

# [***Special Counsel Will Not Pursue Charges; Report: Biden Knew He Kept Classified Material At Home; Special Counsel Report Accuses Biden Of "Poor Memory"; Questions Over Disqualification For Insurrection; Manhattan District Attorney Alvin Bragg Announces Indictments On The NYPD Attack; U.S. Defends Killing Oh Kata'ib Hezbollah Commander; Secretary Yellen Testifies To Congress Regarding Possible Monitoring Of Americans' Bank Transactions; Pharmaceutical CEOs Questioned By Senators About High Drug Prices And Profits; Special Counsel Releases Report On President Biden's Classified Documents Investigation; U.S. Supreme Court Hears Arguments Regarding Colorado Removing Former President Trump from Presidential Ballot***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6B94-WN91-JCS1-60M2-00000-00&context=1516831)

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**Guests:** Bill McGurn, Gillian Turner, Matthew Continetti

**Body**

JESSE WATTERS, FOX NEWS CHANNEL HOST: What was that?

JEANINE PIRRO, FOX NEWS CHANNEL HOST: It was a squirrel.

DANA PERINO, FOX NEWS CHANNEL HOST: A squirrel.

PIRRO: You can see it. It was a squirrel. You know what, they told me you could see the squirrel's eyes. I didn't see it.

PERINO: Well, we'll run it back again, and be late getting to SPECIAL REPORT.

(CROSSTALK)

PIRRO: Yes, we'll bring it back.

PERINO: No, we won't. That's it for us. Have. great night, everyone. Hey, Bret.

BRET BAIER, FOX NEWS CHANNEL ANCHOR: Dana, I saw the squirrel's eyes.

PERINO: Oh, OK. You got good eyes.

BAIER: I do. OK.

PERINO: Good eyes.

PIRRO: Yes.

PERINO: Have good show.

BAIER: Good evening. I'm Bret Baier.

"BREAKING TONIGHT", we are following two major stories. The U.S. Supreme Court hears arguments in Colorado's attempt to kick former President Donald Trump off the 2024 ballot.

This landmark case is something the court has never considered until now. Today's oral arguments were at times fiery, and definitely presented serious concerns from the justices about Colorado's case. We'll explain.

But, first, the special counsel investigating President Biden's handling of classified materials says he will not pursue charges against the president. That is despite the fact that Robert Hur concluded President Biden willfully retained and disclosed highly classified materials when he was a private citizen, including documents about military and foreign policy and other sensitive national security matters. But it was really the other descriptions in this document, this report that have raised some eyebrows.

We have "FOX TEAM COVERAGE" tonight. Shannon Bream is outside the Supreme Court with the latest on the Colorado ballot case.

But we begin with White House correspondent Peter Doocy, live in the North Lawn on the classified documents probe. Good evening, Peter.

PETER DOOCY, FOX NEWS CHANNEL WHITE HOUSE CORRESPONDENT: Bret, good evening.

President Biden might have been cooperating with the government he was not the most helpful witness the special counsel's report says his memory has significant limitations, and that he couldn't remember when he stopped being the vice president. He couldn't remember when he started being the vice president. He couldn't remember the year that his son, Beau died, and that his memory got hazy when it came to the topic of the debate on Afghanistan.

(BEGIN VIDEOTAPE)

JOE BIDEN, PRESIDENT OF THE UNITED STATES: This was an exhaustive investigation. Going back, literally, more than 40 years.

DOOCY (voice over): As president Biden campaigns, the voting public gets a first look at classified documents he kept buried in a damaged cardboard box stuck in a garage between a dog bed and a dog crate.

President Biden, says in a statement, "I was so determined to give the Special Counsel what they needed that I went forward with five hours of in- person interviews over two days on October 8th and October 9th of last year, even though Israel had just been attacked on October 7th, and I was in the middle of handling an international crisis." But, there will be no charges.

BIDEN: Bottom line the special counsel in my case decided against moving forward with any charges. And this matter is now closed.

DOOCY (voice over): In part, because, after that presidential interview, the Special Counsel writes: "At trial, Mr. Biden would likely present himself to a jury, as he did during our interview of him, as a sympathetic, well-meaning, elderly man with a poor memory." Lines like that angering the White House's special counsel, who says, "We disagree with the number of inaccurate and inappropriate comments in the Special Counsel's report. Nonetheless, the most important decision the Special Counsel made, that no charges are warranted, is firmly based on the facts and evidence."

And the president's personal lawyer adds, "The Special Counsel could not refrain from investigative excess, perhaps, unsurprising, given the intense pressures of the current political environment."

That doesn't change the fact that a 15-month investigation finds President Biden, knew he kept classified information in notebooks stored in his house and he knew he was not allowed to do so.

