

First, the Afghanistan documents are now almost fifteen years old. While there is evidence that some contain national defense information, in general, they concern a conflict that is now over, in a country where there are no longer any American troops, about a subject (the 2009 troop surge) that has already been widely discussed in books and media reports. At a trial, we expect the defense would strongly challenge whether the documents still contain sensitive national defense information.

Second, Mr. Biden was allowed to have the Afghanistan documents in his home for eight years as vice president. And when the documents were discovered in his home in December 2022, he was again allowed to have them there as president. To prevail, the government must convince a jury to convict him for having the documents in his home in between, in February 2017, about a month after he left the White House. Because of the possibility that, even if Mr. Biden discovered the Afghanistan documents, he might have forgotten about them soon after, any criminal charges would likely be limited to the days or perhaps weeks surrounding his conversation with Zwonitzer in February 2017. It may be difficult to convince a jury they should care about Mr. Biden's brief illicit possession of documents from 2009, particularly since he was allowed to possess the same documents both before February 2017 (as vice president) and after (as president).

Third, as discussed to some extent above, Mr. Biden will likely present himself to the jury, as he did during his interview with our office, as a sympathetic, well-meaning, elderly man with a poor memory. While he is and must be accountable for his actions—he is, after all, the President of the United States—based on our direct

documents in Virginia, in the absence of other, more direct evidence. We searched for such additional evidence and found it wanting. In particular, no witness, photo, e-mail, text message, or any other evidence conclusively places the Afghanistan documents at the Virginia home in 2017.

In addition to this shortage of evidence, there are other innocent explanations for the documents that we cannot refute. When Mr. Biden told his ghostwriter he “just found all the classified stuff downstairs,” he could have been referring to something other than the Afghanistan documents, and our report discusses these possibilities in detail.

We have also considered that, at trial, Mr. Biden would likely present himself to a jury, as he did during our interview of him, as a sympathetic, well-meaning, elderly man with a poor memory. Based on our direct interactions with and observations of him, he is someone for whom many jurors will want to identify reasonable doubt. It would be difficult to convince a jury that they should convict him—by then a former president well into his eighties—of a serious felony that requires a mental state of willfulness.

We conclude the evidence is not sufficient to convict, and we decline to recommend prosecution of Mr. Biden for his retention of the classified Afghanistan documents.

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Notebooks containing classified information. FBI agents recovered from unlocked drawers in the office and basement den of Mr. Biden’s Delaware home a set