



November 11, 2025

Don R. Berthiaume
Acting Inspector General
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Ave., NW,
Washington, DC 20530

Dear Acting Inspector General Berthiaume:

Democracy Defenders Fund (DDF) respectfully requests that the Department of Justice (DOJ) Office of Inspector General investigate the DOJ's review and potential settlement of two Federal Tort Claims Act (FTCA) claims submitted by President Trump—which reportedly seek \$230 million in compensatory and punitive damages from the Department of Justice—for illegality and improprieties.¹ As of the date of writing, only one of the two reported claims has been made publicly available, but both claims are reported to seek similar damages.² In the publicly available claim, President Trump alleges that the FBI and DOJ harmed the President by searching his Mar-a-Lago premises pursuant to a valid search warrant and prosecuting him for removing and retaining hundreds of classified documents.³ These claims are meritless on their very face. In ordinary times, the DOJ would deny the President's specious request for settlement out of hand.⁴ But these are not ordinary times.

DDF believes that the President and DOJ may be manipulating the FTCA process in the President's favor in contravention of several safeguards established by federal ethics and legal standards. The President's exertion of command influence, coupled with the participation of attorneys who previously represented both him and his co-defendant in the *very matter* for which he now seeks compensation, raises serious concerns that this FTCA settlement process is inherently compromised by conflicting interests. In fact, President Trump himself said: "It's

¹ Austin Sarat, *Trump's claim that the DOJ owes him 'a lot of money' is part of a bigger plan*, MSNBC (Oct. 22, 2025),

<https://www.msnbc.com/opinion/msnbc-opinion/trump-justice-department-230-million-investigation-rcna239094>; Attachment to SF-95, Claim for Damage, Injury, or Death, *RE: Tortious Conduct by the United States Against President Trump* (Aug. 7, 2024), <https://static01.nyt.com/newsgraphics/documenttools/873052e810ffe3d8/eb43cf4-full.pdf>, (Trump 2024 FTCA Claim).

² Trump FTCA Claim, *supra* nt. 1; Sarat (2025), *supra* nt. 1, "The filing from Trump's lawyers...asked for \$15 million in compensatory damages and \$100 million in punitive damages. (The first claim is not public, but reportedly asks for a similar amount of damages.)".

³ Trump 2024 FTCA Claim; *see also* Scott R. Anderson, et al., *United States of America v. Donald J. Trump and Waltine Nauta*, Lawfare (June 9, 2023), <https://www.lawfaremedia.org/article/united-states-of-america-v-donald-j.-trump-and-waltine-nauta>.

⁴ Sam Levine, *Trump's 'absurd' DoJ compensation bid would be rejected if he were anyone else, experts say*, The Guardian, (Oct. 29, 2025), <https://www.theguardian.com/us-news/2025/oct/29/trump-justice-department-230m-legal-claims>.

interesting, because I'm the one that makes a decision, right? . . . [I]t's awfully strange to make a decision where I'm paying myself."⁵

Several provisions of law establish safeguards against abuse of the FTCA settlement process, including the federal financial conflict of interest law, 18 U.S.C. § 208(a), and the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. part 2635. In addition, legal bar rules require that attorneys for the government exercise diligent representation of the United States.⁶ Authorizing the President's meritless claims would transgress these safeguards. In addition, any payment made to the President for frivolous claims would result in an unfair profit, advantage, or benefit to the President from the United States, in contravention of the Domestic Emoluments Clause.⁷ It is therefore imperative that your office begin an investigation to ensure that neither the President nor DOJ officials abuse the FTCA process in violation of these laws and to the financial detriment of American taxpayers.

Background

After President Trump left office in 2021, he removed over 80 boxes of federal documents from the White House, including hundreds of classified documents originated by the Central Intelligence Agency, the National Security Agency, the Department of Defense and other intelligence agencies.⁸ These government documents were covered by federal records laws, including the Presidential Records Act, as well as various laws against the release of classified materials.

According to DOJ's indictment of President Trump, in January 2021, he began storing these documents at Mar-a-Lago, including in the club's ballroom and on the ballroom stage.⁹ Over time these documents were moved to other parts of Mar-a-Lago, including the business center, a bathroom and shower in the club's Lake Room, and a storage room on the ground floor of the club.¹⁰ President Trump also moved some of the documents to his office at the Bedminster Club.¹¹

President Trump was also alleged to have shown several classified documents to individuals who lacked appropriate security clearances to access those materials.¹² For example, it was alleged that President Trump showed classified military advice to a writer and publisher of a forthcoming book.¹³ It was also alleged that he shared military secrets with a member of a political action committee.¹⁴

⁵ Alexander Mallin & Katherine Faulders, *Here's what Trump has said about seeking \$230M settlement from DOJ*, ABC News (Oct. 22, 2025), <https://abcnews.go.com/US/trump-seeking-230m-settlement-doj/story?id=126772259>.

⁶ See American Bar Association, Model Rules of Professional Conduct Rule 1.3.

⁷ U.S. Const. Art. II, § 1, cl. 7.

⁸ Indictment at 7-8, 10, 12, *United States v. Trump*, No. 23-cr-80101 (S.D. Fl. June 8, 2023), <https://www.courtlistener.com/docket/67490070/3/united-states-v-trump/>, (Indictment).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

Starting in May of 2021, the National Archives and Records Administration (NARA) began contacting the President with the aim of facilitating the return of these records.¹⁵ NARA's requests continued for months, during which time NARA repeatedly warned that failure to turn over the records could result in a referral to the DOJ.¹⁶ President Trump did not return any records until January 2022, at which time he handed over only a small subset of all outstanding documents.¹⁷ Among the documents the President returned were nearly 200 confidential records.¹⁸ Shortly after receiving the classified documents, NARA referred the matter to DOJ for investigation.¹⁹

Following NARA's referral, the FBI opened an investigation to establish how classified documents were removed from the White House and how they were stored in unsecured locations at the President's personal golf club and resort.²⁰ Following months of investigation, including interviewing a staff member from President Trump's post-presidential office and ongoing coordination with the President's attorneys, the FBI concluded that there was likely additional material being withheld that could include classified information.²¹ At that time, dozens of boxes of records, including approximately 140 classified documents, were still within President Trump's possession.²²

According to the FBI's 32-page affidavit in support of the warrant to search Mar-a-Lago, the FBI found 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" Mar-a-Lago. The warrant was thereafter approved by a Magistrate Judge Bruce Reinhart.²³ Judge Reinhart is a Magistrate Judge for the Southern District of Florida and had previously served for nearly a decade with the Public Integrity Section of the Department of Justice.²⁴ The FBI indicated that they would conduct the search during the summer months, when the club was closed to club members.²⁵ The warrant was also written to exclude areas where any third party would be present:

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 [Former President of the United States] FPOTUS and his staff and in which boxes or documents could be stored, including all structures or buildings on the estate. It

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Sealed Affidavit in Support of an Application under Rule 41 for a Warrant to Search and Seize (Aug. 26, 2022), <https://www.flsd.uscourts.gov/sites/flsd/files/DE-102.pdf> (Warrant).