The president will soon announce new steps to safeguard national secrets more than a year after claiming his documents were safe.

DOOCY: Classified material, next to your corvette? what were you thinking?

BIDEN: Let me -- I'm going to get a chance to speak on all of this, God willing, soon. But as I said earlier this week, and by the way my corvette is in a locked garage, OK? So, it's not like they are sitting out in the street. But anyway --

(CROSSTALK)

DOOCY: So, those are in a locked garage.

BIDEN: Yes, as well as my corvette.

(END VIDEOTAPE)

DOOCY (on camera): Part of the president's problem now he was surprised he had this classified material. But now we know, he told the ghost writer for his book that he knew he had classified material. Another part of the president's problem is that these memory problems. White House officials have tried to dismiss all week long as comment are now memorialized in a 388-page government report as being serious. And you just heard Marine One leaving.

President Biden is back at the White House. he told us two days ago that today was the day he was going to be answering all of our questions. Yesterday, the press secretary teased that like something that was actually going to happen.

But here we are, 6:00. He has still got a lot of explaining to do, no Q&A. Bret.

BAIER: And as far as tomorrow, Peter, is there any scheduled briefing?

DOOCY: There is a sched -- I believe -- I don't see a reason why there wouldn't be a White House briefing, unless they just really want to try to punt this to next week.

BAIER: OK. Peter Doocy, live on the North Lawn. Peter, thanks.

The Supreme Court appears very skeptical of Colorado's attempt to kick former president Donald Trump off the 2024 ballot over his efforts to undo that his loss in the 2020 presidential election, ending of course of the January 6th, 2021 Capitol riot.

Fox News chief legal correspondent, anchor of "FOX NEWS SUNDAY", Shannon Bream is live outside the High Court with the oral arguments today. Good evening, Shannon.

SHANNON BREAM, FOX NEWS CHANNEL ANCHOR: Good evening, Bret. You know, it normally takes years to get here. But this case made it onto the Supreme Court docket within weeks. Signaling the justices get the urgency of this issue in the middle of what is already a very contentious election year.

(BEGIN VIDEOTAPE)

DONALD TRUMP, FORMER PRESIDENT OF THE UNITED STATES: And watching the Supreme Court today, I thought it was very -- it's a very beautiful process.

BREAM (voice over): One in which a solid majority of the justices seemed very skeptical about Colorado's decision to block President Trump from the state's primary ballot.

Colorado officials say Section 3 of the 14th Amendment gives them the power.

The relevant section reads, "No person shall hold any office under the United States who, having previously taken an oath as a member of Congress, or as an officer of the United States. To support the Constitution of the United States, shall have engaged in insurrection."

Justice Jackson noted, the office of president is not found on that list.

JUDGE KETANJI BROWN JACKSON, SUPREME COURT NOMINEE: The language here doesn't seem to include president, why is that? And so, if there's an ambiguity, why would we construe it to as Justice Kavanaugh pointed out -- against democracy?"

BREAM (voice over): And while most of the arguments were rooted in wonky procedural and statutory arguments, Chief Justice John Roberts eventually got to the practical implications that could result if the High Court upholds Colorado's actions.

JOHN G. ROBERTS, CHIEF JUSTICE OF THE UNITED STATES SUPREME COURT: A goodly number of states will say, whoever the Democratic candidate is, you're off the ballot. And others, for the Republican candidate, you're off the ballot. And it will come down to just a handful of states that are going to decide the presidential election. That's a pretty daunting consequence.

BREAM (voice over): Justice Kagan expressed similar concerns along with plenty of questions about why states should have the power to control who lands on a federal ballot.

ELENA KAGAN, ASSOCIATE JUSTICE, SUPREME COURT OF THE UNITED STATES: This question of whether a former president is disqualified for insurrection to be president again is, you know, just say it, it sounds awfully national to me.

(END VIDEOTAPE)

BREAM (on camera): So, the justices are expected to vote in a private conference in the next day or two. I expect we get a decision in a matter of days or weeks, not months. And remember, by the way, President Trump's legal team has until Monday to file for a stay here or actually appeal that decision that ruling against him on the issue of immunity. And the case now pending the federal criminal case against the former presidents. Bret.

BAIER: Shannon Bream, live outside the court. Shannon, thanks.

Let's get some legal analysis on our top stories. Jonathan Turley, professor at George Washington University Law School joins us now.

Jonathan, good evening. First, I want to start on the Special Counsel report, because it is quite something. First, on the legality, that the Special Counsel Robert Hur is not going forward with charges. But the excuse or the reason for that is not because he didn't find the willful action of then-vice president and even senator taking classified and holding classified materials, but because they don't think a jury would side with a prosecutor.

