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Congress of the United States
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January 8, 2021

The Honorable Donald J. Trump
President of the United States of America
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Re: Pardon for Unjust Political Persecution

Dear President Trump:

I am writing to request a presidential pardon¹ for four patriots associated with We Build the Wall (a non-profit organization) who have been criminally charged by the U.S. Attorney's office in the Southern District of New York in what is clearly a political prosecution. The four men are Brian Kolfage, Steve Bannon, Andrew Badolato, and Timothy Shea.

The case is pending in United States District Court for the Southern District of New York case 1:20-cr-00412-AT and is set for trial in May of 2021. The four men are being prosecuted for supporting you, the America First agenda, and your plan to build a wall on our nation's southern border, not because they committed any crimes. A presidential pardon is not only warranted, it is desperately needed to ensure that a grave injustice is not done and to prevent this left-leaning group of prosecutors from again abusing the judicial system to score political points.

The Southern District of New York is known not just as a hot bed of liberal activism but for its corruption and incompetence. In September 2020, Judge Allison Nathan issued a scathing rebuke against this rogue office noting that the office level of corruption and "misconduct is high. With each misstep, the public faith in the criminal justice system further erodes. With each document wrongfully withheld, an innocent person faces the chance of wrongful conviction. And with each unforced Government error, the likelihood grows that a reviewing court will be forced to reverse a conviction or even dismiss an indictment, resulting in wasted resources, delayed justice, and individuals guilty of crimes potentially going unpunished." (Judge Nathan Sep. 16, 2020 Order).

¹ The President has broad power to issue a pardon of any alleged federal crime, at any stage, even before there is an indictment, under Article Two of the United States Constitution (Section 2, Clause 1), which provides: "The President ... shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of impeachment."

The Four Defendants

Two of the four defendants you are already familiar with. Brian Kolfage is the founder of We Build the Wall. He is also a man who has sacrificed much for the United States of America. He is a veteran and served in the Iraq War from 2003 to 2004 in the Air Force Security Forces. On September 11, 2004, while stationed in Iraq, he lost both his legs entirely, his right hand, and a portion of his right forearm when a 107 mm rocket exploded three feet from him. These catastrophic, life-altering injuries rendered him one of the most severely wounded combat veterans to emerge from that war theater. Brian received the Purple Heart medal among many others for his service and sacrifice. Given his injuries, it is an everyday challenge for him to support his wife and two young children.

Notwithstanding his injuries, Brian has continued to dedicate his life to serving our nation. When Congress petulantly refused to provide any funding for the border wall demanded by Americans in December 2018, he started a “GoFundMe” campaign to raise \$1 billion to build “the Trump border wall” between the United States and Mexico. About one month later, with the assistance of Stephen Bannon, he established We Build the Wall, Inc. (“WBTW”), a Florida non-profit corporation organized under section 501(c)(4) of the Internal Revenue Code. WBTW’s mission is to unite private citizens that share a common belief in providing national security for our southern border through the construction, administration, and maintenance of physical barriers inhibiting illegal entry into the United States of America.

Stephen Bannon is, of course, a great American and your former chief strategist in the White House. He was instrumental in creating WBTW and recruiting some the country’s top experts in border security to be on its Board of Directors and Advisory Board. His love of this country and his sacrifice to make it great again are well known to all.

Andrew Badolato and Timothy Shea are vendors who provided various logistical services to WBTW starting from its inception. These are the four named defendants. It is possible a vindictive DOJ may seek indictments against others affiliated with the non-profit and its charitable work. All people affiliated with WBTW should be prophylactically pardoned.

We Build the Wall

In approximately 18 months, WBTW raised more than \$20 million from more than 400,000 patriotic Americans who are your greatest supporters. WBTW constructed its first section of border wall on private land in the Summer of 2019 in Sunland Park, New Mexico. Although it was only half a mile, it was on extremely mountainous terrain rising 310 vertical feet. It closed one of the two largest smuggling corridors in the El Paso Sector. When it was completed, Donald Trump, Jr. came to the site and delivered a speech praising WBTW and its efforts. *Because it is privately owned, it is the only section of border wall in the country that has had “Trump 2020” banners hanging prominently from the wall.* This has infuriated your political opponents on the Left. This wall is a testament to American spirit and the drug cartels, human traffickers and Democrats who support them seethe at this accomplishment.

In early 2020, WBTW contributed a small portion (5%) of the funds to support Tommy Fisher's prototype of a border wall in Mission, Texas. WBTW was also in the process of working with U.S. Customs and Border Patrol (CBP) to start a third project in cooperation with CBP to plug one of several gaps identified by CBP where WBTW could be of assistance. That effort came to a halt when the U.S. Attorney's Office in the Southern District of New York convinced the judge to freeze the assets of WBTW. In short, political activists who want open borders masquerading as prosecutors in New York stopped the charitable work.

Indictment in the United States Southern District of New York

In August 2020, clearly timed to hurt your re-election efforts, the acting United States Attorney for the Southern District of New York, Audrey Strauss, secured an indictment against the four men. The indictment charges them with Conspiracy to Commit Wire Fraud and Conspiracy to Commit Money Laundering. It alleges that although various representations were made to potential donors that all of the money donated would be used to build the border wall and that Brian would not receive a salary, \$350,000 of the over-\$20 million in donated funds indirectly made its way to him. It further alleges that he then used the money he received to pay for home renovations, a boat, a luxury SUV, a golf cart, jewelry, cosmetic surgery, personal tax payments, and credit card debt. The other three defendants are essentially charged with facilitating this alleged fraud.

This is a Political Prosecution.