²¹ *Id.*; Carol Leonnig & Aaron Davis, *'If it was anybody else, we'd arrest him tomorrow,' Justice Department aide said of Trump*, MSNBC (Nov. 3, 2025), <https://www.msnbc.com/msnbc/news/trump-arrest-classified-documents-probe-maralago-rcna241155>.

²² Marshall Cohen, *The Big Numbers from the Mar-a-Lago search*, CNN (Sept. 1, 2022), <https://www.cnn.com/interactive/2022/09/politics/mar-a-lago-documents-numbers/>; Indictment, *supra* n. 7.

²³ Warrant, *supra* n. 19.

²⁴ Biography of Judge Bruce E. Reinhart of the Southern District of Florida (last visited Nov. 5, 2025) <https://www.flsd.uscourts.gov/content/judge-bruce-e-reinhart>.

²⁵ Warrant, *supra* n. 19.

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-Lago Members) and not otherwise used or available to be used by FPOTUS and his staff, such as private guest suites.²⁶

The FBI found thousands of federal records during its search of Mar-a-Lago.²⁷ Hundreds of pages of classified information were uncovered “some containing gravely serious material” including documents that “detailed covert government operations and U.S. spying powers [that] could get American operatives killed if the information fell into the wrong hands.”²⁸ Reportedly, some of the documents were so highly classified that only the President or a cabinet member could provide approval for the prosecutors to review the documents.²⁹

The DOJ brought an indictment against President Trump in the Southern District of Florida in 2023, alleging violations of several criminal statutes including: 18 U.S.C. § 793; 18 U.S.C. § 1512; 18 U.S.C. § 1519; and 18 U.S.C. § 1001. A grand jury found that probable cause existed and approved the indictment against President Trump in June 2023.

In July 2024, the District Court ruled that Special Counsel Jack Smith had not been appropriately appointed pursuant to the Appointments Clause of the Constitution and that the Special Counsel’s use of a permanent appropriation violated the Appropriations Clause.³⁰ DOJ appealed the matter to the 11th Circuit, but voluntarily dismissed its appeal against President Trump when the President was re-elected.³¹ DOJ’s voluntary dismissal was sought without prejudice and based on advice received from the Office of Legal Counsel that the Department cannot maintain a suit against the President while he is in office.³²

During the proceedings, President Trump was represented by, among others, Todd Blanche.³³ Todd Blanche is now the Deputy Attorney General, the second highest position at DOJ. President Trump’s co-defendant in the case, Walt Nauta, was represented by, among others, Stanley Woodward.³⁴ Mr. Woodward is now Associate Attorney General, the third highest position at DOJ.

²⁶ *Id.*

²⁷ Notice by Investigative Team of Status of Review, Trump v. United States, No. 22-cv-81294 (S.D. Fl. Aug. 30, 2022), [39-main-plus-appendixA.pdf](https://www.courtlistener.com/recap/gov.uscourts.ca11.87822/gov.uscourts.ca11.87822.81.1.pdf).

²⁸ Carol Leonnig & Aaron Davis, *‘If it was anybody else, we’d arrest him tomorrow,’ Justice Department aide said of Trump*, MSNBC (Nov. 3, 2025), <https://www.msnbc.com/msnbc/news/trump-arrest-classified-documents-probe-maralago-rcna241155>.

²⁹ *Id.*

³⁰ Order Granting Motion to Dismiss Superseding Indictment Based on Appointments Clause Violation, United States v. Trump, No. 23-cr-80101 (S.D. Fl. July 15, 2024), <https://www.courtlistener.com/docket/67490070/672/united-states-v-trump/>.

³¹ Order of Dismissal, United States v. Donald Trump, 24-12311 (11th Cir. Nov 26, 2024), <https://storage.courtlistener.com/recap/gov.uscourts.ca11.87822/gov.uscourts.ca11.87822.81.1.pdf>.

³² Government’s Motion to Dismiss, United States v. Trump, 1:23-cr-00257 (D.D.C. Nov 25, 2024), https://storage.courtlistener.com/recap/gov.uscourts.dcd.258149/gov.uscourts.dcd.258149.281.0_6.pdf.

³³ Motion to Appear Pro Hac Vice, United States v. Trump, No. 23-cr-80101 (S.D. Fl. June 13, 2023), <https://www.courtlistener.com/docket/67490070/14/united-states-v-trump/>.

³⁴ *See, e.g.* Opposition to Motion For *Garcia* Hearing, United States v. Trump, No. 23-cr-80101 (S.D. Fl. Aug. 17, 2023), <https://www.courtlistener.com/docket/67490070/126/united-states-v-trump/> (signed by Woodward as counsel for Nauta).

In 2024, lawyers acting on behalf of President Trump filed an FTCA claim with the Department of Justice seeking \$15 million dollars in compensatory damages and \$100 million in punitive damages for purported intrusion upon seclusion, malicious prosecution, and abuse of process.³⁵

The Federal Tort Claims Act

The FTCA, set out at 28 U.S.C. § 2671, et seq., waives the United States' sovereign immunity from lawsuit and permits claims against the United States:

for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.³⁶

Before a claimant can sue the government, however, the FTCA requires that they first present the claim to the appropriate agency whose employees were purportedly responsible for the injury.³⁷ The FTCA provides that the agency may settle such tort claims administratively without need for intervention of a court.³⁸ “The acceptance by the claimant of any . . . award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States.”³⁹ Any request for compensation in excess of \$25,000 must be approved by the Attorney General or her designee.⁴⁰ The DOJ has delegated the responsibility to approve serious tort claims, including those in excess of \$50,000, to the Assistant Attorney General in charge of the Civil Division.⁴¹ Claims over \$4 million are required to be coordinated with the Deputy Attorney General and Associate Attorney General.⁴²

Discussion

1. President Trump's Federal Tort Claims Are Meritless

President Trump's alleged injuries arising from the FBI's search of Mar-a-Lago are based on three purported tortious activities. As discussed below, each of these claims is facially meritless.

³⁵ Trump 2024 FTCA Claim, *supra* n. 1.

³⁶ 28 U.S.C. § 1346(b)(1).

³⁷ 28 U.S.C. § 2675(a).

³⁸ 28 U.S.C. § 2672. The administrative settlement authority generally “benefits FTCA claimants by permitting them to forego the expense of full-blown litigation,” and can also “free[] up limited [department] resources for more pressing matters.” Ugo Colella, *The Case for Borrowing a Limitations Period for Deemed-Denial Suits Brought Pursuant to the Federal Tort Claims Act*, 35 San Diego L. Rev. 391, 402 (1998).

³⁹ 28 U.S.C. § 2672.

⁴⁰ *Id.*

⁴¹ 28 C.F.R. § 0.172(b)-(c).

⁴² 28 C.F.R. § 0.160(d)(1); JUSTICE MANUAL § 4-5.230 (2025), <https://www.justice.gov/jm/jm-4-5000-tort-litigation>.