JONATHAN TURLEY, FOX NEWS CHANNEL CONTRIBUTOR: Yes, I have to tell you, I find that the language of the report is deeply disturbing. It's disconnected from the elements of the crime. They say that he willfully retained these documents, he knew he had them that they were shown to others, and yet, they said well, he would make a very good defendant because he'd be so sympathetic, because he's old and he has no memory.

And that suggests that we'll go for those unsympathetic defendants. It's arguably difficult to convict Joe Biden in Washington, D.C. It's a lot easier to do that with Don -- with Donald Trump.

But the question is, is that how much weight did you actually give that, because what you're describing in this report, is a knowing crime that went on for years, and that's reason was so strange to see the president taking a victory lap, like he was bragging, I'm sympathetically diminished.

I mean, even if you don't get charged, this is a really a damning report.

BAIER: Yes, and the description and we're looking at pictures of these boxes, of tattered boxes were the documents which are classified, and some of them from a Senate time when he was in a skiff, where you can't take documents out of a classified intelligence area in the Senate, but he had them, and other times when he was vice president.

I want to read another part of the -- this is the political side that is really tough for the president in the White House. This is Robert Hurs' report, page 207. "Mr. Biden's memory also appear to have significant limitations, both at the time he spoke to Zwonitzer," that's the writer, "in 2017, as evidenced by their recorded conversations, and today.

Mr. Biden's recorded conversations with Zwonitzer are often painfully slow. In his interview with our office," special Counsel's Office, "Mr. Biden's memory was worse. He did not remember when he was vice president, forgetting on the first day of the interview when his term ended, if it was 2013, when did I stop being vice president? And forgetting on the second day of the interview when his term began in 2009, am, I still Vice President?" Goes on to say he forgot when his son, Beau died.

TURLEY: Yes, I mean, in some ways, this is the successful Chin Gigante defense. You know, that was the mob leader would show up in pajamas, and say that he had no idea where he was. He was convicted.

But here, the special counsel is saying, you know what the jury is just going to it's going to break their heart to see an elderly man with such a faulty memory and diminished faculties being charged.

There's going to be a lot of questions about that. You know, the problem for critics is that it seems that when they're looking at Trump, they hit him with any possible crime, stretching every possible definition.

But when they're dealing with figures like President Biden, they just are former cautious and, and resistant to charges.

BAIER: Finally, quickly, we've got some sketches from the Supreme Court, obviously, no cameras in there, but there is audio and to hear the oral arguments and the questions and answers with the justices today in the case about Colorado and whether the former president is going to be on the ballot there.

You have to be careful not to read the tea leaves, oftentimes in oral arguments with Supreme Court justices. But boy, the tea leaves were all over the place. And they seem pretty, pretty readable.

TURLEY: Yes, I think that if the trajectory of this case remains from oral argument, you are looking at a possible unanimous decision, maybe an eight to one. And that leads, Chief Justice Roberts with an interesting question. If he can eke out that type of majority or unanimity, most people assume he'll write the opinion, it's hard to pass up this historic chance. But if Justice Jackson or Justice Kagan are on board, there is a strategic advantage to him and giving them the opinion to really convey to the country that we are speaking with one voice.

That's what John Roberts said years ago, was the greatest challenge for a chief justice was to get the court to speak with one voice. And I think he'll make that the priority in whatever they do.

BAIER: It will be fascinating. We'll be watching it all. Jonathan, as always. Thank you.

TURLEY: Thanks, Bret.

BAIER: Stocks were up today with the Dow and the S&P finishing with new record closes. The Dow adding 49. The S&P 500 gained three, the NASDAQ was up 37.

Meantime, on Capitol Hill, Senate lawmakers' tonight are scrambling to try to find the path forward on foreign aid legislation after the Senate tanked a bill that tied border security and foreign aid together that supplemental we talked about.

But a major hurdle may have been cleared tonight.

Congressional correspondent Aishah Hasnie with the breaking news update from Capitol Hill. Good evening, Aishah.

AISHAH HASNIE, FOX NEWS CHANNEL CONGRESSIONAL CORRESPONDENT: Bret, good evening to you. A whopping 17 GOP senators today voted yes on the first test vote for this $95 billion foreign aid package.

Remember, this has 60 billion for Ukraine, but absolutely no money for border security.

Now, take a look these 17 senators may be yeses on a final vote as well as long as they get the amendments that they want. But this still has some space and room to get derailed, Bret. Senator Rand Paul, who opposes the package tells fox that he is going to slow the process down because he says Americans need to know what is happening here.

(BEGIN VIDEO CLIP)

SEN. RAND PAUL (R-KY): I know of no conservative Republican in America that supports this. I plan on making them stay here through the weekend. And they will get their votes and they'll finish up when hell freezes over, as far as I'm concerned.

