

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY
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MEMORANDUM

March 7, 2023

To: Democratic Members of the Committee on Oversight and Accountability

Fr: Democratic Staff

Re: Oversight Committee Investigation into the Presidential Records and Classified Records and Transcribed Interview of National Archives Official

On January 10, 2023, Chairman James Comer requested a transcribed interview with Mr. Gary Stern, General Counsel for the National Archives and Records Administration (NARA), as part of Committee Republicans' investigation into allegations that "NARA's inconsistent treatment of recovering classified records held by former President Trump and President Biden raises questions about political bias at the agency."¹ The transcribed interview was held on Tuesday, January 31, 2023.²

Chairman Comer launched this investigation in January 2023, following reports that classified records had been recovered from President Biden's former office at the Penn Biden Center for Diplomacy and Global Engagement at the University of Pennsylvania (Penn Biden Center).³ Shortly thereafter, Chairman Comer sent letters to the White House and NARA requesting documents and information related to the recovery.⁴ Despite sending multiple letters

¹ Letter from Chairman James Comer, Committee on Oversight and Accountability, to Debra Steidel Wall, Acting Archivist of the United States (Jan. 10, 2023) (online at <https://oversight.house.gov/wp-content/uploads/2023/01/2023-01-10-Letter-NARA-Biden-classified-docs.pdf>).

² Following the transcribed interview, Mr. Stern wrote to Chairman Comer to provide additional information to supplement his responses to several questions. See Letter from Gary Stern, General Counsel, National Archives and Records Administration, to Chairman James Comer, Committee on Oversight and Accountability (Feb. 10, 2023) (online at https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/Agent%20%20PDF_0.pdf).

³ See Penn Biden Center for Diplomacy & Global Engagement, *Our Mission Statement* (online at <https://global.upenn.edu/penn-biden-center/our-mission-statement>) (accessed Feb. 11, 2023).

⁴ *U.S. Attorney Reviewing Classified Documents from Joe Biden's Vice Presidency Found at Biden Think Tank*, CBS News (Jan. 9, 2023) (online at www.cbsnews.com/amp/news/biden-center-classified-documents/); Letter from Chairman James Comer, Committee on Oversight and Accountability, to Stuart Delery, White House Counsel (Jan. 10, 2023) (online at <https://oversight.house.gov/wp-content/uploads/2023/01/2023-01-10-Letter-WHCO-Biden-confidential-docs.pdf>); Letter from Chairman James Comer, Committee on Oversight and Accountability, to Debra Steidel Wall, Acting Archivist of the United States, National Archives and Records

regarding the classified records recovered from President Biden since the beginning of this Congress, Chairman Comer has sent no letters regarding the classified records recovered from former Vice-President Pence's home or the classified records that continue to be recovered from former President Trump's Mar-a-Lago Club.⁵

Since then, Chairman Comer and other Republican Committee Members have made wide-ranging and serious allegations against NARA, the Department of Justice (DOJ), and the Biden White House, including claims that there is "political bias" at NARA, a "two-tier system of justice" for Democrats and Republicans, and that the federal government "suppressed" information about the discovery of documents at Penn-Biden Center.⁶

These allegations lack any factual basis. Committee staff is providing this memorandum to share background on the Committee Democrats' longstanding investigation of compliance with the Presidential Records Act (PRA) and to correct several of the factual misrepresentations Committee Republicans have made regarding this investigation. Based on Committee Republicans' decision to cherry-pick information and misrepresent statements made by Mr. Stern during the transcribed interview, Democratic Members of the Committee should call on Chairman Comer to release the full and complete transcript of Mr. Stern's January 10, 2023, interview, so that the American public can evaluate the facts free from any partisan spin.

I. COMMITTEE DEMOCRATS HAVE A LONGSTANDING INVESTIGATION INTO FORMER PRESIDENT TRUMP'S RECORDS VIOLATIONS

During the 116th Congress, Oversight Committee Democrats wrote to NARA raising concerns about the Trump Administration's compliance with the PRA during the 2020 presidential transition. In particular, Committee Democrats requested information regarding the outgoing Trump Administration's efforts to adequately preserve and transfer presidential records in accordance with the PRA.⁷ Prior to the transition, public reports described President Trump's

Administration (Jan. 10, 2023) (online at <https://oversight.house.gov/wp-content/uploads/2023/01/2023-01-10-Letter-NARA-Biden-classified-docs.pdf>).

⁵ *Trump Team Turns Over Additional Classified Records and Laptop to Federal Prosecutors*, CNN (Feb. 10, 2023) (online at www.cnn.com/2023/02/10/politics/trump-classified-records-laptop/index.html).

