

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**PETER K. NAVARRO,**

**Defendant.**

**Case No. 22-cv-2292 (CKK/GMH)**

**ORDER**

This case concerns whether the defendant, Peter Navarro, a former employee of the White House in the Executive Office of the President, is unlawfully withholding documents that constitute “Presidential records” under the Presidential Records Act (“PRA”) of 1978, 44 U.S.C. §§ 2201–2209, and are therefore property of the United States. On April 9, 2024, the Court made a referral to the undersigned “to conduct an *in camera* review of the documents in Defendant’s possession, custody, or control that may be Presidential records as that term is defined by the Presidential Records Act . . . and to issue a Report and Recommendation recommending a disposition as to those records.” ECF No. 43 at 1. The referral also authorized the undersigned “to conduct any proceedings and issue any orders as may be appropriate to aid in consideration of the issues before him, including but not limited to ordering discovery as authorized by the Federal Rules of Civil Procedure, taking testimony under oath, requiring additional briefing, and scheduling.” *Id.* at 2.

The undersigned assumes familiarity with the procedural history of this case, which can be reviewed in the Report and Recommendation filed contemporaneously with this Order. As explained therein, after *in camera* review of the documents provided to the undersigned’s chambers

on May 31, 2024, the undersigned has recommended that the Court find that 538 of these documents are not Presidential records. As for the remaining 354 documents, the undersigned will require additional proceedings before making a recommendation to the Court.

As the Court has noted, under the PRA, “a Presidential record is a record generated by or received by a covered employee in the course of assisting with the discharge of the President’s official duties.” *United States v. Navarro*, 664 F. Supp. 3d 48, 50–51 (D.D.C. 2023), *aff’d*, No. 23-5062, 2024 WL 1364354 (D.C. Cir. Apr. 1, 2024); *see also* 4 U.S.C. § 2201(2). The scope of that definition is “very broad since a great number of what might ordinarily be construed as one’s private activities are, because of the nature of the presidency, considered to be of public nature, i.e., they effect the discharge of [the President’s] official or ceremonial duties.” *Am. Hist. Ass’n v. Peterson*, 876 F. Supp. 1300, 1307 (D.D.C. 1995) (quoting H.R. No. 95-1487, 95th Cong., 2d Sess. §§ 11–12, *reprinted in* 1978 U.S.C.C.A.N. 5732, 5742–43). However, the PRA expressly excludes from the definition “personal records,” which are “all documentary materials, or any reasonably segregable portion thereof, of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President.” 44 U.S.C § 2201(3). Such “personal records” include “diaries, journals, or other personal notes serving as the[ir] functional equivalent . . . which are not prepared or utilized for, or circulated or communicated in the course of, transacting Government business”; and “materials relating to private political associations” or “directly relating to the election of a particular individual or individuals[, including the President,] to Federal, State, or local office,” so long as those records “have no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.” *Id.* These exceptions mean that “the classification between a Presidential record and a personal record can hinge

on what the covered employee has prepared the material for, and what he did with the material.” *United States v. Navarro*, No. 22-cv-2292, 2024 WL 687972, at \*2 (D.D.C. Feb. 20, 2024) (*Navarro II*) (citing *Jud. Watch, Inc. v. Nat’l Archives & Records Admin.*, 845 F. Supp. 2d 288, 301 n.9 (D.D.C. 2012)). Here, the only evidence before the undersigned with which to make such determination is the documents themselves, representations by defense counsel describing each document, and, for those documents that have not been produced to the United States, a brief statement of the reason for nonproduction. Moreover, as explained below, Defendant’s legal justification for withholding many of the documents is unclear. Therefore, the undersigned has identified three categories of documents which require additional proceedings in order to make a recommendation to the Court as to whether they are Presidential records.<sup>1</sup>

The first category comprises documents which appear to be communications with others on various issues within Navarro’s White House portfolio.<sup>2</sup> Many of these are communications about White House policy (concerning issues like COVID response, “big tech” regulation, foreign trade policy, and the performance of various executive branch officials) sent to or received from journalists, commentators, and administration staff and officials, which Defendant (through his