HASNIE (voice over): Also, take a look at this. Sparks were flying on the Senate floor today over the border deal that fell apart yesterday. Senator Kyrsten Sinema, who of course co-authored that deal was caught on camera sparring with Senator Lindsey Graham as he tries to offer border amendments to today's bill.

SEN. KYRSTEN SINEMA (I-AZ): Why you voted against the motion to proceed.

SEN. LINDSEY GRAHAM (R-SC): A big question.

SINEMA: Before we were able to offer any amendments. Including your amendments.

GRAHAM: Yes, because the -- yes, I think the fix is in. I think people on our side and your side wanted to do the border thing as quick as I could. So, we could get the Ukraine we've done a half assed job here trying to secure the border.

(END VIDEO CLIP)

HASNIE: So, the two Senate leaders right now are working on a timing agreement, Bret, on this foreign aid package. But if they cannot come to that agreement, a final vote may not happen until Monday or even Tuesday, Bret.

BRET BAIER, FOX NEWS CHANNEL HOST: Aishah Hasnie live on Capitol Hill. Aishah, thank you.

Up next, new indictments in the migrant attack against New York police officers, we'll give you the latest.

Plus, new information on the latest U.S. strikes inside Iraq.

(COMMERCIAL BREAK)

BAIER: Texas Governor Greg Abbott, along with members of the Texas House of Representatives held a news conference today announcing new measures to combat what they call President Biden's reckless open border policies. Governor saying without efforts by Texas authorities, the number of crossings would be much higher.

(BEGIN VIDEO CLIP)

GOV. GREG ABBOTT (R-TX): We are dealing with the biggest border crisis since America had borders. The reason why we've been able to achieve that level of decrease in illegal crossings is only because of great teamwork and agencies across the state of Texas.

(END VIDEO CLIP)

BAIER: Governor Abbott says they will work to accommodate additional National Guard officers in the Eagle Pass area. He's also calling for additional miles of barrier wire and anti-climb barriers.

Breaking tonight, Manhattan District Attorney Alvin Bragg announces seven indictments in the attack against New York City police officers at the hands of migrants in Times Square last month.

Correspondent Nate Foy is in New York tonight with specifics on this. Good evening, Nate.

NATE FOY, FOX NEWS CHANNEL CORRESPONDENT: Hi, Bret, of the seven indictments involving migrants, only one of them is still in custody tonight. And authorities say at least 11 people are involved in this attack, and five of them still have not been arrested.

We're also seeing new body cam video for the first time tonight. Take a look at this here, you see one migrant push officers while others kick and grab them.

Here's Manhattan district attorney Alvin Bragg.

(BEGIN VIDEOTAPE)

ALVIN BRAGG, MANHATTAN DISTRICT ATTORNEY: And I stand here today confident that we have identified the roles of every person who broke the law and participated in this heinous attack.

FOY (voice over): D.A. Bragg laid out charges against the five identified migrants today, they all face felonies including several second degree assault charges and one charge of tampering with evidence. One migrant is accused of changing coats with an attacker to help him get away.

The search for at least five others includes two suspects whose names will remain sealed in the indictment until a later date and three suspects accused of kicking officers during the attack.

D.A. Bragg defends his decision against requesting bail for several suspects, saying he wanted to proceed cautiously to ensure that he identified the right people.

The migrants released walked out of jail taunting the cameras. One of them put up two middle fingers. Some of the migrants released are believed to be headed west to the California Mexico border.

(END VIDEOTAPE)

FOY (on camera): New York City Mayor Eric Adams said today these crimes don't represent the majority of the over 170,000 migrants in New York City. He referenced the NYPD commissioner who said a migrant crime wave is washing over the city, Bret.

BAIER: Nate Foy in New York. Nate, thanks.

FOY: You got it.

BAIER: We have new information tonight on the U.S. operation that killed a high ranking Iran backed terror leader involved in an attack that killed three American soldiers in Jordan and injured more than 40 others.

Chief National Security Correspondent Jennifer Griffin shows us tonight from the Pentagon.

(BEGIN VIDEOTAPE)

JENNIFER GRIFFIN, FOX NEWS CHANNEL NATIONAL SECURITY CORRESPONDENT (voice over): Angry crowds gathered in Baghdad at the funeral for the leader of Kita'ib Hezbollah, Abu Baqir al-Saadi. An American MQ-9 Reaper drone waited patiently and took a shot after tracking the Kita'ib Hezbollah leader for days. President Biden authorized the strike shortly after the deadly drone attack on tower 22 in Jordan.

BRIG. GEN. PAT RYDER, PENTAGON PRESS SECRETARY: Wissam Mohammed Abu Baqir al-Saadi who's a Kita'ib Hezbollah commander who was responsible for directly planning and participating in attacks on U.S. forces in the region.