⁶ *Id*; *House Oversight Chairman Says Discovery of Biden Classified Docs Displays 'Two-tier' Justice System*, Fox News (Jan. 9, 2023) (online at www.foxnews.com/politics/house-oversight-chairman-says-discovered-biden-classified-docs-displays-two-tier-justice-system); Committee on Oversight and Accountability, Press Release: *Comer: NARA's Inconsistent Treatment of Classified Docs Reveals Political Double Standard* (Feb. 1, 2023) (online at <https://oversight.house.gov/release/comer-naras-inconsistent-treatment-of-classified-docs-reveals-political-double-standard/>).

⁷ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to David S. Ferriero, Archivist of the United States, National Archives and Records Administration (Dec. 21, 2020) (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2020-12-21.CBM%20to%20Ferriero-NARA%20re%20PRA.pdf>).

habit of destroying presidential records by tearing them up and even flushing them down the toilet.⁸

In February 2022, following public reports that NARA had recovered 15 boxes of records from Mr. Trump's Mar-a-Lago Club, the Committee opened an investigation into former President Trump's destruction and removal of presidential records.⁹ Since then, news reports and public court filings have revealed that the former president retained more than 11,000 government records and 300 classified documents, which he failed to turn over to the federal government on multiple occasions, including after receiving a grand jury subpoena.¹⁰ More than two dozen letters have been exchanged between the Oversight Committee—including letters sent by Committee Republicans—and NARA, NARA Office of Inspector General, DOJ, the White House, and the U. S. Secret Service (Secret Service).¹¹

Most recently, on January 31, 2023, Ranking Member Raskin wrote to the Secret Service requesting visitor information for President Trump's Mar-a-Lago Club and former Vice President Mike Pence's home in Carmel, Indiana, where additional classified records were recently found.¹² This letter followed a similar request from Chairman Comer that only sought information related to classified documents discovered at President Biden's residence in Wilmington, Delaware.¹³

In conducting this investigation, Committee Democrats have taken care to balance the Committee's duty to conduct responsible oversight with a respect for the Justice Department's need to protect the integrity of ongoing investigations.

⁸ *Meet the Guys Who Tape Trump's Papers Back Together*, Politico (June 10, 2018) (online at www.politico.com/story/2018/06/10/trump-papers-filing-system-635164); *Exclusive Photos: Trump's Toilet*, Axios (Aug. 8, 2022) (online at www.axios.com/2022/08/08/trump-toilet-photos-maggie-haberman).

⁹ *National Archives Had to Retrieve Trump White House Records from Mar-a-Lago*, Washington Post (Feb. 7, 2022) (online at www.washingtonpost.com/politics/2022/02/07/trump-records-mar-a-lago/); Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to David S. Ferriero, Archivist of the United States (Feb. 9, 2022) (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2022-02-09.CBM%20to%20Ferriero-NARA%20re%20Trump%20Mar-a-Lago%20FINAL.pdf>).

¹⁰ Detailed Property Inventory Pursuant to Court's Preliminary Order (Aug. 30, 2022), *Donald J. Trump v. United States*, S.D.FLA (No. 22-cv-81294); *F.B.I. Found 48 Empty Folders that Had Contained Classified Documents at Trump's Home*, New York Times (Sept. 2, 2022) (online at www.nytimes.com/2022/09/02/us/politics/trump-fbi-folders-classified.html).

¹¹ See Appendix (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/Appendix%20-%20Dem%20Memo%20-%20Correspondence.pdf>).

¹² Letter from Ranking Member Jamie B. Raskin, Committee on Oversight and Accountability, to Director Kimberly Cheatle, United States Secret Service (Jan. 31, 2023) (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2023-01-31%20JBR%20to%20Cheatle-USSS%20re%20Mar-a-Lago%20Visitor%20Logs.pdf>).

¹³ Letter from Chairman James Comer, Committee on Oversight and Accountability, to Director Kimberly Cheatle, United States Secret Service (Jan. 23, 2023) (<https://oversight.house.gov/wp-content/uploads/2023/01/2023-01-23-Letter-Secret-Service-visitor-logs.pdf>).

II. THE OVERSIGHT COMMITTEE HAS JURISDICTION OVER THE PRESIDENTIAL RECORDS ACT

The PRA governs the records of the President, Vice President, and certain components of the Executive Office of the President.¹⁴ The law requires the preservation of presidential records, which are considered the property of the United States. NARA assumes legal custody and control of presidential records at the end of an administration. The Oversight Committee has primary legislative jurisdiction over the PRA. The PRA lacks meaningful enforcement mechanisms because it relies on a president and their administration to act in good faith and does not have any civil or criminal penalties for violations. However, certain violations of the PRA may also violate other criminal statutes.

