Nos. 20A15, 20A16

In the Supreme Court of the United States

DONALD J. TRUMP; THE TRUMP ORGANIZATION, INC.; TRUMP ORGANIZATION LLC; THE TRUMP CORPORATION; DJT HOLDINGS LLC; THE DONALD J. TRUMP REVOCABLE TRUST; AND TRUMP OLD POST OFFICE LLC

v.

MAZARS USA, LLP; COMMITTEE ON OVERSIGHT AND REFORM OF THE UNITED STATES HOUSE OF REPRESENTATIVES

DONALD J. TRUMP; DONALD J. TRUMP, JR.; ERIC TRUMP; IVANKA TRUMP; DONALD J. TRUMP REVOCABLE TRUST; TRUMP ORGANIZATION, INC.; TRUMP ORGANIZATION LLC; DJT HOLDINGS LLC; DJT MANAGING MEMBER LLC; TRUMP ACQUISITION LLC; TRUMP ACQUISITION, CORP.

v.

DEUTSCHE BANK AG; CAPITAL ONE FINANCIAL CORPORATION; COMMITTEE ON FINANCIAL SERVICES OF THE UNITED STATES HOUSE OF REPRESENTATIVES; PERMANENT SELECT COMMITTEE ON INTELLIGENCE OF THE UNITED STATES HOUSE OF REPRESENTATIVES

OPPOSITION TO APPLICATION FOR IMMEDIATE ISSUANCE OF THE JUDGMENTS

To the Honorable John G. Roberts, Jr., Chief Justice of the United States:

For the reasons stated below, Petitioners oppose the Committees' application for immediate issuance of the judgments in *Trump v. Mazars USA, LLP* and *Trump v. Deutsche Bank AG*, 591 U.S. __ (2020) (Slip. Op.) (Nos. 19-715, 19-760). Expediting issuance of the judgments is unnecessary, unproductive, and would be inconsistent with this Court's opinion in these cases.

1. On July 9, this Court issued its opinion, vacating the judgments of the lower courts because they "did not take adequate account of" the "special concerns regarding the separation of powers" that "[c]ongressional subpoenas for information from the President … implicate." Slip. Op. 20. The Court remanded the case for further proceedings consistent with its opinion. *Id.*

2. The same day, the D.C. Circuit and the Second Circuit received notice that the "judgment or mandate of [the Supreme] Court will not issue for at least twenty-five days pursuant to Rule 45." CADC Doc. 1850946; CA2 Doc. 261. In other words, this Court saw no basis for deviating from the ordinary schedule provided for by the Rules of this Court.

3. That decision is meaningful. As it has in other cases, the Court would have expediated issuance of the judgments had it determined that circumstances warranted it. *See, e.g.*, *Bush v. Gore*, 531 U.S. 98, 111 (2000) (directing, in the opinion, that the Clerk issue the mandate forthwith); *United States v. Nixon*, 418 U.S. 683, 716 (1974) (same). The Court was well aware of the Committees' desire for expedited resolution. The Committees, accordingly, provide no compelling reason for the Court to reconsider its decision to not expedite issuance of the judgments in these cases.

4. Indeed, the arguments that the Committees raise in their application are the same arguments they raised in their oppositions to a stay from this Court—namely, that potential new legislation might be delayed and that the House's current term may expire before they can secure the President's documents. Those arguments weren't persuasive then, *see Trump v. Mazars USA, LLP*, 140 S. Ct. 581 (Nov. 25,

2019) (granting stay); *Trump v. Deutsche Bank AG*, 140 S. Ct. 660 (Dec. 13, 2019) (granting stay and certiorari), and they are no more persuasive now. The Committees voluntarily stayed enforcement of the subpoenas for more than six months as these cases made their way through the lower courts. They should not be heard to complain that the proceedings are moving too slowly.

5. The House's argument (at 4) that its ability to consider legislation is being compromised also rings hollow. As before, the Committees cannot identify any pending legislative proposal to which the President's records are relevant—let alone urgently needed. That is unsurprising. There is no indication that the House is even focused on these issues—let alone remotely close to passing legislation. *Accord* Slip. Op. 16 (explaining that "some relation to potential legislation" is an insufficient basis for upholding these subpoenas).

6. But even if the House's opportunity to pass legislation is diminished by failing to accelerate issuance of the judgments, relief should be denied. In *Committee on Judiciary of U.S. House of Representatives v. Miers*, for example, the D.C. Circuit stayed a congressional subpoena notwithstanding that "this controversy will not be fully and finally resolved by the Judicial Branch … before the 110th Congress ends." 542 F.3d 909, 911 (D.C. Cir. 2008). Given that its resolution of the interbranch dispute would have "potentially great significance for the balance of power between the Legislative and Executive Branches," the D.C. Circuit saw an "additional benefit of permitting … the new House an opportunity to express their views on the merits of the lawsuit." *Id*. So too here.

7. Last, as the Court recognized, Congress and the President have "maintained [a] tradition of negotiation and compromise—without the involvement of this Court—until the present dispute." Slip Op. 10; *see also United States v. American Tel. & Tel. Co.*, 551 F.2d 384, 390 (D.C. Cir. 1976). As Judge Livingston explained, "efforts at negotiation in this context *are* to be encouraged, since they may narrow the scope of these subpoenas, and thus avoid judicial pronouncement on the 'broad confrontation now tendered.'" Joint Appendix 331a-332a (Livingston, J., concurring in part and dissenting in part) (quoting *Am. Tel. & Tel. Co*, 551 F.2d at 395). The Committees should be productively using the window of time until the judgments issue to attempt to resolve (or at least narrow) this dispute—not seeking to rush back into court.

July 16, 2020

Respectfully submitted,

Jay Alan Sekulow
Stuart J. Roth
Jordan Sekulow
CONSTITUTIONAL LITIGATION AND ADVOCACY GROUP, P.C.
1701 Pennsylvania Ave, NW,
Ste. 200
Washington, DC 20006
(202) 546-8890
jsekulow@claglaw.com

Stefan C. Passantino
Michael Best & Friedrich LLP
1000 Maine Ave. SW, Ste. 400
Washington, DC 20024
(202) 747-9582
spassantino@michaelbest.com

William S. Consovoy
Counsel of Record
Thomas R. McCarthy
Alexa R. Baltes
Jordan M. Call
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
(703) 243-9423
will@consovoymccarthy.com

Patrick Strawbridge
CONSOVOY MCCARTHY PLLC
Ten Post Office Square
8th Floor South PMB #706
Boston, MA 02109
patrick@consovoymccarthy.com