



CITIZENS FOR  
RESPONSIBILITY &  
ETHICS IN WASHINGTON

August 12, 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 Destruction of Federal Records  
Concerning the January 6 Insurrection and Related Issues

Dear Attorney General Garland and Director Wray:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Department of Justice (“DOJ”) initiate a broad investigation into the destruction of federal records by agency officials involved in the response to the January 6th insurrection and attempts to overturn the 2020 presidential election. A growing body of evidence suggests a pattern of conduct in multiple agencies to destroy federal records bearing directly on the role agency officials may have played in the events of and surrounding January 6, 2021. The seriousness and extent of the problem requires a thorough investigation that DOJ is best qualified to conduct.

Last month, public reporting revealed that the U.S. Secret Service had erased many text messages from January 5 and 6, 2021, notwithstanding a request from the Department of Homeland Security (“DHS”) Inspector General Joseph V. Cuffari for copies of the text messages.<sup>1</sup> The Secret Service asserted in response to this revelation that data on “some phones” was lost as a result of a “reset” of “its mobile phones to factory settings as part of a pre-planned, three-month system migration.”<sup>2</sup> It is our understanding that prior to any

---

<sup>1</sup> Maria Sacchetti and Carol D. Leonnig, Secret Service erased texts from Jan. 5 and 6, 2021, official says, *Washington Post*, July 14, 2022, <https://www.washingtonpost.com/national-security/2022/07/14/secret-service-texts-erased/> (quoting letter from Inspector General Cuffari). See also Ken Klippenstein, Secret Service Deleted Jan. 6 Text Messages After Oversight Officials Requested Them, *The Intercept*, July 14, 2022, <https://theintercept.com/2022/07/14/jan-6-texts-deleted-secret-service/>; Luke Broadwater, Secret Service Text Messages Around Jan. 6 Were Erased, Inspector General Says, *New York Times*, July 14, 2022, <https://www.nytimes.com/2022/07/14/us/politics/secret-service-text-messages-jan-6.html>.

<sup>2</sup> Statement of Anthony Guglielmi, Chief of Communications for the United States Secret Service on Accusations of Deleted Text Messages From DHS Inspector General, July 14, 2022,

migration, agency information technology staff would have advised Secret Service employees to back-up email and text messages to ensure their preservation. This apparently was not done, however, leading to the likely loss of critical text messages from a key period, a problem exacerbated by the months that Inspector General Cuffari waited before informing Congress about the deleted federal records.<sup>3</sup> The failure of the Secret Service to preserve critical forensic evidence is especially perplexing given its mission to “investigate complex cyber-enabled financial crimes.”<sup>4</sup>

Subsequent reporting revealed that text messages of then-acting Homeland Security Secretary Chad Wolf and then-acting Deputy Secretary Ken Cuccinelli also were deleted “for a key period leading up to the Jan. 6 attack on the Capitol[.]”<sup>5</sup> Of note, as an agency head, Acting Secretary Wolf bore the responsibility under the FRA to maintain an active records management program that provides for effective controls over the creation and use of federal records. 44 U.S.C. § 3102. As with the deleted Secret Service text messages, DHS’s Inspector General learned of these additional “lost” text messages months ago but failed to notify either Congress or DHS leadership.<sup>6</sup>

The problem of destroyed text messages extends beyond DHS. More recent reporting has revealed that the Defense Department wiped January 6 and other text messages from the phones of key Pentagon officials, including former acting Secretary of Defense Chris Miller, former chief of staff Kash Patel, and former Secretary of the Army Ryan McCarthy, without preserving text messages sent from those phones.<sup>7</sup> The erasures apparently were done pursuant to agency policy to wipe the phones of departing employees.<sup>8</sup> No explanation has yet been offered publicly as to why text messages were not preserved prior to their destruction.

These agencies and individuals played key roles before, during, and after the January 6th insurrection, as reinforced by testimony provided the Select Committee to Investigate the January 6th Attack on the United States Capitol. Their failure to comply with their record-keeping responsibilities means that critical evidence directly relevant to pending congressional and criminal investigations may be irretrievably lost. Absent intervention by DOJ, we risk the loss of even more records and a diminished likelihood that any deleted records can be successfully restored.

---

<https://www.secretservice.gov/newsroom/releases/2022/07/statement-anthony-guglielmi-chief-communications-united-states-secret>.

