UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE APPLICATION OF USA FOR ORDER PURSUANT TO FED. R. CRIM. P. 6(E)(3)(e)(i) FOR LIMITED DISCLOSURE OF MATTER OCCURRING BEFORE A GRAND JURY	**NO. 22-GJ-_____** **FILED UNDER SEAL AND *EX PARTE***

EMERGENCY APPLICATION FOR ORDER PURSUANT TO FED. R. CRIM. P. 6(E)(3)(e)(i) FOR DISCLOSURE OF MATTER OCCURRING BEFORE A GRAND JURY

This application asks the Court to authorize the government to disclose aspects of a grand jury investigation occurring in this district in connection with a judicial proceeding occurring in the Southern District of Florida, *Trump v. United States of America*, No. 9:22-cv-81294-AMC (the "SDFL Matter"). The government respectfully requests emergency consideration of this application in light of the short time period provided for the government's response to an order of the district court overseeing the SDFL Matter. The court overseeing that matter entered an order on Saturday, August 27, 2022, requiring the government to respond to a pending motion by *tomorrow*, Tuesday, August 30, 2022, in advance of a hearing set for Thursday, September 1, 2022.

The petitioner in the SDFL Matter is the former President of the United States ("FPOTUS"), whose post-presidential office received several months ago a grand jury subpoena arising out of an investigation in this district. Through counsel, FPOTUS has voluntarily disclosed the existence of that subpoena, as well as certain aspects of his partial response thereto, in his motion in the SDFL Matter (SDFL Matter Dkt. No. 1, the "SDFL Motion"). In order to meaningfully respond with relevant facts to both the SDFL Motion and that district court's August 27 order now that the SDFL Motion has disclosed the existence of the grand jury subpoena, the

government needs to be able to acknowledge the existence of the subpoena and some of the interactions between government attorneys and FPOTUS's representatives that occurred as a result of the subpoena. Although FPOTUS is not bound by Rule 6(e)'s grand jury secrecy strictures as the recipient of a subpoena without a non-disclosure order, the government, of course, is. However, in light of the inaccurate or incomplete facts asserted in the SDFL Motion, and as discussed more fully below, the limited disclosure the Government is seeking here is "needed to avoid a possible injustice." *In re Sealed Case*, 801 F.2d 1379, 1381 (D.C. Cir. 1986). Thus, the government petitions this Court pursuant to Rule 6(e)(3)(E)(i) for an order authorizing disclosure of grand jury material "in connection with a judicial proceeding."

BACKGROUND

This matter arises out of a criminal investigation into the improper removal and storage of classified information in unauthorized spaces, as well as the unlawful concealment or removal of government records. The investigation began as a referral from the United States National Archives and Records Administration ("NARA"), sent to the Department of Justice on February 9, 2022. That referral indicated that NARA had been provided fifteen boxes of material from FPOTUS's residence at a club known as "Mar-a-Lago" in Palm Beach, Florida. In its referral, NARA reported that the boxes contained highly classified government documents intermingled with other records.

On February 18, 2022, the Archivist of the United States, chief administrator for NARA, stated in a letter to Congress's Committee on Oversight and Reform Chairwoman, "NARA had ongoing communications with the representatives of former President Trump throughout 2021, which resulted in the transfer of 15 boxes to NARA in January 2022 . . . . NARA has identified items marked as classified national security information within the boxes." The letter also stated that, "[b]ecause NARA identified classified information in the boxes, NARA staff has been in

communication with the Department of Justice." The letter was made publicly available at: https://www.archives.gov/files/foia/ferriero-response-to-02.09.2022-maloneyletter.02.18.2022.pdf.

After reviewing the NARA referral, the FBI opened an investigation to, among other things, determine how documents with classification markings and other records were removed from the White House (or any other authorized location(s) for the storage of classified information) and came to be stored at the Mar-a-Lago club, determine whether any additional classified documents and records may have been stored in an unauthorized location at the club or elsewhere, and identify any person(s) who may have removed or retained classified information without authorization and/or in unauthorized locations.