This prosecution is—to state it in plain and unvarnished terms—a political hitjob. The political motivations underlying the prosecution are clear. You can see this simply by looking at where he is being prosecuted: the Southern District of New York. The Southern District of New York has no interest in this case. Although the indictment alleges that residents of the Southern District of New York donated to the GoFundMe campaign or WBTW, the donorship of WBTW was nationwide and had no special concentration in Manhattan or the surrounding boroughs of New York City. The organization itself was based out of Florida. It's Board Members operated out of Kansas and Colorado; and, as stated, its charitable works were conducted, among other places, in Texas and New Mexico.

Furthermore, the prosecutor who obtained the indictments, Audrey Strauss, is a political partisan. She is a lifelong Democrat and between 2002 and 2017, she donated a total of \$94,845 to candidates for, and organizations affiliated with, the Democratic Party. Her hatred of your Administration, of secure borders, and of a fair administration of justice is palpable.

The political nature of the prosecution is also reflected in the other targets: Stephen Bannon and WBTW itself. Prosecuting Mr. Bannon is yet another example of this particular U.S. Attorney's Office targeting people associated with you. To them, taking him down is taking you down by proxy. And in the process, the prosecutor has shut down WBTW by freezing its assets. Stopping the construction of the border wall—whether by the U.S. Government or by private Trump supporters—is a direct shot at one of your most important legacies as President. The symbolism of attacking the wall, and a charity created to help achieve your most important campaign promise, is obvious. The allegations and indictment are baseless and politically motivated.

The Danger that Innocent Men Will be Convicted

There are also fundamental problems with the case against the four defendants. To convict them, the prosecution must prove that the statements that Brian would not receive any of the money donated to build the border were material misrepresentations. See *Neder v. U.S.*, 527 U.S. 1, 21-25 (1999). A misrepresentation is material if “the maker of the representation knows or has reason to know that its recipient regards or is likely to regard the matter as important in determining his choice of action, although a reasonable man would not so regard it.” *Id.* at 22 n.5.

In other words, the crime requires that the donors made their donation *because* they thought Brian was not receiving a salary. The donors wanted the wall built, and none of them cared whether Brian acted solely as a volunteer or accepted a reasonable salary for his work. That a liberal activist Democrat donor masquerading as the U.S. Attorney wants a person who has devoted his time, energy and life to this project from receiving salary to pay his mortgage and feed his family is abusive, sick and immoral.

Indeed, it appears to us from our investigation to date that the vast majority of those who donated to build the border wall do not claim to be defrauded. They would have naturally expected a portion of their donation to pay for WBTW’s overhead, which would include reasonable compensation for those working for it. Everyone knows that nonprofit organizations have overhead.² And, in this case, a fair reading of the allegations of the indictment make clear that—accepting everything said as true—no more than approximately \$1.5 million of the over \$20 million raised by WBTW (i.e., about 7-8% of the donations) made its way to the collective hands of the defendants in this case. And of this amount, no more than \$350,000 can be said to have been placed in Brian’s hands for three years of labor. Whatever you may say about the worthiness of this charitable cause, one thing is clear and cannot be fairly disputed by the Southern District of New York prosecutors: Brian Kolfage gave more to this organization and its cause than the fraction of funds he may have personally and indirectly received from WBTW donations. He was not unjustly enriched for the services he provided.

Finally, the government’s allegations that Brian used donations for personal expenses are misleading. The supposed extravagant assets Brian obtained pre-dated the conduct alleged in the indictment. He ordered the boat in 2017. He has owned “luxury SUV[s]” since 2007. The renovations to his house were made in 2017 and 2018. And Brian receives monthly compensation for the loss of his three limbs primarily from the Veterans Administration, which is used to pay for his other personal expenses. He did not, in short, live off of WBTW donations. He could have if he so wanted and certainly earned the right to do so.

Nevertheless, despite all of these fatal flaws in the prosecutors’ case, there is a very real risk that the four men will be convicted because of the likely bias in a jury drawn from New York City. While the vast majority of Americans across the country support your efforts to build the border wall, that is not true in liberal New York City. The prosecutors want to use this case to attack the border wall itself and a jury of liberal New Yorkers may be only too willing to help them.

² According to Intuit, a nonprofit’s overhead should not exceed 35%. See “Find the Right Overhead Ratio for Your Nonprofit”, available at <https://quickbooks.intuit.com/ca/resources/nonprofit-organizations/find-right-overhead-ratio/>.

It is an injustice to force these great Americans, and a charity that has accomplished more of its goals in a couple years than most charities ever accomplish, to spend their money and time defending against a vindictive and politically motivated prosecutor from a DOJ district office known for its incompetence and unethical misconduct.

The Defendants Should be Pardoned, and WBTW's Assets Should be Freed to Allow the Mission to Continue.

Mr. President, you have the power to correct this injustice. Please pardon the four men, the organization, and anyone affiliated with the charity to stop Ms. Strauss's incessant abuse of her prosecutorial power and end this misguided, politicized prosecution. Specifically, I request that you "pardon the defendants for any offenses relating to their involvement in We Build the Wall, including the offenses charged in Indictment 20 Cr. 412, and pardon and remit of any punishment, fines or penalties against the defendants or against property relating to those alleged offenses, including the allegations of forfeiture against donations to We Build the Wall." The prosecutors have used this indictment to attack the border wall itself. Pursuing the mission of building the border wall must continue. That is what your supporters want, and that is what the donors to WBTW want.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Paul A. Gosar" with a stylized flourish at the end.

Paul A. Gosar, D.D.S.
Member of Congress