With respect to DOJ's ongoing investigation, the search warrant application for former President Trump's Mar-a-Lago Club identified potential violations of three criminal statutes:¹⁵

- **18 U.S.C. § 793 (Gathering, transmitting or losing defense information)**, which prohibits anyone with unauthorized possession of national defense information from transmitting such information or willfully retaining it. This statute carries a penalty of a fine, up to ten years in prison, or both.
- **18 U.S.C. § 1519 (Destruction, alteration, or falsification of records in Federal investigations and bankruptcy)**, the “anti-shredding provision” of the obstruction statutes, prohibits the intentional destruction or concealment of documents with the intent of obstructing a federal investigation. This statute carries a penalty of a fine, up to 20 years in prison, or both.
- **18 U.S.C. § 2071 (Concealment, removal, or mutilation generally)**, which prohibits the willful and unlawful destruction or concealment of any government records. This statute carries a penalty of a fine, up to three years in prison, or both.

III. DETAILED REVIEW OF REPUBLICAN CLAIMS FOLLOWING THE TRANSCRIBED INTERVIEW OF NARA'S GENERAL COUNSEL

On January 31, 2023, NARA General Counsel Gary Stern participated in a voluntary, five-and-a-half-hour interview with Committee staff and Members. Although Mr. Stern explained that NARA had fully cooperated with the Committee and described the agency's fair and impartial handling of both the Trump and Biden matters, Committee Republicans subsequently mischaracterized Mr. Stern's statements during right wing media appearances. For example, Committee Republicans claimed, during the transcribed interview, Mr. Stern was not allowed to say anything about the “Biden documents,” that there is a “double standard” with how

¹⁴ See 44 U.S.C. §§ 2201–2209.

¹⁵ Search and Seizure Warrant and Receipts for Property (Redacted), *In re Sealed Search Warrant*, No. 22-MJ-8332-BER (S.D. Fla. Aug. 11, 2022), Doc. 17 (online at www.flsd.uscourts.gov/sites/flsd/files/DE-102.pdf).

former President Trump was treated in comparison to President Biden, and that NARA gave former Oversight Committee Chairwoman Carolyn Maloney “every bit of information” she requested on Mr. Trump.¹⁶

To ensure Committee Democrats have an accurate understanding of what occurred during the interview, Committee staff have summarized key points from the transcribed interview that contradict Republicans’ inaccurate and partisan narrative and demonstrate that NARA has followed consistent processes in recovering presidential and classified records across administrations, and in releasing information to Congress and the public about the recoveries.

1. Republicans Falsely Claim NARA “Suppressed” a Press Release on the Recovery of President Biden’s Records.

Republicans have erroneously stated that NARA is biased and partisan because it published a press release about the agency’s recovery of 15 boxes of presidential and classified records from Mar-a-Lago in February 2022, but did not publish a similar press release when documents were found at the Penn Biden Center.¹⁷ They have also falsely suggested that although NARA drafted a press release in response to the discovery of records at the Penn Biden Center, “someone outside of NARA withheld its release.”¹⁸

Mr. Stern’s statements to the Committee, however, make clear that the key difference between its decisions to issue press releases in both matters was the existence of an ongoing federal law enforcement investigation. During his interview, Mr. Stern explained that NARA would not have issued a press release until the document recoveries had otherwise become public because doing so would have potentially violated NARA policy. At the time the Mar-a-Lago document recovery became public—in February 2022—the matter had not yet been referred to DOJ. Therefore, there was no pending federal law enforcement investigation. Conversely, with respect to the recovery of documents from the Penn Biden Center, Mr. Stern acknowledged that no press release was issued because public reports on the recovered documents occurred *after* there had already been a referral to DOJ.

As demonstrated by Mr. Stern’s statements to the Committee below, NARA’s decision not to issue a press release regarding the Biden Penn Center documents—which were the subject of an ongoing DOJ investigation—was consistent with agency policy:

Q: Let me rephrase slightly.

¹⁶ *Rep. Comer on His Meeting Today with the National Archives*, Fox News (Jan. 31, 2023) (online at www.foxnews.com/video/6319572282112/).

¹⁷ *See e.g., Rep. James Comer Blasts DOJ for Stonewalling Information on Biden Classified Docs*, Fox News (Jan. 31, 2023) (online at www.foxnews.com/video/6319572282112/).