Thereafter, the Department of Justice opened a grand jury investigation in this district. As part of the investigation, the grand jury issued a subpoena on May 11, 2022, directed to the custodian of records for the Office of Donald J. Trump, requesting the following materials:

> Any and all documents or writings in the custody or control of Donald J. Trump and/or the Office of Donald J. Trump bearing classification markings, including but not limited to the following: Top Secret, Secret, Confidential, Top Secret/SI-G/NOFORN/ORCON, Top Secret/SI-G/NOFORN, Top Secret/HCS-O/NOFORN/ORCON, Top Secret/HCS-O/NOFORN, Top Secret/HCS-P/NOFORN/ORCON, Top Secret/HCS-P/NOFORN, Top Secret/TK/NOFORN/ORCON, Top Secret/TK/NOFORN, Secret/NOFORN, Confidential/NOFORN, TS, TS/SAP, TS/SI-G/NF/OC, TS/SI-G/NF, TS/HCS-O/NF/OC, TS/HCS-O/NF, TS/HCS-P/NF/OC, TS/HCS-P/NF, TS/HCS-P/SI-G, TS/HCS-P/SI/TK, TS/TK/NF/OC, TS/TK/NF, S/NF, S/FRD, S/NATO, S/SI, C, and C/NF.

See Attachment A hereto (Subpoena).[1]

[1] In an exchange of correspondence concerning an extension of time to respond to the subpoena, counsel for FPOTUS sent a letter to the Department of Justice asking the Department to consider a few "principles," including the claim that a President has absolute authority to declassify documents (although counsel did not actually assert that FPOTUS had done so). In that letter, FPOTUS's counsel requested that "DOJ provide this letter to any judicial officer who is asked to

On June 2, 2022, following discussions in which the government offered an extension of time for a response until June 7, counsel for FPOTUS requested that FBI agents meet him the following day at the Mar-a-Lago club in order to pick up documents responsive to the subpoena. On June 3, 2022, three FBI agents and a Department of Justice attorney went to the Mar-a-Lago club to accept receipt of the materials. During that visit, counsel for FPOTUS and another person who was identified as a custodian of records provided the FBI with a single double-wrapped Redweld envelope containing 38 documents bearing classification markings, and counsel for FPOTUS indicated that the documents had come from boxes inside of a storage room at Mar-a-Lago. The custodian of records provided a certification letter, signed by her, which stated that a diligent search had been conducted and that all responsive documents had been provided:

> Based upon the information that has been provided to me, I am authorized to certify, on behalf of the Office of Donald J. Trump, the following: a. A diligent search was conducted of the boxes that were moved from the White House to Florida; b. This search was conducted after receipt of the subpoena, in order to locate any and all documents that are responsive to the subpoena; c. Any and all responsive documents accompany this certification; and d. No copy, written notation, or reproduction of any kind was retained as to any responsive document.

See Attachment C hereto (Certification).

During that meeting, counsel for FPOTUS stated that he had been advised that all records from the White House were stored in one location at Mar-a-Lago, a basement storage room, that the boxes in the storage room were the "remaining repository" of records from the White House, and he additionally represented to government personnel his understanding that there were no records in any other space at Mar-a-Lago. The government personnel asked to see the storage

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rule on any motion pertaining to this investigation, or on any application made in connection with any investigative request concerning this investigation." *See* Attachment B hereto (Corcoran Letter of May 25, 2022). The government provided that letter to the magistrate judge in connection with seeking the search warrant that was ultimately executed on August 8, 2022.

room during that visit and were permitted to briefly view it, but they were explicitly prohibited from opening any of the approximately fifty to fifty-five boxes that they observed.

