

California judge rules Trump attorney involved in “a conspiracy to defraud the United States”

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A California federal judge has ordered former Trump lawyer John Eastman, whose pseudo-legalisms helped fuel the January 6 attack on the US Capitol, to turn over emails subpoenaed by the House Select Committee investigating the attempted coup. District Judge David O. Carter ruled that the emails show Trump lied in sworn court filings about supposed voter fraud in Georgia.

On Wednesday, Judge Carter ruled that “the emails are sufficiently related to and in furtherance of a conspiracy to defraud the United States” for the so-called crime-fraud exception to apply, overriding Eastman’s claims of attorney-client and attorney work product privileges.

Carter reviewed hundreds of emails the former dean of Chapman College School of Law in Orange County, California, exchanged with co-conspirators seeking to block the transfer of power after Trump’s defeat in the November 2020 election.

Carter’s decision followed a week of legal setbacks for Trump and his cronies. On October 13, the Supreme Court rejected in one sentence Trump’s fatuous petition seeking its intervention in the dispute with the Department of Justice (DOJ) and FBI over the government documents seized at Trump’s Mar-a-Lago resort, including 103 with top-secret classification markings and special handling instructions.

South Florida District Judge Aileen Cannon, a Trump nominee confirmed by the lame-duck Senate after his election defeat, who has no notable qualifications beyond her affiliations with the Republican Party and Federalist Society, raised legal eyebrows last month when she refused to transfer the case to Magistrate Judge Bruce Reinhart, who had issued the search warrant for the Mar-a-Lago documents, and then enjoined the DOJ from using the documents for its criminal investigation of Trump pending their review by a special master.

The DOJ immediately appealed Cannon’s order to the Eleventh Circuit and quickly obtained a unanimous ruling by a three-judge panel granting an emergency order that exempted the 103 documents with classification markings from Cannon’s injunction and the special master review.

On October 14, the day after the Supreme Court

unceremoniously showed Trump the door, the DOJ filed its brief on the merits of the appeal, which, if successful, will result in the dismissal of Judge Cannon’s case altogether. Most objective legal commentators give the appeal a high probability of success.

Meanwhile, former Foreign Intelligence Surveillance Court (FISA) Judge and now special master Raymond Dearie is sorting through the roughly 13,000 documents (22,000 pages total) carted off from Mar-a-Lago by the FBI on August 8. During a public telephone conference Tuesday, Dearie pushed Trump’s legal team over its failure to support its client’s legal positions on excluding documents from DOJ review.

“It’s a little perplexing as I go through the log,” Judge Dearie said about the list of disputes. “What’s the expression—‘Where’s the beef?’ I need some beef.”

For example, recent filings show that Trump’s lawyers listed six clemency applications and a letter from a student in a military academy as Trump’s personal property, although he received them in his capacity as president and they belong to the United States under the 1978 Presidential Records Act.

Trump included two written immigration policies as both his personal property and official advice he received, supposedly protected by executive privilege. “Unless I’m wrong, and I’ve been wrong before, there’s certainly an incongruity there,” Dearie said, referring to the fact that a document cannot both be official advice to the president and exempt from the Presidential Records Act as a personal record, except in the Trump universe, where: “L’État, c’est moi.”

Behind these intense and protracted legal wrangles an increasingly bitter struggle is being waged between factions of the ruling elite mobilized on the one side to maintain certain conventions of bourgeois democracy, such as nominally fair elections in the Eastman case, and to protect with iron determination the confidentiality of state secrets, as in the Mar-a-Lago case, against the win-at-all-cost fascists coalescing around aspiring dictator Donald J. Trump on the other.

In Judge Carter’s latest ruling, the January 6 House Select Committee subpoenaed hundreds of emails between Eastman’s university account and Trump associates from election night

2020 to inauguration day 2021. Eastman filed the lawsuit, claiming that the emails are privileged from disclosure either as attorney-client communications or his attorney work product.

The case was assigned to Judge Carter, a former US Marine officer with almost 25 years of experience on the federal bench, well known and generally respected among Southern California lawyers for his no-nonsense approach to criminal and civil cases. He has presided over protracted, multi-defendant trials of Mexican Mafia and prison and street gangs, and actively involved himself in civil rights cases relating to the masses of unhoused people in Orange and Los Angeles counties.