¹⁸ Letter from Chairman James Comer, Committee on Oversight and Accountability, to Chief of Staff Jeff Zients, The White House (Mar. 7, 2023) (online at <https://oversight.house.gov/wp-content/uploads/2023/03/2023-03-7-Letter-WH-CoS-re-NARA.pdf>).

On February 7th, when NARA released that statement, there had been no NARA
OIG referrals to the Department of Justice.

A: Yeah, that appears to be the case.

Q: On January 9th, when the CBS News report had come out, there had been a
NARA referral, NARA OIG referral to the Department of Justice on the Biden
documents for nearly 2 months.

A: That is correct.

Q: In fact, over 2 months.

A: That is correct.

Q: So, in terms of DOJ's involvement at that time, to your knowledge, DOJ had been
involved for over 2 months in the Biden documents.

A: Yes.

Q: And, when you released a statement in February of 2022, there had been not –
DOJ had not been involved at all in the collection of the Trump documents.

A: Well, it hadn't been referred to them by OIG.

...

Q: And, here, the NARA notice, which was sent by Acting Archivist Wall, states in
no uncertain terms that it's the policy of the National Archives not to comment on
potential or ongoing investigations –

A: Correct.

...

Q: In January of 2023, when CBS News and other news outlets either reach out for
comment or began to run stories about documents found at the Penn Biden
Center, would NARA releasing a press statement about that incident or NARA's
involvement be a comment on potential or ongoing investigations?

A: I think it could be considered that, yes.

Q: So releasing a press statement in that moment would violate the NARA policy as
it's laid out in this NARA notice by Acting Archivist Wall?

A: I mean, potentially, yes.¹⁹

2. **Republicans Falsely Claim NARA and DOJ Failed to Provide the Same Documents to Republicans That They Provided to Democrats and Are Obstructing the Congressional Investigation.**

Republicans have also accused NARA of having a “double standard” and DOJ of having a “two-tier justice system.”²⁰ In support of these claims, they have argued that NARA produced documents to Committee Democrats during the 117th Congress related to the recovery of presidential and classified records from Mar-a-Lago while refusing to produce similar documents and information related to President Biden to Committee Republicans this Congress. For example, after Mr. Stern’s interview, Chairman Comer stated on Fox News that “[w]e requested the same type of information on Joe Biden that my predecessor Chairwoman Carolyn Maloney requested on Donald Trump. National Archives gave them every single piece of information they requested on Donald Trump, but they never gave me any information.”²¹

To the contrary, during the 117th Congress, NARA failed to produce documents in response to numerous document requests from Committee Democrats. In particular, DOJ requested that, “in order to protect the integrity of our ongoing work,” NARA should not “share or otherwise disclose information” to the Committee regarding the collecting and archiving of Trump Administration records.²² According to DOJ, its request was informed by the agency’s longstanding policy, across administrations of both parties, to comply with congressional requests for information while protecting the disclosure of information which might compromise open criminal investigations or prosecutions or civil cases.²³ As a result of this request, and as Mr. Stern confirmed in a February 10, 2023, letter to Chairman Comer following his transcribed interview, NARA did not produce *any* documents or communications related to the recovery of

¹⁹ Committee on Oversight and Accountability, Transcribed Interview of Gary M. Stern (Jan. 31, 2023).

²⁰ Committee on Oversight and Accountability, Press Release: *Comer: NARA’s Inconsistent Treatment of Classified Docs Reveals Political Double Standard* (Feb. 1, 2023) (online at <https://oversight.house.gov/release/comer-naras-inconsistent-treatment-of-classified-docs-reveals-political-double-standard/>); *House Oversight Chairman Says Discovery of Biden Classified Docs Displays ‘Two-tier’ Justice System*, Fox News (Jan. 9, 2023) (online at www.foxnews.com/politics/house-oversight-chairman-says-discovered-biden-classified-docs-displays-two-tier-justice-system).

²¹ Committee on Oversight and Accountability, Press Release: *Comer: NARA’s Inconsistent Treatment of Classified Docs Reveals Political Double Standard* (Feb. 1, 2023) (online at <https://oversight.house.gov/release/comer-naras-inconsistent-treatment-of-classified-docs-reveals-political-double-standard/>).

²² Letter from Peter S. Hyun, Acting Assistant Attorney General, Department of Justice, to Chairwoman Carolyn B. Maloney (Apr. 11, 2022) (online <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/8%20-%20DOJ.220411.Response%20to%20CBM%20re%20NARA.pdf>); see also *DOJ Rebuffs Democrats’ Request for Inventory of Trump’s Boxes*, Washington Post (Apr. 12, 2022) (online at www.washingtonpost.com/politics/2022/04/12/trump-boxes-records-top-secret-doj/).

