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August 27, 2019

By CM/ECF

Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Donald J. Trump, et al. v. Deutsche Bank, AG, et al.*, No. 19-1540

We write to make one correction and to answer one question raised by the Court during the August 23, 2019 oral argument in the above-captioned case.

First, in response to a question about the investigation of President Nixon's tax returns, undersigned counsel for the U.S. House of Representatives mistakenly stated that the investigation was conducted by the Committee on Ways and Means. Oral Arg. at 1:00:50. In fact, as we stated in our supplemental brief (at 6), that investigation was conducted by the Joint Committee on Taxation.¹

Second, the Court asked whether the subpoenas issued by the House Financial Services Committee and the Permanent Select Committee on Intelligence (collectively,

¹ The Joint Committee on Taxation "is a nonpartisan committee of the United States Congress, originally established under the Revenue Act of 1926." *Overview*, The Joint Committee on Taxation, <https://www.jct.gov/about-us/overview.html>; *see* Revenue Act of 1926, Pub. L. No. 69-20, § 1203, 44 Stat. 9, 127-28 (1926). The Committee "is chaired on a rotating basis by the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee" and is "closely involved with every aspect of the tax legislative process," including "[i]nvestigating various aspects of the Federal tax system." *Overview*, The Joint Committee on Taxation, <https://www.jct.gov/about-us/overview.html>.

the Committees) comply with 26 U.S.C. § 6103—which prohibits certain disclosures of tax returns or return information—insofar as those subpoenas require disclosure of federal tax returns or return information. *See* Oral Arg. at 48:55-50:30. Counsel for the House partially responded to the Court’s question and promised to provide the Court with a fuller explanation for his answer. As set forth below, the subpoenas comply with the law.

The application of Section 6103 to any tax returns or return information that defendants Deutsche Bank and Capital One Bank might have depends on how the banks obtained that information—facts the Committees do not know. If the banks obtained tax returns or return information directly from Mr. Trump (or any of the other plaintiffs), and not from the Internal Revenue Service (IRS), then the prohibitions on disclosure in Section 6103(a) do not apply. *See* 26 U.S.C. § 6103(a)(1)-(3); *Hrubec v. National R.R. Passenger Corp.*, 49 F.3d 1269, 1270 (7th Cir. 1995); Staff of the Joint Committee on Taxation, JCX-3-19, *Background Regarding the Confidentiality and Disclosure of Federal Tax Returns* 9 (2019), <https://tinyurl.com/JCTReport>. In other words, Section 6103 does not prohibit the defendant banks from providing tax returns and return information to the Committees under valid subpoenas if that information was provided to the banks directly by the relevant taxpayers.

Similarly, if the banks obtained tax returns or return information directly from the IRS at the request of, or with the consent of, Mr. Trump or any of the other plaintiff taxpayers, the disclosure restrictions in Section 6103(a) would not apply. In April 2019, when the Committees’ subpoenas were issued, and under the version of Section 6103(c) still operative, there is no requirement that “a recipient receiving returns or return information by consent maintain the confidentiality of the information received.” H. Rep. No. 116-39, at 85 (2019). In other words, Section 6103 does not prohibit the defendant banks from providing tax returns or return information to the Committees under valid subpoenas if that information was provided to the banks by the IRS with plaintiffs’ consent.

We note that Congress recently amended Section 6103(c) to prohibit redisclosure of tax return information in certain circumstances. Taxpayer First Act of 2019, Pub. L. No. 116-25, § 2202(a), 133 Stat. 1012. Even if this amendment were otherwise to apply to the type of redisclosure that would be at issue here, the new statute covers disclosures made after the legislation’s effective date. *Id.* at § 2202(c) (effective date of the amendment 180 days after July 1, 2019).

We hope that this information is useful to the Court.

Respectfully submitted,

/s/ Douglas N. Letter

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CERTIFICATE OF SERVICE

I certify that on August 27, 2019, I filed a copy of the foregoing document via the CM/ECF system of the United States Court of Appeals for the Second Circuit, which I understand caused service on all registered parties.

/s/ Douglas N. Letter _____

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