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<sup>1</sup> Before referring this case to the undersigned to conduct *in camera* review of these documents, Judge Kollar-Kotelly reviewed *in camera* a random sample of 50 to determine whether or not they were Presidential records. *See generally Navarro II*, 2024 WL 687972. She identified sixteen documents that needed further review. *See* ECF No. 39 at 1–2. Subsequently, Defendant produced eight of those to the government (identified—using both the DCD\_Review number and the GMH\_Review number—as DCD\_Review\_000005 & GMH\_Review\_0000370; DCD\_Review\_000085 & GMH\_Review\_00000371; DCD\_Review\_000088 & GMH\_Review\_00000374; DCD\_Review\_000206 & GMH\_Review\_00000423; DCD\_Review\_000212 & GMH\_Review\_00000118; DCD\_Review\_000320 & GMH\_Review\_00000226; DCD\_Review\_000367 & GMH\_Review\_00000425; DCD\_Review\_000386 & GMH\_Review\_00000433), leaving eight documents to be reviewed. Those documents are identified with an asterisk (\*) in the lists below.

<sup>2</sup> This category does not include documents directly related to the 2020 Presidential election, which the undersigned considers in a separate category. This category also includes a handful of documents the topic of which is not clear, but may be on issues within Navarro’s White House portfolio.

document index) nonetheless asserts are “purely personal” or “unrelated to the duties of the President.”<sup>3</sup> The following 38 documents fall into this category:

|                     |                     |                      |
|---------------------|---------------------|----------------------|
| GMH_Review_00005385 | GMH_Review_00005873 | GMH_Review_00007075  |
| GMH_Review_00005450 | GMH_Review_00005882 | GMH_Review_00007086  |
| GMH_Review_00005469 | GMH_Review_00005941 | GMH_Review_00007248  |
| GMH_Review_00005470 | GMH_Review_00005942 | GMH_Review_00007474  |
| GMH_Review_00005567 | GMH_Review_00005943 | GMH_Review_00008058* |
| GMH_Review_00005574 | GMH_Review_00005944 | GMH_Review_00008209  |
| GMH_Review_00005575 | GMH_Review_00005945 | GMH_Review_00008509  |
| GMH_Review_00005589 | GMH_Review_00006640 | GMH_Review_00008537  |
| GMH_Review_00005601 | GMH_Review_00006735 | GMH_Review_00008580  |
| GMH_Review_00005602 | GMH_Review_00006787 | GMH_Review_00008581  |
| GMH_Review_00005706 | GMH_Review_00006855 | GMH_Review_00008583  |
| GMH_Review_00005828 | GMH_Review_00006988 | GMH_Review_00008675  |
| GMH_Review_00005871 | GMH_Review_00006989 |                      |

The second category of documents are emails and attachments Navarro sent to himself that relate to public policy issues, the White House, or White House personnel. Many of these appear to be the equivalent of journal or diary entries recounting the events of Navarro’s day and his thoughts on the same; some contain only links to, or excerpts from, online news articles. While the “journal entries,” have some content that is clearly purely personal—such as discussions of Navarro’s health and exercise routines—they also, almost invariably, discuss his day-to-day work in the White House, including writing speeches and reports, drafting executive orders and presidential memoranda, attending meetings with senior administration officials (including then-President Trump), appearing on television or radio programs to discuss issues in his White House portfolio, and his “big picture” thoughts on the state of the administration. This category also includes notes, manuscripts, and “inserts” that are related to Navarro’s White House work but appear to be for use in writing a post-White House book. Many of the documents in this category, although

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<sup>3</sup> There appear to be a handful of errors in the document index where the “Brief Description of Topic” provided by Defendant is inaccurate. Therefore, in any further filings regarding those documents, Defendant should be sure to review the actual documents referenced rather than relying on the description in the index.

