



CITIZENS FOR  
RESPONSIBILITY &  
ETHICS IN WASHINGTON

January 11, 2021

Jeffrey A. Rosen  
Acting Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530

Christopher Wray  
Director  
Federal Bureau of Investigation  
935 Pennsylvania Ave., NW  
Washington, DC 20535-0001

Re: Request for Investigation of President Donald J. Trump for Violations of Federal Law Related to the Seditious Attack on the United States Capitol

Dear Acting Attorney General Rosen and Director Wray:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the U.S. Department of Justice and the Federal Bureau of Investigation investigate whether President Donald J. Trump violated federal law by seditiously conspiring to prevent, hinder, or delay by force Congress’s final counting of the 2020 electoral college votes as part of a scheme to overthrow the government of the United States by preventing the transition of power. As part of this scheme, President Trump and his associates appear to have illegally conspired to encourage the President’s supporters to travel to Washington, D.C. and incite them to forcefully attack and occupy the United States Capitol. On January 6, 2021, President Trump and numerous co-conspirators spoke at a large rally and demanded that the assembled mob march on the Capitol and stop the electoral count. Less than an hour after President Trump’s speech, the mob forcefully stormed the Capitol, successfully hindering and delaying Congress’s lawful exercise of its constitutional and statutory duty to affirm the results of the presidential election.

President Trump and his co-conspirators appear to have engaged in nothing less than an attempt to overthrow the government of the United States by force. These actions must not go unanswered. Our republic will not long endure if it allows domestic forces to raise arms against it.

## **Factual Background**

At approximately noon on January 6, 2021, President Trump spoke to a crowd of supporters near the White House Ellipse at the “Save America March.”<sup>1</sup> President Trump told the crowd: “We will never give up. We will never concede . . . We will stop the steal!”<sup>2</sup> He instructed his supporters to “fight much harder,” and he admonished Republicans for not being “tougher.”<sup>3</sup> He told his supporters: “We’re going to walk down to the Capitol . . . you’ll never take back our country with weakness. You have to show strength, and you have to be strong.”<sup>4</sup>

This was not the first time that President Trump had exhorted his supporters to “fight” against the results of the 2020 election during his concerted, months-long campaign to undermine faith in the democratic process and convince his supporters that he had won an election he had clearly lost. On December 18, 2020, he tweeted “@senatemajldr and Republican Senators have to get tougher, or you won’t have a Republican Party anymore. We won the Presidential Election, by a lot. FIGHT FOR IT. Don’t let them take it away!”<sup>5</sup> President Trump also explicitly promoted January 6, the day that Congress was scheduled to certify the Electoral College votes, and the “Save America March” as an opportunity to disrupt Congress’s legal obligation to count Electoral College votes. On December 19, 2020 he tweeted: “Big protest in D.C. on January 6th. Be there, will be wild!”<sup>6</sup> On January 1, 2021, he retweeted: “A great honor!” at a post by a “Stop the Steal” group founder referencing January 6th in Washington, D.C., that promised: “The calvary [sic] is coming, Mr. President!”<sup>7</sup> Early in the morning on January 6, 2021, he tweeted: “Get smart Republicans. FIGHT!”<sup>8</sup>

President Trump’s supporters did exactly what he urged them to do. Shortly after the speech, Vice President Mike Pence and both houses of the United States Congress gathered in the Capitol to count the Electoral College votes.<sup>9</sup> Not long after they began, the United States Capitol Police began evacuating congressional office buildings as thousands of people from the rally who had followed President Trump’s instructions descended on the Capitol, fighting with Capitol Police officers.<sup>10</sup> Rioters pushed down barriers and past police to enter the Capitol, with some making their way to the House and Senate chambers, while others ransacked offices, stealing documents and electronics and breaking furniture.<sup>11</sup> Congress was forced to hurriedly adjourn the joint session, don gas masks, and evacuate to undisclosed secure locations.<sup>12</sup>

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<sup>1</sup> Elise Stokols, Trump Vow to ‘Never Concede’ Incites Mob of Supporters, *Los Angeles Times*, Jan. 6, 2021, <http://lat.ms/3s1CNzD>.

