



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

February 8, 2022

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Christopher Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Re: Request for Investigation of Donald J. Trump for Violating
Federal Law by Willfully Mutilating and Destroying Records

Dear Attorney General Garland and Director Wray:

Citizens for Responsibility and Ethics in Washington (“CREW”) and the National Security Archive respectfully request that the Department of Justice (“DOJ” or the “Department”) investigate whether former President Donald J. Trump violated federal criminal law by willfully mutilating and destroying critical records of his presidency before leaving office.

Throughout his term in office President Trump and other White House officials demonstrated a serious disregard for their recordkeeping responsibilities under the Presidential Records Act (“PRA”). This conduct prompted three separate lawsuits challenging President Trump’s violations of the PRA¹ and congressional letters urging the White House Counsel to ensure the Executive Office of the President complied fully with the statute.² Recent reporting reveals that despite repeated notice, President Trump’s recordkeeping violations continued, compromising congressional oversight efforts, criminal investigations, and leaving the public—the rightful owners of the records of the Trump presidency—with an incomplete historical record. President Trump’s actions appear to violate 18 U.S.C. § 1361, which makes it a crime to willfully injure or commit any depredation against United States property in excess of \$1,000, and 18 U.S.C. § 2017, which makes it a crime to willfully destroy or mutilate federal records.

¹ *CREW, et al. v. Trump, et al.*, Civ. No. 17-1228 (D.D.C.) (filed June 22, 2017); *CREW, et al. v. Trump, et al.*, Civ. No. 19-1333 (D.D.C.) (filed May 7, 2019); *National Security Archive, et al. v. Trump, et al.*, Civ. No. 20-3500 (D.D.C.) (filed Dec. 1, 2020).

² See, e.g., letter to Pat Cipollone, White House Counsel from Rep. Raja Krishnamoorthi, Nov. 10, 2020, <https://krishnamoorthi.house.gov/sites/krishnamoorthi.house.gov/files/2020.11.10%20Rep.%20Krishnamoorthi%20PRA%20WH%20Letter.pdf>.

Factual Background

President Trump and White House officials ignored or otherwise violated their recordkeeping responsibilities from the outset of the administration. For example, in the first month of the Trump presidency news reports revealed that at least some White House staff were using encrypted disappearing messaging applications to communicate about official business.³ As a result, the messages were not captured in an official White House recordkeeping system and preserved as presidential records, contrary to the requirements of the PRA. President Trump also ignored his legal obligation to create and preserve records of key meetings and discussions he had with foreign leaders, impairing the ability of his administration's policy makers to effectively conduct foreign policy and depriving historians of access to critical documents of the Trump presidency.⁴

In June 2018, news reports documented yet another recordkeeping violation by President Trump, specifically his habit of tearing up presidential records when he was done with them—what some termed his “unofficial ‘filing system’”—leaving records management staff to try to tape them back together.⁵ In the waning months of the Trump presidency members of Congress raised concerns with this practice and other recordkeeping violations by President Trump and his White House staff and sought information on what steps the White House was taking to ensure full compliance with the PRA.⁶ Others expressed concern that President Trump, fearing the consequences to him and his legacy once his records were made public, would destroy those records before leaving office.⁷ To address these concerns CREW and the National Security Archive each wrote to White House Counsel Pat Cipollone. CREW requested that Mr. Cipollone remind all White House staff of their recordkeeping requirements⁸ and the National Security Archive requested that Mr. Cipollone provide written assurances that no White House official, including the President, would take any action to destroy any presidential record.⁹ The White House never responded to either letter.

Instead, as we now know based on recent news reports, President Trump relentlessly continued his practice of ripping up his records despite repeated admonitions by top White House officials that such conduct violated the PRA. According to the National Archives and Records Administration (“NARA”), the trove of records it turned over to the Select Committee

³ See, e.g., Mara Gay, Messaging App Has Bipartisan Support Amid Hacking Concerns, *Wall Street Journal*, Jan. 24, 2017, <https://www.wsj.com/articles/messaging-app-has-bipartisan-support-amid-hacking-concerns-1485215028>; Maya Kosoff, White House Staffers Are Using a Secret App to Speak Freely, *Vanity Fair*, Feb. 27, 2017, <http://www.vanityfair.com/news/2017/02/white-house-staffers-are-using-a-secret-chat-app-to-speak-freely>.

⁴ See Complaint in *CREW, et al. v. Trump*, Civil Action No. 19-1333 (D.D.C.), Dkt. 1 (May 7, 2019).