In addition, President Trump's request for punitive damages is statutorily barred under 28 U.S.C. § 2674.⁴³

a. Intrusion upon Seclusion

President Trump's first claimed injury is that the FBI's search of Mar-a-Lago violated the President's privacy under the common law tort known as "inclusion of seclusion."⁴⁴ President Trump's claim is based principally on his contention that the FBI did not request his consent prior to searching Mar-a-Lago, notwithstanding that the FBI had been issued a warrant to search the premises by a seasoned magistrate judge.⁴⁵ President Trump's claim avoids key facts and ignores case law that supports the view that the existence of probable cause for a lawful search stands as a bar against a claim of inclusion upon seclusion.

First, the established factual record demonstrates that both NARA and the FBI had been in constant contact with President Trump and his attorneys for months seeking access to the subject files.⁴⁶ In fact, it was recently reported that FBI agents visited Mar-a-Lago in June 2023 at President Trump's attorney's request, at which time they were shown a handful of records boxes but were denied the opportunity to inspect the boxes.⁴⁷ President Trump could have handed over the files or given NARA or the FBI access to the files at any time before the execution of the FBI's warrant. He chose not to do so. That fact that he didn't consent to the FBI's search simply ignores the fact that he was aware that the FBI was investigating him for misconduct.

Second, the FBI is not required to seek and receive consent for a lawful search and seizure executed pursuant to a warrant predicated on probable cause, as occurred in this instance.⁴⁸ In fact, there are times when executing a warrant without first forewarning the subject is important, such as where there may be spoliation of evidence. In this case, the Government validly addressed the reason for not providing prior consent:

Given Trump's prior obfuscation and deception up to that point, there was ample reason to avoid seeking Trump's consent, which would simply invite more deception. But regardless, there is no support for the notion that a warrant affidavit must set forth a description of an agency's internal discussion about investigative strategy. Even if some would have preferred one investigative technique (consent) while others favored a warrant, the omission of those details would have no effect on the magistrate's common-sense determination that there

⁴³ Although President Trump's second FTCA claim is not publicly available, DDF would request that you consider the below analysis as it is relevant to that claim.

⁴⁴ Trump 2024 FTCA Claim, *supra* n. 1.

⁴⁵ *Id.* at 2-3.

⁴⁶ Indictment, *supra* nt. 7.

⁴⁷ Carol Leonnig & Aaron Davis, 'If it was anybody else, we'd arrest him tomorrow,' Justice Department aide said of Trump, MSNBC (Nov. 3, 2025), <https://www.msnbc.com/msnbc/news/trump-arrest-classified-documents-probe-maralago-rcna241155>.

⁴⁸ U.S. Const. Amend. 4.

was probable cause that evidence of a crime would be found in the location to be searched.⁴⁹

The FBI's search was lawful, executed pursuant to a search and seizure warrant issued by a Florida magistrate and based on a 32-page affidavit.⁵⁰ Courts across the country have consistently recognized that a lawful search, conducted in accordance with a valid warrant predicated on probable cause, cannot be the basis of an "intrusion upon seclusion" claim.⁵¹ In fact, to find that a search that is lawfully executed under a validly-issued warrant is an "intrusion upon seclusion" because the individual did not give prior consent would be fundamentally inconsistent with the Fourth Amendment and controlling precedent which treat consent and warrant as two equal and independent bases for a reasonable search.⁵² For that reason, President Trump's claim of intrusion of seclusion is fundamentally flawed.

b. Malicious Prosecution

President Trump next argues that the FBI's investigation of the President equated to malicious prosecution. The President's claim is based, largely, on a few emails from line attorneys—who do not appear to have first-hand involvement with the investigation—raising questions about the propriety of the search, as well as the President's own conclusory views that it has "always been a malicious political prosecution."⁵³

Regardless of the President's concerns, Florida law is clear that the presence of probable cause for an investigation conclusively defeats a claim of malicious prosecution.⁵⁴ As the Florida Supreme Court has explained, "the absence of probable cause is an essential element in a suit for malicious prosecution."⁵⁵

⁴⁹ Response in Opposition by USA as to Donald J. Trump Motion to Suppress Evidence and Motion to Dismiss Indictment, *United States v. Trump*, No. 23-cr-80101, (S.D. Fl. May 21, 2024), <https://www.courtlistener.com/docket/67490070/567/united-states-v-trump/>.

⁵⁰ Warrant, *supra* nt. 19.

⁵¹ See, e.g., *Wilson v. Lamp*, 995 F.3d 628, 634 (8th Cir. 2021); *Brudwick v. Minor*, No. CIVA 05CV00601 WYDMJ, 2006 WL 1991755, at *20 (D. Colo. July 13, 2006) (holding that "a claim requires that the intrusion be considered offensive by a reasonable person. Here, the officers who "intruded" were acting pursuant to a validly-issued search warrant"); *Griffin v. Upper Merion Twp.*, No. CV 23-3020, 2023 WL 6609339, at *2 (E.D. Pa. Oct. 10, 2023); *Doby v. Decrescenzo*, No. CIV. A. 94-3991, 1996 WL 510095, at *33 (E.D. Pa. Sept. 9, 1996), *aff'd in part, appeal dismissed in part*, 118 F.3d 1575 (3d Cir. 1997), and *aff'd*, 171 F.3d 858 (3d Cir. 1999); *Carrington v. Duke Univ.*, No. 1:08CV119, 2011 WL 13324486, at *38 (M.D.N.C. Mar. 31, 2011), *aff'd in part, rev'd in part, dismissed in part sub nom. Evans v. Chalmers*, 703 F.3d 636 (4th Cir. 2012).

⁵² U.S. Const. Amd. 4 (providing that "The right of the people . . . against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause . . . describing the place to be searched, and the persons or things to be seized"). "The United States Supreme Court has expressed a strong preference for the making of searches and seizures pursuant to search warrant, even to the point of declaring that 'in a doubtful or marginal case [of probable cause] a search under a warrant may be sustainable where without one it would fail.'" Wayne R. LaFave, *Search And Seizure: A Treatise On The Fourth Amendment* § 4.1 (6th Ed., 2024) (citing *United States v. Ventresca*, 380 U.S. 102 (1965)).

⁵³ Trump 2024 FTCA Claim at 6-8, *supra* n.1.

⁵⁴ See *Gallucci v. Milavic*, 100 So. 2d 375, 378 (Fla. 1958); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352, 1355 (Fla. 1994) (setting forth elements of malicious prosecution claim in Florida); see also *Burns v. GCC Beverages, Inc.*, 502 So.2d 1217 (Fla.1986); *Adams v. Whitfield*, 290 So.2d 49 (Fla.1974).

⁵⁵ *Tatum Bros. Real Estate and Investment Co v. Watson*, 92 Fla. 278, 109 So. 623 (1926); *Cold v. Clark*, 180 So. 2d 347, 349 (Fla. Dist. Ct. App. 1965).