GRIFFIN (voice over): A crowd that gathered in the aftermath, some of whom made their way toward the U.S. Embassy, chanting, Allah is the Greatest. America is the greatest devil.

Kita'ib Hezbollah is an Iraqi Shia militia that is part of the Popular Mobilization Forces that formed to fight ISIS with funding from Iranian Revolutionary Guard Corps commander, General Qasem Soleimani before he and another head of Kita'ib Hezbollah, was killed in a U.S. drone strike in 2020.

Kita'ib Hezbollah was later brought under the Iraqi military who pay their salaries. Some worry the U.S. drone strike could jeopardize talks between the U.S. and Iraqi governments about whether U.S. troops can stay in Iraq.

FAISAL AL-SAIDI, MOURNER: The martyr is one of the leaders of the wholly Popular Mobilization Forces, it is considered an element of the Iraqi state.

JOHN KIRBY, PRESS SECRETARY, PENTAGON: Look, if there were no attacks on our troops who are there at the invitation of the Iraqi government, there would be no need for retaliatory strikes.

(END VIDEOTAPE)

GRIFFIN (on camera): There have been no attacks on U.S. bases inside Iraq since the U.S. began its military response to the attack that killed three Americans. This targeted killing could change that, Bret.

BAIER: Jennifer Griffin at the Pentagon. Jennifer, one quick question, big changes at the top of Ukraine's military today.

GRIFFIN: That's right, Bret. President Zelenskyy replaced his top general Valery Zaluzhny, a political rival and the commander responsible for pushing Russian forces away from the capital, saving Kyiv after the Russian invasion. He's also blamed for the failure of Ukraine's counter offensive last summer and angered Zelenskyy by writing an op-ed describing the conflict as a stalemate unless Ukraine received more advanced weapons.

His replacement is Oleksandr Syrskyi, the general who oversees Ukraine's ground forces, known derisively by his own troops as the butcher, Bret.

BAIER: OK, Jen, thank you.

Up next, fiery exchanges between Senate Republicans and President Biden's treasury secretary of the alleged surveillance of Trump supporters, we'll explain.

(COMMERCIAL BREAK)

BAIER: You are looking live at the Trump campaign headquarters in Las Vegas. Republican voters in Nevada are gearing up to decide their preferred presidential candidate in tonight's caucuses there. The former president will face longshot candidate Texas Pastor Ryan Binkley, with all of 26 of Nevada's delegates up for grabs there.

Former South Carolina Governor and U.N. Ambassador Nikki Haley opted to run in Nevada's primary, losing to none of these candidates by 30 plus points. There wasn't an organized effort to get that vote out, but she did lose the primary with zero delegates.

Meantime, tensions are running high on Capitol Hill after a testy hearing saw Senate Republicans grill Treasury Secretary Janet Yellen over accusations of surveillance on Americans' transactions. Reports suggest banks were asked to flag Trump related purchases to the federal government. FOX Business correspondent Hillary Vaughn has the story from Capitol Hill.

(BEGIN VIDEO TAPE)

UNIDENTIFIED FEMALE: Secretary Yellen, this is an issue that Americans are worried about. They think that they are being targeted because of who they voted for or what their religion is or where they shop. What do you have to say to Americans?

JANET YELLEN, TREASURY SECRETARY: I will say I'm not taking questions.

HILLARY VAUGHN, FOX BUSINESS CORRESPONDENT: Treasury Secretary Janet Yellen may nothing be taking questions from us, but she is facing them from lawmakers as the Treasury Department is being accused of targeting Americans' bank transactions as part of its hunt for people involved in January 6th. FOX obtained recommendations distributed to banks telling them to look for red flags that could be a sign that someone is a homegrown violent extremist. That included political terms in transactions like "Trump," "MAGA," "Biden," or "Kamala," large purchase was from Dicks Sporting Goods, Cabela's, or Bass Pro Shops, or purchases of any religious books. The customers combined bank activity had to meet a certain threshold before they would be flagged.

SEN. BILL HAGERTY, (R-TN): Secretary Yellen, do you believe that people who purchase bibles are extremists?

YELLEN: Certainly not. And in the aftermath of the January 6th attack, there were efforts to work with financial institutions to determine what had happened.

VAUGHN: The Treasury Department routinely shares recommendations with financial institutions through its Financial Crimes Enforcement Network so they can be on the lookout for possible financial criminal behavior. But the secretary promises to investigate.

YELLEN: It's the purpose ever FinCEN. And so the details I promise to thoroughly investigate.

(END VIDEO TAPE)

VAUGHN (on camera): A Treasury official tells FOX that this all started because of January 6th, to investigate that and prevent further violence, and that the bank's cooperation is voluntary. Bret?

BAIER: Hillary Vaughn on Capitol Hill. Hillary, thanks.