The government's investigation continued thereafter and developed evidence that the response to the May 11 grand jury subpoena was incomplete, including evidence that classified documents, as well as other Presidential records, remained at Mar-a-Lago. The government also developed evidence that government records may have been concealed and removed and that efforts may have been taken to obstruct the government's investigation. [redacted]

Accordingly, the government submitted an affidavit in support of a search and seizure warrant to a magistrate judge in the Southern District of Florida establishing probable cause that additional documents bearing classification markings remained at the Mar-a-Lago club—in the basement storage room and elsewhere—despite the representations of FPOTUS's counsel and the custodian of records. The magistrate signed a search warrant on August 5, 2022, and the FBI executed the judicially authorized search at the Mar-a-Lago club on August 8, 2022. The search resulted in the recovery of over one hundred documents (amounting to hundreds of pages) bearing classification markings, both from the basement storage room and elsewhere on the property, including documents at the Top Secret/Sensitive Compartmented Information level, some of which

bore additional compartment/dissemination control markings, and some of which had classified cover sheets.

Immediately following the conclusion of the execution of the search warrant on August 8, 2022, FPOTUS publicly announced that the search had occurred, triggering extensive news coverage. *See, e.g., F.B.I. Searches Trump's Florida Home, Signaling Escalation of Inquiries*, New York Times (Aug. 8, 2022), available at https://www.nytimes.com/2022/08/08/us/politics/trump-fbi-mar-a-lago.html (last accessed August 28, 2022) ("Former President Donald J. Trump said on Monday that the F.B.I. had searched his Palm Beach, Fla. home . . . .").

Two weeks later, on August 22, 2022, FPOTUS filed the SDFL Motion, a "Motion for Judicial Oversight and Additional Relief," commencing the SDFL Matter in the Southern District of Florida. *See Trump v. United States of America*, No. 9:22-cv-81294-AMC.[2] Appearing to intend (based on the civil cover sheet) that it be construed under the umbrella of a Fed. R. Crim. P. 41(g) motion for return of property, the SDFL Motion seeks the appointment of a special master in relation to the August 8, 2022 search, an injunction against further review of the seized materials, and the return of any seized items outside of the scope of the search, among other relief. *See* SDFL Matter Dkt. No. 1 at 1.

[2] In a separate proceeding before the magistrate judge, the Department moved to unseal the search warrant and certain related materials, and a number of intervenors moved to unseal (among other materials) the affidavit supporting the search warrant. Pursuant to the court's order, the Department submitted a redacted version of the affidavit and a memorandum explaining the reasons for the redactions. Among the reasons for its redactions, the Department noted that certain materials were required to be kept under seal pursuant to Fed. R. Crim. P. 6(e). *See* United States' Sealed, *Ex Parte* Memorandum of Law Regarding Proposed Redactions at 4, *In re Sealed Search Warrant*, No. 22-MJ-8332, ECF No. 98 (S.D. Fla. Aug. 25, 2022). The court subsequently unsealed the affidavit with the Department's redactions, as well as a redacted version of the Department's legal memorandum.

The day after the SDFL Matter was filed, that court ordered that the SDFL Motion be supplemented with additional elaboration of "(1) the asserted basis for the exercise of [that] Court's jurisdiction . . . ; (2) the framework applicable to the exercise of such jurisdiction; (3) the precise relief sought, including any request for injunctive relief . . . ; (4) the effect, if any, of the proceeding before Magistrate Judge Bruce E. Reinhart [related to requests to unseal portions of the search warrant documents]; and (5) the status of [FPOTUS's] efforts to perfect service on Defendant." *See* SDFL Matter, Dkt. No. 10, Paperless Order (Aug. 23, 2022). On August 26, 2022, FPOTUS filed a supplemental filing responding to the court's order. *See id.* Dkt. No. 28.