<sup>2</sup> Transcript: Donald Trump Speech “Save America” Rally, *Rev*, Jan. 6, 2021, <http://bit.ly/2XnwPLk> (“Rally Transcript”).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Donald J. Trump (@realDonaldTrump), Twitter (Dec. 18, 2020). Twitter permanently suspended the @realDonaldTrump account on January 9, 2022, but an archive of all the tweets from that account is available at <https://www.thetrumparchive.com/>.

<sup>6</sup> Donald J. Trump (@realDonaldTrump), Twitter (Dec. 19, 2020) (emphasis in original).

<sup>7</sup> Donald J. Trump (@realDonaldTrump), Twitter (Jan 1, 2021) (retweeting Kylie Jane Kremer (@KylieJaneKremer), Twitter (Dec. 19, 2020), <https://bit.ly/3i0rpPP>).

<sup>8</sup> Donald J. Trump (@realDonaldTrump), Twitter (Jan 6, 2021) (emphasis in original).

<sup>9</sup> Rosalind S. Helderman, Karoun Demirjian, Seung Min Kim, and Mike DeBonis, Congress Affirms Biden’s Presidential Win Following Riot at U.S. Capitol, *Washington Post*, Jan. 7, 2021, <http://wapo.st/3pXvSWr>.

<sup>10</sup> Associated Press Timeline of Events at the Capitol, 4 Dead, *Associated Press*, Jan. 6, 2021, <http://bit.ly/35mLbjx>.

<sup>11</sup> Marisa Peñaloza, Trump Supporters Storm U.S. Capitol, Clash with Police, *NPR*, Jan. 6, 2021, <https://n.pr/3qb8ncq>; Jaclyn Diaz, Bill Chappell, and Elena Moore, Police Confirm Death of Officer Injured During Attack on Capitol, *NPR*, Jan. 7, 2021, <https://n.pr/35mxNMD>.

<sup>12</sup> *Associated Press*, Jan. 6, 2021.

While these events unfolded at the Capitol, President Trump signaled his approval of the riotous take-over of the Capitol building, tweeting: “These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever!”<sup>13</sup> He then tweeted a recorded video message where he repeated his baseless election fraud conspiracies, half-heartedly asked the rioters to “go home,” and ended by telling them, “We love you, you’re very special.”<sup>14</sup>

Officials did not declare the Capitol complex “secure” until almost 6 p.m, after multiple National Guard units were mobilized.<sup>15</sup> In the early morning hours of January 7, 2021 – 15 hours after it began – Congress completed its counting of the Electoral College votes.<sup>16</sup> By that point, four people were dead.<sup>17</sup> Over 50 police officers were injured in the violent insurrection, and one has since died from his injuries.<sup>18</sup>

### **Potential Violations**

While President Trump and his associates likely committed a multitude of federal criminal offenses prior to and during the insurrectionary events of January 6, 2021, the President’s larger purpose appears to have been the violent overthrow of the United States government by delaying, hindering, or stopping Congress from affirming the results of the 2020 presidential election. Thus, while CREW encourages you to investigate the full extent of the President’s potential violations of federal criminal law during this period, we request that you specifically investigate whether President Trump and his associates engaged in a pattern of conduct with the specific intent of preventing by force the peaceful transfer of power.

#### **Seditious Conspiracy - 18 U.S.C. § 2384**

Federal law makes it a crime for two or more persons to conspire to “prevent, hinder, or delay the execution of any law of the United States” or to “overthrow, put down, or to destroy by force the Government of the United States.”<sup>19</sup> It appears that President Trump engaged in a seditious conspiracy to prevent, hinder, or delay by force the lawful transfer of power and to thus overthrow the government of the United States. We discuss each element below.

#### **Conspiracy**

For purposes of the seditious conspiracy statute, “the essence of a conspiracy is ‘an agreement to commit an unlawful act.’”<sup>20</sup> The agreement must be between two or more people who are working together toward a common goal, though the goal need not be specifically articulated

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<sup>13</sup> Brian Heater, [Twitter Locks Trump Out of His Account for at Least 12 Hours](https://tcrn.ch/3bkySZ0), *TechCrunch*, Jan. 6, 2021, [http://tcrn.ch/3bkySZ0](https://tcrn.ch/3bkySZ0) (citing Donald J. Trump (@realDonaldTrump), Twitter (Jan. 6, 2021)).

