

George W. Bush Presidential Library

Collection: Counsel's Office, White House

Series: Kavanaugh, Brett, – Subject Files

Folder Title: PRA (Presidential Records Act)
Executive Privilege

Withdrawn/Redacted Material

The George W. Bush Library

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Letter	Dear Judge Gonzales - To: Alberto R. Gonzales - From: Jay S. Bybee	3	06/2002	P5;
002	Memorandum	[Constitutional Privileges] - To: Andrew H. Card, Jr. - From: Alberto R. Gonzales	1	06/14/2002	P5;
003	Memorandum	[Constitutional Privileges] - To: POTUS - From: Alberto R. Gonzales	2	06/2002	P5;
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COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

PRA (Presidential Records Act) Executive Privilege

FRC ID:

9802

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- A. Closed by Executive Order 13526 governing access to national security information.
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Records Not Subject to FOIA

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BILLING CODE 7515-01U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36-CFR Part 1275

RIN 3095-AB07

Nixon Presidential Materials; Reproduction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is revising the regulations for obtaining copies of the Nixon White House tape recordings, which are in NARA custody. First, NARA is now allowing the public to obtain copies of all Nixon White House tape recordings after they are officially released to the public. Previously, NARA only permitted the public to obtain selected tape recordings. Second, the ban on self-service copying of these tapes is lifted. These changes reflect modifications in the 1996 Nixon Tapes Settlement Agreement that became effective April 1, 2001. This final rule will apply to the public.

EFFECTIVE DATE: [INSERT 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301-837-2902, or fax number 301-837-0319.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the March 15, 2002, **Federal Register** (67 FR 11632) for a 60-day comment period. NARA did not receive any comments. This rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the

Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1275

Archives and records.

For the reasons set forth in the preamble, NARA amends part 1275 of title 36, Code of Federal Regulations, as follows:

**PART 1275 – PRESERVATION AND PROTECTION OF AND ACCESS TO THE
PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION**

1. The authority citation for part 1275 is revised to read as follows:

Authority: 44 U.S.C. 2104, 2111 note.

2. Amend §1275.64 by revising paragraph (d) to read as follows:

§ 1275.64 Reproduction of tape recordings of Presidential conversations.

* * * * *

(d) The reproduction for members of the public of the reference copies of the available tape recordings described in paragraph (a) of this section will be permitted as follows: Copies of tape recordings will be made available following the public release of the tape segments contemplated in §1275.42(a). Effective as of April 20, 2001, NARA will allow members of the public to obtain copies of all tapes that have been made available to the public by that date and that subsequently become available as they are released. Such copying will be controlled by NARA or its designated contractor. The fees for the reproduction of the tape recordings under this section shall be those prescribed in the schedule set forth in part 1258 of this chapter.

* * * * *

3. Amend §1275.66 by revising paragraph (a) to read as follows:

§1275.66 Reproduction and authentication of other materials.

(a) Copying of materials, including tape recordings described in §1275.64, may be done by NARA, by a contractor designated by NARA, or by researchers using self-service copiers or copying equipment.

* * * * *

4. Amend Appendix A to Part 1275 -- Settlement Agreement, by revising the introductory paragraph to read as follows:

APPENDIX A TO PART 1275 -- SETTLEMENT AGREEMENT

Settlement Agreement filed April 12, 1996, in Stanley I. Kutler and Public Citizen v. John W. Carlin, Archivist of the United States, and William E. Griffin and John H. Taylor, Co-executors of Richard M. Nixon's Estate, Civil Action No. 92-0662-NHJ (D.D.C.) (Johnson, J.). By letter dated April 17, 2001, NARA and the Nixon estate agreed to waive paragraph 11 of this Settlement Agreement, such that the delay on public copying until January 1, 2003, of tapes not made publicly available before April 12, 1996, shall no longer apply. This change is reflected in 36 CFR 1275.64.

* * * * *

Dated: May 23, 2002

John W. Carlin,

Archivist of the United States.

107TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. HATCH introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To establish a comprehensive Federal program to compensate United States victims of international terrorism and certain other specified acts of terrorism.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Compensation for Vic-
5 tims of International Terrorism Act of 2002";

6 **SEC. 2. ESTABLISHMENT OF PROGRAM.**

7 There is established within the Department of State
8 the Compensation for Victims of International Terrorism
9 Program (in this Act referred to as the "program") under
10 which monetary awards shall be made in accordance with

1 this Act to eligible individuals who are physically injured
2 or killed as a result of an act of international terrorism
3 or such other acts as are specifically covered by this Act.

