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August 29, 2018

The Honorable Charles E. Grassley, Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley:

This letter is in response to your July 27, 2018, letter to Patrick X. Mordente, Director of the George W. Bush Presidential Library and Museum (Bush Library), requesting Bush Presidential records concerning Brett M. Kavanaugh. The Bush Library is part of the National Archives and Records Administration (NARA). The request is being processed in accordance with the Presidential Records Act (PRA), 44 U.S.C. § 2205(2)(C), which provides for an exception to restricted access for records that are requested by a committee or subcommittee in the conduct of the business of Congress, as well as under NARA's regulations at 36 C.F.R. Part 1270 and Executive Order 13489.

This letter constitutes the first interim response to your request, and relates to the third topic that you requested – i.e., “Documents relating to Kavanaugh’s nomination to the U.S. Court of Appeals for the District of Columbia Circuit.”

In accordance with the PRA, we have coordinated this request with the representatives of President Trump and former President Bush, who have completed their review, thus allowing us to provide the responsive records to you and the public. Enclosed is a DVD containing the records, which we are also making available on the Bush Library website.

The Bush Library processed 3,826 pages of records for this part of your request. We have simultaneously processed these records for public release in response to Freedom of Information Act (FOIA) requests that we have received. As a result of our review, we are withholding from public access 318 pages in whole and 74 pages in part (i.e., that have been partially redacted).

In addition, in response to the Committee’s special access request for records that are not publicly available, we have identified 192 pages that implicate significant executive branch confidentiality interests under two PRA restrictions – 44 U.S.C. § 2204(a)(2) (relating to appointments to Federal office, known as “P2”) and § 2204(a)(5) (confidential communications requesting or submitting advice, between the President and his advisers, or between such advisers, known as “P5”). We are providing the Committee with 33 pages in whole and six

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pages in part that are restricted from public release under the P2 and P5. These restricted records are being provided on the condition that the Committee treats them as committee confidential, as described in your letter, with access limited to any Senator on the Senate Committee on the Judiciary, any member of Committee staff, and any others agreed upon by the Chairman and Ranking Member.

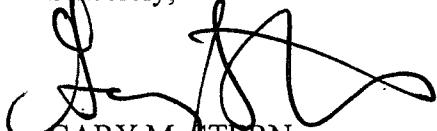
We are providing a DVD with these restricted records to the Committee. We understand that Committee Confidential documents may be reviewed by those with access as specified above, but such documents will not be disclosed to the public or disseminated to anyone not authorized to access them. We also understand that any questions or reference to these documents would not occur during the open session of Judge Kavanaugh's confirmation hearing, but could take place during the closed session.

Additionally, the representatives of the former and incumbent Presidents have informed us of 27 documents that are subject to the P2 and/or P5 restrictions, concerning internal assessments about the qualifications of a judicial candidate, the confidentiality of which is critical to the process of advising the President regarding potential nominations. These documents are therefore not being provided to the committee – 153 pages are being withheld in full and six pages will remain redacted in part to protect such information.

As noted in your letter, we are not providing the Committee with information withheld in whole or in part that (1) is subject to the PRA's personal privacy restriction (P6), (2) contains classified national security information, or (3), based on discussion with your staff, is subject to other applicable FOIA exemptions.

If you have any questions concerning this request, please feel free to have your staff contact me at 301-837-3026.

Sincerely,



GARY M. STERN
General Counsel

Enc.

cc:

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary

Donald F. McGahn
Counsel to the President
The White House