they specifically discuss Navarro’s official duties, may fall under the “diaries” and “journals” exception to Presidential records if they were “not prepared or utilized for, or circulated or communicated in the course of, transacting Government business.”<sup>4</sup> 44 U.S.C. § 2201(3)(A). The following 252 documents fall into this category:

|                      |                     |                     |
|----------------------|---------------------|---------------------|
| GMH_Review_00000266* | GMH_Review_00005663 | GMH_Review_00005868 |
| GMH_Review_00000299* | GMH_Review_00005665 | GMH_Review_00005881 |
| GMH_Review_00000304* | GMH_Review_00005705 | GMH_Review_00005886 |
| GMH_Review_00000330* | GMH_Review_00005707 | GMH_Review_00005888 |
| GMH_Review_00000331* | GMH_Review_00005712 | GMH_Review_00005889 |
| GMH_Review_00005382  | GMH_Review_00005713 | GMH_Review_00005894 |
| GMH_Review_00005408  | GMH_Review_00005714 | GMH_Review_00005898 |
| GMH_Review_00005417  | GMH_Review_00005715 | GMH_Review_00005899 |
| GMH_Review_00005419  | GMH_Review_00005716 | GMH_Review_00005900 |
| GMH_Review_00005436  | GMH_Review_00005717 | GMH_Review_00005905 |
| GMH_Review_00005437  | GMH_Review_00005721 | GMH_Review_00005906 |
| GMH_Review_00005449  | GMH_Review_00005722 | GMH_Review_00005920 |
| GMH_Review_00005451  | GMH_Review_00005725 | GMH_Review_00005924 |
| GMH_Review_00005453  | GMH_Review_00005727 | GMH_Review_00005928 |
| GMH_Review_00005454  | GMH_Review_00005731 | GMH_Review_00005932 |
| GMH_Review_00005455  | GMH_Review_00005733 | GMH_Review_00005933 |
| GMH_Review_00005457  | GMH_Review_00005735 | GMH_Review_00005957 |
| GMH_Review_00005530  | GMH_Review_00005736 | GMH_Review_00005958 |
| GMH_Review_00005566  | GMH_Review_00005741 | GMH_Review_00005959 |
| GMH_Review_00005576  | GMH_Review_00005742 | GMH_Review_00005960 |
| GMH_Review_00005587  | GMH_Review_00005782 | GMH_Review_00005961 |
| GMH_Review_00005588  | GMH_Review_00005783 | GMH_Review_00005962 |
| GMH_Review_00005590  | GMH_Review_00005801 | GMH_Review_00005990 |
| GMH_Review_00005591  | GMH_Review_00005802 | GMH_Review_00005991 |
| GMH_Review_00005592  | GMH_Review_00005803 | GMH_Review_00006001 |
| GMH_Review_00005604  | GMH_Review_00005805 | GMH_Review_00006002 |
| GMH_Review_00005607  | GMH_Review_00005806 | GMH_Review_00006003 |
| GMH_Review_00005608  | GMH_Review_00005809 | GMH_Review_00006284 |
| GMH_Review_00005614  | GMH_Review_00005816 | GMH_Review_00006285 |
| GMH_Review_00005621  | GMH_Review_00005819 | GMH_Review_00006287 |
| GMH_Review_00005633  | GMH_Review_00005820 | GMH_Review_00006289 |
| GMH_Review_00005634  | GMH_Review_00005821 | GMH_Review_00006290 |
| GMH_Review_00005636  | GMH_Review_00005822 | GMH_Review_00006298 |
| GMH_Review_00005638  | GMH_Review_00005826 | GMH_Review_00006301 |
| GMH_Review_00005639  | GMH_Review_00005866 | GMH_Review_00006304 |
| GMH_Review_00005655  | GMH_Review_00005867 | GMH_Review_00006307 |

<sup>4</sup> The undersigned notes that GMH\_Review\_00006702 and GMH\_Review\_00006860 are styled as journal entries but, in addition to journal-like content, appear to contain talking points in preparation for particular events.

