Eleventh Circuit Court of Appeals slams Trump, vacates special master for Mar-a-Lago state secrets documents

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On Thursday evening, the Eleventh Circuit Court of Appeals, which oversees Florida federal courts, ordered the dismissal of former president Donald Trump's civil lawsuit against the Department of Justice. The appeals court's decision vacated a lower court order that appointed a special master to review the 22,000 documents seized by the FBI while serving a search warrant last August at Trump's home in his Mar-a-Lago resort in Palm Beach, Florida.

The unsigned "per curiam" opinion by Chief Judge William Pryor, a George W. Bush nominee, and two Trump nominees, Andrew Brasher and Britt Grant, methodically rejected every argument made in Trump's sophomoric lawsuit and the bizarre ruling by Southern Florida District Judge Aileen Cannon.

Cannon, who was 39 when confirmed by the lame-duck Senate after Trump's electoral defeat, shocked most legal observers by ruling that Trump's status as a former president triggered "extraordinary circumstances" to support her exercise of "equitable jurisdiction" over the criminal investigation into his concealment of top secret documents at his private club well after the end of his presidency.

The Eleventh Circuit ruling will effectively terminate all proceedings before Special Master Raymond Deerie, the former Foreign Intelligence Surveillance (FISA) judge charged with sorting through thousands of unclassified documents seized at Mar-a-Lago. An earlier Eleventh Circuit ruling already exempted the 107 documents marked confidential.

The ruling clears the path for newly appointed special prosecutor Jack Smith to complete his criminal investigation of Trump's mishandling of highly classified state secrets and his brazen lying to cover it up. Based on recent Washington grand jury activity, many commentators believe indictments may be forthcoming relatively soon, in any event, before any action is taken by Smith against Trump for leading the conspiracy to block the transfer of power on January 6, 2021.

Trump has one week to seek review "en banc" by the Eleventh Circuit as a whole, or by the US Supreme Court, neither of which is likely to intervene. The Supreme Court has already unanimously rejected Trump's petition to overturn the Eleventh Circuit's partial stay, and there is no reason to believe that it will decide a new petition differently.

While grounded in established law-and-order precedents and a relatively clear factual record, the opinion also suggests that certain sections of the ruling class affiliated with the Republican Party have had their fill of Trump's antics and are looking for new fascistic standard bearers, such as Florida Governor Ron DeSantis.

The 21-page, unsigned "per curiam" opinion concisely summarizes the Mar-a-Lago document controversy before methodically dismantling each point advanced by Trump and Judge Cannon to invoke the equitable jurisdiction necessary to install a special master.

Framing the issue as "whether the district court had jurisdiction to block the United States from using lawfully seized records in a criminal investigation," the Eleventh Circuit responded with the bluntness that pervades the opinion, writing, "The answer is no."

"We are faced with a choice," the opinion states, "apply our usual test; drastically expand the availability of equitable jurisdiction for every subject of a search warrant; or carve out an unprecedented exception in our law for former presidents. We choose the first option. So the case must be dismissed."

The court traced the dispute to January 2022, when "after months of discussions, [Trump] transferred fifteen

boxes of documents to the National Archives," which included "newspapers, magazines, printed news articles, photos, miscellaneous print-outs, notes, presidential correspondence, personal and post-presidential records, and a lot of classified records," 184 to be exact, "including twenty-five marked top secret."

In response to a subpoena for all remaining documents marked classified, Trump's representatives "produced an envelope wrapped in tape, which was consistent with an effort to comply with handling procedures for classified documents" that "contained thirty-eight classified documents, seventeen of which were marked top secret."

"A declaration accompanying the documents certified that a 'diligent search was conducted' of the boxes moved from the White House and that '[a]ny and all responsive documents' had now been produced," the court added.

That turned out to be false, as the court noted. On August 8, agents "seized approximately 13,000 documents and a number of other items, totaling more than 22,000 pages of material," including over 100 documents marked confidential, secret or top secret, three of which were found unsecured in Trump's Mar-a-Lago office desk.

The court pointed to a 1975 precedent that severely limits equitable jurisdiction over ongoing criminal investigations. A court can intervene only when "the government displayed a callous disregard" for constitutional rights. Trump did not even assert that to be the case here because, as the opinion points out more than once, the search warrant was based on a judicial finding of probable cause that Trump's actions violated the Espionage Act and obstructed the government's investigation.

The opinion rejected Trump's claim "that the special master process is necessary to determine whether a constitutional violation happened."

The opinion brushed off Trump's claims that the seized records were actually his property. "The status of a document as personal or presidential does not alter the authority of the government to seize it under a warrant supported by probable cause; search warrants authorize the seizure of personal records as a matter of course. The Department of Justice has the documents because they were seized with a search warrant, not because of their status under the Presidential Records Act."

Certain passages suggest an almost mocking tone. At the oral argument, Trump's "counsel noted that the seized items included 'golf shirts' and 'pictures of Celine Dion.' While Trump may have an interest in these items and others like them, we do not see the need for their immediate return after seizure under a presumptively lawful search warrant."

"All [Trump's] arguments are a sideshow," the judges wrote in unusually dismissive language for an appellate decision. "Only one possible justification for equitable jurisdiction remains: that Plaintiff is a former President of the United States."

"It is indeed extraordinary for a warrant to be executed at the home of a former president," the court noted, "but not in a way that affects our legal analysis or otherwise gives the judiciary license to interfere in an ongoing investigation."

Quoting a 1794 decision of the United States Supreme Court, the opinion concludes, "To create a special exception here would defy our Nation's foundational principle that our law applies 'to all, without regard to numbers, wealth, or rank.'"

While the opinion emits an egalitarian aura, in essence it upholds the essentially conservative, law-and-order principle that courts must defer to the executive branch and cannot interfere with ongoing criminal investigations absent extraordinary evidence of constitutional violations.

The decision is the latest in a series of courtroom defeats for Trump and his sycophants. Multiple advisers have been ordered to appear before an Atlanta grand jury investigating Trump's fraudulent elector scheme. The Supreme Court allowed House Democrats access to six years of Trump's tax returns.

Last week, a federal jury found Stewart Rhodes, the head of Trump's brownshirts, the Oath Keepers, guilty of seditious conspiracy for his role in the January 6 attack on the Capitol. He faces a maximum 60-year sentence.

It remains to be seen whether the chief conspirator will follow Rhodes in the dock.