²³*Id.*; Letter from Assistant Attorney General Robert Raben, U.S. Department of Justice, to Chairman John Linder, Subcommittee on Rules and Organization of the House, Committee on Rules, at 2-3 (Jan. 27, 2000) (online at www.justice.gov/file/1080046/download).

records from Mar-a-Lago, White House policies or guidance on the PRA, and implementation and compliance with the PRA during the Trump Administration.²⁴ Notwithstanding NARA's response, Committee Democrats continued their investigation while attempting to avoid undue interference with the integrity of DOJ's ongoing investigation.

Below is an excerpt from the Stern interview during which he confirmed that NARA did not produce documents to Committee Democrats in response to their requests:

Q: And I'm going to direct you to the second paragraph. And it says, "With respect to your request for information about the contents of the 15 boxes that NARA received from President Trump's Mar a Lago residence or about any reviews conducted by other federal agencies, based on our consultation with the Department of Justice, we are unable to provide any comment. Please contact" and it gives a contact at the Department of Justice.

So this letter was sent on March 28, 2022. Is that correct?

A: That's what it says, yes.

Q: And Chairwoman Carolyn Maloney's letter was sent on February 24, 2022. Is that correct?

A: Yes.

Q: So that was about 5 weeks after that letter that NARA said that it could not provide any comment on the documents requested by Chairwoman Maloney. Is that correct?

A: That's correct. Or, at least yeah. I mean, it was a partial response, but yes. I mean, with respect to those particular queries, we responded that we could not respond.

Q: And you could not provide any documents.

²⁴ Compare Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to David S. Ferriero, National Archives and Records Administration (Feb. 9, 2022) (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2022-02-09.CBM%20to%20Ferriero-NARA%20re%20Trump%20Mar-a-Lago%20FINAL.pdf>); with Letter from Gary M. Stern, General Counsel, National Archives and Records Administration, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (March 28, 2022) (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/6%20-%20NARA.220328.Response%20to%20CBM%20re%20Document%20Request.pdf>); see also Letter from Gary Stern, General Counsel, National Archives and Records Administration, to Chairman Comer, Committee on Oversight and Accountability (Feb. 10, 2023) (online at https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/Agent%205%20PDF_0.pdf) (confirming that NARA "did not provide that Committee with any Trump Presidential records in response to the seven categories listed" on the "Chairwoman's February 24, 2022, PRA special request.").

A: Correct.²⁵

3. Republicans Falsely Claim NARA Is Not Cooperating with Chairman Comer's Investigation.

Republicans have accused NARA of failing to provide documents requested by Chairman Comer and both NARA and DOJ of failing to cooperate with their investigation.²⁶

Republican claims are flatly contradicted by the Stern interview and NARA's production of documents. During his interview, Mr. Stern explained that NARA began identifying responsive documents within a week of receiving Chairman Comer's oversight letter, that NARA provided those documents to DOJ for review before January 24, 2023, and that NARA is committed to producing all documents that do not interfere with ongoing DOJ investigations.²⁷

Further, as NARA informed the Committee after the interview, DOJ had already cleared a first round of documents for production to the Committee, which NARA produced to the Committee on February 3, 2023—only two days after the transcribed interview.²⁸ Despite a request to postpone the interview until after DOJ had a chance to review the documents, at the insistence of Chairman Comer, Mr. Stern, appeared before the Oversight Committee for a five-and-a-half hour transcribed interview and answered hundreds of questions from both Committee Members and staff. In his interview, Mr. Stern detailed NARA's extensive cooperation:

Q: So, to just make sure I want to understand this timeframe correctly. So, on January 10th, you got a letter from Chairman Comer, and you alerted staff at the National Archives. Is that correct?

A: Yes, correct. Sorry.

Q: No, it's fine. And then you met with congressional staff on January 13, 2023?

A: Correct.

Q So, within those 3 days, had you already started to search for documents that were responsive to the oversight letter?

A: I think it's possible that some people were already starting to search for records even by then. I can't remember precisely.

²⁵ Committee on Oversight and Accountability, Transcribed Interview of Gary M. Stern (Jan. 31, 2023).

²⁶ See, e.g., *Rep. James Comer Blasts DOJ for Stonewalling Information on Biden Classified Docs*, Fox News (Jan. 31, 2023) (online at www.foxnews.com/video/6319572282112).

²⁷ Committee on Oversight and Accountability, Transcribed Interview of Gary M. Stern (Jan. 31, 2023).

²⁸ Email from Staff, National Archives and Records Administration, to Staff, Committee on Oversight and Accountability (Feb. 3, 2023).