The initiating motion of the SDFL Matter revealed the existence of a grand jury investigation by specifically referencing the grand jury subpoena that had been served on FPOTUS's post-presidential office (as well as a grand jury subpoena served on the Trump Organization for surveillance video footage), as well as the response thereto and interactions between FPOTUS counsel and government personnel in relation to the subpoena response. The SDFL Motion asserts:

> On May 11, 2022, [FPOTUS] voluntarily accepted service of a grand jury subpoena addressed to the custodian of records for the Office of Donald J. Trump, seeking documents bearing classification markings. President Trump determined that a search for documents bearing classification markings should be conducted—even if the marked documents had been declassified[3]—and his staff conducted a diligent search of the boxes that had been moved from the White House to Florida. On June 2, 2022, President Trump, through counsel, invited the FBI to come to Mar-a-Lago to retrieve responsive documents.
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> The next day, on June 3, 2022, Jay Bratt, Chief of the Counterintelligence and Export Control Section in the DOJ's National Security Division, came to Mar-a-Lago, accompanied by three FBI agents. President Trump greeted them in the dining room at Mar-a-Lago. There were two other attendees: the person designated as the custodian of records for the Office of Donald J. Trump, and

[3] The government notes that the subpoena sought documents "bearing classification markings," and therefore a complete response would not turn on whether or not responsive documents had been purportedly declassified.

> counsel for President Trump. Before leaving the group, President Trump's last words to Mr. Bratt and the FBI agents were as follows: "Whatever you need, just let us know."
>
> Responsive documents were provided to the FBI agents. Mr. Bratt asked to inspect a storage room. Counsel for President Trump advised the group that President Trump had authorized him to take the group to that room. The group proceeded to the storage room, escorted by two Secret Service agents. The storage room contained boxes, many containing the clothing and personal items of President Trump and the First Lady. When their inspection was completed, the group left the area.
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> Once back in the dining room, one of the FBI agents said, "Thank you. You did not need to show us the storage room, but we appreciate it. Now it all makes sense." Counsel for President Trump then closed the interaction and advised the Government officials that they should contact him with any further needs on the matter.
>
> On June 8, 2022, Mr. Bratt wrote to counsel for President Trump. His letter requested, in pertinent part, that the storage room be secured. In response, President Trump directed his staff to place a second lock on the door to the storage room, and one was added.
>
> In the days that followed, President Trump continued to assist the Government. For instance, members of his personal and household staff were made available for voluntary interviews by the FBI. On June 22, 2022, the Government sent a subpoena to the Custodian of Records for the Trump Organization seeking footage from surveillance cameras at Mar-a-Lago. At President Trump's direction, service of that subpoena was voluntarily accepted, and responsive video footage was provided to the government.

SDFL Matter, Dkt. No. 1 at 5-6.[4]

The SDFL Motion goes on to implicitly reference the grand jury proceedings by emphasizing what he contends is the "voluntary assistance provided by President Trump," *id.* at 6, and the "expansive assistance that President Trump had provided [in responding to the subpoena]," *id.* at 7.

[4] Because FPOTUS's filing also reveals the fact of a subpoena for surveillance camera footage, which was issued by a grand jury empaneled in this district, the government also seeks this Court's approval pursuant to Rule 6(e)(3)(E)(i) to be able to disclose the existence of that subpoena as well, if necessary to respond to assertions made by FPOTUS in the SDFL Matter.

This recitation of events related to the grand jury subpoena from this district is incomplete or inaccurate in several respects:

- Although the SDFL Motion indicates that FPOTUS directed his staff to conduct a review of boxes moved "from the White House to Florida," the subpoena was not so limited, instead seeking "[a]ny and all documents or writings in the custody or control of Donald J. Trump and/or the Office of Donald J. Trump bearing classification markings," without limitation to where they were stored. *See* Attachment A hereto (Subpoena dated May 11, 2022).

- While the SDFL Motion asserts that FPOTUS's representatives conducted a "diligent search" and mentioned a custodian of records as being present on June 3, 2022, it does not state that a custodian of records provided a signed certification to the government asserting, *inter alia*, that "[a]ny and all responsive documents," *i.e.*, documents bearing classification markings, had been provided. *See* Attachment C hereto (Certification Letter dated June 3, 2022). Contrary to that assertion, when the FBI conducted its search at Mar-a-Lago on August 8, it found over one hundred total documents bearing classification markings, from both the storage room and the space FPOTUS uses as an office.

- Although FPOTUS explained that the government officials present on June 3, 2022, requested to see a storage room at the property, his recitation implies that they were permitted to "inspect" the room. In fact, government personnel were allowed only a brief view of the storage room and were expressly told that they could not open any boxes to review their contents.

