

NBC News Special Report

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TOM LLAMAS: And we've just been listening to Attorney General Merrick Garland with some stunning news. A special counsel has now been appointed to investigate the classified documents that have been discovered at both President Biden's personal office when he was out of office, at his personal home, and we've just learned a new development. There has been a third document. There's been two batches and now a single document. A third instance, if you will, of a classified document that was located and now turned over to the National Archives.

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KRISTEN WELKER: So, Tom, just to put all of this into a broader context. This goes back to something that you said right, which is that Republicans have been calling for the appointment of a special counsel, so this announcement today by the attorney general clearly will quiet some of that criticism. They were arguing there was a double standard that former President Trump who, of course, had classified documents seized at his Mar-a-Lago resort was being treated with a double standard. Now, the White House throughout this week has been very insistent to try to draw the distinctions. They say, look, this is a much smaller batch of documents that we are talking about, and these documents were never requested by the National Archives, but still, Tom, this does raise questions about how all of this was handled because, of course, President Biden campaigned on a promise to be transparent. We still have a lot of unanswered questions here, Tom, and now the appointment of this special counsel. This is a very significant development indeed. And of course, we continue to try to get a response here from the White House.

LLAMAS: And crystal — and Kristen, to be absolutely clear here. There is the issue of transparency correct because it has been news organizations that have been breaking the news about these documents. The first batch, the second batch, and now we've learned about this third document, a single document that was also found at his home.

WELKER: It's such an important point, Tom and I pressed White House Press Secretary Karine Jean-Pierre here yesterday during her briefing on that very point that President Biden did campaign on a promise of transparency. These stories are being broken by the news media, not by the White House. Now, the White House counsel's office did put out a statement vowing to update the public on any information. That statement went out before NBC News broke the story about the existence of a second batch of classified documents so there are still going to be a lot of questions swirling about that issue of transparency. Worth noting, Tom, that the Republican-led House Oversight Committee has already launched an investigation into this. Not a big surprise because they are launching a series of investigations into the Biden administration but again, this

is a very significant development here today.

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KEN DILANIAN: Well, Tom, [Robert Hur] is a consummate career prosecutor. A very accomplished guy, but it's important to note he was a Republican appointee. He served in a very senior post in the Trump justice Department — the PADAG, the principal assistant deputy attorney general who's — it's kind of a job that makes the trains run on time and touches almost everything inside the Justice Department, and then he went on to become the unit of the U.S. attorney in the state of Maryland for some period of time, but he rose up through the ranks as a career prosecutor prosecuting all sorts of different kinds of cases from gang violence to counter-terrorism to corporate fraud. He's a graduate of Harvard and then Stanford Law School, where he was editor of the Law Review there, so a very accomplished guy, well known to people in Justice Department circles and Republican appointee, although many people who know him couldn't tell you exactly what his politics are, Tom.

LLAMAS: Ken, before I let you go, and just briefly, if you can, talk to me about the pressure Attorney General Merrick Garland is under right now. He has an open investigation against a former President. President Trump. He has this new investigation against the current President, and there's also the ongoing investigation into Hunter Biden and some tax issues there. Talk to me about the pressure that the attorney general has to be under now.

DILANIAN: Well, he went somewhere to alleviating some of that pressure with this appointment today, but you're right to point out, Tom, that at the end of the day, all in all these cases, prosecutors may make charging recommendations, but the buck stops with Merrick Garland. He's ultimately going to have to decide, for example, if Special Counsel Jack Smith recommends charges against Donald Trump. Merrick Garland is going to have to decide whether to move forward with those. Similarly in this case with President Biden. So, it is an enormous burden and people inside this building where I am do not like special counsels. They like to think that they can do this stuff on their own and within the confines of the Justice Department, so it's a big step that Garland has taken today. But he felt like the circumstances and the law and the facts demanded it, Tom.

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LLAMAS: I want you to walk us through the timeline here because I think Republicans may seize on this piece of information, which we learned from the attorney general just now. November 4th, the department of Justice is notified about these classified documents. The FBI doesn't start their investigation, according to the attorney general until November, 9. There is a

big day in between those two dates and that's November 8, Election Day. Is this just standard operating procedure? Is this the way things work, the protocol? Or do you think they tried to leave politics out of this?

DANNY CEVALLOS: This is a question that at some point, DOJ May have to answer for because there was some delay. You can see it in Josh Hawley's letter that he wrote to Merrick Garland. He lays out this exact same concern and we may never know — Merrick Garland may not give a press conference where he explains the reasoning behind that decision. But, ultimately, it may be as simple as DOJ was investigating, and DOJ policy is they don't come out and give status updates on their investigations. They investigate. And the only way a target usually finds out there's a problem is if they're indicted, and if not, then they may never know they were ever a target or somebody that was being looked at by DOJ. That's the way DOJ works, and that's how they're very, very effective at what they do, which is prosecute and secure convictions.

LLAMAS: Danny, before you go, give us the legal ramifications for President Biden right now.

DILANIAN: If nothing else, Merrick Garland's going to be committed to being remembered historically as someone who was not partial to President Biden because he has not only appointed a Trump-appointed U.S. Attorney to do the initial review and now he's appointed another Trump-appointed attorney — a U.S. Attorney as a special counsel. This should give Biden some concern, but look, as — we have to expect that special counsel, on either side, will be impartial and independent, truly independent.