<sup>14</sup> Jordan Moreau, [President Trump’s Chilling Message to Violent Mob Overtaking Capitol: ‘Go Home. We Love You. You’re Very Special’](https://www.vanityfair.com/culture/2021/01/trump-chilling-message-to-violent-mob), *Vanity Fair*, Jan. 6, 2021, [http://bit.ly/2XksXuH](https://www.vanityfair.com/culture/2021/01/trump-chilling-message-to-violent-mob).

<sup>15</sup> *Associated Press*, Jan. 6, 2021.

<sup>16</sup> Matt Fuller, [After Day Of Chaos, Congress Certifies Joe Biden as the Election Winner](https://www.huffpost.com/entry/after-day-of-chaos-congress-certifies-joe-biden-as-the-election-winner), *Huffington Post*, Jan. 7, 2021, [http://bit.ly/3pVMduP](https://www.huffpost.com/entry/after-day-of-chaos-congress-certifies-joe-biden-as-the-election-winner).

<sup>17</sup> *Associated Press*, Jan. 6, 2021.

<sup>18</sup> Diaz, Chappell, and Moore, *NPR*, Jan. 7, 2021.

<sup>19</sup> 18 U.S.C. § 2384.

<sup>20</sup> *United States v. Jimenez Recio*, 537 U.S. 270, 274 (2003) (quoting *Iannelli v. United States*, 420 U.S. 770, 777 (1975)); see also *United States v. Avila*, 465 F.3d 796, 798 (7th Cir. 2006) (“[T]o join a conspiracy ... is to join an agreement, rather than a group.” (quoting *United States v. Townsend*, 924 F.2d 1385, 1390 (7th Cir. 1991))).

nor the agreement explicit as the enterprise is generally secretive.<sup>21</sup> Individual defendants may implicitly agree to a larger conspiracy if they knew, or should have known, that others were committing similar actions.<sup>22</sup>

There is strong evidence that President Trump and his associates generally agreed among themselves to encourage a group of people to travel to Washington, D.C., and “take back our country” by unlawfully hindering or delaying Congress’s certification of the electoral college vote. President Trump undoubtedly was in close contact with numerous co-conspirators regarding Congress’s counting of the electoral votes on January 6 and their attempts to delay or stop the count, including the “Save America March” rally. President Trump’s adult sons, Donald Trump Jr. and Eric Trump, have closely advised the President on overturning the results of the election, and both took prominent roles in promoting the January 6 rally and inciting the crowd to stop Congress from certifying.<sup>23</sup> Immediately prior to their appearances at the rally, President Trump and Donald Trump Jr. attended a private gathering during which Donald Trump Jr. recorded a video in which he described the rally attendees as “patriots” who were “sick of the bullshit” and repeatedly urged them to “fight.”<sup>24</sup> At the rally itself, Donald Trump Jr. threatened members of Congress who did not vote against certifying, saying: “We’re coming for you.”<sup>25</sup>

Similarly, Rudolph Giuliani is the President’s personal lawyer and has spearheaded his efforts to overturn the results of the election. Demonstrating his agreement with President Trump to encourage his supporters to come to Washington, D.C. on January 6, Mr. Giuliani posted a tweet on January 5 that retweeted President Trump’s exhortation to his followers to attend the rally, and said that “President Trump will be joining us tomorrow on The Ellipse in Washington, DC. SEE YOU THERE!”<sup>26</sup> Mr. Giuliani’s agreement with the President also clearly extended to trying to delay or hinder Congress certifying the electoral college votes. In his speech at the Save America March, Giuliani exhorted the crowd to demand of the legislature a “trial by combat.”<sup>27</sup> Later in the day, while the rioters were in the Capitol and members of Congress were sheltering in place, Mr Giuliani and President Trump attempted to make nearly identical calls to Senator Tommy Tuberville as part of their scheme to continue to delay the certification of the electoral votes. First, President Trump called Senator Tuberville and pushed him to delay the vote by objecting to additional states’ electors.<sup>28</sup> Later, Mr. Giuliani attempted to call Senator Tuberville again, but accidentally left a voicemail for a different Senator who shared it with a news reporter – in the recording Mr. Giuliani

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<sup>21</sup> See, e.g., *United States v. Gardiner*, 463 F.3d 445, 457 (6th Cir. 2006) (stating that a formal agreement is not necessary “because a tacit or mutual understanding among the parties is sufficient” (quoting *United States v. Baveres*, 787 F.2d 1022, 1026 (6th Cir. 1985))).