<sup>3</sup> Maria Sacchetti and Carol D. Leonnig, [Watchdog launches criminal probe over missing Secret Service messages](https://www.washingtonpost.com/national-security/2022/07/21/oig-secret-service-texts/), *Washington Post*, July 21, 2022, <https://www.washingtonpost.com/national-security/2022/07/21/oig-secret-service-texts/>.

<sup>4</sup> U.S. Secret Service, Cyber Investigations, <https://www.secretservice.gov/investigation/cyber>.

<sup>5</sup> Carol D. Leonnig and Maria Sacchetti, [Jan. 6 texts missing for Trump Homeland Security’s Wolf and Cuccinelli](https://www.washingtonpost.com/nation/2022/07/28/homeland-security-texts-jan6/), *Washington Post*, July 28, 2022, <https://www.washingtonpost.com/nation/2022/07/28/homeland-security-texts-jan6/>.

<sup>6</sup> *Id.*

<sup>7</sup> Tierney Sneed and Zachary Cohen, [First on CNN: Jan. 6 text messages wiped from phones of key Trump Pentagon officials](https://www.cnn.com/2022/08/02/politics/defense-department-missing-january-6-texts/index.html), *CNN*, Aug. 2, 2022, <https://www.cnn.com/2022/08/02/politics/defense-department-missing-january-6-texts/index.html>; Karoun Demirjian and Jacqueline Alemany, [Phones of top Pentagon officials were wiped of Jan. 6 messages](https://www.washingtonpost.com/national-security/2022/08/02/pentagon-jan-6-phones-wiped/), *Washington Post*, Aug. 2, 2022, <https://www.washingtonpost.com/national-security/2022/08/02/pentagon-jan-6-phones-wiped/>.

<sup>8</sup> *Id.*

Without question the deleted text messages were federal records under the definition adopted by the 2014 amendments to the Federal Records Act (“FRA”), which defines the term “electronic messages” to mean “electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.” 44 U.S.C. § 2911. Any communications from agency officials concerning the events of January 6 and other efforts to overturn the results of a valid presidential election pertain to their agencies’ “functions, policies, decisions, procedures and essential transactions,” 44 U.S.C. § 3101, and therefore must be preserved. *Id.*

As we outlined in our July 18, 2022 letter to you requesting an investigation of the Secret Service for violating federal law by destroying records, such destruction implicates two criminal statutes. First, 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,” and 18 U.S.C. § 2071(b), prohibits the custodian of any record from concealing, removing, mutilating, obliterating, falsifying, or destroying it. Second, 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 more than 10 years and for property that does not exceed \$1,000 a fine and/or imprisonment for not more than one year.

The destruction of federal records by the Secret Service appears to fall within the reach of these statutes and, at a minimum, warrants a full investigation by DOJ. We now know, however, that the problem extends beyond the Secret Service. Given its possible scope and the resources necessary to ascertain the universe of destroyed records and the reasons for their destruction, DOJ is best positioned to conduct a government-wide investigation. Moreover, experience illustrates the problem of leaving the matter with individual agencies to investigate. At DHS, Inspector General Cuffari has launched a criminal probe and instructed the Secret Service to cease its own search for deleted text messages.<sup>9</sup> Yet his own actions have been called into question, specifically his failure to follow up with the Secret Service or senior agency leadership when he first learned that texts had been deleted.<sup>10</sup>

For all these reasons, it is imperative that DOJ immediately commence a broad investigation that focuses on relevant officials at federal agencies who were involved in responding to the January 6th insurrection and attempts to overturn the 2020 election. Finally, we urge DOJ to put in place preservation orders at every agency to guard against the further loss of critical documents.

### **Conclusion**

The violent insurrection of January 6 and the sustained efforts by a former president to overturn the results of a valid election have seriously eroded public trust in government and placed our democracy on shaky ground. To restore that credibility there must be full accountability for those who perpetrated acts of violence and insurrection. But such accountability is not possible without a full factual record. Accordingly, we respectfully

---

<sup>9</sup> Saccheetti & Leonnig, *Washington Post*, July 21, 2022.

<sup>10</sup> *Id.*

August 12, 2022

Page 4

request that you launch an immediate and broad investigation into the extent to which federal agency officials willfully destroyed federal records in violation of federal criminal laws.

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam Rappaport". The signature is fluid and cursive, with the first name "Adam" and last name "Rappaport" clearly distinguishable.

Adam J. Rappaport  
General Counsel