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November 23, 2021

Rep. Bennie G. Thompson, Chairman
January 6th Select Committee
1540A Longworth House Office Building
Washington DC 20515

Re: Subpoena to Bernard B. Kerik

Dear Rep. Thompson:

I represent Bernard B. Kerik and am writing regarding the subpoena dated November 5, 2021. The purpose of this letter is to inform you, pursuant to paragraph 13 of the "Document Production Definitions and Instructions," that we will need additional time to fully comply with this subpoena. However, before addressing those points, I need to first discuss issues with your press release and cover letter which were apparently based on a fabricated claim.

False Statements in the Subpoena Letter and Press Release

In your letter to Mr. Kerik, you wrote that:

> The Select Committee's investigation and public accounts have revealed credible evidence of your involvement in the events within the scope of the Select Committee's inquiry. You reportedly participated in a meeting on January 5, 2021 at the Willard Hotel in Washington D.C., in which Rudolph Giuliani, Stephen Bannon, John Eastman, and others discussed options for overturning the results of the November 2020 election such as, among other things, pressuring Vice President Pence not to certify the electoral college results.

We knew from the time that we received the subpoena that this was a false allegation, as Mr. Kerik never participated in any such meeting. He wasn't even in Washington DC, as he was in New York dealing with a family medical emergency. While we knew at the time that the claim was false, we later found out that it was actually a fabrication.

This passage in your letter had a footnote, citing two sources for this allegation, Bob Woodward's book, *Peril*, as well as a Washington Post article. However, a review of both cites quickly demonstrates that no such allegation was ever made. The Washington

Post article does discuss Mr. Kerik's involvement in investigating fraud, but makes no mention of this alleged meeting, whereas Woodward's book does not claim that Mr. Kerik was at the meeting. In fact, a text search of Woodward's book reveals that the word "Kerik" isn't even mentioned once.

You can understand my concern where you send a letter claiming that the basis for issuing the subpoena is that you "have revealed credible evidence," of a provably false claim, citing two sources that do not support this false claim. If you were not personally responsible for this fabrication and false statements, then someone on your staff was and should be held accountable. Someone either intentionally fabricated this claim, or someone failed at the simple task of carefully reading the sources before writing a letter claiming that the sources "have revealed credible evidence." There was no "credible evidence," because it never happened.

Before providing us with a copy of the subpoena, you also issued a press release, which contained some concerning statements. In addition to repeating the same fabricated claims about a January 5 meeting, and including a copy of the letter, you also stated that Mr. Kerik "worked with Mr. Rudolph Giuliani…promote baseless litigation." This is not the statement of someone who is attempting to conduct a fact-based investigation and unfortunately indicates that you have already reached your verdict before receiving any evidence. Similarly, when you stated that Mr. Kerik was "involved in efforts to promote false claims of election fraud," this statement also cannot be credibly made before reviewing any of the evidence that Mr. Kerik has to provide. The evidence that Mr. Kerik has that would be responsive to your subpoena, support true claims of voter fraud which could have been used in legitimate litigation, but before reviewing any of it, you have already made a public statement on behalf of the committee that you have prejudged the issue. How can anyone expect the committee to review the documents with an eye towards legitimate investigative efforts?

I am also concerned because when I brought some of these issues to the attention of Daniel George, your Senior Investigative Counsel, he asked me repeatedly if we would not comply with the subpoena. This happened at least three times during the call, despite my clear assertions that we did intend to comply. When someone continuously invites non-compliance in this manner, it gives the distinct impression that the goal was never to have him comply, but rather to cause him to not comply and face indictment, like Mr. Bannon. The combination of a subpoena issued on fabricated pretenses, and false statements, and the repeated push for non-compliance severely undermines the appearance of credibility in your investigation.

For these reasons, Mr. Kerik demands that both the letter and press release be withdrawn or corrected and an apology issued. Whether intentional or negligent, allowing these false statements to stand on the website of this Committee is improper and should be corrected.

Update on Subpoena Compliance

Notwithstanding the significant issues outlined above, Mr. Kerik still intends to comply with the subpoena. However, we will need additional time to comply due to the volume of documents and privilege issues. To understand the privilege issues, we should first clarify the background of Mr. Kerik's involvement.

At the request of former New York City Mayor Rudy Giuliani, Mr. Kerik arrived in Washington D.C. on November 5, 2020, to assist in the legal effort of addressing improprieties in the presidential election, as well as allegations of voter/election fraud. Mr. Kerik worked side-by-side with a small group of aids and attorneys under the direct supervision of Mayor Giuliani who was acting as the personal counsel for President Donald J. Trump.