|                     |                     |                      |
|---------------------|---------------------|----------------------|
| GMH_Review_00006314 | GMH_Review_00006636 | GMH_Review_00006807  |
| GMH_Review_00006327 | GMH_Review_00006647 | GMH_Review_00006820  |
| GMH_Review_00006342 | GMH_Review_00006648 | GMH_Review_00006821  |
| GMH_Review_00006344 | GMH_Review_00006649 | GMH_Review_00006822  |
| GMH_Review_00006353 | GMH_Review_00006660 | GMH_Review_00006823  |
| GMH_Review_00006356 | GMH_Review_00006664 | GMH_Review_00006824  |
| GMH_Review_00006358 | GMH_Review_00006666 | GMH_Review_00006825  |
| GMH_Review_00006359 | GMH_Review_00006667 | GMH_Review_00006826  |
| GMH_Review_00006360 | GMH_Review_00006668 | GMH_Review_00006827  |
| GMH_Review_00006372 | GMH_Review_00006669 | GMH_Review_00006853  |
| GMH_Review_00006384 | GMH_Review_00006676 | GMH_Review_00006858  |
| GMH_Review_00006385 | GMH_Review_00006679 | GMH_Review_00006859  |
| GMH_Review_00006386 | GMH_Review_00006681 | GMH_Review_00006860  |
| GMH_Review_00006390 | GMH_Review_00006692 | GMH_Review_00006871  |
| GMH_Review_00006392 | GMH_Review_00006693 | GMH_Review_00006873  |
| GMH_Review_00006393 | GMH_Review_00006694 | GMH_Review_00006878  |
| GMH_Review_00006395 | GMH_Review_00006695 | GMH_Review_00006879  |
| GMH_Review_00006396 | GMH_Review_00006697 | GMH_Review_00006881  |
| GMH_Review_00006524 | GMH_Review_00006698 | GMH_Review_00006903  |
| GMH_Review_00006525 | GMH_Review_00006702 | GMH_Review_00006904  |
| GMH_Review_00006526 | GMH_Review_00006706 | GMH_Review_00006906  |
| GMH_Review_00006527 | GMH_Review_00006707 | GMH_Review_00006907  |
| GMH_Review_00006529 | GMH_Review_00006710 | GMH_Review_00006920  |
| GMH_Review_00006537 | GMH_Review_00006715 | GMH_Review_00006921  |
| GMH_Review_00006551 | GMH_Review_00006716 | GMH_Review_00006924  |
| GMH_Review_00006553 | GMH_Review_00006719 | GMH_Review_00006926  |
| GMH_Review_00006555 | GMH_Review_00006722 | GMH_Review_00006928  |
| GMH_Review_00006556 | GMH_Review_00006723 | GMH_Review_00006929  |
| GMH_Review_00006557 | GMH_Review_00006727 | GMH_Review_00006932  |
| GMH_Review_00006568 | GMH_Review_00006730 | GMH_Review_00006934  |
| GMH_Review_00006569 | GMH_Review_00006736 | GMH_Review_00006936* |
| GMH_Review_00006570 | GMH_Review_00006737 | GMH_Review_00006937  |
| GMH_Review_00006571 | GMH_Review_00006738 | GMH_Review_00006940  |
| GMH_Review_00006572 | GMH_Review_00006776 | GMH_Review_00006941  |
| GMH_Review_00006587 | GMH_Review_00006788 | GMH_Review_00006943  |
| GMH_Review_00006603 | GMH_Review_00006789 | GMH_Review_00006948  |
| GMH_Review_00006605 | GMH_Review_00006791 | GMH_Review_00006950  |
| GMH_Review_00006606 | GMH_Review_00006792 | GMH_Review_00006996  |
| GMH_Review_00006608 | GMH_Review_00006793 | GMH_Review_00007074  |
| GMH_Review_00006609 | GMH_Review_00006795 | GMH_Review_00007986  |
| GMH_Review_00006610 | GMH_Review_00006796 | GMH_Review_00008249  |
| GMH_Review_00006618 | GMH_Review_00006797 | GMH_Review_00008390  |
| GMH_Review_00006630 | GMH_Review_00006798 | GMH_Review_00008391  |
| GMH_Review_00006631 | GMH_Review_00006800 | GMH_Review_00008416  |
| GMH_Review_00006633 | GMH_Review_00006804 | GMH_Review_00008658  |
| GMH_Review_00006635 | GMH_Review_00006805 | GMH_Review_00008659  |