Following the submission of FPOTUS's supplemental filing in the SDFL Matter on Friday, August 26, the court overseeing that matter entered an order on Saturday, August 27, indicating the court's "preliminary intent to appoint a special master." The court scheduled a hearing for September 1, 2022, and ordered the government to file a response to FPOTUS's motion on or before Tuesday, August 30, 2022. Among the topics that the government is required to address are the possible appointment, duties, and responsibilities of a special master in relation to the items seized on August 8, 2022.

ARGUMENT

I. Legal Standards

Federal Rule of Criminal Procedure 6(e)(3)(E)(i) provides that a "court may authorize disclosure—at a time, in a manner, and subject to any other conditions that it directs—of a grand-jury matter . . . preliminary to or in connection with a judicial proceeding." And any petition to disclose a grand jury matter under Rule 6(e)(3)(E)(i) "must be filed in the district where the grand jury convened." Fed. R. Crim. P. 6(e)(3)(F). As the rule further provides,

> (F) [. . .] Unless the hearing is ex parte—as it may be when the government is the petitioner—the petitioner must serve the petition on, and the court must afford a reasonable opportunity to appear and be heard to:
>
> (i) an attorney for the government;
> (ii) the parties to the judicial proceeding; and
> (iii) any other person whom the court may designate.
>
> (G) If the petition to disclose arises out of a judicial proceeding in another district, the petitioned court must transfer the petition to the other court unless the petitioned court can reasonably determine whether disclosure is proper.

As this Court has explained, disclosure under the Rule 6(e)(3)(E)(i) exception is proper when three requirements are satisfied: the party seeking disclosure must identify a relevant "judicial proceeding;" the party must establish that the requested disclosure is "in connection with" that proceeding; and the requesting party must show a "particularized need" for the grand jury material. *See In re Capitol Breach Grand Jury Investigations*, 339 F.R.D. 1, 23 (D.D.C. 2021) (internal citations omitted).

To establish "particularized need," in turn, a party must show that "(1) the requested materials are 'needed to avoid a possible injustice in another judicial proceeding;' (2) the need for disclosure is greater than the need for continued secrecy; and (3) the request is structured to cover only material so needed." *Id.* at 24 (quoting *In re Sealed Case*, 801 F.2d 1379, 1381 (D.C. Cir.

1986)). Determinations of "particularized need" are committed to the discretion of the district court. *See Douglas Oil v. Petrol Stops Nw.*, 441 U.S. 211, 228 (1979). As the Supreme Court has explained, moreover, a district court exercising its discretion in deciding whether to authorize disclosure under Rule 6(e)(3)(E)(i) should engage in a balancing exercise, bearing in mind that "as the considerations justifying secrecy become less relevant, a party asserting a need for grand jury [material] will have a lesser burden." *Id.* at 223.[5]

With respect to subsection (G) and the appropriate venue for a Rule 6(e)(3)(E)(i) petition, this Court has emphasized that transfer of such a petition is "not appropriate when 'the petitioned court can reasonably determine whether disclosure is proper.'" *In Matter of Grand Jury Investigation*, No. 18-gj-00008 (BAH), 2019 WL 13160140, *3 (Oct. 30, 2019) (quoting Rule 6(e)(3)(G)). This rule, the Court explained, reflects a "preference for having the disclosure issue decided by the grand jury court," *id.* (quoting Fed. R. Crim. P. 6, Advisory Committee Notes, 1983 Amendment, Note to Subsection (e)(3)(D)), and that transfer is "disfavored" where the grand jury court is able to "(1) find that the disclosure is being sought 'preliminary to or in connection with a judicial proceeding,"... and (2) weigh the relative interests of the [parties] in disclosure or continued grand-jury secrecy from the grand jury witness," *id.* (quoting Fed. R. Crim. P. 6(e)(3)(E)(i)). Subpart (F) of the rule also makes clear that a grand jury court "may" proceed *ex parte* when the government is the petitioner.