Mr. Kerik was tasked with investigating and gathering credible, verifiable, and admissible evidence as part of potential litigation. In this role, he compiled a significant amount of information regarding the elections in the states of Arizona, Georgia, Wisconsin, Michigan, and Pennsylvania. Mr. Kerik was involved in coordinating witnesses, interviewing witnesses, collecting sworn affidavits, meeting with analysts, reviewing statistical evidence, overseeing the preparation of briefing documents for both Giuliani and the president, overseeing the scheduling of meetings for Giuliani and witnesses, and whistle blowers, attorneys, and advisers.

To be clear, Mr. Kerik was not tasked with trying to overturn the will of the people, only to ensure that the will of the people was accurately reflected. If there was no evidence of fraud, he would have reported that. What he did find was significant evidence of fraud but was unable to complete the investigation to determine whether any of evidence was conclusive or whether the election result would have been any different. These determinations would have required additional time, resources, and subpoena power.

The information we have compiled from Mr. Kerik comprises approximately 10 GB of data and close to 900 separate files. We will need additional time to go through and review these, remove duplicates and, potentially, make appropriate and permissible redactions, as well as to organize them into the separate categories in the Schedule to the subpoena.

Much of the information contained in these documents is not public because many of the lawsuits were filed and dismissed before Mr. Kerik had an opportunity to complete his work. However, I note that in the past several months, multiple states and even the U.S. Attorney's Office for the Southern District of New York have confirmed evidence of various election frauds.

Given the fact that all of Mr. Kerik's work was done at the behest of attorneys in anticipation of litigation, substantially all of the documents Mr. Kerik has that would be responsive to your subpoena is shielded from disclosure by the work-product doctrine.

As the Supreme Court has made clear:

> At its core, the work-product doctrine shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client's case. But the doctrine is an intensely practical one, grounded in the realities of litigation in our adversary system. One of those realities is that attorneys often must rely on the assistance of investigators and other agents in the compilation of materials in preparation for trial. It is therefore necessary that the doctrine protect material prepared by agents for the attorney as well as those prepared by the attorney himself.

United States v. Nobles, 422 U.S. 225, 238-39 (1975).

Mr. Kerik is not the privilege holder, President Trump is. Although the law is clear that these documents are exempt from disclosure, we are working to see if some form of limited privilege waiver can be obtained because Mr. Kerik very much wants to cooperate and provide these documents to the Committee, so that the American people can witness first-hand what he and others on the president's legal team saw for themselves. We therefore need additional time after compiling and organizing the documents to provide them to counsel for President Trump so that they can decide what portions, if any, they wish to exert privilege over.[1] To the extent that he does stand by the privilege, we will need to then prepare a privilege log, in accordance with paragraph 14 of the "Document Production Definitions and Instructions." For these reasons, we will need an addition 30 days to complete our production and allow for an appropriate review by the privilege holder.

The unavoidable truth that you will learn if Mr. Kerik is able to complete his production to this committee is that there were several indicators of fraud. Some of which were unfounded, and many of which were legitimate. Unfortunately, the majority were never fully investigated, as there was insufficient time. One of the reasons why Mr. Kerik is so interested in making these documents public is so that they can be properly investigated. Ultimately, Mr. Kerik does not know what a proper investigation would reveal and, even if it does show that fraud was widespread, he does not know if that would have changed the outcome of the election. What he does know is that the American people deserve to have confidence in the integrity of their elections and the only way to do that is to conduct a proper and complete investigation of these issues.

We will continue to work on the production for the current subpoena. However, given the falsity of your stated primary reason for subpoenaing Mr. Kerik and the lack of any information he has on the January 6th attack, I suspect Mr. Kerik doesn't have anything that would assist in reaching your publicly stated conclusion.

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[1] For many reasons, including the privilege issues, Mr. Kerik would prefer not to sit for a closed-door deposition, but would prefer to testify in an open and public hearing where, in addition to Mr. Kerik's own counsel, counsel for President Trump may also be present to object to any privilege issues

If the committee wants to review the evidence of election fraud, we are happy to comply, however if this is outside your purview, I would appreciate it if you could let me know whether you intend to modify or withdraw the subpoena.

Respectfully submitted,

Timothy C. Parlatore, Esq.