⁵ 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>.

⁶ See, e.g., letter to White House Counsel Pat Cipollone from Rep. Raja Krishnamoorthi, Nov. 10, 2020.

⁷ Jill Lepore, Will Trump Burn the Evidence?, *New Yorker*, Nov. 16, 2020, <https://bit.ly/3kZesWy>; Alex Woodward, What Trump might do now that he's lost the election: From pardoning cronies to sabotaging the transition, *The Independent*, Nov. 17, 2020, <https://bit.ly/2J6KnHa>.

⁸ Letter to White House Counsel Pat Cipollone from Noah Bookbinder, Nov. 12, 2020, <https://www.citizensforethics.org/wp-content/uploads/2020/11/2020-11-12-Cipollone-PRA.pdf>.

⁹ Letter to White House Counsel Pat Cipollone from Thomas Blanton, Nov. 13, 2020, <https://nsarchive.gwu.edu/documents/how-president-elect-biden-can-improve-foia-bolster-presidential-records-act-against-future-abuse/Cipollone-letter-2020-11-13.pdf>.

to Investigate the January 6th Attack on the United States Capitol “includ[ed] those that were torn up and reconstructed.”¹⁰ Records the Trump administration turned over to NARA at the end of the administration as part of his presidential papers also included “a number of torn-up records that had not been reconstructed by the White House.”¹¹

According to the *Washington Post*, “interviews with 11 former Trump staffers, associates, and others familiar with the habit reveal that Trump’s shredding of paper was far more widespread and indiscriminate than previously known and—despite multiple admonishments—extended throughout his presidency[.]”¹² Further, “[w]hen the Jan. 6 committee asked for certain documents related to Trump’s efforts to pressure Vice President Mike Pence, for example, some of them no longer existed in this person’s files because they had already been shredded[.]”¹³

President Trump continued his document destruction “despite being urged by at least two chiefs of staff and the White House counsel to follow the law on preserving documents.”¹⁴ According to officials familiar with these actions, “[h]undreds of documents, if not more, were likely torn up,” spanning “a range of topics, including conversations with foreign leaders[.]”¹⁵ Reportedly the problem was “particularly acute at the time of the transition to the Biden administration.”¹⁶ Although the Trump White House instituted “special practices” to deal with his shredded records, including attempting to tape them back together, the article notes that it is “unclear how many records were lost or permanently destroyed through Trump’s ripping routine.”¹⁷

The Presidential Records Act

Congress enacted the PRA in 1978 to ensure both “the preservation of the historical record of future Presidents” and “public access to the materials” of a presidency. H.R. Rep. No. 95-1487, 95th Cong., 2d Sess. § 2 (1978). Toward that end, the statute provides that “[t]he United States shall reserve and retain complete ownership, possession, and control of Presidential records[.]” 44 U.S.C. § 2202. The PRA directs the president to

¹⁰ Jacqueline Alemany, Josh Dawsey, Amy Gardner and Tom Hamburger, Some records sent to Jan. 6 committee were torn up, taped back together—mirroring a Trump habit, *Washington Post*, Jan. 31, 2022, <https://www.washingtonpost.com/nation/2022/01/31/trump-ripped-up-documents/>.

¹¹ *Id.*

¹² Ashley Parker, Josh Dawsey, Tom Hamburger, and Jacqueline Alemany, ‘He never stopped ripping thins up’: Inside Trump’s relentless document destruction habits, *Washington Post*, Feb. 5, 2022, <https://www.washingtonpost.com/politics/2022/02/05/trump-ripping-documents/>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* Recent reporting disclosed that in addition, President Trump improperly removed multiple boxes of his papers to Mar-a-Lago where they resided until retrieval by NARA last month. Jacqueline Alemany, Josh Dawsey, Tom Hamburger, and Ashley Parker, National Archives had to retrieve Trump White House records from Mar-a-Lago, *Washington Post*, Feb. 7, 2022, <https://www.washingtonpost.com/politics/2022/02/07/trump-records-mar-a-lago/>.

take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of the President's constitutional, statutory, or other official or ceremonial duties are adequately documented *and that such records are preserved and maintained as Presidential records pursuant to the requirements of this section and other provisions of law.*

44 U.S.C. § 2203(a) (emphasis added).

The PRA imposes a multi-step process on the President before any presidential records can be destroyed or disposed of, including obtaining the written views of the Archivist of the United States concerning any proposed destruction. 44 U.S.C. §§ 2203(c)(1)-(2).

