

November 13, 2020

Pat Cipollone, Esq.
White House Counsel
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: Compliance with the Presidential Records Act

Dear Mr. Cipollone:

I write on behalf of the National Security Archive and historians to seek your express assurances that all presidential records of the Trump presidency will be preserved for transfer to the National Archives by the end of the President's term on January 20, 2021.

As the Trump administration prepares for the upcoming transition to the Biden administration, it is critical that all White House personnel, including the President, comply with the recordkeeping duties that the Presidential Records Act (PRA) places on them. Those duties include the obligation to preserve all presidential records until their transfer, at the end of President Trump's term, to the National Archives and Records Administration, which will then "assume responsibility" for their "custody, control, and preservation." 44 U.S.C. § 2203(g). The PRA imposes on the President directly the duty to create, preserve, and maintain records about the "activities, deliberations, decisions, and policies that reflect the performance of the President's constitutional, statutory, or other official or ceremonial duties." 44 U.S.C. § 2203(a).

Unfortunately, from the outset of this administration, the President and other White House officials have demonstrated real disregard for their responsibilities under the records laws. Despite direct guidance from your office in February 2017 and again in September 2017, senior personnel including the President's son-in-law continued to use personal phones, personal e-mail, and disappearing messages to conduct government business, while taking no apparent measures to transfer the content of those communications over to official systems for preservation.¹ The President himself reportedly ripped up documents and left shreds on the floor in the Oval Office, forcing records managers to gather the pieces and tape them back together.² As recently as two months ago, top White House officials, including Jared Kushner, were using non-official messaging applications such as WhatsApp and Signal to conduct White House business

¹ See, e.g., Jeff Horwitz, "Trump aides told not to use personal phones – but some do," *Associated Press*, Sept. 26, 2017. <https://apnews.com/article/bbb5a8a4a9f445498f35907ef6a0e4e1>


² See, e.g., Annie Karni, "Meet the guys who tape Trump's papers back together," *Politico*, June 10, 2018, <https://www.politico.com/story/2018/06/10/trump-papers-filing-system-635164>

domestically and abroad.³ President Trump, for his part, has refused to comply with his records creation obligations by forbidding the creation of records that document his meetings with key foreign leaders.⁴ President Trump even reprimanded your predecessor, Don McGahn, for taking notes at meetings.⁵ And court filings show that the White House ordered the Secret Service not to keep records of presidential visitors at Trump properties like Mar-a-Lago.⁶

This ongoing pattern of behavior raises a red flag that the records of the Trump presidency will not be properly preserved for the public, their rightful owner. With the Trump administration drawing to a close, it is critical that the American public receive adequate assurances that all of the presidential records of this administration will be preserved and transferred to the National Archives and Records Administration by January 20, 2021, as the law requires.

Accordingly, we respectfully request that you provide us written assurances by November 23, 2020, that no person in the Executive Office of the President, including President Trump, will take any action to destroy any presidential record, nor will they prevent any other person from preserving presidential records as the law requires.

Sincerely,



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Cc: Andrew Preston, President, Society for Historians of American Foreign Relations (SHAFR); Professor of American History, Cambridge University

Cc: Anne Weismann, Esq., Counsel for the Archive and SHAFR

³ See e.g., Katherine Eban, "That's Their Problem," *Vanity Fair*, Sept. 17, 2020. <https://www.vanityfair.com/news/2020/09/jared-kushner-let-the-markets-decide-covid-19-rate>

⁴ See, e.g., Peter Baker, "Trump and Putin Have Met Five Times. What Was Said Is a Mystery," *The New York Times*, Jan. 15, 2019, <https://www.nytimes.com/2019/01/15/us/politics/trump-putin-meetings.html>

⁵ See, e.g., David Choi, "Trump raged at former White House counsel Don McGahn for taking notes about their conversations," *Business Insider*, Apr. 19, 2019, <https://www.businessinsider.com/trump-angry-at-don-mcghahn-notes-conversation-fire-special-counsel-2019-4>

⁶ See, e.g., Josh Gerstein, "Judge surprised at feds' slim disclosure on Mar-a-Lago visitors," *Politico*, Oct. 11, 2017. <https://www.politico.com/blogs/under-the-radar/2017/10/11/trump-mar-a-lago-visitors-243691>