The FBI's investigation of President Trump and the eventual search of Mar-a-Lago was clearly predicated on probable cause. The President revealed that he had removed hundreds of classified records when he returned nearly 200 such records to NARA.⁵⁶ Shortly after receiving NARA's referral, the FBI conducted an interview with a Trump associate who explained that the President still had a large number of additional records that had not been turned over to the FBI.⁵⁷ The FBI's investigation later resulted in over 100 additional classified documents and indications that the President had shown such records to private citizens on at least two occasions.⁵⁸ These facts evidence the "reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the party is guilty of the offense with which he is charged" that is the gravamen of probable cause.⁵⁹

As noted above, the government filed an affidavit setting forth the basis for probable cause and a magistrate independently determined that affidavit was valid and issued a warrant to the FBI to search Mar-a-Lago. President Trump already sought review of the validity of the affidavit and warrant in the classified records case and was rebuffed.⁶⁰ In fact, one of President Trump's attorneys, Emil Bove, himself conceded that probable cause existed for searching at least some portions of Mar-a-Lago.⁶¹ Given the presence of probable cause, the President's claim that the government maliciously prosecuted him fails as a matter of law.

c. Abuse of Process

President Trump's final claim is that DOJ abused the prosecutorial process in bringing charges against him for withholding classified documents.⁶² The basis of the President's claim is that DOJ should have known that the Special Counsel's appointment and funding were not in accordance with law and the President was immune from prosecution. President Trump also noted that other Presidents have been treated differently.⁶³ Again these claims have no bearing on an "abuse of process" tort under Florida law.

In essence, "[a]buse of process involves the use of criminal or civil legal process against another primarily to accomplish a purpose *for which it was not designed*."⁶⁴ "For abuse of

⁵⁶ Indictment, *supra* nt. 7.

⁵⁷ Carol Leonnig & Aaron Davis, *'If it was anybody else, we'd arrest him tomorrow,' Justice Department aide said of Trump*, MSNBC (Nov. 3, 2025), <https://www.msnbc.com/msnbc/news/trump-arrest-classified-documents-probe-maralago-rcna241155>.

⁵⁸ Indictment, *supra* nt. 7.

⁵⁹ *Dumbra v. United States*, 268 U.S. 435, 441 (1925).

⁶⁰ Order Denying Motion for *Franks* Hearing and Reserving Ruling on Balance of Motion Pending Necessary Factual Development, *United States v. Trump*, No. 23-cr-80101 at 14 (S.D. Fl. June 25, 2024), [Order – #655 in United States v. Trump \(S.D. Fla., 9:23-cr-80101\) – CourtListener.com](#).

⁶¹ Transcript of Motions Before the Hon. Aileen M. Cannon, *United States v. Trump*, No. 23-cr-80101 at 14 (S.D. Fl. June 25, 2024), <https://www.courtlistener.com/docket/67490070/650/united-states-v-trump/> ("Taking a look at the warrant application, we think that it established probable cause with respect to the six locations that we identified in our brief at page 3. The White & Gold Ballroom; the storage room; the anteroom to the storage room").

⁶² Trump 2024 FTCA Claim, *supra* nt. 1.

⁶³ *Id.*

⁶⁴ *Bothmann v. Harrington*, 458 So. 2d 1163, 1169 (Fla. Dist. Ct. App. 1984) (emphasis added); *Cline v. Flagler Sales Corp.*, 207 So.2d 709 (Fla. 3d DCA 1968); *see also* Restatement of the Law, Second, Torts, Div. 7, Chap. 31, § 682 (1977); George L. Blum, *American Jurisprudence*, Second Edition Part II.B., § 15(May, 2025).

process to occur there must be use of the process for an immediate purpose other than that for which it was designed and intended. The usual case of abuse of process is one of some form of extortion, using the process to put pressure upon the other to compel him to pay a different debt or to take some other action or refrain from it.”⁶⁵ As is clear from the procedural record, the prosecution in this case was consistent with the process as designed. DOJ brought suit against President Trump after NARA identified that there were classified materials in his possession, the DOJ and the government had engaged in a thorough back-and-forth with President Trump and his attorneys, the FBI had determined that probable cause existed to support a search of Mar-a-Lago, and the FBI found over a hundred classified documents in President Trump’s possession.⁶⁶ The purpose of the prosecution was to bring charges against the President for his failure to turn over classified records. The fact that Judge Cannon determined that the Special Counsel’s appointment and use of appropriations was unlawful, has no bearing on whether there was an abuse of process. The process used—assignment of a Special Counsel to conduct a prosecution on behalf of the DOJ into criminal misconduct—is exactly what the Special Counsel regulations require of a Special Counsel.⁶⁷

The President’s claim that he was immune from prosecution is also incorrect. The Supreme Court in *Trump v. United States* held that “for a President’s unofficial acts, there is no immunity.”⁶⁸ The Court based its position on two cases, *Clinton v. Jones* from 1997, and *Nixon v. Fitzgerald* from 1982. Far from suggesting that the Special Counsel’s prosecution was an abuse of process, the Court’s precedent supports the prosecution, given that it was based on the President’s unofficial conduct of removing and retaining classified records after his term had ended.

Finally, President Trump’s assertion that he was treated differently than other Presidents is at best a mischaracterization of the facts. President Biden was, in fact, contemporaneously investigated by Special Counsel Robert Hur (whose appointment and funding would have been subject to the same perceived infirmities President Trump raised with Special Counsel Jack Smith) for his retention of classified documents.⁶⁹ Unlike President Trump, President Biden provided extensive assistance to the Special Counsel in his investigation.⁷⁰ Special Counsel Hur, after considering “all relevant considerations,” ultimately determined that the factors “do not

⁶⁵ Restatement of the Law, Second, Torts, Div. 7, Chap. 31, § 682, cmt. b (1977) (explaining that “the entirely justified prosecution of another on a criminal charge . . . does not become abuse of process merely because the instigator dislikes the accused and enjoys doing him harm”).

⁶⁶ Indictment, *supra* nt. 7.

⁶⁷ 28 C.F.R. § 600.6.

⁶⁸ *Trump v. United States*, 144 S. Ct. 2312, 2332 (2024).

⁶⁹ Ryan J. Reilly et al., *Biden won’t be charged in classified docs case; special counsel cites instances of ‘poor memory’*, MSNBC (Feb. 8, 2024), <https://www.nbcnews.com/politics/joe-biden/special-counsel-says-evidence-biden-willfully-retained-disclosed-class-rcna96666>.