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

6 (1) ACT OF INTERNATIONAL TERRORISM.—The
7 term “act of international terrorism” means activi-
8 ties that—

9 (A) cause death or physical injury;

10 (B) are a violation of the criminal laws of
11 the United States or of any State, or that
12 would be a criminal violation if committed with-
13 in the jurisdiction of the United States or of
14 any State;

15 (C) were intended—

16 (i) to cause death to, or physical in-
17 jury to, or kidnapping of, members of the
18 civilian population; and

19 (ii) to influence the policy or conduct
20 of the United States Government;

21 (D) were committed by foreign nationals or
22 foreign governments, or the agents thereof; and

23 (E) are directed, in whole or in part, at the
24 United States or at an individual because the
25 individual is a national of the United States.

1 (2) CLAIMANT.—The term “claimant” means
2 an individual filing a claim for compensation under
3 this Act.

4 (3) NATIONAL OF THE UNITED STATES.—The
5 term “national of the United States” has the mean-
6 ing given in section 101(a)(21) of the Immigration
7 and Nationality Act (8 U.S.C. 1101(a)(21)).

8 (4) OFFICE OF INTERNATIONAL CLAIMS.—The
9 term “Office of International Claims” means the Of-
10 fice of International Claims and Investment Dis-
11 putes in the Office of the Legal Adviser of the De-
12 partment of State.

13 (5) PHYSICAL INJURY.—The term “physical in-
14 jury” means a physical injury to the body that
15 caused, either temporarily or permanently, partial or
16 total physical disability, incapacity, or disfigurement.

17 (6) UNITED STATES.—The term “United
18 States” means the States, the District of Columbia,
19 the Commonwealth of Puerto Rico, the Common-
20 wealth of the Northern Mariana Islands, the terri-
21 tories and possessions of the United States, the ter-
22 ritorial sea of the United States, and the airspace
23 above them.

24 **SEC. 4. DETERMINATIONS OF CLAIMS.**

25 (a) THRESHOLD DETERMINATION.—

1 (1) IN GENERAL.—Upon the occurrence of a
2 terrorist incident, the Secretary of State, after con-
3 sultation with the Attorney General, shall promptly
4 determine in writing whether an act of international
5 terrorism has taken place.

6 (2) STATUS OF DETERMINATIONS.—The Sec-
7 retary of State's determination under this section
8 shall be final and conclusive, and it shall not be sub-
9 ject to review in any judicial, administrative, or
10 other proceeding.

11 (3) PUBLICATION OF DETERMINATIONS.—If the
12 Secretary determines that an act of international
13 terrorism has taken place, the Secretary shall pub-
14 lish such a determination in the Federal Register
15 and transmit a copy of it to the Office of Inter-
16 national Claims.

17 (b) OFFICE OF INTERNATIONAL CLAIMS.—

18 (1) IN GENERAL.—Upon receipt of a deter-
19 mination under subsection (a), the Office of Inter-
20 national Claims shall have jurisdiction to receive, ex-
21 amine, and adjudicate claims, and render final deci-
22 sions with respect to claims, filed under section 5 in
23 accordance with the provisions of this Act.

24 (2) CERTIFICATION REQUIRED.—When a final
25 decision of the Office of International Claims makes

1 an award of benefits, the transmittal of the final de-
2 cision shall be accompanied by the Office of Inter-
3 national Claims certification of that award to the
4 Secretary of the Treasury for payment.

5 (3) APPLICATION OF INTERNATIONAL CLAIMS
6 SETTLEMENT ACT.—Except to the extent incon-
7 sistent with the provisions of this Act, the provisions
8 of title I of the International Claims Settlement Act
9 of 1949 (22 U.S.C. 1621 et seq.) shall apply to
10 claims filed under the program.

11 **SEC. 5. FILING OF CLAIMS.**

12 (a) IN GENERAL.—Claims for compensation under
13 the program shall be filed with the Office of International
14 Claims on the form developed under subsection (b) and
15 shall state the factual basis of eligibility for compensation
16 and the amount of compensation sought.

17 (b) CLAIM FORM.—

18 (1) REQUIREMENT TO DEVELOP.—The Office
19 of International Claims shall develop a form that
20 claimants shall use when submitting claims under
21 subsection (a).

22 (2) CONTENTS.—The claim form at a minimum
23 shall request—

24 (A) in the case of a claim filed with respect
25 to a decedent, information demonstrating the

1 decedent's death as a direct result of the act of
2 international terrorism and information dem-
3 onstrating that the claimant is eligible to re-
4 cover under the Act;

5 (B) in the case of a claim not involving a
6 death, information demonstrating the physical
7 harm that the claimant suffered as a direct re-
8 sult of the act of international terrorism; and

9 (C) in the case of a claim filed by a parent
10 or legal guardian, information demonstrating
11 the claimant's status as a parent or legal
12 guardian.