Another contentious hearing on Capitol Hill as leaders from several of the nation's biggest pharmaceutical companies received an incredibly harsh reception from Senate lawmakers from both sides over skyrocketing drug prices. Senior congressional correspondent Chad Pergram has that story.

(BEGIN VIDEO TAPE)

CHAD PERGRAM, FOX NEWS CONGRESSIONAL CORRESPONDENT: Drug prices high.

SEN. BERNIE SANDERS, (I-VT) SENATE HELP COMMITTEE CHAIRMAN: One out of four of our people go to the doctor, get a prescription, and they cannot afford to fill that prescription.

PERGRAM: Senators confused.

SEN. MITT ROMNEY, (R-UT): I'm not sure where all the money goes.

PERGRAM: Answers cryptic.

ROBERT DAVIS, MERCK CEO: It is highly complex, and so complex that at times even learned people who play in the space can't understand.

UNIDENTIFIED MALE: Certainly, I can't explain it. And that's my point is it's so nontransparent.

PERGRAM: To some the answers weren't as clear as mud. They were worse.

UNIDENTIFIED MALE: That's manure. I don't understand why this is so complex.

PERGRAM: Liberals lambasted pharmaceutical firms as drug prices and profits soar, $18 billion for Johnson & Johnson, $14.5 billion for Merck, $8 billion for Bristol Myers Squibb.

UNIDENTIFIED MALE: You could choose, instead of using $6 billion to buy back stock, to put that into more research and development. But you don't.

PERGRAM: But Republicans defended the free market.

BILL CASSIDY, (R-LA) SENATE HELP COMMITTEE: -- publicly attack private citizens for being successful under capitalism. We demand CEOs come before the committee for a public verbal stoning.

PERGRAM: Senators repeatedly asked for promises from drugmakers, but didn't get far.

UNIDENTIFIED MALE: Will you commit to lowering the price of STELARA in 2025?

SANDERS: Will you commit today that Bristol Myers Squibb will reduce the list price of Eliquis in the United States?

UNIDENTIFIED MALE: Senator, we can't make that commitment.

PERGRAM: Boerner said drugs are prioritized differently abroad, affecting the price.

(END VIDEO TAPE)

PERGRAM: Some lawmakers said Congress will not mandate changes. That's because big pharma lines the pockets of politicians with campaign cash -- $40 million in 2022. Bret?

BAIER: A lot of money. Chad Pergram on the Hill. Chad, thanks.

Up next, the panel on the Supreme Court taking up the Trump Colorado ballot case. Plus, President Biden not facing charges in that classified documents probe, but the other shocking descriptions inside the special counsel's report.

First, what some of our FOX affiliates around the country are covering tonight. FOX 5 in San Diego where the search for five U.S. marines aboard a helicopter that went down during stormy weather in the mountains outside San Diego ends tragically after all five are confirmed dead. The helicopter vanished late Tuesday night during a routine training mission.

WFXT in Boston where passengers of two JetBlue planes had their travel plans upended after the aircrafts collided on the tarmac at Logan Airport. A JetBlue plane was entering a de-icing pad when it came into contact with the tail of another jet at an adjacent path. No passengers or crew members were hurt.

And this is a live look at Denver from FOX 31. One of the big stories there tonight, a nonprofit group dedicated to preserving the iconic Red Rocks Park and Amphitheater, they've gathered a total 50 pounds of gum from under the seats last year. A volunteer with Friends of Red Rock says gum is not even permitted inside the amphitheater, but unfortunately, there is no way to enforce that rule. Fifty pounds of gum.

That's tonight's live look outside the beltway from SPECIAL REPORT. We'll be right back.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: When you saw the photograph of top secret documents laid out on the floor at Mar-a-Lago, what did you think to yourself looking at that image?

JOE BIDEN, (D) PRESIDENT OF THE UNITED STATES: How that could possibly happen, how anyone could be that irresponsible. And I thought what data was in there that may compromise sources and methods. And by that I mean names of people who helped, et cetera. And it's just totally irresponsible.

(END VIDEO CLIP)

BAIER: Well, that was President Biden talking about the Mar-a-Lago finding of documents with former President Trump. The special counsel's report today from Robert Hur says that President Biden, then vice president and senator Biden, withheld classified material willfully, but they are not moving forward with charges.

You take a look at these pictures from various places in his garage, other places. They describe tattered boxes with classified materials that are military secrets. They are a description of foreign policy in classified form that should not have been there. Yet, when they talk about moving forward with charges, the special counsel says that they don't because the president would be a sympathetic, well-meaning, elderly man with a poor memory, and that's the reason they are not bringing charges because they couldn't prosecute it in front of a jury. And some of the other descriptions inside the special counsel's report are quite something.