Once a president leaves office, the Archivist assumes "responsibility for the custody, control, and preservation of, and access to" the former president's records. 44 U.S.C. § 2203(g)(1). The PRA imposes on the Archivist "an affirmative duty to make" a former president's "records available to the public as rapidly and completely as possible consistent with the provisions of this chapter." *Id.*

White House recordkeeping guidance issued by the White House Counsel during President Trump's term in office acknowledged both the legal obligations of all White House personnel to preserve and maintain presidential records consistent with the PRA and the legal consequences of willfully destroying or concealing federal records. A February 2017 White House memorandum warns: "At all times, please keep in mind that presidential records are the property of the United States. You may not dispose of presidential records. ... The willful destruction or concealment of federal records is a federal crime punishable by fines and imprisonment."¹⁸ Reportedly a second memorandum sent in September 2017 repeated the admonition that "[t]he willful destruction or concealment of federal records is a federal crime."¹⁹

Potential Criminal Law Violations

18 U.S.C. § 1361

Two provisions of the Criminal Code bear on President Trump's destruction and mutilation of presidential records. First, 18 U.S.C. § 1361 provides that anyone who "willfully injures or commits any depredation against any property of the United States" whose value exceeds \$1,000 shall be punished by a fine and/or imprisonment for not then 10 years and for property that does not exceed \$1,000 a fine and/or imprisonment for not more than one year.

¹⁸ White House Memorandum, Presidential Records Act Obligations, Feb. 22, 2017, [https://www.archives.gov/files/foia/Memo%20to%20WH%20Staff%20Re%20Presidential%20Records%20Act%20\(Trump,%2002-22-17\)_redacted%20\(1\).pdf](https://www.archives.gov/files/foia/Memo%20to%20WH%20Staff%20Re%20Presidential%20Records%20Act%20(Trump,%2002-22-17)_redacted%20(1).pdf).

¹⁹ Josh Dawsey and Bryan Bender, National Archives warned Trump White House to preserve documents, *Politico*, Oct. 17, 2017, <https://www.politico.com/story/2017/10/17/national-archives-trump-documents-preserve-243888>.

Department guidance clarifies that this statute reaches the destruction of a public record or document.²⁰

President Trump's willful destruction of his records, which are the property of the United States, appears to violate 18 U.S.C. § 1361. As confirmed by NARA, which is the current legal custodian of the presidential records of the Trump presidency, the records that the White House transferred to NARA at the end of his administration included an unknown number that had been torn up—some so significantly that NARA was simply given ripped up shreds of paper. As part of his presidential papers, they clearly constitute “a public record or document,” a fact President Trump at least implicitly conceded by transferring them to NARA as part of this presidential records. This conclusion is also reinforced by the breadth of the PRA's definition of a presidential record as including all documents that “reflect the performance of the President's constitutional, statutory, or other official or ceremonial duties.”²¹ Indeed, one of the central purposes of the PRA was to establish ownership by the United States of a president's records upon leaving office.²²

DOJ guidance notes the need to prove a loss of at least \$100 to establish a felony conviction,²³ and the statute provides that damage exceeding \$1,000 is punishable by a fine and imprisonment for not more than 10 years. These prerequisites are easily met here given the value of presidential records overall and the particular value of presidential records pertaining to the January 6 insurrection. As discussed in detail below, President Trump's destruction of his presidential records also appears to have been willful.

18 U.S.C. § 2071

Another provision of the Criminal Code, 18 U.S.C. § 2071(a), makes it unlawful to intentionally “conceal[], remove[], mutilate[], obliterate[], or destroy[], or attempt[] to do so . . . any record, proceeding, map, book, paper, document, or other thing, filed or deposited . . . in any public office[.]” Section 2071(b) further prohibits the custodian of any record from concealing, removing, mutilating, obliterating, falsifying, or destroying it. A violation of either provision is punishable by a fine or imprisonment of not more than three years, or both. A violation of section 2071(b) by anyone “having the custody of any such record” also disqualifies that individual “from holding any office under the United States.”²⁴

As explained in the Department's Criminal Resources Manual, “[t]he acts proscribed by this section are defined broadly.”²⁵ Section 2071(a) prohibits “three types of conduct” involving public records, including “concealment, removal, mutilation, obliteration or

²⁰ U.S. Dep't of Justice, Criminal Resources Manual, CRM 1663. Protection of Government Property—Protection of Public Records And Documents, <https://www.justice.gov/archives/jm/criminal-resource-manual-1663-protection-government-property-protection-public-records-and>.