GMH\_Review\_00008678  
GMH\_Review\_00008703

GMH\_Review\_00008994  
GMH\_Review\_00009009

GMH\_Review\_00009015  
GMH\_Review\_00009016

The third category of documents are communications directly related to the 2020 Presidential election, including post-election “election integrity” efforts. The PRA excludes from the definition of “Presidential records” those materials which “relat[e] exclusively to the President’s own election to the office of the Presidency . . . which have no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.” 44 U.S.C. § 2201(3)(C). The Court has noted that “although [some of the] records relate to a Federal election, it does not mean that they automatically become a ‘personal record.’ To obtain such status, the materials must ‘have *no relation to or direct effect* upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.’” *Navarro II*, 2024 WL 687972, at \*3 (citation omitted) (quoting 44 U.S.C. § 2201(3)(C)). Moreover, of the 911 documents Defendant has already produced to the United States, more than half—approximately 480 documents—appear to relate directly to the 2020 Presidential Election,<sup>5</sup> a seeming concession by Defendant that at least some documents on that topic are Presidential records. The following 62 documents fall into this category:

GMH\_Review\_00005625  
GMH\_Review\_00000268\*  
GMH\_Review\_00000270  
GMH\_Review\_00000275  
GMH\_Review\_00000284  
GMH\_Review\_00005531  
GMH\_Review\_00005532  
GMH\_Review\_00005609  
GMH\_Review\_00005615  
GMH\_Review\_00005616  
GMH\_Review\_00005619  
GMH\_Review\_00005623

GMH\_Review\_00005626  
GMH\_Review\_00005627  
GMH\_Review\_00005628  
GMH\_Review\_00005630  
GMH\_Review\_00005631  
GMH\_Review\_00005632  
GMH\_Review\_00005652  
GMH\_Review\_00005660  
GMH\_Review\_00005667  
GMH\_Review\_00005669  
GMH\_Review\_00005671  
GMH\_Review\_00005673

GMH\_Review\_00005675  
GMH\_Review\_00005676  
GMH\_Review\_00005681  
GMH\_Review\_00005690  
GMH\_Review\_00005711  
GMH\_Review\_00005720  
GMH\_Review\_00005723  
GMH\_Review\_00005724  
GMH\_Review\_00005726  
GMH\_Review\_00005730  
GMH\_Review\_00005732  
GMH\_Review\_00005739

<sup>5</sup> This estimate is based on Defendant’s description of the topic of these documents provided in the index accompanying the *in camera* production. The undersigned has not reviewed each of the documents that have already been produced to the United States.

GMH\_Review\_00005740  
GMH\_Review\_00005746  
GMH\_Review\_00005748  
GMH\_Review\_00005772  
GMH\_Review\_00005773  
GMH\_Review\_00005779  
GMH\_Review\_00005781  
GMH\_Review\_00005833  
GMH\_Review\_00005836

GMH\_Review\_00005844  
GMH\_Review\_00005895  
GMH\_Review\_00005913  
GMH\_Review\_00005993  
GMH\_Review\_00005994  
GMH\_Review\_00006283  
GMH\_Review\_00006315  
GMH\_Review\_00006328  
GMH\_Review\_00006528

GMH\_Review\_00006539  
GMH\_Review\_00006863  
GMH\_Review\_00006867  
GMH\_Review\_00006882  
GMH\_Review\_00006883  
GMH\_Review\_00006976  
GMH\_Review\_00006977  
GMH\_Review\_00008676

To aid the undersigned in recommending a disposition as to the documents in the categories above, it is hereby

**ORDERED** that counsel shall appear for a remote status conference on November 1, 2024, at 10:00 a.m. Both the government and Defendant shall be prepared to address whether documents falling into any of the categories above or documents matching the more detailed descriptions within those categories are or are not Presidential records. Defendant shall also be prepared to address his prior production of approximately 480 documents related to the 2020 Presidential Election and any distinctions made between the records produced and those withheld relevant to the issue of whether they are Presidential records. Finally, prior to the status conference, the parties should meet and confer to discuss a joint proposal for a path forward in this case that will facilitate the efficient completion of the undersigned's *in camera* review of the remaining documents.

**SO ORDERED.**

Date: October 11, 2024

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G. MICHAEL HARVEY  
UNITED STATES MAGISTRATE JUDGE