Let's start there with our panel, Bill McGurn, columnist for "The Wall Street Journal," FOX News State Department correspondent Gillian Turner, and Matthew Continetti, fellow at the American Enterprise Institute. Matthew, we have read numerous parts of this report throughout the show, at the beginning with Jonathan Turley. What's your take of this and how detrimental it is to President Biden?

MATTHEW CONTINETTI, AMERICAN ENTERPRISE INSTITUTE: Well, Bret, I think it's hugely detrimental. I think this could be the most damaging special counsel report for a sitting president since the Starr Report with President Clinton back in 1998. It hurts Biden in two ways. One, it reinforces the Trump argument that there is a two-tiered justice in this country where the rules only apply to Donald Trump, and well-connected liberal Democrats aren't charged for the same violations.

But two, and perhaps more importantly, it confirms the public image of Biden as someone who is simply not up to a second term. It confirms everything we see in the polling about the American electorate viewing Biden as too old and infirm to serve another term as president. This is very damaging.

BAIER: President Biden, Gillian, took -- while talking to Democrats in kind of a campaign style event -- almost a victory lap that there were no charges, that he cooperated, and specifically he got to the point where he was comparing and contrasting the differences in this case and the former president's case about classified materials. Take a listen.

(BEGIN VIDEO CLIP)

JOE BIDEN, (D) PRESIDENT OF THE UNITED STATES: The special counsel made clear the stark differences between this case and Donald Trump. He not only refused to return documents for many months, he also obstructed justice by enlisting others to destroy evidence and then lie about it. In contrast, Mr. Biden, turning classified documents to the National Archives, the Department of Justice, consented to a search of multiple locates, including his homes, and sat for a voluntary interview.

(END VIDEO CLIP)

BAIER: So he says there is a difference. And he points to what he says obstruction, basically, for the former president.

I do want to point to this point in Hur report. Biden's ghostwriter, which he shares classified material with, deleted recordings, this report says. "At some point after learning of Special Counsel's Hur appointment, Mr. Biden's ghostwriter, Mark Zwonitzer, deleted digital audio recordings of his conversations with Mr. Biden during the writing of the book "Promise Me, Dad." The recordings had significant evidentiary value." Again, this the is special counsel's report pointing to that, but no charges either for obstruction or the willful handling of classified material.

GILLIAN TURNER, FOX NEWS CORRESPONDENT: The most problematic part of the entire report for President Biden is the fact that the authors, the special counsel, takes great care to point out that President Biden knew how you're supposed to responsibly handle classified national security information. It's not the ***politics*** stuff.

It's not the salacious stuff in the report. It is this, Bret. Real quick, I'll read you this line. "Mr. Biden had decades of experience with classified information, was deeply familiar with measures taken to safeguard classified info and the need for those measures to prevent harm to national security." As commander-in-chief, you are entrusted with a sacred responsibility, which is to safeguard national security, and, by extension, U.S. troops around the world. If you know what you're supposed to do to safeguard this, as the report says the president did and does, and you then choose not to do it anyway for your own personal reasons, that's an especially egregious violation of your oath of office.

BAIER: In your previous job you knew a lot about all the classified material handling and what to do and what not to do. To hear that Senator Biden got classified materials out of a SCIF, which is a classified area on Capitol Hill that you don't take anything out of, and then Vice President Biden had documents where in this report it says he wrote messages on them and shared that with his ghostwriter, and then you see the documents on the floor in various places in those boxes, what do you think?

TURNER: First of all, the president, after he was out of office, was never allowed under national security policy to take any of those documents with him. They were not his personal property, even if they were his handwritten notes. All of that classified material is statutorily, Bret, the property of the federal government, and, by extension, the property of the American public, because one day all of that information would be in the president's archives, which would be eventually declassified and made public. In deciding to hold on to them, he's really denying the American public access to the information in these documents.

BAIER: Yes. Bill, thoughts?

BILL MCGURN, COLUMNIST, "THE WALL STREET JOURNAL": Yes, I agree with Gillian and Matthew. I would add the only thing I disagree with Matthew, I think it suggests that he shouldn't be president now. I mean, the quotes in the report are stunning. He couldn't remember when he is vice president and everything. So legally, the document lets him off the hook. No culpability. But because, as Matthew points out, it emphasizes age, that he didn't -- it paints him as a doddering old man. I think it says aloud what everyone is thinking. I think it's really damning.

And plus, I think he can say there is all these differences with the Trump case and so forth. For the ordinary person, they see Trump gets the book thrown at him. Biden gets a pass. So I agree with Gillian and Matthew. I think it's really going to be damning for Joe Biden.

