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2 **UNITED STATES DISTRICT COURT**
3 **CENTRAL DISTRICT OF CALIFORNIA**
4 **SOUTHERN DIVISION**

5 JOHN C. EASTMAN

6 Plaintiff,

7 vs.

8 BENNIE G. THOMPSON, *et al.*,

9 Defendants.
10
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Case No. 8:22-cv-00099-DOC-DFM
12

13 **MOTION FOR EXCULPATORY INFORMATION AND CONTINUANCE OF THE MARCH 8**
14 **PRIVILEGE HEARING**

15 Comes now the plaintiff John C. Eastman and moves this Court to order the defendants
16 to produce exculpatory information and for a continuance of the March 8 hearing and March 7 reply
17 brief deadline. Plaintiff asserts as follows:
18

19 **INTRODUCTION**

20 The congressional defendants have responded to Dr. Eastman's claims of attorney
21 client and work product privilege by invoking the crime fraud exception. The defendants have accused
22 Dr. Eastman, former President Donald J. Trump and others of committing serious federal crimes.
23 Effectively, the defendants have unveiled an entire criminal case under the auspices of a filing on an
24 evidentiary privilege issue.
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26 These are serious accusations which have already made international headlines. They
27 require careful consideration by the Court. Were this Court to sustain the defendants' claims, it may be
28 the first formal finding of Presidential criminality by a federal court in United States history.

1 In responding to these claims, plaintiff is effectively forced into the position of acting
2 as a pseudo-defense attorney for the former President. If the former President had himself been
3 charged with these alleged crimes, it could easily be years before an ultimate decision was reached by
4 a judge or jury. Yet plaintiff is now faced with responding to these claims in time for a decision by
5 this Court on March 8.
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7 This already impossible task is made more difficult by the defendants' selective
8 presentation of evidence. In support of their crime/fraud claim, the defendants have submitted highly
9 incomplete transcripts which seemingly omit relevant information. At the same time, the defendants
10 are clearly withholding information generated by their investigation which cuts against any crime fraud
11 finding.
12

13 The January 6 Committee has offered to disclose "further submissions on specific
14 relevant topics of interest to the Court." This Court should accept the offer and require the committee
15 to disclose all exculpatory information in its possession. This Court should continue the March 8
16 hearing and reply brief deadline in order to allow plaintiff time to review this information and mount a
17 proper response to the defendant's extremely serious allegations.
18

19 ARGUMENT

20 I. This Court Should Require the Select Committee to Produce All Exculpatory 21 Evidence

22 In a criminal case, the prosecuting authority is required to disclose all exculpatory
23 information. *Brady v. Maryland*, 373 U.S. 83 (1963). Any information tending to cast doubt with
24 respect to the proof of any charged count falls within the scope of *Brady*, and must be produced. *Id.* at
25 87. Information affecting witness credibility must also be disclosed. *Giglio v. United States*, 405 U.S.
26 150, 153-55 (1972).

27 Although this is a civil case, the congressional defendants have, to their credit,
28 volunteered to make any disclosures required by the Court. As the defendants' brief states: "[t]he Select

1 *Committee stands ready to make further submissions on specific relevant topics of interest to the*
2 *Court.”* Resp. at 3, n. 4; *see also*, Resp. at 52 n. 114 (“[t]he Select Committee can make additional
3 evidence available to the Court as requested”). The defendants’ laudable willingness to proceed in a
4 transparent manner is appropriate in light of the serious issues involved. This Court should accept the
5 Committee’s offer and require the defendants to produce all exculpatory information.
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7 Such disclosure is absolutely necessary for a just resolution of the congressional
8 defendants’ explosive claims. The defendants’ response is effectively a draft criminal indictment
9 against former President Trump and various named and unnamed alleged coconspirators. It cites
10 specific criminal statutes and accuses the President and his advisers of essentially attempting to subvert
11 American democracy. As stated above, were these allegations brought in criminal court, it would
12 potentially require years of litigation to prepare the case for decision by a judge or jury. It is a
13 monumental task to expect Dr. Eastman to defend this historic claim in the context of a privilege log
14 dispute. At a minimum, Dr. Eastman should be provided with all exculpatory information in the
15 defendants’ possession or control.
16