<sup>22</sup> See, e.g., *Blumenthal v. United States*, 332 U.S. 539, 558-59 (1947) (stating that although each salesman agreed to sell only his own share of whiskey, because each “knew or must have known” that the “lot to be sold was larger,” each implicitly agreed to participate in the conspiracy).

<sup>23</sup> See, e.g., Rebecca Ballhaus, Joe Palazzolo, and Andrew Restuccia, [Trump and His Allies Set the Stage for Riot Well Before January 6](https://on.wsj.com/3bGRnaj), *Wall St. Journal*, Jan. 8, 2021, <https://on.wsj.com/3bGRnaj>; Phil Owen, [Eric Trump: “The MAGA Movement Is Going Nowhere.”](https://bit.ly/3nDPRb4) *The Wrap*, Jan. 5, 2021, <https://bit.ly/3nDPRb4>; Nick Whigham, [‘Premeditated’: Video emerges of Trump family party before Capitol riots](https://yhoo.it/3oBhvH1), *Yahoo News*, Jan. 8, 2021, <https://yhoo.it/3oBhvH1>; Pamela Brown, Dana Bash, Gloria Borger, and Betsy Klein, [Trump’s eldest children split on his path forward](https://cnn.it/3hTORyc), *CNN*, Nov. 12, 2020, <https://cnn.it/3hTORyc>.

<sup>24</sup> Amy Siskind (@Amy\_Siskind), Twitter (Jan 7, 2021), <https://bit.ly/3oJIKz2>.

<sup>25</sup> Maggie Haberman, [Trump Told Crowd ‘You Will Never Take Back Our Country With Weakness’](https://nyti.ms/3nsq45q), *New York Times*, Jan. 6, 2021, <https://nyti.ms/3nsq45q>.

<sup>26</sup> Rudy W. Giuliani (@RudyGiuliani), Twitter (Jan. 5, 2021), <https://bit.ly/3q2Gq6E>.

<sup>27</sup> Charlotte Klein, [Watch Giuliani Demand ‘Trial by Combat’ to Settle the Election](https://nym.ag/2MGLMpl), *New York*, Jan. 6, 2021, <https://nym.ag/2MGLMpl>.

<sup>28</sup> Sunlen Serfaty, Devan Cole, and Alex Rogers, [As riot raged at Capitol, Trump tried to call senators to overturn election](https://cnn.it/2XxLxjc), *CNN*, Jan. 8, 2021, <https://cnn.it/2XxLxjc>.

echoes the call President Trump made earlier in the day, saying, “I want to discuss with you how ... we need you, our Republican friends, to try to just slow [the counting and certification process] down ... the only strategy we can follow is to object to numerous states and raise issues so that we get ourselves into tomorrow—ideally until the end of tomorrow.”<sup>29</sup>

Accordingly, it appears that President Trump and his associates were engaged in a conspiracy with the common goal of preventing, hindering, or delaying Congress’s counting and certification of the electoral votes cast in the 2020 presidential election.<sup>30</sup>

Overthrow the government or prevent, hinder, or delay the execution of any law

Seditious conspiracy may be proven by demonstrating that the individual co-conspirators intended to prevent or delay the execution of any law or overthrow the government.<sup>31</sup> Each of these elements is a separate basis for a seditious conspiracy charge, and in many cases they occur simultaneously. For example, in one case, the conspirators specifically intended to prevent or hinder the enforcement of a law – the 1917 Draft Law – but to accomplish this end it would have been necessary to “supplant the administration with a provisional government.”<sup>32</sup>

President Trump and his co-conspirators intended to prevent, hinder, or delay the execution of Congress’s legal duty to count, tabulate, and certify the electoral college votes pursuant to the Twelfth Amendment of the Constitution and the Electoral Count Act.<sup>33</sup> The effect of such a delay would be to allow President Trump to reinstall himself as president, thus subverting the democratic will of the people as expressed in the 2020 election. Had President Trump’s scheme been successful, it would have resulted in the undemocratic overthrow of the government of the United States.