- Q: Okay. But you would say is it fair to characterize that within a week of receiving the letter that the National Archives began searching for responsive documents?
- A: Yeah, I mean, absolutely. After we met with staff I know, I mean, certainly by the beginning of the following week, that's when we were, you know, extensively trying to, I mean, essentially conduct and complete the search, the week, I believe, of the 17th, to complete our search and try to get them to DOJ. So, I mean, we were trying to be responsive, you know, to the January 24th date in the chairman's letter. We always try to be responsive to congressional requests. It's often very difficult, especially if you have to do outside review. Certainly when there's a request for Presidential records, I mean, we tell everyone that there's a built in presumptive 30 day notification period. Even after we define the search, we have to give 30 day notice well, presumptively 30 days. It can be expedited, the notification process. And so that can go on for quite a while. So it's – when there's a request for Presidential records, it's quite rare that we can meet the initial deadline of the chairman's request.
- Q: So, understanding that you have identified the documents and referred them to Department of Justice –
- A: Yes.
- Q: And you did that on what date?
- A: We essentially did that that same week, the week of the 17th.
- Q: So before Chairman Comer's January 24th deadline.
- A: Yes, we got them to DOJ.
- ...
- Q: I'd direct your attention to the bottom paragraph. It says, "Our longstanding practice has been to facilitate information sharing with Congress while protecting the integrity of our investigations from disclosures that could damage our law enforcement or litigation missions."
- So, Mr. Stern, if I'm understanding you correctly, the document that NARA can provide to the committee that will not damage the integrity of law enforcement investigations or litigation missions, you're planning on providing that information to the committee?
- A: That would be our expectation, yes.²⁹

²⁹ Committee on Oversight and Accountability, Transcribed Interview of Gary M. Stern (Jan. 31, 2023).

4. **Republicans Falsely Claim NARA Intentionally Delayed Sharing Guidance Received from DOJ With the Oversight Committee.**

Republicans have accused NARA of failing to promptly share the guidance it received from DOJ on “what information regarding [the matters under investigation by Committee Republicans] can be shared without interfering with the integrity of the Department’s ongoing investigations.”³⁰ However, on multiple occasions before the transcribed interview, NARA informed the Committee it was actively seeking input from DOJ on what could be shared without interfering with the ongoing investigations and requested the interview be postponed to allow DOJ to provide guidance.³¹ As demonstrated below, Committee Republicans refused to postpone the transcribed interview and failed to inquire whether Mr. Stern had received the guidance in advance of the interview:

Q: Okay. Great.

So, before hearing in front of the committee today, did you at any point in time indicate that you were seeking guidance from the Department of Justice on what you would or would not be able to say to the committee?

A: I think I think I did, or at least just stated as a general matter in my meetings with you, with staff, both staff, including last Friday, and maybe it’s in the letter, that, you know, essentially, we have to consult we were going to have to consult with the DOJ on both with respect to the documents and which would then reflect what I could say in testimony, in the interview.

Q: Okay.

And, on January 17th, the National Archives responded to Chairman Comer’s oversight letter from January 10th and said, quote, “I respectfully request that you agree to postpone the scheduling of any interviews until DOJ completes its review of the documents, since any restrictions that apply to the documents will necessarily apply to the interviews.”
Does that sound correct?

A: Yes.

...

Q: And was that request granted or denied by the Republican staff?

³⁰ Letter from Assistant Attorney General Carlos Uriarte, Department of Justice, to Gary M. Stern, National Archives and Records Administration (Jan. 30, 2023).

³¹ Letter from Acting Archivist Debra Steidel Wall, National Archives and Records Administration, to Chairman James Comer (Jan. 17, 2023); Meeting with Staff, Committee on Oversight and Accountability, and Staff, National Archives and Records Administration (Jan. 27, 2023).

A: Republican staff said -- well, Chairman Comer, you know, sent a letter, I believe, saying he still wanted to move forward with the interview of me. And that's resulting in today's meeting.

...

Q: So my Republican colleagues suggested at the start, at the very start, at 2 o'clock today, of this voluntary interview that you did not share this letter. Despite saying that you were seeking guidance and despite the Acting Archivist stating in a letter to Chairman Comer that the preference was to delay the scheduling of the transcribed interview in part because you were seeking guidance, did the Republicans ask at any point in time whether you had received that guidance?

A: Not that I no, I don't think so.

Q: Did they ask you whether you had gotten a letter from the Department of Justice clarifying what you could or could not say at today's interview?

A: No.

Q: No. Did they ask you yesterday?

A: No.

...

Q: If they had asked for this letter yesterday after you had received it, would you have provided it to them?