²¹ 44 U.S.C. § 2203(a).

²² See, e.g., H.R. Rep. No. 95-1487, 95th Cong. at 2 (PRA “establish[es] the public ownership of records created by . . . presidents and their staffs in the course of discharging their official duties.”).

²³ U.S. Dep't of Justice, Criminal Resources Manual, CRM 1663.

²⁴ *Id.*

²⁵ *Id.*

destruction of records[.]”²⁶ The offense is “a specific intent crime,” which “means that the defendant must act intentionally with knowledge that he is violating the law” and, according to at least one case, must “know that the documents involved are public records.”²⁷ The “statutory requirement of willfulness is satisfied if the accused acted intentionally, with knowledge that he was breaching the statute.”²⁸ The “essential element” of a section 2071 offense is “the specific intent to destroy them [papers or documents] as records of a public office; or, in other words, to obliterate or conceal them as the evidence of that which constitutes their value as public records, or to destroy or impair their legal effect or usefulness as a record of our governmental affairs.”²⁹

There is sparse legislative history to this and its predecessor statute. Courts applying this statute have described its purpose variously as “prevent[ing] any conduct which deprives the Government of the use of its documents, be it by concealment, destruction, or removal,”³⁰ and “to preserve the public records and papers intact from all kinds of spoliation, mutilation, or destruction.”³¹ Section 2071 has been “customarily employed where Government records have been mutilated or destroyed,” and in such cases the “essence of the offense charged” was “the rendering of information unavailable to the Government.”³² Given this broad construction and the statute’s underlying purpose, courts applying section 2071(a) have not attributed any special meaning to the statute’s “filed or deposited” requirement, finding it met where the documents in question were part of the “records of a public office.”³³

Relying on the statute’s “obvious purpose” of prohibiting “the impairment of sensitive government documents by those officials who have access to and control over them,” at least one court has construed section 2071(b) as applying not only to “custodians of records in the technical sense” but also those “officials who have access to and control over” the records.³⁴ Notably, two White House officials have been prosecuted under Section 2071 including for the destruction of presidential records.³⁵

Former President Trump also appears to have violated 18 U.S.C. § 2071. As outlined above, he has a well-documented and unprecedented practice of repeatedly ripping up his presidential records. The former President’s conduct clearly constitutes mutilation, which is

²⁶ *Id.*

²⁷ *Id.* citing *United States v. De Groat*, 30 F. 764, 765 (E.D. Mich. 1887).

²⁸ *United States v. Simpson*, 460 F.2d 515, 518 (9th Cir. 1972) (citation and quotation omitted); accord *United States v. North*, 708 F. Supp. 364, 368-69 & n.3 (D.D.C. 1988).

²⁹ *United States v. De Groat*, 30 F. at 765.

³⁰ *United States v. Rosner*, 352 F. Supp. 915, 919 (S.D.N.Y. 1972).

³¹ *United States v. De Groat*, 30 F. at 765; See *McInerney v. United States*, 143 F. 729, 730 (1st Cir. 1906) (describing the purpose in part as “to make it an offense to steal or destroy . . . any paper, document, or record filed or deposited in any of the public offices of the federal government; the purpose being to preserve them as evidence relating to things which concern the public and the government”).

³² *United States v. Rosner*, 352 F. Supp. at 920-21.

³³ *United States v. De Groat*, 30 F. at 765.

³⁴ *United States v. Poindexter*, 725 F. Supp. 13, 20 (D.D.C. 1989).

³⁵ See *United States v. North*, 708 F. Supp. at 368-69 & n.3; *United States v. Poindexter*, *supra* at 19-20 & n.7. In the *North* case the court rejected the defendant’s argument that presidential records were exempt from section 2071. 708 F. Supp. at 369 n.3.

defined as “to cut up or alter radically so as to make imperfect.”³⁶ Indeed, Meriam Webster dictionary’s definition of “mutilate” includes as an example “the child *mutilated* the book with his scissors.”³⁷ Moreover, as presidential records the mutilated documents were “records of a public office.”³⁸