BAIER: All right, panel, stand by, if you would. Next, we will talk about the Supreme Court taking up the Trump Colorado ballot case and the interesting oral arguments earlier today.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

KETANJI BROWN JACKSON, SUPREME COURT JUSTICE: Why didn't they put the word "president" in the very enumerated list in Section 3? The thing that really is troubling to me is I totally understand your argument, but they were listing people that were barred, and president is not there.

This came up in the debates in Congress over Section 3 where Reverdy Johnson said, why haven't you included president and vice president in the language? And Senator Morrill responds, we have. Look at the language, any office under the United States.

JACKSON: Yes. But doesn't that at least suggest ambiguity?

(END VIDEO CLIP)

BAIER: That's Justice Ketanji Brown Jackson questioning the Colorado lawyer. This is about the effort to kick the former president off of the Colorado ballot based on the 14th Amendment, Section 3, because they say he led an insurrection.

We're back with the panel. Matthew, some of the toughest questioning today, and obviously we don't have cameras in the courtroom, but we do have audio, the toughest questioning came from justices on the left side of the spectrum, Ketanji Brown Jackson, Elena Kagan saying if Colorado takes his name off the ballot, that affects the national picture for somebody in Wisconsin or Michigan, and it disenfranchises voters, essentially saying a lot by those questions.

CONTINETTI: Saying a lot, and not in the state of Colorado's favor. It did not go well for Colorado, and I think for good reason, Bret. This is what happens when an untested theory meets judicial reality. And I think the key votes are Justice Jackson and Justice Kagan for different reasons talking about, well, is the president even covered by this clause in the 14th Amendment? And Justice Kagan pointed out that if we left up the qualification question to the states, the result would be chaos. It's a national question that deserves a national answer. I think we're looking at an eight-one decision in Donald Trump's favor.

BAIER: And some experts saying maybe nine-zero to try to, and John Roberts would really push for that, the chief justice, Bill. Here is just a little clip from the Kagan Q and A.

(BEGIN VIDEO CLIP)

JUSTICE ELENA KAGAN, SUPREME COURT: If they can put most boldly, I think that the question that you have to confront is why a single state should decide who gets to be president of the United States.

(END VIDEO CLIP)

BAIER: Bill, thoughts?

MCGURN: Yes, the Supreme Court is one of the few institutions in Washington still doing its job. This is really not a close case, as the frothy reception to Colorado's arguments showed. If they rule for Colorado, not only do they open the door to the kind of chaos the justices mentioned, they are really saying why not just shut down the ballot box? If we are going to allow people to rig it this way and to get their opponents off the ballot based on these flimsy arguments -- this argument depended on a lot of ifs. And I think the Supreme Court showed its very skeptical about them.

BAIER: Yes, "The Wall Street Journal" writes it this way, "Supreme Court's Colorado Trump test. The best course for the country would be for the justices to settle this case on narrow legal issues and not to enter the political fight over whether January 6th was an insurrection. The justices don't need to go there if they find that Section 3 of the 14th Amendment doesn't cover the president."

Gillian, there were questions that dealt with the insurrection question. Obviously, the former president is not charged with that, he has not been convicted of that. And it seems that they are going down the road of whether it's right for the nation about being on the ballot or not being on the ballot. But if you look at the map, there are a number of states that are considering, at least, kicking him off the ballot unless the Supreme Court weighs in.

TURNER: And that line of legal reasoning you just laid out, Bret, goes hand in hand with the other, sort of second line argument that Trump's team tried to present today, which is that they are saying Colorado is putting the cart before the horse. You cannot bar the president from the state ballot for inciting an insurrection if he has not been charged with inciting an insurrection or been found guilty of inciting an insurrection anywhere in the United States. That was the other way in which you could avoid talking about this all together, the nuts and bolts of what is an insurrection.

BAIER: All right, panel, a big legal day, political day as well. Thanks a lot.

Finally tonight, a special day.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Doctors give the diagnosis but God gives the prognosis. And I promised him many years ago that he is going to get through this, but we are going to get through this together.

(END VIDEO CLIP)

BAIER: Sixteen-year-old cancer survivor Mason Ferrulli got the surprise of a lifetime earlier today when he was gifted tickets to Sunday night's Super Bowl. Mason and his parents were visiting their good friend Phil Waterford at his Ford dealership when Waterford gave the teen who is a diehard 49ers fan the exciting news. Waterford befriended mason several years earlier around the time of his diagnosis. Congratulations, cheering for the 49ers. There you go.

Tomorrow on SPECIAL REPORT, a look at the roadmap for Republicans to try win control back of the U.S. Senate. The map looks good, at least now.

Remember, if you can't catch us live, set your DVR, 6:00 p.m. in the east, 3:00 p.m. on the west coast.

Thank you for inviting us into your home tonight and every night. That's it for this SPECIAL REPORT, fair, balanced, and unafraid. "THE INGRAHAM ANGLE" is now.

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