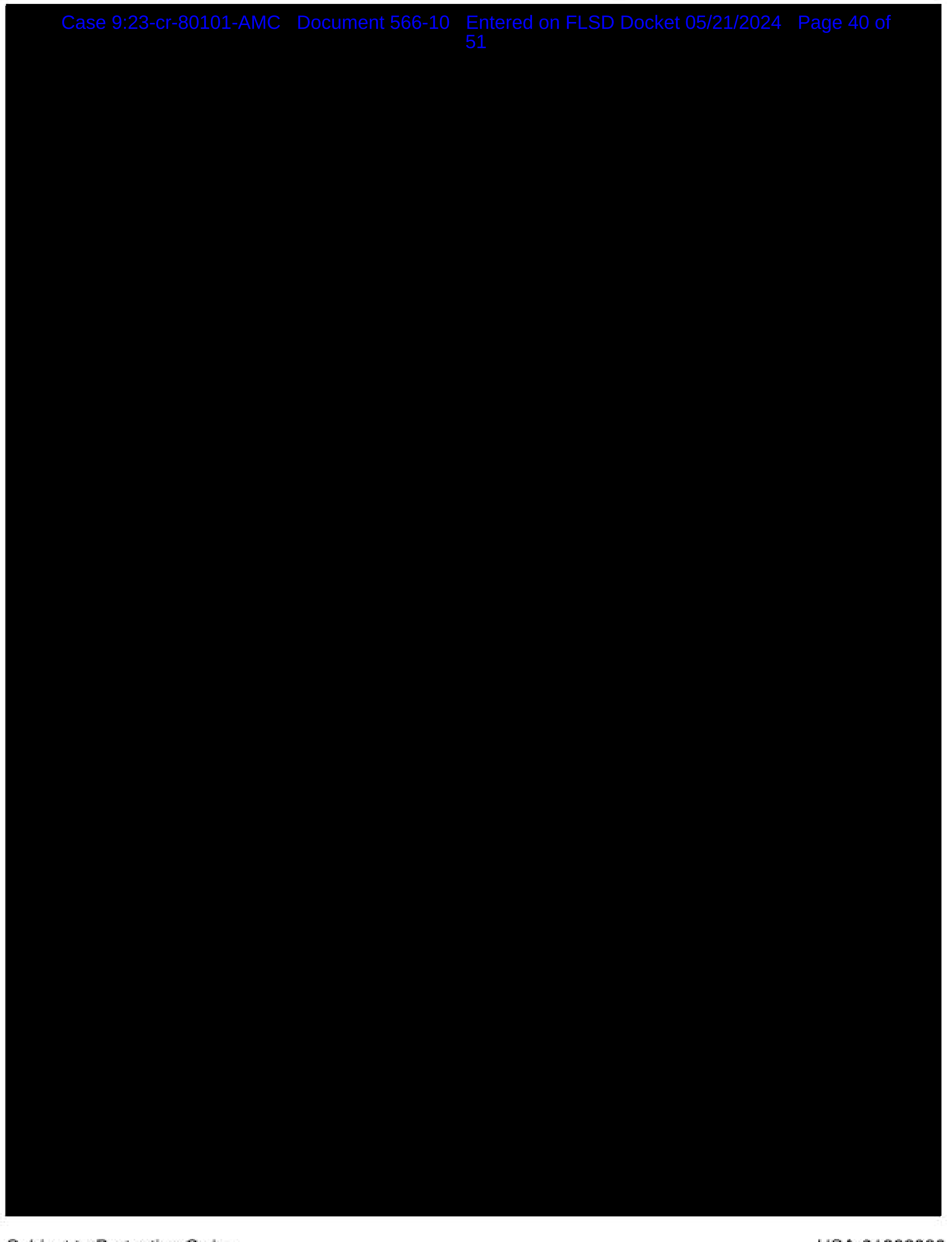


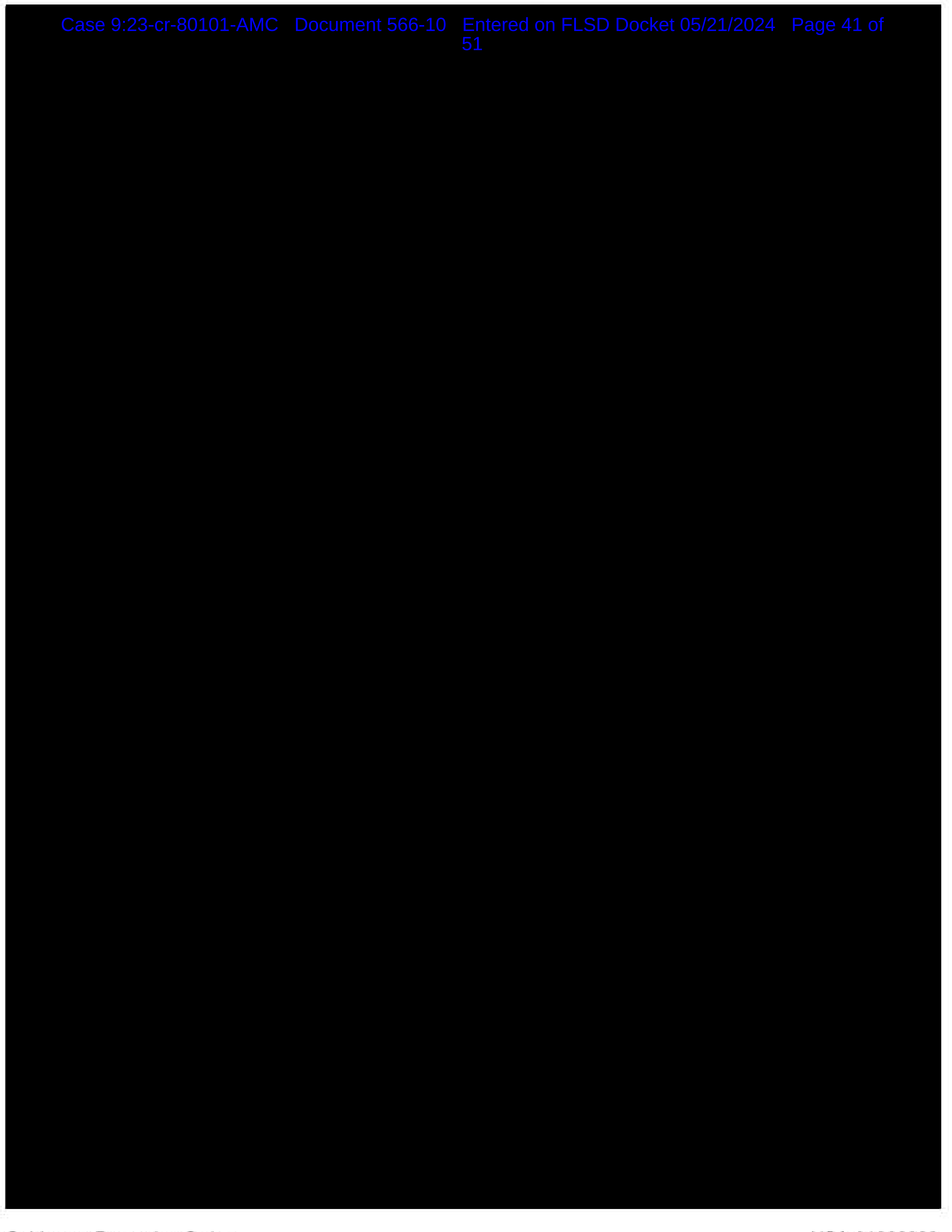


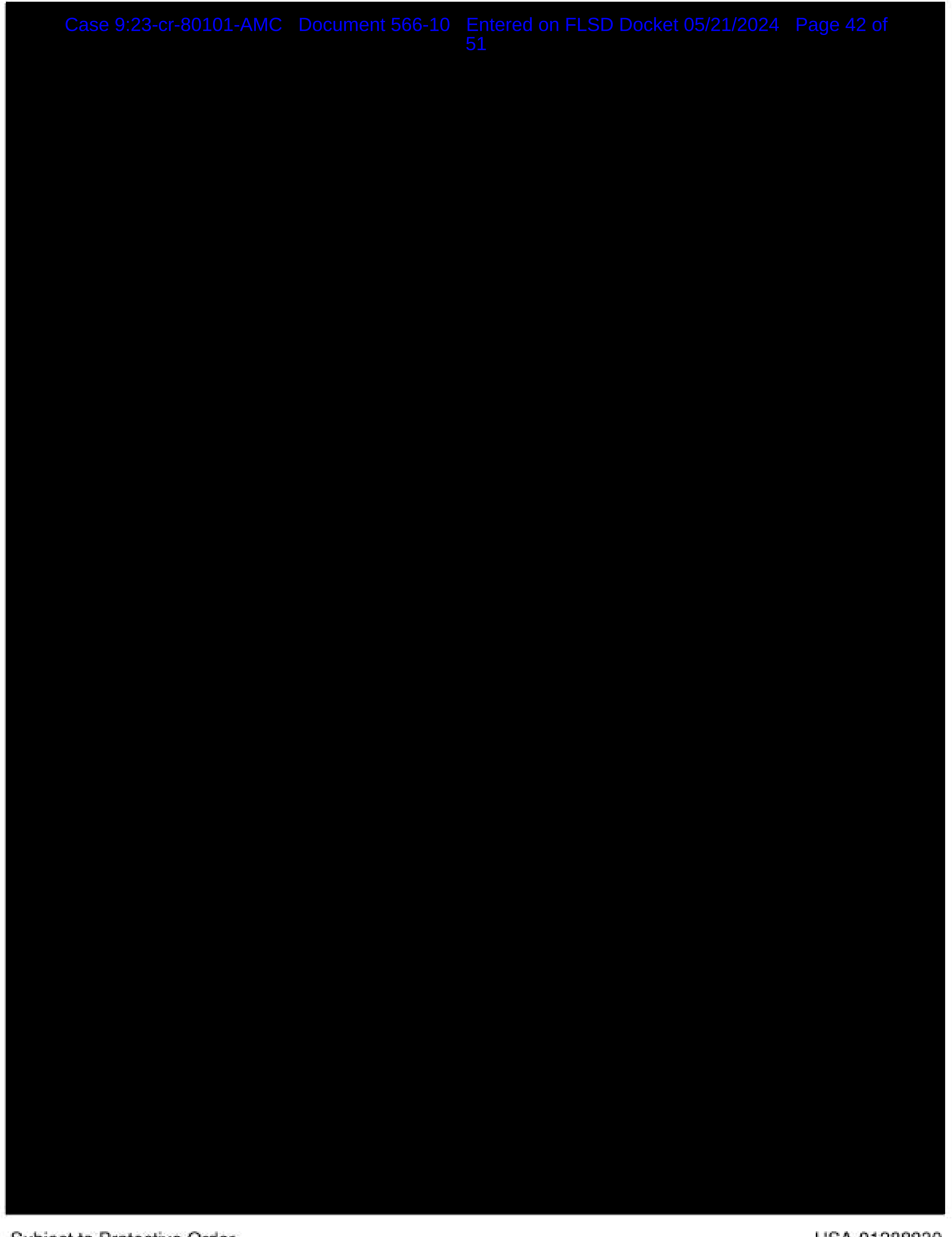


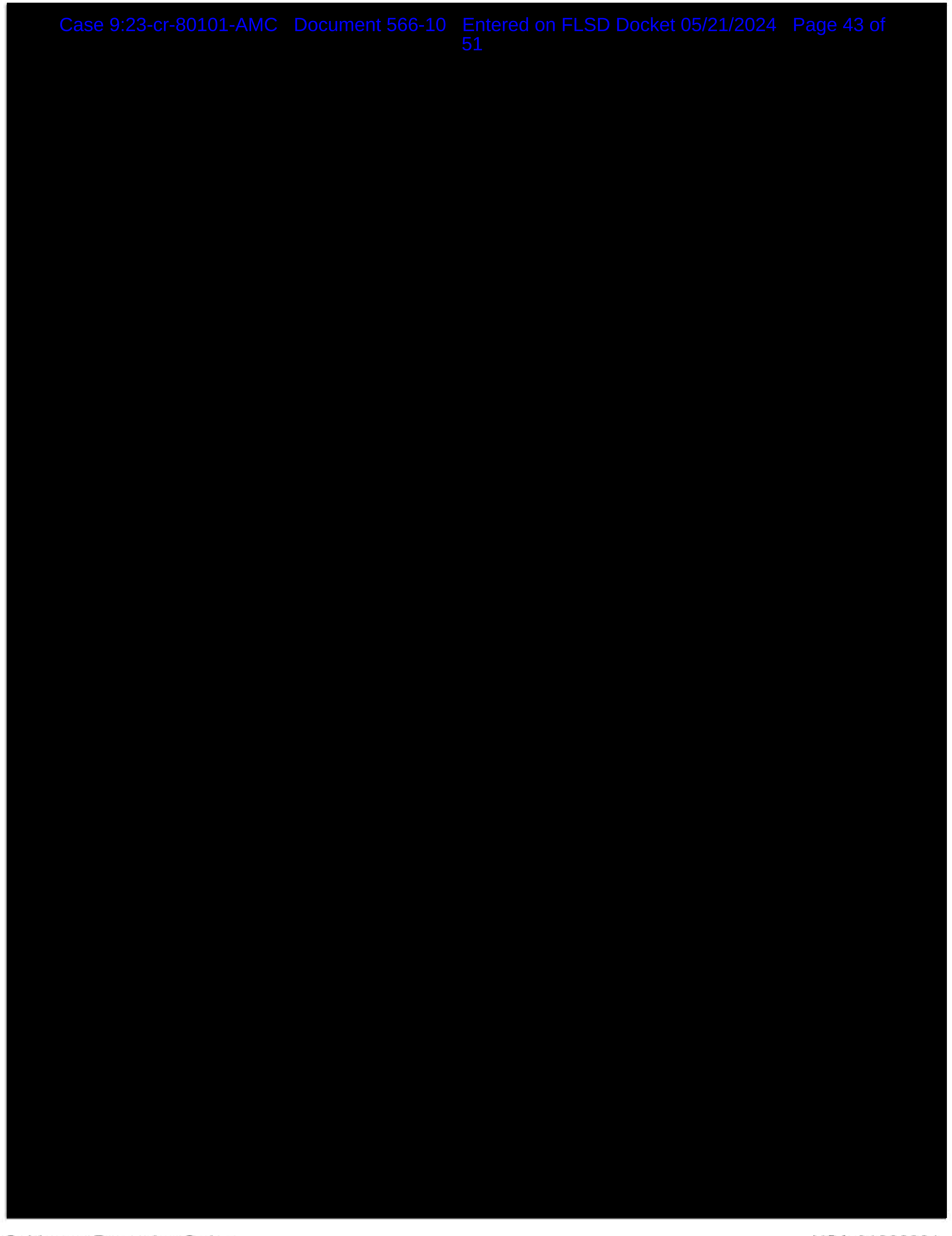


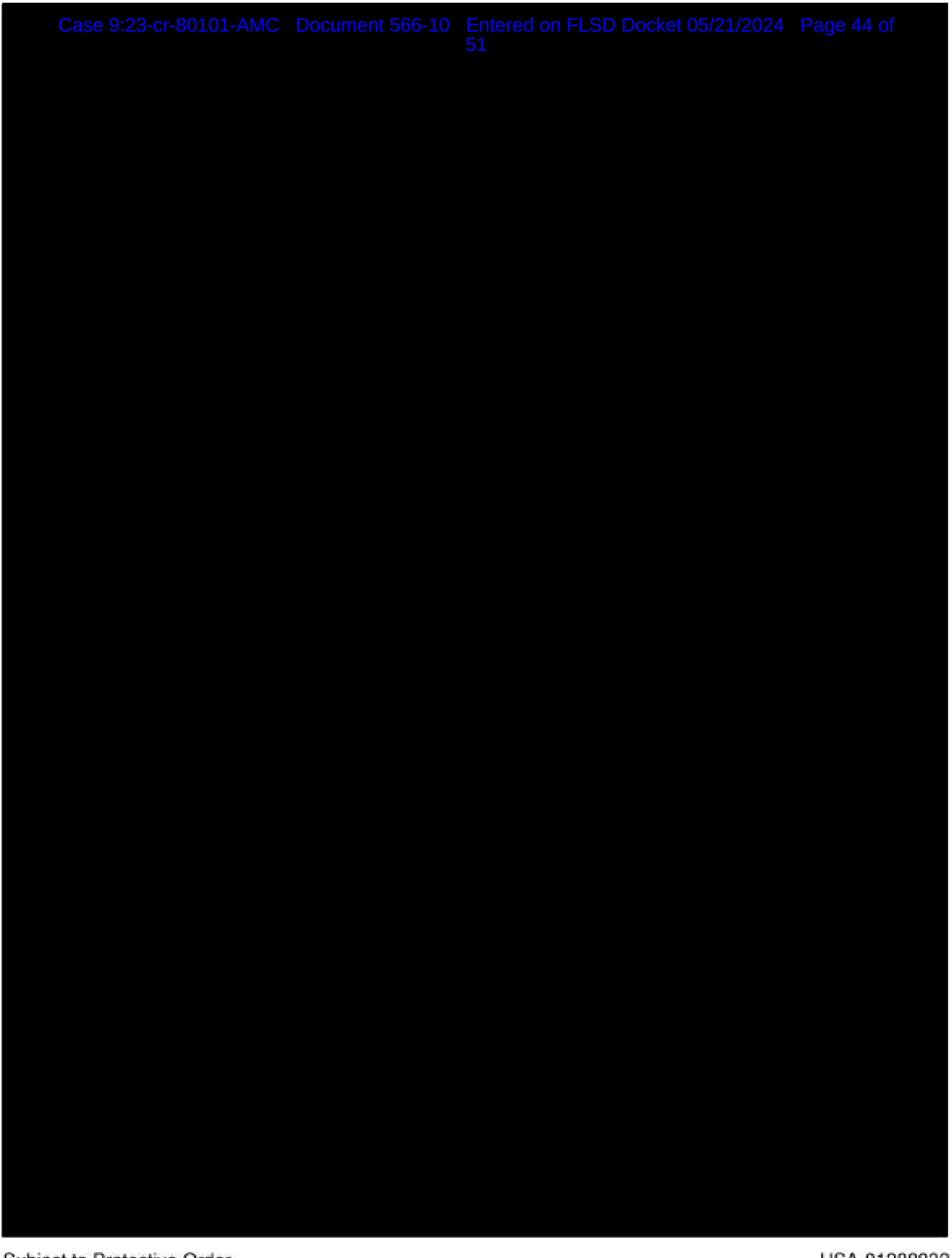


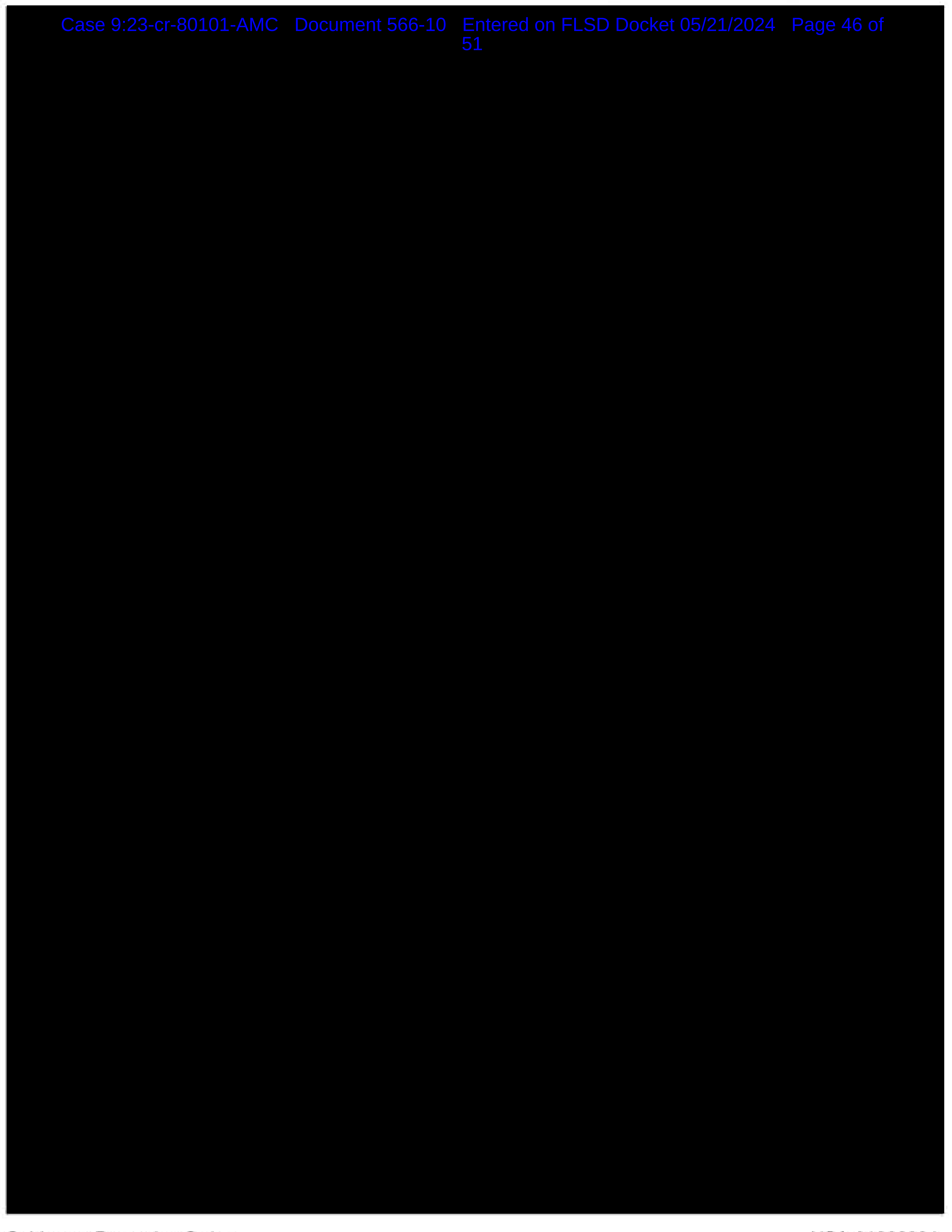












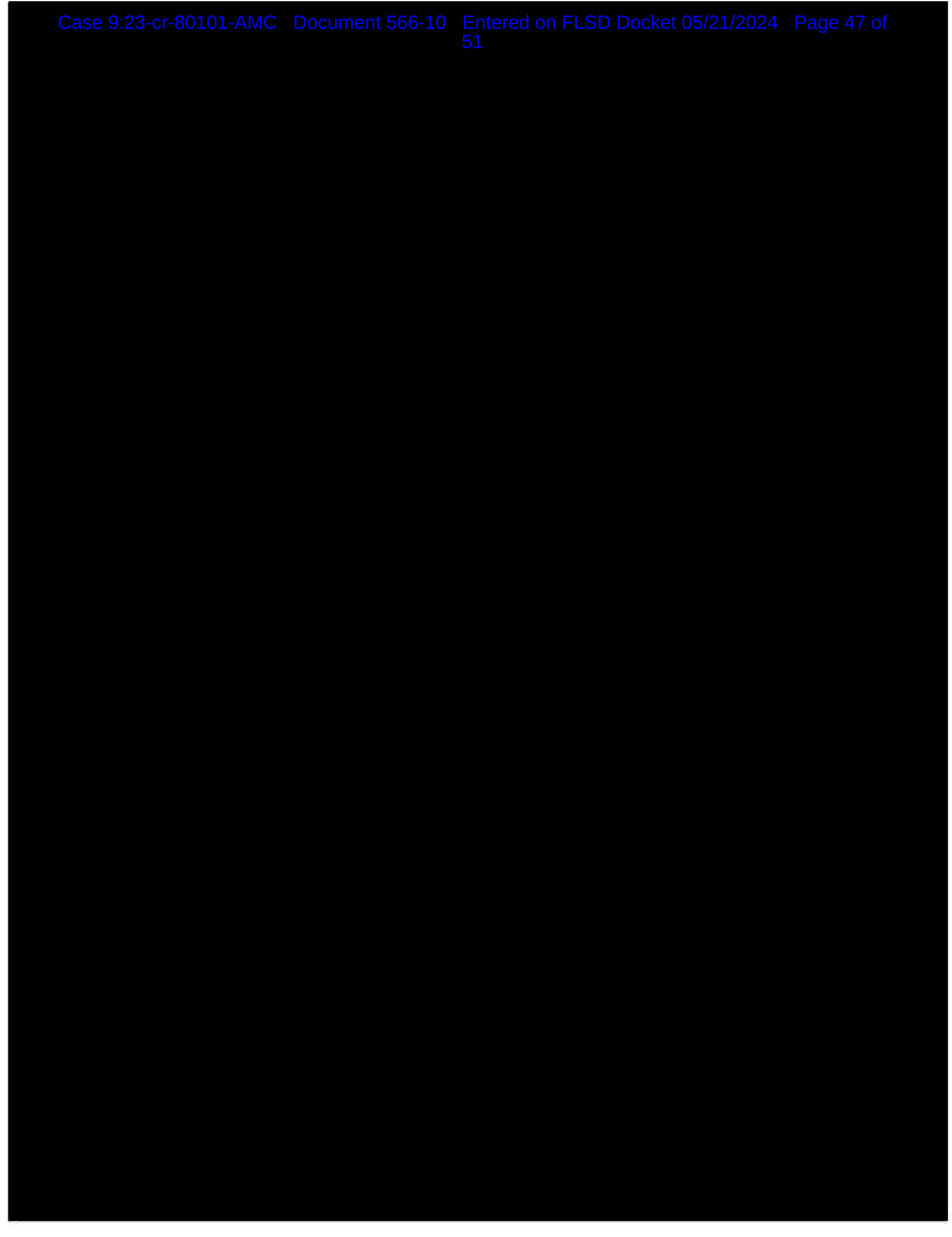


EXHIBIT 20

Legal Department
3620 Hacks Cross Road
Building B, 3rd Floor
Memphis, TN 38125 US

