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U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535-0001

APR - 4 2022

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL *LM 4-5-22*

FROM: CHRISTOPHER A. WRAY *CAW*
DIRECTOR

SUBJECT: Approval to Open a Certain Sensitive Investigative Matter Investigation

PURPOSE: To obtain your signature authorizing the Washington Field Office (WFO) to open a full sensitive investigative matter (SIM). This request is based on the recommendation of the Deputy Director, Executive Assistant Director Criminal, Cyber, Response, and Services Branch, and the Assistant Director in Charge, WFO.

AG DECISION REQUESTED BY: Your approval is requested as soon as possible. Due to the nature of the SIM at issue and pursuant to DOJ guidance, WFO may not open this full investigation without your authorization.

EXECUTIVE SUMMARY: Following the 2020 Presidential and Vice Presidential election, in an apparent effort to obstruct Congress's certification of the Electoral College, fraudulent certificates of electors' votes were submitted to the Archivist of the United States, purporting to represent the actual elector votes from the states of Arizona, Georgia, Michigan, Nevada, and Wisconsin. Open source reporting and public statements made by individuals closely associated with Donald J. Trump, Inc. (Trump Campaign) present an articulable factual basis indicating the existence of a federal crime, and thus the FBI seeks to open a full investigation. Because this investigation involves a SIM as set forth in the Department of Justice Memorandum dated February 5, 2020, entitled "Additional Requirements for the Opening of Certain Sensitive Investigations" (DOJ Memo), your authorization is required before WFO may initiate this full investigation.

DISCUSSION: WFO seeks to open this SIM full investigation based on evidence that presents specific and articulable facts that individuals, both known and unknown, engaged in a conspiracy to obstruct Congress's certification of the Electoral College on January 6, 2020, including through the submission of fraudulent certificates of electors' votes to the United States Government.

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Memorandum for the Attorney General
Subject: Approval to Open a Certain Sensitive Matter Investigation

Page 2

Following the 2020 Presidential and Vice Presidential election, fraudulent certificates of electors' votes were sent to the Archivist of the United States, purporting to represent the actual elector votes from five states: Arizona, Georgia, Michigan, Nevada, and Wisconsin. A review of the fraudulent certificates indicated they were in substantially similar form (e.g., similar content, wording, and document length), suggesting they were created either by one actor or through coordination among allegedly fraudulent elector groups. Each of the documents purported to cast all of their electoral votes for then-President Donald Trump and Vice President Michael Pence. Individuals in two other states, New Mexico and Pennsylvania, sent similar certificates to the Archivist, but with an additional caveat stating that the certificates for those states were "certified on the understanding that if, as a result of a final non-appealable Court Order or other proceeding prescribed by law, we are ultimately recognized as being the duly elected and qualified Electors."

On December 14, 2020, the Pennsylvania Republican Party issued a news release on pagop.org entitled "Republican Electors Cast Procedural Vote, Seek to Preserve Trump Campaign Legal Challenge." According to the release, "[A]t the request of the Trump campaign, the Republican presidential electors met today in Harrisburg to cast a conditional vote for Donald Trump and Mike Pence for President and Vice President respectively." On January 20, 2022, an individual purporting to be an elector from the state of Michigan was audio-recorded, claiming, "[W]e fought to seat the electors. The Trump Campaign asked us to do that. [Inaudible] under a lot of scrutiny for that today."

Several other individuals who were closely associated with the Trump Campaign have made public statements implicating themselves in a conspiracy to obstruct Congress's certification of the Electoral College. Appearing on a podcast on December 14, 2020, and asked why the Trump Campaign was sending its own slate of electors to various state capitals, one individual with close ties to the Trump Campaign responded that the campaign was doing so "out of an excess of caution." Another individual associated with the Trump Campaign, in a January 21, 2022 interview with CNN.com, stated, "[Y]es, I was part of the process to make sure there were alternate electors for when we hoped the challenges to the seated electors would be heard and be successful." In addition, a third individual affiliated with the Trump Campaign drafted a memorandum entitled "January 6 Scenario," detailing options for the Vice President during Congress's certification of the Electoral College. This memorandum states "7 states have transmitted dual slates of electors to the President of the Senate," and outlines scenarios in which the Vice President could use the dual slates of electors to achieve the objective of keeping President Trump in office for a second term. Both scenarios required the Vice President to determine that "because of the ongoing disputes in the 7 states, there are no electors that can be deemed validly appointed in those states" and disregard the legitimate elector certificates from those seven states.

Memorandum for the Attorney General
Subject: Approval to Open a Certain Sensitive Matter Investigation

Page 3

A review of the apparently fraudulent elector certificates, along with the aforementioned open source reporting and public statements made by individuals closely affiliated with the Trump Campaign, reasonably indicate the existence of a federal crime. Accordingly, the FBI seeks to open a full investigation into whether individuals conspired to obstruct justice by unlawfully impeding Congress's certification of the Electoral College vote on January 6, 2020.

Opening of this full investigation is governed by the DOJ Memo. The DOJ Memo requires written notification to and consultation with the Assistant Attorney General and U.S. Attorney with jurisdiction over the matter and written approval of the Attorney General, through the Deputy Attorney General, prior the opening of any investigation of a declared candidate for president or vice president, a presidential campaign, or a senior presidential campaign staff member or advisor. It is assessed that the pool of potential subjects may include individuals who fall into one or more of these categories. Although members of the 45th Presidential administration are no longer in office, the DOJ Memo states that the scope of this policy should be broadly construed to ensure that Department leadership is made aware of the opening of matters that could potentially be disruptive to the democratic process if publicly disclosed prior to an election, encouraging the FBI to err on the side of caution or seeking approval if there could be any question as to whether such actions are required under this policy.

The Assistant Attorney General for the Criminal Division has been consulted, as has the U.S. Attorney for the District of Columbia.

CONSULTATION: Criminal Division, Department of Justice
United States Attorney's Office, District of Columbia

OTHER STAKEHOLDERS: NONE

RECOMMENDATION: I recommend you approve the opening of this SIM full investigation.

Memorandum for the Attorney General
Subject: Approval to Open a Certain Sensitive Matter Investigation

Page 4

APPROVE: MG 4/5/22

Concurring Component(s):
NONE

DISAPPROVE: _____

Non-concurring Component:
NONE

OTHER: _____

Attachment(s) NONE

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I recommend you approve.

LM 4/5/22