Former President Trump’s document mutilation and destruction were far from isolated incidents. NARA staff apparently were “stunned at how many papers they received from the Trump administration that were ripped,” which they described as “unprecedented.”³⁹ The ripped up papers included “a range of official documents logged as going to the Oval Office or the White House residence,” and “spanned a range of topics, including conversations with foreign leaders[.]”⁴⁰ Documents NARA provided to the congressional committee investigating the January 6 insurrection included some that had been ripped up and taped back together. As records pertaining to an event that occurred years after White House news of the President’s unusual practice first surfaced in 2018,⁴¹ they evidence President Trump’s continued and willful mutilation of his presidential records. Indeed, his document destruction was so entrenched that two White House records management analysts were assigned the task of taping together the scraps of papers mutilated by President Trump.⁴²

President Trump was put on notice that this conduct violated the law in multiple ways and on multiple occasions, yet he persisted in destroying and mutilating presidential records of enormous historical value. In 2017, the Trump White House issued its own records memoranda—which applied to all White House staff, including the President—and made clear that “[t]he willful destruction or concealment of federal records is a federal crime.”⁴³ In 2018, public reporting about his unlawful records destruction practices first surfaced and included the fact that he was advised to stop ripping up his documents.⁴⁴ More recent reporting by the *Washington Post* confirms that during his tenure in office, his then-White House Counsel Donald McGahn and his first two chiefs of staff, Reince Priebus and John F. Kelly, warned President Trump that compliance with the PRA required him to preserve his documents.⁴⁵ Nevertheless, former President Trump “didn’t want a record of anything,” and “never stopped ripping things up.”⁴⁶

The former president was also put on notice of the unlawfulness of his actions by a lawsuit brought in 2020 by the National Security Archive, CREW, and others alleging that this and other of his recordkeeping practices violated the PRA. That complaint specifically cited President Trump’s practice of ripping up his presidential papers as evidence of his

³⁶ *Merriam-Webster*, “Mutilate,” <https://www.merriam-webster.com/dictionary/mutilate>.

³⁷ *Id.* (emphasis in original).

³⁸ President Trump’s White House Counsel conceded as much with the recordkeeping memoranda that advised staff that destruction of presidential records would violate 28 U.S.C. § 2071.

³⁹ Parker, Dawsey, Hamburger & Alemany, *Washington Post*, Feb. 5, 2022.

⁴⁰ *Id.*

⁴¹ Alemany, Dawsey, Gardner & Hamburger, *Washington Post*, Jan. 31, 2022.

⁴² Karni, *Politico*, June 10, 2018. *See also* Parker, Dawsey, Hamburger & Alemany, *Washington Post*, Feb. 5, 2022.

⁴³ Dawsey and Bender, *Politico*, Oct. 17, 2017.

⁴⁴ Karni, *Politico*, June 10, 2018.

⁴⁵ Parker, Dawsey, Hamburger & Alemany, *Washington Post*, Feb. 5, 2022.

⁴⁶ *Id.*

disregard for his PRA recordkeeping responsibilities.⁴⁷ That President Trump persisted in mutilating and destroying his records notwithstanding clear notice that such actions violated the PRA demonstrates his conduct was willful within the meaning of 18 U.S.C. § 2071.⁴⁸

Former President Trump similarly appears to have violated 18 U.S.C. § 2071(b), which specifically applies to custodians of records. The PRA imposed recordkeeping responsibilities directly on President Trump as the custodian of his own records. The statute, at 44 U.S.C. § 2203(a), expressly requires the president to “preserve[] and maintain[]” all of his records that “reflect the performance of the President’s constitutional, statutory, or other official or ceremonial duties.” Accordingly, by mutilating records over which he had custody former President Trump also appears to have violated 18 U.S.C. § 2071(b).

Conclusion

Revelations over the course of the past year have shed greater light on the role former President Trump played in seeking to overturn the results of a free and fair election. To ensure that such attacks on the foundation of our democracy are never repeated there must be full and public accounting of Trump’s role in the insurrection of January 6, 2021, and the roles of those who aided and abetted him. But without a full historical record, unimpeded by the former president’s willful destruction and mutilation of his presidential records, full accountability may escape us. Accordingly, we request that you investigate whether former President Trump violated criminal laws by willfully destroying and mutilating his presidential records while in office.

Sincerely,



Noah Bookbinder
President
Citizens for Responsibility and Ethics in
Washington



Thomas Blanton
Director
National Security Archive

⁴⁷ *National Security Archive v. Trump*, Civil No. 20-3500 KBJ (D.D.C.), Complaint, ¶ 56 (Dkt. 1 Dec. 7, 2020).

⁴⁸ See *Simpson*, 460 F.2d at 518.