13 (3) **ADDITIONAL INFORMATION.**—The claim
14 form shall state clearly and conspicuously the infor-
15 mation contained in section 12.

16 **SEC. 6. ELIGIBILITY.**

17 (a) **IN GENERAL.**—The Office of International
18 Claims shall review each claim filed under the program
19 and determine whether the claimant is an eligible indi-
20 vidual under subsection (b).

21 (b) **ELIGIBLE INDIVIDUALS.**—A claimant is an eligi-
22 ble individual if the Office of International Claims deter-
23 mines that such claimant is—

24 (1) a victim who, as of the date on which the
25 act of international terrorism occurred—

1 (A) was a national of the United States;
2 and

3 (B)(i) suffered physical injury or death as
4 a direct result of the act of international ter-
5 rorism; or

6 (ii) was held hostage as a direct result of
7 an act of international terrorism and not solely
8 for ransom;

9 (2) in the case of a decedent who is a victim
10 within the meaning of paragraph (1), an individual
11 who is eligible to recover under section 7(a);

12 (3) in the case of an individual who is a victim
13 within the meaning of paragraph (1) and who is less
14 than 18 years of age, incompetent or incapacitated,
15 the parent or legal guardian of the individual who
16 files a claim on behalf of the individual; or

17 (4) a victim who—

18 (A) was a national of the United States;
19 and

20 (B)(i) suffered physical injury or death as
21 a direct result of the bombing of the Alfred P.
22 Murrah Federal Building in Oklahoma City on
23 April 19, 1995, or as a direct result of the
24 bombing of the World Trade Center Complex
25 on February 26, 1993, or an individual who is

1 eligible to recover under section 7(a) on account
2 of the death of an individual described in this
3 paragraph.

4 (c) PROHIBITION ON ELIGIBILITY.—An individual
5 identified by the Attorney General as having been a partic-
6 ipant or conspirator in any act of international terrorism,
7 or a representative of such individual, shall not be eligible
8 to receive compensation under the program.

9 (d) EXCLUSION FOR ARMED CONFLICT.—The pro-
10 gram does not apply to any claim arising out of injury
11 or death sustained while engaged in armed conflict by a
12 member of the United States Armed Forces serving on
13 active duty. The Secretary of Defense shall determine
14 promptly whether the incident giving rise to the claims
15 shall be deemed an armed conflict for the purposes of the
16 preceding sentence. The Secretary of Defense's determina-
17 tion under this subsection shall be final and conclusive,
18 and it shall not be subject to review in any judicial, admin-
19 istrative, or other proceeding.

20 (e) SEPTEMBER 11 VICTIMS BARRED FROM ELIGI-
21 BILITY.—Notwithstanding any other provision in this Act,
22 no individual who is or was eligible to recover under the
23 September 11th Victim Compensation Fund of 2001 shall
24 be eligible to recover under this Act.

1 **SEC. 7. PAYMENT OF BENEFITS.**

2 (a) **DEATH BENEFITS.**—In any case in which the Of-
3 fice of International Claims determines, under regulations
4 issued pursuant to this Act, that an eligible individual has
5 died as the direct and proximate result of an act of inter-
6 national terrorism or is an eligible individual on account
7 of a death described in section 6(b)(4), the Office of Inter-
8 national Claims shall pay a benefit equal to the amount
9 payable as a death benefit to public safety officers pursu-
10 ant to section 3796 of title 42, United States Code, as
11 follows:

12 (1) If there is no surviving child of such officer,
13 to the surviving spouse of such victim.

14 (2) If there is a surviving child or children and
15 a surviving spouse, one-half to the surviving child or
16 children of such victim in equal shares and one-half
17 to the surviving spouse.

18 (3) If there is no surviving spouse, to the child
19 or children of such victim in equal shares.

20 (4) If none of the circumstances in paragraphs
21 (1) through (3) apply, to the parent or parents of
22 such victim in equal shares.

23 (b) **BENEFITS FOR PHYSICAL INJURIES OR HOSTAGE**
24 **TAKING.**—In the event the claimant was physically injured
25 or held hostage as a direct result of an act of international
26 terrorism, or is a physically injured eligible individual

1 under section 6(b)(4), the Office of International Claims
2 shall pay a benefit to the claimant in an amount deter-
3 mined by the Office of International Claims up to, but
4 not to exceed, the amount provided for under the pre-
5 ceding subsection.

6 (c) NEGLIGENCE OR OTHER LIABILITY THEORIES
7 NOT CONSIDERED.—Awards shall be made without regard
8 to the negligence or any other theory of liability of the
9 claimant or of the individual on whose behalf the claimant
10 is filing a claim.

