

TRUMP'S LATEST TIRADE PROVES ANY TEMPORARY RESTRAINING ORDER MAY COME TOO LATE

At 12:49ET yesterday, the head of DOJ's espionage section, Jay Bratt, informed Trump's lawyers that the Agents who conducted the search of Mar-a-Lago had seized two expired passports and his still-active diplomatic passport; he invited someone to come get them after 2.

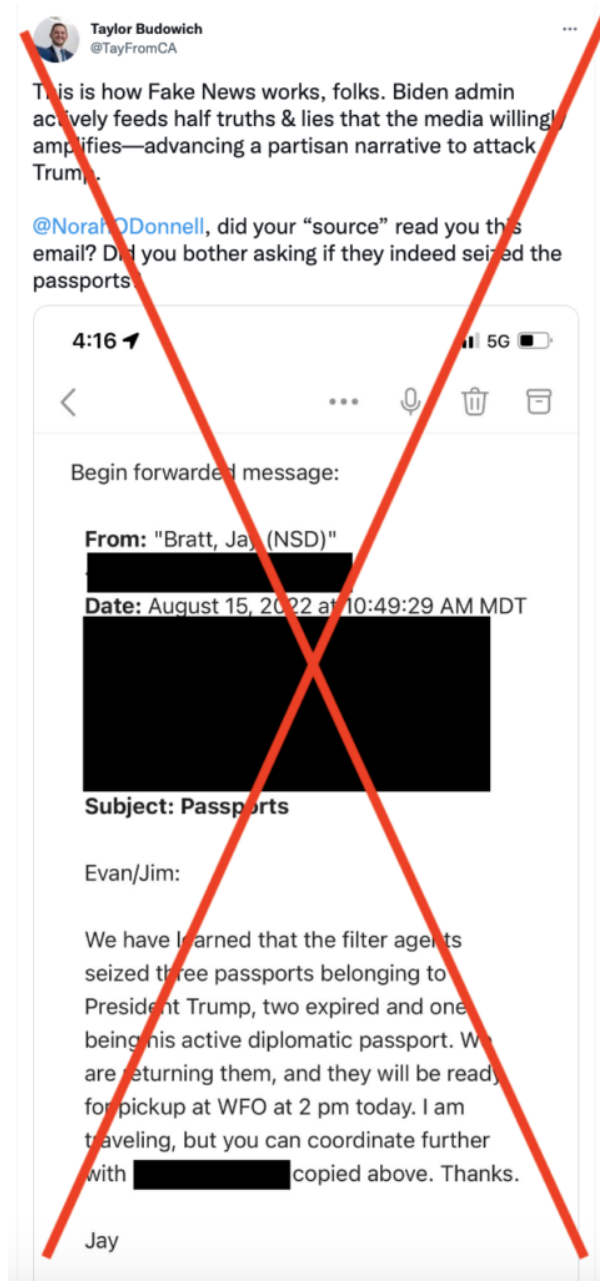
Later in the day, the former President went on his shitty website and claimed that the FBI, which attempted to return the passports within a week, had "stole" them.



Not long after, Norah O'Donnell tweeted that DOJ was not in possession of Trump's passports.



In response, Trump's spox Taylor Budowich accused O'Donnell of Fake News. He screencapped the Bratt letter to Trump's lawyers showing that when the FBI discovered the passport, they made efforts to return them, effectively confirming O'Donnell's statement that by the time of Trump's tweet, the passports had been retrieved.



Given the way the warrant was written, there's an easy explanation for how the FBI could have seized the passports. As I laid out in more detail here, the search worked from classified documents outward. The FBI was permitted to take any box that had a classified document in it, and any boxes stored where boxes storing classified documents were stashed.

Any physical documents with classification markings, along with any containers/boxes (including any other contents) in which such documents are located, as well as any other containers/boxes that are collectively stored or found together with the

aforementioned documents and
containers/boxes;

So if Trump stored his diplo passport in the leather-bound box where he stored the TS/SCI documents he stole, the FBI would have taken it under the search protocols. The same would happen if his expired passports were in a box in the storage closet where he stored his other stolen classified documents.

As the FBI explained in a statement, this is how it works.

In executing search warrants, the FBI follows search and seizure procedures ordered by courts, then returns items that do not need to be retained for law enforcement purposes.

And because Trump is a privileged white collar criminal suspect, he was lucky enough to get things that are out of scope immediately, rather than months later.

Unsurprisingly, then, Trump took an example of the FBI being diligent and used it to gin up outrage.

Worse for him, he is wasting his time.

As I noted Sunday, in response to similar searches implicating Donald Trump, lawyers filed for a Temporary Restraining Order within days.

I have been waiting all week for a docket to spring up with a Trump motion for a Temporary Restraining Order stalling any access to these files.

For comparison, the docket on a similar challenge from Michael Cohen in 2018 was created just 4 days after the search of his residences, and the discussions about the search began that same day.