⁷⁰ DEPARTMENT OF JUSTICE, REPORT ON THE INVESTIGATION INTO UNAUTHORIZED REMOVAL, RETENTION, AND DISCLOSURE OF CLASSIFIED DOCUMENTS DISCOVERED AT LOCATIONS INCLUDING THE PENN BIDEN CENTER AND THE DELAWARE PRIVATE RESIDENCE OF PRESIDENT JOSEPH R. BIDEN, JR. at 11 (Feb. 2024), [report-from-special-counsel-robert-k-hur-february-2024](https://www.documentcloud.org/documents/248888-report-from-special-counsel-robert-k-hur-february-2024) | DocumentCloud (explaining that “Mr. Biden turned in classified documents to the National Archives and the Department of Justice, consented to the search of multiple locations including his homes, sat for a voluntary interview, and in other ways cooperated with the investigation”).

support prosecution of Mr. Biden.”⁷¹ Special Counsel Hur went further and explained why he decided to not charge President Biden when DOJ had charged President Trump: “[u]nlike the evidence involving Mr. Biden, the allegations set forth in the indictment of Mr. Trump, if proven, would present serious aggravating facts.”⁷²

d. Punitive Damages

President Trump’s FTCA claim not only seeks compensatory damages for DOJ’s alleged tortious conduct, but also seeks \$100 million in punitive damages.⁷³ The FTCA, however, places a flat prohibition on punitive damages for any offense other than one resulting in death.⁷⁴ Punitive damages, as that term is used in the FTCA, includes any amount that is “intended to act as punishment for egregious conduct.”⁷⁵ President Trump’s 2024 claim explains that the punitive damages are requested because the violations were “particularly egregious, showing willful, wanton, oppressive, and malicious intent.”⁷⁶ This is in contrast to the President’s request for compensatory damages, which are focused on the “harm suffered.”⁷⁷ President Trump’s request for punitive damages, which seek to punish the DOJ, are not permitted under the FTCA and the DOJ’s payment of such amounts would stand in stark contrast with the statutory proscription.

2. President Trump’s Former Attorneys Are Ethically Prohibited from Using their Office for his Private Gain

Claimants under the FTCA often find it difficult to receive compensation from the government even when there is clear wrongdoing.⁷⁸ Given the meritless nature of President Trump’s claims, one would expect for the Department to deny his settlement requests out of hand.⁷⁹ However, President Trump is in a unique position. As the head of the Executive Branch, he controls who occupies the positions that are responsible for addressing his claims. He has currently staffed senior DOJ positions with individuals with close ties to this case, including Todd Blanche, his former attorney, and Stanley Woodward, the attorney for his co-defendant in the *very matter* that is the subject of the available tort claim.

The basic obligation of public service is that “public service is a public trust.”⁸⁰ In practice, this means that “employees must endeavor to act at all times in the public’s interest, avoid losing impartiality or appearing to lose impartiality in carrying out official duties, refrain from misusing

⁷¹ *Id.*

⁷² *Id.*

⁷³ Trump FTCA Claim, *supra* n. 1.

⁷⁴ 28 U.S.C. § 2674; *Fitch v. United States*, 513 F.2d 1013, 1016 (6th Cir. 1975).

⁷⁵ *Molzof v. United States*, 502 U.S. 301, 305 (1992).

⁷⁶ Trump 2024 FTCA Claim, *supra* n. 1.

⁷⁷ *Id.*

⁷⁸ Adam Liptak and Devlin Barrett, *Unlike Trump, Most Who Seek Money for Official Misconduct Face Long Odds*, The New York Times (Oct. 23, 2025), <https://www.nytimes.com/2025/10/23/us/politics/trump-misconduct-claims.html>.

⁷⁹ Sam Levine, *Trump’s ‘absurd’ DoJ compensation bid would be rejected if he were anyone else, experts say*, The Guardian (Oct 29, 2025), <https://www.theguardian.com/us-news/2025/oct/29/trump-justice-department-230m-legal-claims>.

⁸⁰ 5 C.F.R. § 2635.101(b)(1).

their offices for private gain . . . [and] serve as good stewards of public resources”⁸¹ Consistent with this responsibility, Todd Blanche and Stanley Woodward are required to uphold the highest traditions of ethical service. It is not clear how they would be able to do so and participate in the review of any settlement claim related to President Trump. In fact, given the unique threat of removal and the ongoing fiduciary responsibility they have to the United States, there is a real risk that they could violate several provisions of law, including 18 U.S.C. § 208(a), 5 C.F.R. § 2635.101(b), 5 C.F.R. § 2635.502(a), and the legal Rules of Professional Conduct, including Rule 1.3.

a. Financial Conflict of Interest

The federal criminal conflict of interest law, 18 U.S.C. § 208(a), prohibits an employee from participating personally and substantially in any “particular matter” in which they have a disqualifying “financial interest.”⁸² The term financial interest includes any “potential for gain or loss to the employee . . . as a result of governmental action on the particular matter.”⁸³ Although many disqualifying financial interests arise from outside sources, “financial interests arising from federal service” are also covered, as former Deputy Assistant Attorney General, and current Supreme Court Justice, Samuel Alito explained in 1987.⁸⁴

The primary “financial interest” an employee has arising from federal services is, of course, their personal salary. To account for the risk that “an employee's routine performance of duties might be viewed as creating a disqualifying financial interest,” OGE passed a regulation in 1995 excepting government salary and benefit from the scope of the conflict-of-interest laws, *except* where those determinations would “individually or specially affect [their] own Government salary and benefits.”⁸⁵ As a result, OGE’s regulations normally exclude “the performance of everyday duties” from the scope of 18 U.S.C. § 208(a), even if there exists the possibility that the employee’s performance would be deemed deficient and could result in the employee “being removed involuntarily from Federal service.”⁸⁶ However, OGE’s regulations do not permit an employee to participate in any determination that may “specially” or “individually” affect that person’s federal salary.⁸⁷ For example, OGE has advised that employees working on privatization of the Government could not work on a matter if it “would have a direct and predictable effect on the salary and benefits of a very small number of employees, including that of the employee”⁸⁸

⁸¹ 5 C.F.R. § 2638.102.

⁸² 18 U.S.C. § 208(a); 5 C.F.R. § 2640.103(a).

⁸³ 5 C.F.R. § 2640.103(b).

⁸⁴ Memorandum for the Solicitor of the Interior, from Samuel A. Alito, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Scope of the Term “Particular Matter” under 18 U.S.C. § 208 (Jan. 12, 1987), <https://www.justice.gov/olc/page/file/1009471/dl?inline>; see also *U.S. v. Lund*, 853 F.2d 242 (4th Cir. 1988) (finding that the law applies to internal personnel procedures). The U.S. Office of Government Ethics (OGE) and the DOJ have since adopted this position as well. See, e.g., 61 Fed. Reg. 66837 (Dec. 18, 1996); OGE DAEOgram DO-95-32 (1995).

⁸⁵ 60 Fed. Reg. 44708 (Aug. 28, 1995); 5 C.F.R. § 2640.101 (1991) (recodified at 5 C.F.R. § 2640.203(d)(1)).

⁸⁶ 60 Fed. Reg. 44708 (Aug. 28, 1995).

⁸⁷ 5 C.F.R. § 2640.203(d)(1).

⁸⁸ 60 Fed. Reg. 44708 (Aug. 28, 1995).