11 (d) INTERIM PAYMENTS.—Whenever the Office of
12 International Claims determines upon a showing of need
13 and prior to final action that the claimant is likely to re-
14 cover under this Act, the Office of International Claims
15 may make an interim benefit payment not to exceed
16 \$3,000 to the individual entitled to receive a benefit under
17 this Act. The amount of an interim payment under this
18 paragraph shall be deducted from the amount of any final
19 benefit paid to such individual. Where there is no final
20 benefit paid to such individual, the recipient of any interim
21 payment shall be liable for repayment of such amount.
22 The Office of International Claims may waive all or part
23 of such repayment, considering for this purpose the hard-
24 ship which would result from such repayment.

1 **SEC. 8. LIMITATIONS ON CLAIMS.**

2 (a) **EXCLUSIVITY OF BENEFITS FOR PHYSICAL INJU-**
3 **RIES OR HOSTAGE TAKING.**—No benefit is payable under
4 this Act with respect to the death of a victim if a benefit
5 is paid under this Act with respect to such victim having
6 been injured or held hostage.

7 (b) **EXCLUSIVITY OF DEATH BENEFITS.**—No benefit
8 is payable under this Act with respect to a victim having
9 been injured or held hostage if a benefit is payable under
10 this Act with respect to the death of such victim.

11 (c) **TIME LIMITATION FOR FILING.**—No claim may
12 be filed on the basis of an act of international terrorism
13 after the date that is 2 years after the date of publication
14 in the Federal Register of a determination under section
15 4(a). In the event that the claimant is eligible under sec-
16 tion 6(b)(4), no claim by that claimant may be filed after
17 the date that is 2 years after the date of enactment of
18 this Act.

19 **SEC. 9. APPLICATION TO ACTS OF INTERNATIONAL TER-**
20 **RORISM OCCURRING BEFORE DATE OF EN-**
21 **ACTMENT.**

22 (a) **IN GENERAL.**—Subject to the provisions of sub-
23 section (b), benefits may be awarded under this Act to
24 eligible individuals for acts of international terrorism that
25 took place before the date of enactment of this Act and
26 which occurred on or after November 1, 1979.

1 (b) DETERMINATIONS OF STATUS OF INCIDENTS.—

2 The Secretary of State, in consultation with the Attorney
3 General, shall issue, promptly upon the request of a claim-
4 ant potentially covered under subsection (a), a determina-
5 tion whether an incident that occurred on or after Novem-
6 ber 1, 1979, and before the date of enactment of this Act
7 was an act of international terrorism. Such requests shall
8 be considered only if made not later than one year after
9 the date of enactment of this Act.

10 **SEC. 10. ADMINISTRATIVE PROVISIONS.**

11 The Office of International Claims is authorized to
12 establish such rules, regulations, and procedures as may
13 be necessary to carry out the purposes of this Act. Such
14 rules, regulations, and procedures will be determinative of
15 conflict of laws issues arising under this Act. Rules, regu-
16 lations, and procedures issued under this Act may include
17 regulations governing the recognition of agents or other
18 persons representing claimants under this Act before the
19 Office of International Claims. The Office of International
20 Claims may prescribe the maximum fees that may be
21 charged for services performed in connection with any
22 claim under this Act before the Office of International
23 Claims, and any agreement in violation of such rules and
24 regulations shall be void.

1 **SEC. 11. SUBROGATION.**

2 (a) IN GENERAL.—The United States shall be sub-
3 rogated, to the extent of the payments, to any recovery
4 in litigation or settlement of litigation related to an injury
5 or death of an individual paid under the program.

6 (b) STATUTORY CONSTRUCTION.—Nothing in this
7 Act shall limit or otherwise affect any right of the United
8 States, including any right of recovery from a foreign state
9 or instrumentality thereof, under any applicable law.

10 (c) USE OF RECOVERED FUNDS.—Notwithstanding
11 any other provision of law, any amounts recovered under
12 subsection (a) or under any recovery described in sub-
13 section (b) shall be used for subsequent awards under this
14 Act.

15 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

16 There are authorized to be appropriated to the De-
17 partment of State such sums as may be necessary to carry
18 out this Act.

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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	Dear Judge Gonzales - To: Alberto R. Gonzales - From: Jay S. Bybee	3	06/2002	P5;

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

PRA (Presidential Records Act) Executive Privilege

FRC ID:

9802

FOIA IDs and Segments:

2017-0345-F

OA Num.:

2182

NARA Num.:

2093

RESTRICTION CODES**Presidential Records Act - [44 U.S.C. 2204(a)]**

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
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