Seditious conspiracy further requires that the co-conspirators planned to effectuate their illegal ends by some unlawful means.<sup>34</sup> Specifically, the conspirators must have contemplated the possible use of force, though the ultimate goal need not be the use of force.<sup>35</sup> The element of force does not necessarily mean engaging in explicitly violent activities; rather, this element is satisfied when the co-conspirators contemplated the unlawful “invasion of rights of others.”<sup>36</sup>

As part of their scheme, President Trump and his associates encouraged supporters to come to Washington, D.C. on the day that Congress was set to lawfully count the electoral college votes and urged them to use force to stop the count. The President issued numerous exhortations for

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<sup>29</sup> Steve Hayes, [Giuliani to Senator: Try to Just Slow it Down](https://bit.ly/3s62VcB), *The Dispatch*, Jan. 6, 2021, <https://bit.ly/3s62VcB>.

<sup>30</sup> The seditious conspiracy statute does not require that the co-conspirators take an overt act in furtherance of the conspiracy. *Bryant v. U.S.*, 257 F. 378 (5th Cir. 1919); see also *Anderson v. U.S.*, 273 F. 20 (8th Cir. 1921). However, should a court incorrectly choose to require an overt act in furtherance of the conspiracy, there are numerous incidents which could qualify, including President Trump’s appearance at the rally, his various statements inciting the violence prior to its start, his sons’ and Mr. Giuliani’s statements to the crowd, and Mr. Giuliani’s call asking to “slow” the certification process.

<sup>31</sup> 18 U.S.C. § 2384.

<sup>32</sup> *Bryant*, 257 F. at 386.

<sup>33</sup> U.S. Const. amend XII; 3 U.S.C. § 15.

<sup>34</sup> *U.S. v. Sinclair*, 321 F.Supp. 1074, 1079 (E.D. Mich.1971).

<sup>35</sup> See *Wells v. United States*, 257 F. 605, 615 (9th Cir. 1919) (conspirators contemplated rioting as part of the overall goal of subverting the laws of the United States). There is some debate as to the extent to which the co-conspirators must have contemplated the specific use of force. See *Anderson*, 273 F. at 26 (finding that seditious conspiracy requires more than simply “setting the laws themselves at defiance,” and that “there must be a forcible resistance of the authority of the United States while endeavoring to carry the laws into execution”).

<sup>36</sup> *Sinclair*, 321 F. Supp. at 1079.

supporters to join him in Washington, including saying that the day would be “wild.”<sup>37</sup> President Trump also repeatedly called on his supporters to “fight” for him, including describing the supposed election fraud as “an act of war” which would drive others to “fight to the death” to prevent it.<sup>38</sup> On January 6 itself, President Trump and his associates repeatedly and baselessly alleged that the Congress was engaged in criminal activity, that the election was “stolen,” and that violence may be required.<sup>39</sup> Specifically, President Trump and his associates encouraged the mob assembled in front of the White House to demand a “trial by combat”, and to “walk down to the Capitol” in order to “fight like hell” because “if you don’t fight like hell, you’re not going to have a country any more”.<sup>40</sup> There was no question among many of President Trump’s supporters about what exactly they were being asked to do and why, because the President had spent the previous day tweeting about the Vice President stopping the count: before he took the stage at the rally, for example, the President tweeted, “All Mike Pence has to do is send [the electoral votes] back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage!”<sup>41</sup> As if on cue, as the violence escalated a top-voted post on the main Trump message board simply said, “This is what Trump told us to do!”<sup>42</sup> And, as one rioter emerged from the Capitol, he yelled to wild applause, “Yeah, we stopped the vote!”<sup>43</sup>