[5] The D.C. Circuit and the Supreme Court have explained that the interests motivating grand jury secrecy consist of "(1) preserving the willingness and candor of witnesses called before the grand jury; (2) not alerting the target of an investigation who might otherwise flee or interfere with the grand jury; and (3) preserving the rights of a suspect who might later be exonerated." *McKeever v. Barr*, 920 F.3d 842, 844 (D.C. Cir. 2019) (citing *Douglas Oil*, 441 U.S. at 219).

II. This Court Should Permit the Proposed Disclosure of Grand Jury Material

The government seeks this Court's authorization to disclose the existence of the May 11, 2022 subpoena, as well as any correspondence related to it (such as a letter dated May 11, 2022, attached hereto as Attachment D); the in-person interactions on June 3, 2022, when government personnel visited the Mar-a-Lago club to retrieve FPOTUS's subpoena response; the factual details about the subpoena response and the materials produced; and the signed certification asserting compliance with the subpoena (Attachment C).

Such references are "discrete[] and limited[]," *Douglas Oil*, 441 U.S. at 221, and merely allow the government to reference the grand jury subpoena and the correspondence and in-person interactions related to it, all of which have been revealed in the SDFL Motion. *See* SDFL Matter Dkt. No. 1 at 5-6. Although the government does intend to provide some clarifying detail beyond what has been asserted in the SDFL Motion—such as the fact that government personnel were not permitted to "inspect" the contents of the relevant storage room at Mar-a-Lago and that a document custodian provided a certification that "any and all" documents bearing classification markings had been provided—those details do not reveal any matters occurring before the grand jury beyond what has already been revealed in the SDFL Matter, insofar as they do not reveal the existence of any subpoena, testimony, or investigation not already made public.

A. The Government's Pending Response to the SDFL Matter Presents a Particularized Need to Disclose This Limited Grand Jury Matter

To permit this limited disclosure would be entirely consistent with the relevant legal precedents. As this Court explained in *Capitol Breach*, a particularized need for disclosure of a grand jury matter requires a showing that "(1) the requested materials are needed to avoid a possible injustice in another judicial proceeding; (2) the need for disclosure is greater than the need for continued secrecy; and (3) the request is structured to cover only material so needed." 339

F.R.D. at 24 (internal quotation marks and citation omitted). Here, the "requested material[]" from the grand jury is a subpoena already revealed in the SDFL Motion, as well as factual detail related to FPOTUS's response and the visit by government personnel to Mar-a-Lago that the SDFL Motion has also detailed. And the government's purpose in seeking to disclose them stems from its need to respond to a court order in the SDFL Matter that itself necessarily requires the government to discuss some of the factual detail—including the insufficient and partial subpoena response and further evidence developed after the government's receipt of the subpoena response—leading to the execution of the search warrant. To require the government to maintain secrecy in the subpoena as it litigates the SDFL Matter, while counsel for FPOTUS are permitted to discuss it, would create a significant risk that the judge hearing that matter would be left without the full context and factual detail relevant to both sides' arguments, presenting just the kind of "possible injustice" that justifies a 6(e)(3)(E)(i) disclosure. *See In re App. of Comm. on Judiciary, U.S. House of Representatives, for an Order Authorizing the Release of Certain Grand Jury Materials*, 414 F. Supp. 3d 129, 177-78 (D.D.C. 2019) (explaining that within the context of 6(e)(3)(E)(i), disclosure can be appropriate when necessary to avoid misleading a trier of fact) (vacated as moot by *Department of Justice v. House Comm. on the Judiciary*, 142 S.Ct. 46 (2021)).