The circumstances surrounding DOJ's review of the President's FTCA claims is far from the "everyday duties" that OGE had in mind when it prepared the regulatory exemption. Federal employees who are asked to work on President Trump's claims, including Todd Blanche and Stanley Woodward, are operating under the sword of Damocles. The Trump Administration has fired hundreds of employees, including hundreds of prosecutors and officials within the Department of Justice, many whose views did not accord with the President's own.⁸⁹ A decision to disapprove the President's claims would raise a near certain risk of removal. As the former Director of the DOJ's ethics office, Joe Tirrell, recently put it "there's just nobody that can make this decision, career or political appointee, who's not going to be chock-full of ethical conundrums here" because there exists a "risk of any or all of them being fired if they don't make a decision that comports with the president's wishes"⁹⁰ Given this immense coercive pressure, an individual DOJ employee's determination on the President's FTCA claim would appear to be one that would directly and predictably affect their own financial interests individually and specially in violation of 18 U.S.C. § 208(a).⁹¹

b. Impartiality

In addition to avoiding financial conflicts of interest, all government employees are required by the Standards of Ethical Conduct for Employees of the Executive Branch to "act impartially and not give preferential treatment to any private organization or individual."⁹² In fact, employees are required to "endeavor to avoid *any actions* creating the appearance that they are violating the law or the ethical standards" and must consider whether "particular circumstances create an appearance that the law or [the] standard have been violated . . . from the perspective of a reasonable person with knowledge of the relevant facts."⁹³ For the following reasons, a "reasonable person" would have to conclude that Deputy Attorney General Todd Blanche or Associate Attorney General Stanley Woodward could not possibly be impartial in the review of President Trump's FTCA claims.

First, as his personal attorney, Todd Blanche received fees for his services in representing President Trump in the Mar-a-Lago case. President Trump is now seeking compensatory damages for fees he spent on that matter, including fees paid to Todd Blanche.⁹⁴ In the normal course, an agency reviewing an FTCA claim would need to review records supporting the claim, and might conduct interviews, physical examination, or seek expert opinions, prior to approving

⁸⁹ Consider This from NPR, *Many DOJ employees have been fired, some over clashes with Trump administration*, NPR (July 30, 2025), <https://www.npr.org/2025/07/30/1256429518/how-firing-hundreds-of-employees-this-year-has-transformed-the-justice-department>.

⁹⁰ Sam Levine, *Trump's 'absurd' DoJ compensation bid would be rejected if he were anyone else, experts say*, The Guardian (Oct. 29, 2025), <https://www.theguardian.com/us-news/2025/oct/29/trump-justice-department-230m-legal-claims>.

⁹¹ Because the Department is not legally required to settle an FTCA claim, even if every single DOJ employee were placed in the same situation and required to recuse, there would be no need to resort to the rule of necessity. *Cf.* OGE Inf. Adv. Op. 83 x 18 (1983).

⁹² 5 C.F.R. § 2635.101(b)(8).

⁹³ *Id.* at § 2635.101(b)(14).

⁹⁴ Trump 2024 FTCA Claim, *supra* nt. 1.

a settlement.⁹⁵ DOJ's assessment of the validity of the President's claims could therefore require an assessment of the validity of Todd Blanche's fees, placing him (or his subordinate) in the position of reviewing his own fees for validity and appropriateness against the President's claims. It is not clear how Todd Blanche could ever be able to "act impartially" in such a matter.

Second, Todd Blanche, on behalf of President Trump, has previously argued that there were defects in the DOJ affidavit and the search warrant for similar reasons raised in President Trump's FTCA claim.⁹⁶ It seems improbable that Todd Blanche would consider these claims with fresh eyes and through an objective lens, given that he has already taken similar positions in prior litigation. Given the similarity of claims and issues, a reasonable person would conclude that Todd Blanche must have prejudged the facts and the law of President Trump's FTCA claims.⁹⁷

Third, to avoid even the *appearance* of impartiality, OGE regulations at 5 C.F.R. § 2635.502 provide that employees must recuse themselves from any particular matters involving former clients for one year from the end of the client relationship if a reasonable person would question their ability to act impartially.⁹⁸ It appears that Todd Blanche continued to be counsel for President Trump until at least through November 2024.⁹⁹ A reasonable person would certainly question a former attorney's involvement in matters relating to a recent employer. That is why Todd Blanche was required to sign an Ethics Agreement as part of his Senate confirmation confirming that he would "not participate personally and substantially in any particular matter involving specific parties in which [he] knows a former client . . . is a party or represents a party

⁹⁵ See, e.g., 28 C.F.R. §§ 14.4, .14.8 (providing types of evidence that is required for certain types of torts and authorizing agencies to enter into agreements to investigate claims and perform examinations); Fed. Tort Claims § 22:3, *Settlement Procedures* (2025) ("The United States attorney or Torts Branch trial attorney often will refuse to discuss settlement until his or her investigation and pretrial discovery are complete, so that a sound evaluation of the case may be made").

⁹⁶ President Trump's Motion for Relief Relating to the Mar-A-Lago Raid and Unlawful Piercing of Attorney-Client Privilege (Feb 22, 2024), *United States v. Trump*, 9:23-cr-80101, (S.D. Fla. May 21, 2024) <https://www.courtlistener.com/docket/67490070/566/united-states-v-trump/>.

⁹⁷ See *Gilligan, Will & Co. v. SEC*, 267 F.2d 461, 469 (2d Cir.), *cert. denied*, 361 U.S. 896, 80 S. Ct. 200, 4 L. Ed. 2d 152 (1959) (holding that the Due Process clause requires disqualification of an employee from a quasi-adjudicatory decision where "a disinterested observer may conclude that [the agency] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it").

⁹⁸ 5 C.F.R. § 2635.502(a)(1), (b).

⁹⁹ TODD BLANCHE, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY, QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES 15 (Feb. 2025), [blanche_sjq.pdf](#); QUESTIONS FOR THE RECORD TODD BLANCHE – NOMINEE TO BE DEPUTY ATTORNEY GENERAL SEN. ADAM SCHIFF (CA) at 2, [2025-02-12 - qfr_responses - blanche.pdf](#).

Since November 5, 2024, have you had conversations with anyone at DOJ about Special Counsel Jack Smith's investigations and prosecutions? If so, please describe.

RESPONSE: I had numerous conversations with members of Jack Smith's team as well as senior DOJ officials regarding ongoing litigation in the two cases brought by Jack Smith. These conversations were all in my capacity as President Trump's attorney. Aside from these individuals and topics, my answer is no.

for a period of one year after [he] last provided services[s] to that client or until the client satisfies any outstanding bill, whichever is later”¹⁰⁰

Fourth, Stanley Woodward, who is the number three official at the Department, was deeply involved in the Mar-a-Lago case on behalf of President Trump’s co-defendant. He has been described as the “key architect of the legal pushback to the criminal cases brought by special counsel Jack Smith.”¹⁰¹ Stanley Woodward also has deep ties to President Trump, including advising President Trump on potential Vice-Presidential candidates during the 2024 Presidential Election and advising the Trump-Vance 2025 Transition on potential presidential nominees.¹⁰² Like Todd Blanche, Associate Attorney General Woodward’s past relationship with the Mar-a-Lago case, positions taken in that case, and his relationship with the President, raise serious questions about how he could possibly be impartial in matters concerning the President.

