

Trump seeks Supreme Court intervention in Mar-a-Lago state secrets dispute

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Former President Donald Trump petitioned the US Supreme Court Tuesday to intervene in the special master's review of documents seized by the FBI at his Mar-a-Lago resort on August 8. The cache included 103 documents marked as "classified," "secret" or "top secret," implying that their unauthorized dissemination would gravely damage national security.

The state secrets were left unsecured in a storage room and Trump's office while the resort was closed for the season, and Trump's Secret Service detail accompanied him in New York or New Jersey. While serving the search warrant, the FBI also found dozens of empty security folders and document covers marked "classified," the contents of which appear to be missing.

Trump's cavalier treatment of state secrets, and his likely use of them for personal and partisan ends, has unleashed a bitter conflict between factions within the American ruling class. This conflict pits elements backing the cult of personality around Trump against those elements that consider state secrets to be the sacrosanct collective property of the ruling class as a whole.

Neither faction expresses the interests of the international working class, which lie in the exposure of all imperialist intrigues. Nevertheless, Trump's arguments, which seek to place the former chief executive above the law, have profoundly anti-democratic implications.

In the aftermath of the looming impeachment and consequent resignation of President Richard Nixon, the Presidential Records Act of 1978 affirmed the principle that documents reflecting the official activities of the president are the property of the state, not of the president as a private person. Animating Trump's legal campaign in defense of his retention of secret

documents is the sentiment expressed by absolute monarch Louis XIV: "*L'état, c'est moi.*"

In his petition to the Supreme Court, Trump is challenging one provision of the September 21 ruling by a three-judge panel of the Eleventh Circuit Court of Appeals—including two judges nominated by Trump—that stayed a portion of the September 5 order by Judge Aileen Cannon of the Southern District of Florida, also a Trump nominee.

The provision in question directed that the 103 documents with confidential markings be included with the other 11,000 documents seized by the FBI in the review by special master Raymond Dearie, a former judge on the Foreign Intelligence Surveillance Act (FISA) Court.

Critically, Trump's Supreme Court application does not challenge the Eleventh Circuit's stay of Cannon's injunction that temporarily prevented the FBI from using the marked documents. Accordingly, the filing itself will have no effect on the tempo of the underlying proceedings.

Trump's papers make no mention of the fact that after the Eleventh Circuit ruled, Cannon modified her original order to exclude the 103 marked documents from the special master's review. Therefore, a Supreme Court ruling for Trump would have no immediate effect. His legal team would still have to reapply to Cannon to reinstate her ruling.

From any objective legal standpoint, Trump's flimsy and self-contradictory Supreme Court petition should be summarily dismissed as legally frivolous and tossed into the wastebasket of summary denials, along with the thousands of other meritless petitions filed every Supreme Court term. But under conditions of acute political crisis, pseudo-legal arguments that would be laughed out of court under any other circumstances can

become the basis for prosecuting a kind of legal trench warfare within the political establishment.

The Supreme Court accepts significantly fewer than 100 matters to review each year and, at least in theory, only addresses matters of profound national significance that have percolated through the lower courts and are ripe for resolution in ways that will establish precedents lasting generations.

This litigation is barely one month old. The lower courts are engaged in sorting out the issues, and the question presented is an arcane nuance of appellate jurisdiction that has already been mooted by lower court actions. Supreme Court intervention at this stage would be unprecedented and legally indefensible.

The Supreme Court, however, is now firmly under the control of reactionaries Clarence Thomas, Samuel Alito and the three Trump appointees. It has been transformed without meaningful opposition from the Democrats into an adjunct of the fascistic Republican Party, no longer constrained by precedent or principle and largely impervious to popular outrage over its abrogation of constitutional rights, most notably, access to abortion.

The mere fact that Trump's legal rubbish might actually be taken seriously, much less acted upon, is itself a product of the degenerated state of bourgeois democracy and an expression of the most acute political crisis.

Moreover, Supreme Court practice directs Trump's application to the associate justice assigned to the Eleventh Circuit, who happens to be Clarence Thomas. His wife, Virginia "Ginni" Thomas, is a high-level Trump operative, who, following Trump's clear electoral defeat, texted QAnon election conspiracies to Trump's chief of staff Mark Meadows, lobbied for the decertification of state vote counts and the appointment of fake electors, and personally attended the January 6, 2021 "Stop the Steal" rally that preceded the fascist attack on the Capitol, which was aimed at violently stopping the transfer of power from Trump to Joe Biden.

Late Tuesday, Clarence Thomas directed the government to file an opposition by October 11, suggesting that he will be referring the application to the court as a whole rather than deciding it himself on an emergency basis. A decision will likely be made later this month.

The criminal probe into Trump's illegal handling of state secrets, a violation of the Espionage Act of 1917; the government's full appeal of Cannon's order, which is likely to be expedited and decided sometime around the end of the year; and Dearie's document review, presently set to be completed in mid-December, are all set to continue unabated, unless the Supreme Court takes some unexpected action.

Trump's Supreme Court application barely mentions the merits of the dispute and omits entirely his attorney's perjurious representation that all documents marked classified had been returned to the Justice Department. Instead, the principal ground is hyper-technical: whether an appellate court has jurisdiction to review the appointment and scope of a special master before the case comes to a conclusion.

The Eleventh Circuit brushed off Trump's technical quibble by pointing out that injunctions are appealable immediately, and that the special master's review is part of the injunction itself or sufficiently tied to the injunction for jurisdiction to exist.

After more than 30 pages of arcane hairsplitting, Trump's application resurrects the discredited claims that Trump somehow declassified the documents "in his mind," that is, without documenting it anywhere or notifying intelligence agencies that the information was going into the public domain.

"President Trump was still the President of the United States when any documents bearing classification markings were delivered to his residence in Palm Beach, Florida," the application to the Supreme Court states. "At that time, he was the Commander in Chief of the United States. As such, his authority to classify or declassify information bearing on national security flowed from this constitutional investment of power in the President."

The facts are: Trump's authority to declassify the marked documents terminated on January 20, 2021. Their willful retention continued almost 20 months later, to August 8, 2022.



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