

Court approves Trump request for independent review of documents seized in Mar-a-Lago raid

Patrick Martin
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Federal judge Aileen Cannon ruled Monday that the Justice Department must halt its examination of documents seized in the FBI raid on the Mar-a-Lago estate of ex-president Donald Trump, pending an independent review of the documents by a court-appointed “special master.”

Lawyers for Trump and the Department of Justice (DOJ) must confer and submit a list of possible special masters to the judge by September 9, as well as ground rules for the review procedure. Such officials are usually chosen from the ranks of prominent attorneys and retired federal judges, because most such cases involve attorney-client privilege.

In this case, however, the oversight will include Trump’s claims of both attorney-client privilege and executive privilege, over the objections of the DOJ, which argued that Trump could not invoke executive privilege against a review of material by an agency of the executive branch.

Cannon said that DOJ arguments that a former president could not invoke executive privilege if the current president has waived it, as in this case, were “overstated.” She claimed that it was still an open question under Supreme Court precedents going back to the Watergate scandal of 1972-74. “The Supreme Court did not rule out the possibility of a former President overcoming an incumbent President on executive privilege matters,” she wrote.

The judge also cited a decision earlier this year by the ultra-right majority of the current Supreme Court—including three justices appointed by Trump—that in relation to the congressional investigation into the January attack on Congress, “The questions whether and in what circumstances a

former President may obtain a court order preventing disclosure of privileged records from his tenure in office, in the face of a determination by the incumbent President to waive the privilege, are unprecedented and raise serious and substantial concerns.”

Significantly, Cannon ruled that the Office of the Director of National Intelligence could continue its current review of the documents from the standpoint of the potential damage to US national security, even though the Justice Department review was suspended, at least temporarily.

Both the DNI and the DOJ are units of the executive branch, and Cannon did not explain how she could logically make a legal distinction between the two. Her ruling suggests, however, that the court gives paramount importance to national security considerations, overriding any claims of privilege.

Cannon has close connections to the Republican Party and to Trump in particular, who nominated her for a federal judgeship in May 2020. She was previously an assistant US attorney for South Florida and has been a member of the right-wing Federalist Society since she was in law school. Her nomination was not confirmed by the Senate until November 12, 2020, nine days after the presidential election won by Democrat Joe Biden, and as Trump was gearing up the “stop the steal” campaign that culminated in the violent attack on Congress on January 6, 2021.

The judge issued the 24-page decision on Labor Day, unusual timing for a major court ruling on a question of intense public and media interest. Justice Department officials were “examining the opinion and will consider appropriate next steps in the ongoing litigation,” according to a spokesman.

Both possible courses of action—appealing the decision or waiting for the special master to go through more than 11,000 pages of documents—could delay further legal action against Trump for weeks, if not months, and likely past the November election. That may be a major part of the Trump legal strategy.

There are a number of peculiarities in the text of the decision. Throughout the 24 pages, Cannon repeatedly refers to Trump as the former president, as though this in any way separates him from ordinary citizens and gives him greater protection against search and seizure by the FBI. The notion of equal justice under the law is entirely discarded, in favor of an immunity more like that of a king.

Similarly, she bends over backwards to present Trump as cooperating with the DOJ when it sought the return of classified documents, although a major part of the justification for the FBI’s unannounced entry into Mar-a-Lago was that Trump and his attorneys had repeatedly delayed responding to requests and subpoenas and told DOJ, falsely, that all the documents sought had been handed over.

In the opening section, Cannon asserts “the need to ensure at least the appearance of fairness and integrity under the extraordinary circumstances presented ...” This is clearly a reference to the FBI raid on the home of a former president, and the language about ensuring “at least” the appearance of fairness seems a concession to the fascistic claims of the Trump camp that the FBI raid was politically motivated.

The judge revealed that in the boxes retrieved by the FBI because they included presidential records and secret papers, “the seized materials include medical documents, correspondence related to taxes, and accounting information.”

She wrote: “In addition to being deprived of potentially significant personal documents, which alone creates a real harm, plaintiff faces an unquantifiable potential harm by way of improper disclosure of sensitive information to the public.” The reference to “unquantifiable potential harm” is so vague as to be meaningless, although it is suggestive as well. The unavoidable implication is that there is something very damaging to Trump’s political and personal interests in the material taken by the FBI. Despite that inference, however, the judge refused to order anything to be returned to Trump, pending the review by the special

master.

Why it is more likely that the FBI and DOJ would leak derogatory information about Trump than the CIA and other agencies under the Director of National Intelligence, the judge does not explain. The implication, however, is that she regards these agencies as politically hostile to Trump, as he charged at his most recent rally, Saturday night, in Wilkes-Barre, Pennsylvania.

The *New York Times* wrote, “Nonetheless, Judge Cannon was highly sensitive to the potential damage to Mr. Trump’s reputation should improperly seized materials be used to initiate criminal process against him.” It cited her statement in the decision: “As a function of Plaintiff’s former position as President of the United States, the stigma associated with the subject seizure is in a league of its own,” adding, “A future indictment, based to any degree on property that ought to be returned, would result in reputational harm of a decidedly different order of magnitude” than would be suffered by another target of a federal investigation.

At the same time, Cannon found no “compelling showing of callous disregard” for Trump’s constitutional rights in the procedure followed by the DOJ to carry out the search of Mar-a-Lago, which was approved through a warrant issued by federal magistrate Bruce Reinhart.



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