On the same day as the seizures (April 9, 2018), the undersigned

counsel requested in writing that the U.S. Attorney's Office for the SDNY return all of the seized property and allow Mr. Cohen and his attorneys the opportunity to screen the materials for privilege, produce any relevant, non-privileged documents to the government, and provide a log of any documents withheld on privilege grounds. Id., ¶ 32, Ex. A. On Wednesday, April 11, 2018, the government responded by letter, rejecting defense counsel's proposal and informing defense counsel that the government would begin to review the materials at noon on Friday, April 13, 2018. Id. ¶ 33, Ex. B. Accordingly, Mr. Cohen hereby moves for immediate injunctive and equitable relief seeking the opportunity to have his counsel review the seized documents in the first instance, before any review by any law enforcement personnel, for privilege and responsiveness, and, if the Court believes it necessary, for the appointment of a Special Master to supervise that review process.

Trump moved to intervene that same day, April 13, just four days after the seizures.

In the case of the search on Rudy's phones, SDNY itself asked for a Special Master the next day (though Trump never intervened).

There *have* to be similar discussions going on now. There just have to be. Trump's paucity of lawyers – and the conflict posed by the possibility that Evan Corcoran, his most competent

current defense attorney, may be conflicted out by dint of having signed an affirmation that Trump turned over all his classified documents in June – cannot explain a full week delay.

But thus far, in spite of every media outlet and their mother filing motions to unseal the search affidavit itself, no one has started pushing to unseal an inevitable fight over access to the seized material. (Again, by comparison, the NYT filed to intervene the day the Cohen warrant docket was made public.)

There's no sign of that happening here yet.

As of now, there are at most two unexplained sealed filings on the warrant docket.

08/15/2022	SYSTEM ENTRY - Docket Entry 55 restricted/sealed until further notice. (jmd) (Entered: 08/15/2022)
08/15/2022	SYSTEM ENTRY - Docket Entry 56 restricted/sealed until further notice. (jmd) (Entered: 08/15/2022)
08/15/2022	SYSTEM ENTRY - Docket Entry 57 restricted/sealed until further notice. (jmd) (Entered: 08/15/2022)

Except they're probably all accounted for: According to the government's opposition to unsealing the warrant affidavit, Docket 57 contains all the other releasable materials (such DOJ's own motion to seal), and the two prior entries are likely a motion to seal *that* filing and permission to do so. Each initially sealed docket entry in this docket has included two other sealed entries before it.

And time is running out for the Donald.

Contrary to what certain journalists have concluded from an email from Bratt that said, "the filter agents seized three passports belonging to President Trump," that doesn't mean a filter team *currently working* found the passports (though I assume a filter team may review materials seized under the SSA receipt a second time). It means that filter agents were used to do the search, as was reported contemporaneously. And now case agents – the people who determine which items are within scope of the investigation and which "items [] do not need to be retained for law enforcement

purposes” – appear to be making scope determinations.

DOJ only needs to identify a single classified document to charge the former President under the Espionage Act. And given the way that Trump is ginning up outrage and attacks on FBI agents (which the government cited in explaining the need to keep the affidavit sealed), charging him with a single count indictment describing (hypothetically) the nuclear codes might be a good way to shut everyone up. They could use that to offer Trump a plea deal to lesser charges while they catalog other documents that each could bear a separate 10-year sentence.

If they’ve already singled out Trump’s passports, they surely are processing the stolen classified documents that could expose Trump to years in prison.

And Trump’s still at the manufactured outrage stage of his defense.

Update: Corrected time of Bratt’s email, which was shown with MDT.

emptywheel Trump Espionage coverage

Trump’s Timid (Non-Legal) Complaints about Attorney-Client Privilege

18 USC 793e in the Time of Shadow Brokers and Donald Trump

[from Rayne] Other Possible Classified Materials in Trump’s Safe

Trump’s Stolen Documents

John Solomon and Kash Patel May Be Implicated in the FBI’s Trump-Related Espionage Act Investigation

[from Peterr] Merrick Garland Preaches to an Overseas Audience

Three Ways Merrick Garland and DOJ Spoke of

Trump as if He Might Be Indicted

The Legal and Political Significance of Nuclear Document[s] Trump Is Suspected to Have Stolen

Merrick Garland Calls Trump's Bluff

Trump Keeps Using the Word "Cooperate." I Do Not Think That Word Means What Trump Wants the Press To Think It Means

[from Rayne] Expected Response is Expected:
Trump and Right-Wing DARVO

DOJ's June Mar-a-Lago Trip Helps Prove 18 USC 793e

The Likely Content of a Trump Search Affidavit

All Republican Gang of Eight Members Condone Large-Scale Theft of Classified Information, Press Yawns

Some Likely Exacerbating Factors that Would Contribute to a Trump Search

FBI Executes a Search Warrant at 1100 S Ocean Blvd, Palm Beach, FL 33480

The ABCs (and Provisions e, f, and g) of the Espionage Act

Trump's Latest Tirade Proves Any Temporary Restraining Order May Come Too Late