Although an agency designee may authorize an employee to participate in a matter notwithstanding that to do so would “raise a question in the mind of a reasonable person about the employee’s impartiality,” an authorization can only be provided if the “interest of the Government in the employee’s participation outweighs the concern that a reasonable person may question the integrity of the agency’s programs and operations.”¹⁰³ It is hard to see how a prudent DOJ attorney could view the Government as having *any* interest in providing millions of taxpayer dollars to the President for his meritless FTCA claims. Even if the Government had an interest in settling these claims, however, that interest could not outweigh the concern that decision-makers—such as the President’s former attorney and former counsel for his co-defendant—would not be able to decide the matter fairly.

Moreover, an authorization is only available to permit an employee to participate when their recusal is only dictated by an *appearance* concern.¹⁰⁴ If the employee is prohibited from participating in a matter pursuant to 18 U.S.C. § 208(a) or they are *actually* incapable of being impartial, an authorization under 5 C.F.R. § 2635.502(a) is insufficient to permit their participation.¹⁰⁵ Given Deputy Attorney General Todd Blanche or Associate Attorney General Stanley Woodward’s direct involvement in the underlying claims at issue, it seems absurd to think that they would be able to impartially review President Trump’s FTCA claims.

¹⁰⁰ Todd Blanche, Ethics Agreement (Feb. 10, 2025), [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/0E4C3EB0ACE8404785258C30003217F2/\\$FILE/Blanche%2C%20Todd%20%20finalEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/0E4C3EB0ACE8404785258C30003217F2/$FILE/Blanche%2C%20Todd%20%20finalEA.pdf).

¹⁰¹ Kyle Cheney, *Trump taps go-to lawyer for his MAGA allies to fill out Justice Department’s Upper Ranks*, Politico (Apr. 2, 2025).

<https://www.politico.com/news/2025/04/02/trump-stanley-woodward-associate-attorney-general-00267224>

¹⁰² STANLEY WOODWARD, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY, QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES 24 (Apr. 2025),

<https://www.bing.com/ck/a?!&ap=adbd42b1c2d459de6a290fb2eb32416ef70ee0676f230432ed97e136919adbf6JmltdHM9MTc2MjM4NzlwMA&ptn=3&ver=2&hsh=4&fclid=3da18251-9d16-67ae-0640-94489c116663&psq=woodward+senate+questionnaire&u=a1aHR0cHM6Ly93d3cuanVkaWNpYXJ5LnNlbmF0ZSS5nb3YvaW1vL21lZGlhL2RvYy93b29kd2FyZF9zanEucGRm>.

¹⁰³ 5 C.F.R. § 2635.502(d).

¹⁰⁴ *Id.*

¹⁰⁵ *See id.* (stating that authorization is not available when employee’s participation would violate 18 U.S.C. § 208).

c. Misuse of Position

The Standards of Ethical Conduct for Employees of the Executive Branch also provide that employees may “not use public office for private gain.”¹⁰⁶ This restriction is amplified at 5 C.F.R. § 2635.702, which provides that an employee may not use their office for the private gain of any person, including persons with whom the employee has been affiliated with in a “nongovernmental capacity.”¹⁰⁷ OGE’s regulations also provide that an employee must “endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards” which is to be determined by “from the perspective of a reasonable person with knowledge of the relevant facts.”¹⁰⁸

Pursuant to OGE’s misuse of position regulations, a DOJ attorney’s authorization of President Trump’s meritless claims would be prohibited. Because these claims have no basis in law, the provision of millions of dollars to the President could realistically be for no reason other than to provide him with unwarranted financial enrichment. Any decision to settle the claims in the President’s favor would at the very least “create [the] appearance . . . from the perspective of a reasonable person with knowledge of all the relevant facts” that these officials would be misusing their positions to personally assist President Trump in violation of their ethical obligations.¹⁰⁹

d. Attorney Rules of Professional Conduct

President Trump’s former attorneys maintain an ongoing responsibility to both their current and former clients under applicable state bar rules. These responsibilities are reinforced through the *McDade* Amendment and DOJ’s implementing regulations, which require DOJ attorneys to adhere to applicable state bar rules when representing the government.¹¹⁰

Each DOJ attorney maintains a fiduciary responsibility to the Department and the United States.¹¹¹ As an attorney for the government, DOJ employees are required to serve their client diligently.¹¹² This means that an attorney must “act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.”¹¹³ This responsibility to

¹⁰⁶ *Id.*; 5 CFR § 2635.101(b)(7).

¹⁰⁷ 5 C.F.R. § 2635.702.

¹⁰⁸ 5 C.F.R. § 2635.101(b)(14).

¹⁰⁹ *Id.*; *See also Special Couns. v. Nichols*, 36 M.S.P.R. 445 (Mar. 29, 1988) (Merit System Protection Board has recognized that “conduct which actually involves no wrongful use of public office for private purposes may nonetheless create an appearance of such wrongdoing” warranting disciplinary action under the Civil Service Reform Act).

¹¹⁰ 28 U.S.C. § 530B; 28 C.F.R. § part 77.

¹¹¹ *See, e.g.*, 5 C.F.R. § 2635.101(a); 7 Am. Jur. 2d (Attorneys at Law) § 138 (2025) (providing that “the lawyer-client relationship is a ‘fiduciary relationship’”); American Bar Association, Rule 1.13, cmmt. 9 (explaining that a government attorney’s client “may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole,” but like other organization clients, it is generally not individual “constituents” such as employees or officers).

¹¹² American Bar Association, Model Rules of Professional Conduct Rule 1.3, cmmt. 1. Most states have adopted Model Rule 1.3. *See* American Bar Association, Variations of the ABA Model Rules of Professional Conduct (Nov. 18, 2022), [mrpc-1-3.pdf](#). Almost all states that have not adopted the Model Rule have generally required an attorney to exercise “reasonable diligence” in representing a client. *See id.*

¹¹³ *Id.* Rule 1.3, cmmt. 1.

act diligently on behalf of the United States as a current client and the concomitant fiduciary relationship government attorneys have with the United States, means that DOJ attorneys must assess claims against the United States carefully to ensure that any settlement is in the best interest of the U.S. It seems clear that authorizing a settlement based on legally insufficient and frivolous claims would breach this duty in violation of applicable state bar rules.

3. *President Trump is Prohibited from Receiving Emoluments, Other Than His Salary, From the United States*

The Domestic Employment Clause of the Constitution, set out at Article II, Section 1, Clause 7, provides that:

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.¹¹⁴

This Domestic Emoluments Clause has the effect of restricting the President’s ability to relieve “any other Emolument” from the United States, other than his fixed salary.¹¹⁵ As the District Court of the D.C. Circuit explained “[t]he Framers of the Constitution forbade the President from receiving any emolument other than a fixed compensation, in part because they feared the consequences of allowing a President to convert his or her office into a vehicle for personal profit.”¹¹⁶ Unlike the bar on foreign emoluments, the Domestic Emoluments Clause is non-waivable.¹¹⁷

The term “Emolument” as used in the Domestic Emoluments Clause means any “profit, gain, or advantage.”¹¹⁸ As the Office of Legal Counsel has explained when providing guidance on the use of the term “emolument” in the related Foreign Emoluments Clause, the “expansive language and underlying purpose ... strongly suggest that it be given broad scope.”¹¹⁹ Against the “sweeping and unqualified” language,¹²⁰ OLC has explained that the proscription is “directed against every possible kind of influence”¹²¹

¹¹⁴ U.S. Const. art. II, § 1, cl. 7.