In his first order seven months ago, Carter analyzed Trump's and Eastman's actions leading up to the attack on the Capitol, finding that each "more likely than not committed obstruction of an official proceeding, in violation of 18 U.S.C. § 1512(c)(2), and conspiracy to defraud the United States, in violation of 18 U.S.C. § 371."

In his recent ruling, Carter determined that 536 Eastman emails were privileged by attorney work product and attorney-client communications, but that eight were subject to the "crime-fraud" exception because they were made "in furtherance of the obstruction and conspiracy crimes."

"There are four documents," Carter ruled, that show Eastman conspired with Trump to file cases solely "to delay or otherwise disrupt the January 6 vote," including one "in the Supreme Court" that "might be enough to delay consideration of Georgia."

Carter determined that four more emails "demonstrate an effort by President Trump and his attorneys to press false claims in federal court for the purpose of delaying the January 6 vote. The evidence confirms that this effort was undertaken in at least one lawsuit filed in Georgia."

As Carter detailed in his ruling: "President Trump and his attorneys alleged in a Georgia state court action that Fulton County improperly counted a number of votes including 10,315 deceased people, 2,560 felons, and 2,423 unregistered voters. President Trump and his attorneys then decided to contest the state court proceeding in federal court, and discussed incorporating by reference the voter fraud numbers."

In the four emails, "Eastman relayed 'concerns' from President Trump's team 'about including specific numbers in the paragraph dealing with felons, deceased, moved, etc.," because Eastman knew that Trump "has since been made aware that some of the allegations (and evidence proffered by the experts) has been inaccurate," and therefore, "For him to sign a new verification with that knowledge (and incorporation by reference) would not be accurate."

Judge Carter wrote that "Trump and his attorneys ultimately filed the complaint with the same inaccurate numbers without rectifying, clarifying, or otherwise changing them. President Trump, moreover, signed a verification swearing under oath that the incorporated, inaccurate numbers 'are true and correct' or 'believed to be true and correct' to the best of his

knowledge and belief."

Thus, Carter concluded, "The emails show that President Trump knew that the specific numbers of voter fraud were wrong but continued to tout those numbers, both in court and to the public. The Court finds that these emails are sufficiently related to and in furtherance of a conspiracy to defraud the United States" for the crime-fraud exception to apply.

Trump denounced the ruling on his Truth Social website, accusing Carter of "very nasty, wrong and ill informed statements about me on ruling on a case (whatever!), currently going on in California." He added, "Please explain to this partisan hack that the President Election of 2020 was Rigged and Stolen."

In the DOJ's opening brief in the Mar-a-Lago documents appeal filed on October 14, the Justice Department begins by attacking Cannon's claim of jurisdiction to intervene, which she made on the grounds that the target is a former US president, and her brushing aside Magistrate Judge Bruce Reinhart, who had authorized the search warrant.

The DOJ has concerns that extend beyond the dispute with Trump. The federal police apparatus cannot tolerate a precedent that allows targets of search warrants to petition possibly sympathetic district judges for injunctions and special masters that would interfere with their investigators.

"The exercise of equitable jurisdiction over an ongoing criminal investigation is reserved for exceptional circumstances," the DOJ wrote. The "foremost consideration" is whether the government "displayed a callous disregard for constitutional rights in seizing the items at issue."

Quoting the recent Eleventh Circuit ruling that exempted the marked documents from Cannon's order, the DOJ explained that Cannon herself "acknowledged that there has been no showing that the government acted in 'callous disregard' for" Trump's rights, which "'by itself is reason enough to conclude that the district court abused its discretion in exercising equitable jurisdiction here.'"

Finally, the DOJ concluded that to the extent Cannon "suggested that Plaintiff's former elected office entitles him to treatment different from that afforded to any other subject of a court-authorized search, such a notion would be contrary to the public interest and the rule of law."

The appeal has been expedited at the DOJ's request. Trump's opposition brief is due November 10 and the DOJ reply one week later. Oral argument and the decision could come at any time thereafter, so the appeal could be resolved around the time that the special master's review is scheduled to conclude.



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