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LDAD Files Amicus Brief Supporting John Brennan's Bid to Preserve DOJ Records Amid Threatened Prosecution

Lawyers Defending American Democracy (LDAD) has filed an amicus brief in support of former CIA Director John Brennan's motion for a preliminary injunction requiring the Department of Justice to preserve records and communications relating to any investigation or potential prosecution of him. The underlying lawsuit, *John O. Brennan v. Todd W. Blanche*, is an extraordinary description of the Department of Justice's misuse of its enormous prosecutorial powers and its willful failure to follow court orders and the rule of law, as evidenced by judicial decisions around the country.

Former Director Brennan's lawsuit is an effort to require the DOJ to preserve records in the event that the government proceeds with a threatened indictment. He argues that, if criminal charges are ultimately brought, records and communications relating to the government's investigation may be critical to establishing whether any prosecution was motivated by political retaliation or constituted vindictive or selective prosecution. He contends there is a well-founded concern that, absent an injunction, those records and communications will not be preserved until a court can review them.

LDAD's brief notes that, for over a century, courts have routinely afforded the federal government a "presumption of regularity," that allows courts to presume that public officers are properly discharging their official duties, absent clear evidence to the contrary. This presumption of trust earned by generations of Justice Department lawyers, however, is increasingly questioned by courts in light of the dramatic increase in judicial findings that Department lawyers have failed to comply with court orders, misrepresented or concealed facts, or acted arbitrarily and capriciously.

As the brief explains, "This sudden flood of decisions rejecting application of the presumption is remarkable both for its volume and for the unprecedented degree to which it departs from past practice."

Counsel's brief for Brennan describes how prosecutor conduct in his case warrants rejection of the presumption of regularity. LDAD's brief further argues that Director Brennan's concern that the government may fail to preserve relevant records and communications is realistic not only because of its conduct in this case, but given the Department's recent conduct, an injunction requiring their preservation is the only reliable means of protecting his constitutional rights.

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Georgetown Law Professor and LDAD Board Member Mitt Regan said: "The brief describes the extent to which DOJ lawyers, including the Attorney General, place as paramount the President's prosecutorial demands. We note that the only 'regularity' regarding this conduct is the failure to determine whether investigation and prosecution is justified by the facts in each case, which is a fundamental requirement of the rule of law. It would be unrealistic to apply the presumption of regularity in the face of such overwhelming evidence to the contrary."

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Lawyers Defending American Democracy (LDAD) is a nonpartisan 501(c)(3) organization composed of attorneys, law professors, former judges, and former government officials dedicated to preserving the rule of law, constitutional democracy, and the independence of the legal profession. LDAD's work includes filing amicus briefs, authoring Calls to Action, presenting public education programs, and encouraging lawyers and the public to speak out against threats to the rule of law and our democratic institutions. LDAD's nationwide Meeting the Moment *initiative mobilizes lawyers across the country to engage with their communities in defense of constitutional democracy. For more information, visit* ***www.ldad.org***