¹¹⁵ *Id.*; see also (1) *Presidential Prot. Assistance Act (18 U.S.C. § 3056 Note)-Retroactive Effect* (2) *Fed. Improvements to Real Prop. Owned by A Former President-Title Thereto-Removal of*, 3 U.S. Op. Off. Legal Counsel 440, 447 (1979) (explaining that certain improvements made to President Nixon’s private property while he was in office were the property of the government and that transferring title to the President would “conflict with” the Domestic Emoluments Clause).

¹¹⁶ *Griffin v. United States*, 935 F. Supp. 1, 3 (D.D.C. 1995).

¹¹⁷ Compare U.S. Const. art. I, § 9, cl. 8 (providing that Congress may consent to emoluments from a foreign government) with U.S. Const. art. II, § 1, cl. 7 (providing no comparable provision).

¹¹⁸ See, e.g., *Blumenthal v. Trump*, 373 F. Supp. 3d 191, 207 (D.D.C. 2019), *vacated as moot*, 949 F.3d 14 (D.C. Cir. 2020); *D.C. v. Trump*, 315 F. Supp. 3d 875, 904 (D. Md. 2018), *rev’d and remanded sub nom. In re Trump*, 928 F.3d 360 (4th Cir. 2019), *on reh’g en banc*, 958 F.3d 274 (4th Cir. 2020), *cert. granted, judgment vacated as moot sub nom. Trump v. D.C.*, 141 S. Ct. 1262, 209 L. Ed. 2d 5 (2021), and *vacated*, 838 F. App’x 789 (4th Cir. 2021).

¹¹⁹ *Application of Emoluments Clause to Part-Time Consultant for the Nuclear Regulatory Commission*, 10 Op. O.L.C. 96, 98 (1986).

¹²⁰ *Applicability of the Emoluments Clause to Non-Government Members of ACUS*, 17 Op. O.L.C. 114, 121 (1993).

¹²¹ Memorandum from Norbert A. Schlei, Assistant Att’y Gen., Office of Legal Counsel, to Andrew F. Oehmann, Office of the Att’y Gen., *Re: Invitation by Italian Government to Officials of the Immigration and Naturalization*

Because there is no legal basis to settle President Trump’s claims, any DOJ settlement would provide the President with an unwarranted profit, gain, or advantage—an advantage which would have no apparent basis other than that the President is the President.¹²² Acceptance of such payments would clearly open the Presidency up to the type of corruption the Domestic Emoluments Clause was intended to avoid in contravention of the “Framers’ concern that the President should not have the ability to convert his or her office for profit.”¹²³

President Trump’s meritless request for damages arising from the government’s legitimate investigation into the President’s alleged illegal retention of classified records is also distinguishable from the situation in which a President is seeking *bona fide* compensatory money damages from the government for harm arising from the clear tortious conduct of the United States (such as a traffic incident arising because of negligence of a U.S. official). The Comptroller General of the United States has, for example, advised that compensatory payments for *bona fide* tortious harm would not be considered an emolument in a 1955 opinion.¹²⁴ In that opinion, which dealt with the Foreign Emoluments Clause, the Comptroller General was asked whether a current United States employee could receive payment from the German government for harm caused to him by the Nazi regime when he was terminated from a German judicial office for racial reasons.¹²⁵ After the war, the employee applied for and received compensatory money damages from the government of Germany under the “Federal Supplementary Law for the Compensation of Victims of National Socialist Persecution.”¹²⁶ Under those circumstances, the Comptroller General found that the payments “represent damages payable as a direct result of a moral and legal wrong inflicted upon [the employee] at the hands of the national socialist government. The payments are made to liquidate a recognized legal liability arising from the tortious acts of the Nazi regime.”¹²⁷

Settlement of the President’s frivolous FTCA claims is a far cry from the “recognized legal liability” the German government provided to citizens who had been harmed by the murderous and racist Nazi regime.¹²⁸ President Trump’s claims each fail as a matter of law.¹²⁹ The search of Mar-a-Lago was authorized and conducted under a legally valid warrant and the prosecution of the President was based on probable cause and consistent with the Special Counsel regulations. Providing the President with an unearned payday from the federal treasury would not serve to make the President whole; rather, it would serve to provide “profit, gain, or advantage,” which

Service & a Member of the White House Staff, 2 (Oct. 16, 1962), <https://www.justice.gov/olc/page/file/935741/download>.

¹²² See The Honorable George J. Mitchell United States Senate, B-207467 (Jan. 18, 1983) (excluding “payments for services rendered prior to the occupancy of . . . and having no connection with the Presidency”).

¹²³ *Griffin v. United States*, 935 F. Supp. 1, 4 (D.D.C. 1995).

¹²⁴ *Officers and Employees—Acceptance of Annuity from Foreign Government—Constitutional Prohibition*, 34 Comp. Gen. 331 (Jan. 12, 1955).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Given that President Trump’s claims are wholly meritless and that punitive damages are statutorily barred, it is unnecessary to distinguish between his requests for “compensatory” and “punitive” damages. Notwithstanding, punitive damages would always appear to be unconstitutional domestic emoluments, given that they are gratuitous payments above and beyond what is necessary to recompense a legitimately harmed President.

would not have arisen had he not held the power of the office of the President. Such payments would clearly be emoluments from the United States in contravention of the Domestic Emoluments Clause.

Conclusion

In *The Spirit of the Laws*, Montesquieu warned that when virtue ceases in a republic, the “public treasury . . . become[s] the patrimony of individuals.”¹³⁰ The Founders, Congress, and executive agencies like OGE have each taken steps to prevent government employees, including the President, from abusing their offices for private gain. Yet we find ourselves perilously close to the situation in which the President, acting through a cadre of hand-picked loyalists, is able to abuse the federal tort claims process to extract taxpayer money from the Treasury of the United States. This is an unacceptable result that stands in contravention of core American values, fiscal responsibility, and the law. DDF respectfully requests that your office investigate the DOJ’s processing of the President’s FTCA claims to ensure that DOJ officials and the President are not violating the Constitution or the laws of the Nation.

Sincerely,

/s/

Ambassador Norman L. Eisen (ret.)
Executive Chair and Founder
Democracy Defenders Fund

/s/

Virginia Canter
Chief Counsel and Director for Ethics and
Anticorruption
Democracy Defenders Fund

/s/

Christopher Swartz
Senior Ethics Counsel
Democracy Defenders Fund

¹³⁰ MONTESQUIEU, *THE SPIRIT OF THE LAWS* (1758), Part 1, Bk. 3, Ch. 3 (Cambridge Press ed., 1989).