It thus appears that President Trump and his associates considered and then actively and explicitly called for the unlawful use of force to achieve their unlawful ends. That the President and his associates contemplated the possibility that their actions would result in some unlawful use of force in support of their goals is further shown both by President Trump’s comments condoning and supporting the violence as it unfolded, including in a since-deleted tweet,<sup>44</sup> and Mr. Giuliani’s call to a Senator designed to take advantage of the situation by further delaying proceedings.<sup>45</sup>

Accordingly, President Trump and his associates, including but not limited to Mr. Giuliani, appear to have conspired to prevent, hinder, or delay the execution of Congress’s lawful duty to count and certify the electoral college results under the Twelfth Amendment and the Electoral Count Act by, among other means, directing a mob of supporters to forcefully take control of the Capitol. The end goal of the conspiracy appears to be the subversion of the 2020 presidential election and thus the overthrow of the government of the United States.

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<sup>37</sup> Donald J. Trump (@realDonaldTrump), Twitter (Dec. 19, 2020).

<sup>38</sup> Donald J. Trump (@realDonaldTrump), Twitter (Dec. 26, 2020). *See also* Ballhaus, Palazzolo, and Restuccia, *Wall St. Journal*, Jan. 8, 2021.

<sup>39</sup> Rally Transcript. *See also* Ballhaus, Palazzolo, and Restuccia, *Wall St. Journal*, Jan. 8; Donald J. Trump (@realDonaldTrump), Twitter (Jan. 5, 2021) (“Washington is being inundated with people who don’t want to see an election victory stolen by emboldened Radical Left Democrats. Our Country has had enough, they won’t take it anymore! We hear you (and love you) from the Oval Office. MAKE AMERICA GREAT AGAIN!”).

<sup>40</sup> Rally Transcript.

<sup>41</sup> Donald J. Trump (@realDonaldTrump), Twitter (Jan 6, 2021).

<sup>42</sup> James Purtill, [Weeks of rhetoric online made the January 6 storming of the Capitol 'entirely predictable', experts say](https://ab.co/3sa95ZA), *ABC Science*, Jan. 7, 2021, <https://ab.co/3sa95ZA>; *see also* Craig Timberg, Drew Harwell, Razzan Nakhlawi, and Harrison Smith, [‘Nothing can stop what’s coming’: Far-right forums that fomented Capitol riots voice glee in aftermath](https://wapo.st/3nsLUWL), *Washington Post*, Jan. 7, 2021, <https://wapo.st/3nsLUWL>.

<sup>43</sup> Sabrina Tavernise and Matthew Rosenberg, [These Are the Rioters Who Stormed the Nation’s Capitol](https://nyti.ms/39hEU9U), *New York Times*, Jan. 7, 2021, <https://nyti.ms/39hEU9U>.

<sup>44</sup> It read, in part: “These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated.” Anne Gearan and Josh Dawsey, [Trump issued a call to arms. Then he urged his followers ‘to remember this day forever!’](https://wapo.st/3op0IHf), *Washington Post*, Jan. 6, 2021, <https://wapo.st/3op0IHf>.

<sup>45</sup> Heater, *TechCrunch*, Jan. 6, 2021; Hayes, *The Dispatch*, Jan. 6, 2021.

**Conclusion**

We do not levy the accusation of sedition against the President lightly. It is a charge of the utmost gravity, and should be reserved for only the most extreme circumstances. This is such a circumstance. President Trump's actions during and preceding the violent insurrection he incited on January 6 amount to nothing less than an attack on our republic. He has betrayed the country he was elected to serve, the high office which he holds, and the Constitution he was sworn to uphold. By conspiring with his associates to raise a mob in front of the White House, and then directing that mob to go to the Capitol and use "strength" to "take back our country" in order to hinder or delay Congress's certification of the electoral vote and overturn the 2020 election, President Trump attempted to incite the violent overthrow of the government of the United States. In order to preserve the existence of our republic, and to protect our experiment in democratic self-governance, we ask that you immediately open an investigation to determine whether President Trump and his associates seditiously conspired to forcefully overthrow our democracy. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a long horizontal flourish extending to the right.

Noah Bookbinder  
Executive Director