17 Although plaintiff is of course not privy to what particular exculpatory evidence may
18 exist in the January 6th committee’s vast files, some items of evidence are apparent from the
19 defendants’ response itself. The defendants have asked this Court to find that a good faith basis exists
20 to conclude that 1) President Trump is guilty of the felony offense of Obstruction of an Official
21 Proceeding, 2) the President and members of his campaign engaged in a criminal conspiracy to defraud
22 the United States, and 3) the President and members of his campaign engaged in common law fraud in
23 violation of District of Columbia law. Resp. at 39-52. In support of these claims, the defendants argue
24 that “[t]he evidence supports an inference that President Trump and members of his campaign knew he
25 had not won enough legitimate electoral votes to be declared the winner of the 2020 Presidential
26 election during the January 6.” Resp. at 41. However, the defendants’ brief quotes former Acting
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1 Attorney General Jeffrey Rosen as advising the President that “people are telling you things that are
2 not right.” Resp. at 5. In other words, Mr. Rosen acknowledged to the committee that, although he
3 himself apparently saw no evidence of material fraud or illegality, other presidential advisers had given
4 the opposite assessment. To the extent that President Trump received advice and information that
5 material fraud or illegality had occurred in the 2020 election, it would undercut the defendants’ claim
6 that he intentionally committed crimes or fraud. As stated, this is just one particularly obvious
7 example of the exculpatory evidence in the committee’s possession.
8

9 The committee is almost certainly in possession of many other types of exculpatory
10 evidence. Such evidence would include (without limitation) 1) *Giglio* impeaching evidence on the
11 various deponents relied on by the committee, 2) evidence of election irregularities not already in the
12 public domain, 3) evidence of any internal dissent within CISA related to its public statement
13 referenced on page 5 of the response, 4) evidence of any internal dissent within the DOJ with respect to
14 Attorney General Barr’s statement on referenced on page 6 of the response, 5) any election
15 investigations discontinued by the DOJ on the grounds that the allegations were not sufficiently
16 “major” (*cf.* Resp. at 7, ln. 4), 6) information received from state officials about election concerns, 7)
17 deposition transcripts or other witness statements which conflict in any way with the depositions
18 submitted in support of the defendants’ response, 8) information tending to negate the claim on page 9
19 line 6 about “false” election certificates, or 9) statements by or attributed to former President Trump
20 which would tend to negate the defendants’ allegation of corrupt intent, *e.g.* statements manifesting a
21 genuine belief in election irregularities.
22

23 Luckily, the January 6 committee is well staffed to conduct an expeditious *Brady*
24 review of evidence in its possession. The committee’s senior staff is largely composed of experienced
25 former federal prosecutors. These capable lawyers are well trained in identifying exculpatory evidence
26 and could easily conduct such a review in this case.
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1 Before finding that a former President is likely guilty of felony crimes, this Court
2 should at a minimum require that evidence on *both sides* of the issue be submitted for consideration.
3 With this request, plaintiff is asking for no more than the due process routinely afforded misdemeanor
4 defendants in hundreds of courts every day. This Court should require at least this level of due process
5 before entering a finding of serious criminality against a former President. The Court should therefore
6 order the defendants to produce any information which would qualify as exculpatory under *Brady* and
7 its progeny if the named criminal offenses had been formally charged by the government.
8

9 **II. This Court Should Continue the March 8 Hearing and March 7 Reply Deadline to**
10 **Allow Plaintiff Time to Obtain and Review Exculpatory Information**

11 There is manifestly insufficient time for the defendants to produce exculpatory
12 information in time for its effective use by Dr. Eastman on March 8. Plaintiff fully appreciates this
13 Court's oft expressed desire for an expeditious resolution of this matter and has gone to much time and
14 expense to comply with this Court's demanding but fair production schedule. Plaintiff has produced
15 thousands of pages to the defendants and even withdrawn privilege in certain cases where it would
16 arguably apply. However, the recent allegations by the defendants absolutely call for careful rather
17 than rushed consideration.
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19 Under Federal Rule of Civ. Pro. 4, this Court may extend a deadline for "for good
20 cause." The congressional defendants have raised a potentially historic legal claim in the unlikely
21 context of a privilege log dispute. Plaintiff does not dispute the defendants' right to raise such claim or
22 this Court's need to adjudicate it. Plaintiff is merely asking for sufficient time for *all* the evidence to
23 be put before this Court. This is clearly good cause for a reasonable delay of these proceedings.
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25 Alternatively, this Court has the option of bifurcating the privilege hearing, deciding
26 the non crime fraud claims on March 8 and the remaining claims at a later date.
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CONCLUSION

For the foregoing reasons, plaintiff requests this Court to order the defendants to produce all evidence that would be discoverable under *Brady v. Maryland* and its progeny if the defendants' criminal accusations were formally charged. Plaintiff further requests a continuance of the hearing and reply brief deadline to allow sufficient time to review this information.

March 4, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this filing has been served on opposing counsel by email.

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