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OPINIONREVIEW & OUTLOOK

# *The FBI's Dangerous Search at Trump's Mar-a-Lago*

Merrick Garland is taking the U.S. down a perilous path.

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Monday's unannounced Federal Bureau of Investigation search of Donald Trump's Mar-a-Lago home isn't a moment for anyone to cheer. The Justice Department is unleashing political furies it can't control and may not understand, and the risks for the department and the country are as great as they are for Mr. Trump.

As everyone knows by now, an FBI law-enforcement action of this kind against a former American President is unprecedented. Monday's search needed a judicial warrant in service of probable cause in a criminal probe. The Justice Department has provided few details beyond what has been leaked to reporters, so it is hard to judge what the FBI was looking for.

The media leaks say the search is related to potential mishandling of classified documents or violations of the Presidential Records Act. If that is true, then the raid looks like prosecutorial overkill and a bad mistake. Document disputes are typically settled in negotiation, and that is how Mr. Trump's disagreement with the National Archives had been proceeding.

Mr. Trump has already returned 15 boxes of documents, but the National Archives wants to know if the former President retained classified material he shouldn't have. This is what appears to have triggered the FBI search, but it's far from clear why this couldn't be settled cooperatively, or at most with a subpoena.

Didn't someone at Justice point out that a search in this case would draw comparisons to Hillary Clinton's mishandling of classified information before her 2016 presidential campaign? She was never prosecuted, as Mr. Trump was quick to point out. Unless Mr. Trump's offense involves a serious risk to national security, half of America may see the Trump search as an example of unequal justice.

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This may not be the full FBI story. Multiple media reports suggest that Justice has opened a grand jury probe into the events of Jan. 6, 2021, and Mr. Trump may be a target of that investigation. The House committee investigating Jan. 6 has been cheering for a prosecution, and the political and media pressure is intense on Attorney General Merrick Garland to indict Mr. Trump. The FBI search may be a fishing expedition to find evidence related to Jan. 6.

On the public evidence so far, a Jan. 6 indictment would be a legal stretch. Political responsibility isn't the same as criminal liability. In our view, the evidence would have to show that Mr. Trump was criminally complicit in that day's violence at the Capitol.

Given its inherently political nature, the burden of proof is especially high for indicting a former President, all the more so for an Administration of the opposition party. The evidence had better be overwhelming—not merely enough to convince a 12-person jury in the District of Columbia, but enough to convince a majority of the American public.

Then there is the fraught history between Mr. Trump and the FBI and Justice. The Russia collusion probe was a fiasco of FBI abuse of process and public deception. Current FBI director Christopher Wray was Mr. Trump's choice to succeed the disastrous James Comey, but the bureau still has a serious credibility problem.

That the Mar-a-Lago raid occurred only about 90 days from a national election also increases the political suspicion. Democrats want to keep Mr. Trump front and center in the midterm campaign, which is why the Jan. 6 committee is continuing into the autumn.

Anyone who thinks an indictment and trial of Mr. Trump would go smoothly is in for a rude surprise. Millions of his supporters will see this as vindication of his charges against the

“deep state,” and who knows how they will respond. Has Mr. Garland considered all of this?

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Worse in the long term is the precedent being set and the payback it is likely to inspire. Once the Rubicon of prosecuting a former President has been crossed—especially if the alleged offense and evidence are less than compelling—every future President will be a target. William Barr, Mr. Trump’s second AG, wisely resisted pressure to indict political actors without a very strong case. The next Republican AG will not be as scrupulous.

Democrats may also be wrong in their calculation about how a prosecution would affect Mr. Trump’s future. The FBI search alone makes it more likely that Mr. Trump will run again for President, if only to vindicate himself. He will run as a martyr, and even Republicans who want to turn the page on the former President may be repelled by what they see as a political prosecution.

All of this risks compounding the baleful pattern of the last six years. Mr. Trump is accused of violating political norms—sometimes fairly, sometimes not—and the left violates norms in response. Polarization increases, and public faith in institutions and the peaceful settlement of political difference erodes further.

The FBI search on Mr. Trump suggests that Mr. Garland may be committed to pursuing and indicting Mr. Trump. If so, he is taking the country on a perilous road. There is much ruin in a nation, but no one should want to test the limits of that ruin in America.

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