A: I guess I don't know the answer. But if we had it and it was asked for, then I would expect that we would've produced it.³²

5. Republicans Falsely Claim NARA Is Partisan Because It Publicly Released Documents About the Mar-a-Lago Document Recovery, But Not the Penn Biden Center Document Recovery.

Republicans allege that NARA released hundreds of internal documents about its recovery of records from Mar-a-Lago but not documents relating to its recovery of records from Penn Biden Center.

However, as NARA informed the Committee, the records on the Mar-a-Lago document recovery were released because NARA was required to make them public under the Freedom of

³² Committee on Oversight and Accountability, Transcribed Interview of Gary M. Stern (Jan. 31, 2023).

Information Act (FOIA), a federal disclosure law enacted to provide greater transparency of the federal government.³³ According to NARA, it has already begun releasing certain documents related to the recovery of documents at the Penn Biden Center. NARA has continued to update the webpage, which now includes a release of records on the recovery of documents from President Biden that is responsive to FOIA requests.³⁴

During his interview, Mr. Stern informed Republican staff that NARA's webpage includes a section related to the recovery of documents from President Biden:

Q: You did four different releases of documents related to Mar-a-Lago, correct?

A: Yes, so far. We're under a court stipulation to -- these were lawsuits, requests that were filed almost a year ago. And then, subsequently, there were numerous lawsuits, I think possibly up to eight FOIA lawsuits that were filed, I believe, in the spring. And based on then, you know, FOIA litigation requirements and the court-ordered or -approved stipulation, then we were put on what's called a scheduling order, which is relatively common now in FOIA lawsuits, to respond on an ongoing basis to the requests, you know, per a regular schedule, and respond to the requests and produce, you know, responsive records that are not subject to a FOIA exemption.

And because -- I mean, there's another part of the Freedom of Information Act that says if you receive three or more requests for the same records you are obligated to post those on your website.

Q: I looked but I couldn't find it: Is there a President Biden FOIA website for the Penn Biden Center; for the Wilmington, Delaware, garage; for the Wilmington, Delaware, office; for the FBI search? Why isn't there a President Biden FOIA website?

A: Well, actually, there is -- we just started it -- with records, information that we could publicly release, including the correspondence that you referenced before with the chairman and the Archivist. And as we have more records that are responsive, we would expect to --

Q: Are you saying you're expecting to have a website or there is a website?

A: There is a website.³⁵

³³ See National Archives and Records Administration, Electronic Reading Room (online at www.archives.gov/foia/15-boxes) (accessed on Feb. 11, 2023).

³⁴ National Archives and Records Administration, Electronic Reading Room (online at www.archives.gov/foia/electronic-reading-room) (accessed on Feb. 11, 2023).

³⁵ Committee on Oversight and Accountability, Transcribed Interview of Gary M. Stern (Jan. 31, 2023).

6. **Republicans Falsely Claim NARA Unfairly Singled Out President Trump's Handling of Records.**

Although Republicans allege that NARA unfairly singled out President Trump's handling of official records, in contrast to how it has treated "far clearer violations" committed by non-Republican politicians and officials, Mr. Stern confirmed during his interview that in his 25 years as NARA's general counsel, prior to President Trump, he had never heard of nor experienced a President personally destroying presidential records, in violation of the PRA:³⁶

Q: In your 25 years as general counsel at the National Archives, in your work to ensure that Presidential records are appropriately preserved, have you ever had to write a letter with respect to a President destroying Presidential records?

A: Well, I've never written a letter before as to a President, the allegations, which the allegations were that the President was personally tearing up paper records.

...

Q: So, to make sure I'm understanding this, it's correct that this the first time in your 25 years that you've had to send a letter to the White House indicating that a President was tearing up paper textual records. Is that correct?

A: That was - this was the first time I was aware of that happening.

...

Q: Have you received records that have been torn up, destroyed, or mutilated?

A: We have.

Q: Have you had any -- received any of those records that were -- you were unable to be reconstructed or reassembled?

A: I don't know. I mean, we -- as I understand it, we received records that had already been taped up, reassembled by the White House staff. And then we received records or we received, yeah, materials, I guess, containing torn-up, what would appear to be torn-up records and that -- the White House staff was not able to, I guess, complete or get to.³⁷

³⁶ Ranking Member James Comer to Debra Steidel Wall, Acting Archivist of the United States, National Archives and Records Administration (Aug. 10, 2022) (online at <https://oversight.house.gov/wp-content/uploads/2022/08/2022-08-10-NARA-MAL567537660.pdf>). Mr. Stern confirmed that at the end of the Trump Administration, NARA in fact received records that were torn up and that White House Staff was unable to reconstruct.

