

# United States Senate

WASHINGTON, DC 20510

November 12, 2024

## VIA ELECTRONIC TRANSMISSION

The Honorable Merrick B. Garland  
Attorney General  
Department of Justice

The Honorable Christopher Wray  
Director  
Federal Bureau of Investigation

Mr. Jack Smith  
Special Counsel  
Department of Justice

Dear Attorney General Garland, Director Wray, and Special Counsel Smith:

We write to request the Justice Department and the Federal Bureau of Investigation (FBI) ensure that all records relating to Special Counsel Smith's investigations into former President Trump be preserved. Our request is necessary based on the Justice Department's past failures to preserve federal records.

By way of example, on September 11, 2020, we wrote to the Justice Department about concerns that multiple employees of then-Special Counsel Mueller's team wiped data from their government phones, including texts messages, during their investigation of alleged Russian collusion in the 2016 election.<sup>1</sup> During that time, members of Special Counsel Mueller's team admitted that they wiped data from their phones and also on multiple occasions had their data automatically wiped after putting in the wrong password too many times.<sup>2</sup> Indeed, one team member, Andrew Weissmann, appeared to have deleted data on his phone more than once. On March 18, 2018, records show that Weissmann "[e]ntered [his] password too many times and wiped his phone."<sup>3</sup> On September 27, 2018, another report reads, "AAW accidentally wiped cell phone – data lost."<sup>4</sup>

Moreover, after Special Counsel Mueller's investigation ended, the Justice Management Division took possession of 79 of 96 phones.<sup>5</sup> Of those, it appears that only 74 phones were reviewed for official records, which means not all phones were subject to records preservation.<sup>6</sup> Many members of Special Counsel Mueller's team apparently began deleting federal records after the DOJ Office of the Inspector General (DOJ OIG) began its inquiry into the Justice Department's mishandling and error-prone Crossfire

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<sup>1</sup> Letter from Senator Charles E. Grassley to AG Barr and FBI Director Wray, (Sep. 11, 2020) [https://www.grassley.senate.gov/imo/media/doc/2020-09-11%20CEG%20to%20DOJ%20FBI%20\(Special%20Counsel%20Records\).pdf](https://www.grassley.senate.gov/imo/media/doc/2020-09-11%20CEG%20to%20DOJ%20FBI%20(Special%20Counsel%20Records).pdf).

<sup>2</sup> *Id.*

<sup>3</sup> FOIA Production, U.S. Department of Justice, *Records Concerning the Use of Department-issued mobile devices by Peter Strzok and Lisa Page* (May 20, 2017-October 23, 2019) at 002016-000049, Posted September 10, 2020, [https://www.justice.gov/oip/foia-library/general\\_topics/communications\\_strzok\\_and\\_page\\_09\\_04\\_20/download](https://www.justice.gov/oip/foia-library/general_topics/communications_strzok_and_page_09_04_20/download).

<sup>4</sup> *Id.* at 002016-000050.

<sup>5</sup> Letter from Senators Charles E. Grassley and Ron Johnson to AG Garland, *Grassley and Johnson Request More Information from Justice Department about Special Counsel Mueller Team's Missing Phones*, (Jul. 12, 2021) <https://www.grassley.senate.gov/news/news-releases/grassley-and-johnson-request-more-information-from-justice-department-about-special-counsel-mueller-teams-missing-phones>.

<sup>6</sup> *Id.*

Hurricane investigation.<sup>7</sup> The proximity in time to the DOJ OIG investigation along with the number of times and stated reasons for the deletion of the federal records calls into question whether this was a widespread intentional effort in order to prevent Congress and agency watchdogs from better understanding the Special Counsel's decision making process as they pursued their investigation and wrote their report.<sup>8</sup> In fact, under this administration's standards, these actions could have very well been prosecuted for destruction of evidence and obstruction, but the Biden administration chose not to.

In addition, Senator Grassley's oversight exposed that during the FBI's investigation of Secretary Clinton's mishandling of highly classified information, the FBI agreed to destroy any records that were not turned over to the investigatory team and agreed to destroy laptops associated with Secretary Clinton's staff.<sup>9</sup> As Senator Grassley said in 2016, this agreement is astonishing given the likelihood that evidence on the laptops would be of interest to congressional investigators.

According to whistleblower disclosures, former FBI Assistant Special Agent in Charge (ASAC) Timothy Thibault, who publicly engaged in anti-Trump political partisanship, was deeply involved in the decision to open and pursue the investigation that ultimately became one of Special Counsel Smith's cases against former President Trump.<sup>10</sup> On July 18, 2022, Senator Grassley wrote the Justice Department raising concerns about ASAC Thibault's clear pattern of political partisanship and the apparent impact it had on the Justice Department and FBI's decision to open and pursue its investigation.<sup>11</sup> ASAC Thibault was later found to have violated the Hatch Act for his anti-Trump political partisanship.<sup>12</sup> Due to the apparent political bias of FBI officials that were involved in the genesis of a case against former President Trump, preservation of Special Counsel Smith's records is more important than ever. If a politically charged case is to be opened, it must be done the right way and free from political bias.