Certification of Business Records

I, [redacted] the undersigned, declare that I am employed by FedEx Express in the Legal Department as a Senior Paralegal Specialist; and by my position, am authorized and qualified to make this certification.

Based upon a diligent search and to my knowledge, I certify that the accompanying records are copies of all documents, information, and things that:

1. were made at or near the time by – or from information transmitted by – someone with knowledge;
2. were kept in the course of regularly conducted activity of a business; and
3. making the records was a regular practice of that activity.

Records deemed privileged or protected from disclosure, if any, do not accompany this response.

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

Place of Execution: FedEx Express
Legal Department
3620 Hacks Cross Road
Building B – Third Floor
Memphis, TN 38125

[redacted]

[redacted], sr. paralegal specialist, and custodian of records

SWORN TO AND SUBSCRIBED before me on this 27th **day of** Sept. **2021**

[redacted]

Notary Public in and for
The State of Tennessee

My Commission Expires: 04/22/2025

[redacted]

TENNESSEE NOTARY PUBLIC
SHELBY COUNTY
MY COMMISSION EXPIRES 4-22-2025

CERTIFICATION OF APPLE INC. CUSTODIAN OF RECORDS

I, [redacted], hereby declare:

1. I am employed by Apple Inc. and my official title is Legal Specialist. I am a duly authorized Custodian of Records, or other qualified witness for Apple Inc. ("Apple") located in Cupertino, California. As such I have the authority to certify these records, APL000001_APPLE_CONFIDENTIAL and APLiC000001_APPLE_CONFIDENTIAL produced November 14, 2022 in response to the legal process served on Apple on November 8, 2022. I am authorized to submit this declaration on behalf of Apple.

2. Each of the records produced is the original or a duplicate of the original record in the custody of Apple Inc.

3. With respect to the records contained in APL000001_APPLE_CONFIDENTIAL, these records were:

   a. made at or near the time by — or from information transmitted by — someone with knowledge or from a process or system that produces an accurate result, the accuracy of which is regularly verified by Apple;

   b. kept in the course of a regularly conducted activity of Apple's business; and

   c. made as part of a regular practice of the activity of Apple's business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

DATED: November 14, 2022

APPLE INC.

By: [redacted]

Name: [redacted]

Title: Legal Specialist, Apple Inc.