³⁷ Committee on Oversight and Accountability, Transcribed Interview of Gary M. Stern (Jan. 31, 2023).

7. **Republicans Falsely Claim NARA Triggered a “Raid” on Mar-a-Lago.**

Republicans have incorrectly alleged that NARA triggered a “raid” on Mar-a-Lago.³⁸ However, as the transcript shows, Mr. Stern explained that once DOJ opened its investigation, NARA had no role in the multiple recoveries of presidential records and classified records from former President Trump’s Mar-a-Lago Club and West Palm Beach storage facility, including the issuance of a grand jury subpoena and the application for and execution of a search warrant.

Q: Okay. Has NARA been involved in DOJ’s investigation into the materials that were recovered from Mar-a-Lago?

A: That’s what I’ve tried to sort of describe. We’ve had no sort of no involvement in their investigation, how they’ve conducted their investigation. We to the extent that they have sought, communicated to us with respect to I mean, the Acting Archivist letter to Evan Corcoran talks about, like, seeking access to Presidential records and going through the President the PRA notification process. You know, we’ve responded to requests from DOJ of that kind.

Q: Okay. Has NARA been involved in the Department of Justice’s efforts to retrieve further Presidential records and classified material from Mar-a-Lago after the January 2022

A: No, we’ve had no involvement, no knowledge, no familiarity and didn’t know anything about what they were doing until we read about it in the press.

Q: Did NARA have any role in the May 11th, 2022, grand jury subpoena issued to former President Trump for classified records that he continued to possess?

A: No.

Q: Did NARA have any role in reviewing the June 3rd, 2022, certification by former President Trump’s lawyers in which they certified in response to the grand jury subpoena that all classified documents in his possession had been returned?

A: No.

Q: Did NARA have any role in the August 8th, 2022, court authorized search of Mar-a-Lago that discovered 33 boxes, 11,000 government records, including 103 records with classification markings?

³⁸ *GOP Committee Chairs Want Answers*, EWTN News Nightly (Jan. 11, 2023) (online at <https://twitter.com/EWTNNewsNightly/status/1613351304377602055>); see also Ranking Member James Comer, Committee on Oversight and Reform, to Debra Steidel Wall, Acting Archivist of the United States, National Archives and Records Administration (Aug. 10, 2022) (online at <https://oversight.house.gov/wp-content/uploads/2022/08/2022-08-10-NARA-MAL567537660.pdf>).

A: No.

Q: Did NARA have any role in the December 2022 search by an outside team ordered by a Federal judge and reported on by The Washington Post that discovered additional classified materials at former President Trump's storage facility?

A: No.³⁹

8. Republicans Incorrectly Claim NARA Did Not Provide the Trump White House Support During the Presidential Transition.

Republicans allege that NARA failed to install a transition team at the Trump White House following the 2020 election, as it had in previous administrations and that this failure is indicative of NARA's partisanship. On January 31, 2023, as the transcribed interview was still in progress, and before having all the relevant facts, Chairman Jordan stated on Fox News that with respect to the Trump White House, NARA "broke protocol" by not installing a transition team.⁴⁰ However, in Mr. Stern's February 10, 2023, letter to Chairman Comer following the transcribed interview, Mr. Stern fully conveyed NARA's involvement during the Trump-Biden transition:

Following the interview, I checked with my colleagues, and I was informed that, in fact, NARA did send staff members to the White House in the final weeks of the Trump Administration to assist with the move of the physical records (including artifacts), in coordination with the DOD team that NARA employed to transport the records from the White House complex to the National Archives. It is my understanding that this support was logistical in nature and did not involve providing records management guidance. In addition, NARA staff provided on-site transition support to the National Security Council. (The transfer of the electronic records was done by a different process that did not necessitate NARA staff to be onsite.)⁴¹

Mr. Stern also stated that NARA provided similar support in the three previous transitions of two-term Presidents, which did not include providing records management guidance.⁴² The facts now show that Republicans' allegations about the nature of the presidential transition support NARA provided are wrong and that NARA did not break protocol.

³⁹ Committee on Oversight and Accountability, Transcribed Interview of Gary M. Stern (Jan. 31, 2023).

⁴⁰ *Rep. Jim Jordan: Was This a Setup for Trump?*, Fox Business (Jan. 31, 2023) (online at www.youtube.com/watch?v=T8BFmpOMDgc).

⁴¹ Letter from Gary Stern, General Counsel, National Archives and Records Administration, to Chairman Comer, Committee on Oversight and Accountability (Feb. 10, 2023) (online at https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/Agent%205%20PDF_0.pdf).

⁴² *Id.*