On September 16, 2024, we wrote to the Justice Department and FBI about a *Washington Post* report based on internal Justice Department and FBI records relating to another investigation allegedly involving the Egyptian Government that the Mueller team tried to advance against President Trump which was ultimately closed for lack of evidence.<sup>13</sup> The article was reportedly based, in part, on "interviews with people familiar with the case as well as documents and contemporaneous notes of the investigation" and "a review of thousands of pages of government records, including sealed court findings and exhibits."<sup>14</sup> The reporting also refers to "classified U.S. intelligence," indicating that Justice Department and FBI officials

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<sup>7</sup> Letter from Senator Charles E. Grassley to AG Barr and FBI Director Wray, (Sep. 11, 2020) [https://www.grassley.senate.gov/imo/media/doc/2020-09-11%20CEG%20to%20DOJ%20FBI%20\(Special%20Counsel%20Records\).pdf](https://www.grassley.senate.gov/imo/media/doc/2020-09-11%20CEG%20to%20DOJ%20FBI%20(Special%20Counsel%20Records).pdf).

<sup>8</sup> *Id.*

<sup>9</sup> Letter from Senator Charles E. Grassley to AG Lynch, (Oct. 5, 2016) <https://www.judiciary.senate.gov/imo/media/doc/2016-10-05%20CEG%20et.%20al%20to%20DOJ%20-%20Wilkinson%20Immunity%20Letters.pdf>.

<sup>10</sup> Senator Charles E. Grassley, *Grassley Raises Concern about Apparent Political Bias by Senior FBI Public Integrity Official*, (May 31, 2022) <https://www.grassley.senate.gov/news/news-releases/grassley-raises-concern-about-apparent-political-bias-by-senior-fbi-public-integrity-official>.

<sup>11</sup> Letter from Senator Charles E. Grassley to AG Garland and FBI Director Wray, (Jul. 18, 2022) [https://www.grassley.senate.gov/imo/media/doc/grassley to justice dept fbi - political bias.pdf](https://www.grassley.senate.gov/imo/media/doc/grassley%20to%20justice%20dept%20fbi%20-%20political%20bias.pdf).

<sup>12</sup> Letter from the Office of Special Counsel to Senator Charles E. Grassley, (Jan. 19, 2024) [https://www.grassley.senate.gov/imo/media/doc/office of special counsel to grassley - thibault2.pdf](https://www.grassley.senate.gov/imo/media/doc/office%20of%20special%20counsel%20to%20grassley%20-%20thibault2.pdf).

<sup>13</sup> Aaron C. Davis and Carol D. Leonnig, *\$10M cash withdrawal drove secret probe into whether Trump took money from Egypt*, *Washington Post* (Aug. 2, 2024) <https://www.washingtonpost.com/investigations/2024/08/02/trump-campaign-egypt-investigation/>.

<sup>14</sup> *Id.*

may have leaked classified information to the media.<sup>15</sup> The following photograph is of an award given to Special Agent Walter Giardina, an FBI employee who worked on aspects of the Mueller investigation and the Trump investigation and prosecution led by Jack Smith. Although Special Agent Giardina was assigned to the Mueller investigation's "Team R," he would've most likely had access to or been made aware of information from "Team 10," the reported Egypt investigation that formed the basis of the *Washington Post* reporting.<sup>16</sup> Have you opened a media leak investigation into personnel assigned to the Mueller team? If not, why not?



Accordingly, considering the Justice Department's past destruction of federal records relevant to congressional oversight and political bias infecting its decision-making process, we request that you preserve all records related to the Justice Department's criminal investigations of former President Trump by Special Counsel Smith.<sup>17</sup> The improper conduct of the past cannot be repeated in this matter, therefore, all records must be preserved so that Congress can perform an objective and independent review.

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> "Records" include any written, recorded, or graphic material of any kind, including letters, memoranda, reports, notes, electronic data (emails, email attachments, and any other electronically created or stored information), calendar entries, inter-office communications, meeting minutes, phone/voice mail or recordings/records of verbal communications, and drafts (whether they resulted in final documents).

Thank you for your prompt review and response.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on the Budget



Ron Johnson  
Ranking Member  
Permanent Subcommittee on Investigations

cc: The Honorable Sheldon Whitehouse  
Chairman  
Committee on the Budget

The Honorable Richard Blumenthal  
Chairman  
Permanent Subcommittee on Investigations

The Honorable Michael E. Horowitz  
Inspector General  
Department of Justice

Ms. Jolene Ann Lauria  
Assistant Attorney General for Administration  
Justice Management Division  
Department of Justice