The appropriateness of disclosure here is further confirmed in the context of the rationales for grand jury secrecy articulated by the D.C. Circuit in *McKeever v. Barr*, 920 F.3d 842 (D.C. Cir. 2019). As that court explained, the interests motivating grand jury secrecy consist of "(1) preserving the willingness and candor of witnesses called before the grand jury; (2) not alerting the target of an investigation who might otherwise flee or interfere with the grand jury; and (3) preserving the rights of a suspect who might later be exonerated." *Id.* at 844. Here, there is little risk of undermining the willingness and candor of witnesses called before the grand jury,

because the government is only seeking to discuss what a recipient of a subpoena has himself chosen to reveal. Nor, for similar reasons, are the second or third *McKeever* interests threatened: again, the recipient of the subpoena, is the post-presidential office of FPOTUS, and the SDFL Motion has already revealed that subpoena and select facts related to it.[6]

B. Disclosure is Also Appropriate Because FPOTUS's Public Disclosure of the Subpoena Has Lifted Its 6(e) Protections

The limited disclosure sought here also accords with D.C. Circuit precedent related to already-disclosed materials. As that court has explained, "Rule 6(e)(6) requires that '[r]ecords, orders, and subpoenas relating to grand-jury proceedings' remain sealed only 'to the extent and as long as necessary to prevent the unauthorized disclosure' of such matters." *In re Grand Jury Subpoena, Judith Miller*, 493 F.3d 152, 154 (D.C. Cir. 2007) ("*Miller II*") (quoting *In re Grand Jury Subpoena, Judith Miller*, 438 F.3d 1138, 1140 (D.C. Cir. 2006) ("*Miller I*")). In other words, "grand jury secrecy is not unyielding when there is no secrecy left to protect." *Id.* (internal quotation marks and citation omitted). *See also id.* ("[W]hen once-secret grand jury material becomes 'sufficiently widely known,' it may 'los[e] its character as Rule 6(e) material.'") (quoting *In re North*, 16 F.3d 1234 (D.C. Cir. 1994)); *In re Sealed Case No. 99-3091*, 192 F.3d 995, 1004-05 (D.C. Cir. 1999) (holding that where former President Clinton "went on national television on the day of his testimony to reveal [the] fact [of his testimony]," his status as a witness was "widespread public knowledge" and that disclosure of his identity did not establish a prima facie Rule 6(e) violation).

Moreover, this kind of permission for disclosure is entirely appropriate where the recipient of a grand jury subpoena himself reveals the grand jury matter. As the *Miller II* court explained,

[6] As noted above, the SDFL Motion also reveals the existence of a subpoena for surveillance camera footage at Mar-a-Lago.

while "not every public disclosure waives Rule 6(e) protections, one can safely assume that the 'cat is out of the bag' when a grand jury witness" makes public his role vis-à-vis the grand jury. *Miller II*, 493 F.3d at 154-55. *See also In re Motions of Dow Jones & Co.*, 142 F.3d 496, 505 (D.C. Cir. 1998) (explaining that a grand jury subpoena had been revealed and lost its 6(e) character because the witness's attorney "virtually proclaimed from the rooftops that his client had been subpoenaed to testify before the grand jury").

III. Sealing

Because the government seeks disclosure of a grand jury matter, it requests that this matter be kept under seal pursuant to Fed. R. Crim. P. 6(e)(6) unless and until the Court grants the government's motion for disclosure. Should the Court grant the motion for disclosure, the government does not object to the unsealing of this memorandum in some part, but respectfully requests the opportunity to propose redactions to this application and the attachments hereto both to protect personal identifying information, and to protect details about the government's investigation that have not yet become public, depending on what the government needs to reveal in order to provide a full response in its filings and at the upcoming hearing in the SDFL Matter. [7]

CONCLUSION

For the foregoing reasons, the Court should grant the government's application for disclosure of a matter occurring before a grand jury by permitting the government to disclose, in the SDFL Matter, the existence of the May 11, 2022 subpoena, the response thereto, and the course

[7] The government has provided a certain level of investigative detail in this application for this Court's context, but does not presently intend to reveal it publicly in the SDFL matter unless required to provide a full record in front of that court. Accordingly, it may seek to redact some of the information about its investigation that has not been publicly revealed should proceedings in this matter be unsealed.

of correspondence and in-person consultation stemming from it, as well as the existence of the subpoena for video surveillance footage.

August 29, 2022

Respectfully submitted,

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