EVAN CORCORAN KEEPS ARGUING THAT EVAN CORCORAN DIDN'T DO A DILIGENT SEARCH

There's something weird about the argument that Trump's lawyers — each time with the participation of Evan Corcoran — are making about the search of Mar-a-Lago. What they claim they're up to is all over the map, and has evolved (for example, their first filing focused on Executive Privilege, but in last week's hearing, Judge Aileen Cannon had to remind Trump lawyer Jim Trusty that's what he was supposed to be arguing).

But their true goal, it seems, is to learn enough about what was taken so they can attempt to claw back certain materials that would incriminate Trump for reasons other than the sheafs of highly classified information that were stored in an insecure storage closet. It's a two step process: Learn what was taken, so they can then argue that its seizure was a gross violation of the Fourth Amendment under what's called a Rule 41(g) motion.

And to that end, the first filing argued that they need a more detailed inventory, describing what was seized and from where, so Donald Trump can make a Rule 41 motion claiming it was improperly seized.

> Movant submits the current Receipt for Property is legally deficient. Accordingly, the Govemment should be required to provide a more detailed and informative Receipt For Property, which states exactly what was seized, and where it was located when seized. In addition, Movant requests that the Court provide him with a copy of the inventory. This, along with inspection of the full Affidavit, is the only way

> to ensure the President can properly evaluate and avail himself of the important protections of Rule 41. [my emphasis]

The second filing (which is where the Executive Privilege started to be dropped) repeated and expanded the request that Cannon order the government give Trump enough information so he can start clawing stuff back. In addition to falsely claiming his passports had been improperly seized, the filing admitted they couldn't figure out what kind of harm the seizures would do without getting more details on what was seized.

> Finally, this Court should exercise its equitable or anomalous jurisdiction over Movant's request for the return of seized property and for a detailed receipt for property. This Court has written, "Where no criminal proceedings are pending, either because an indictment has not been filed or because a criminal prosecution has terminated, a petition pursuant to Rule 41(g) [of the Federal Rules of Criminal Procedure] has always been treated as a civil action in equity." Bennett v. United States, No. 0:12-cv-61499, 2013 WL 3821625, at *11 (S.D. Fla. July 23, 2013); see also United States v. Dean, 80 F.3d 1535, 1542 (11th Cir. 2005) ("Federal courts have developed the doctrine of 'equitable' or 'anomalous' jurisdiction to enable them to take jurisdiction over property in order to adjudicate 'actions for the return of unlawfully seized property even though no indictment has been returned and no criminal prosecution is yet in existence.'" (citation omitted)). Given that Movant's request for a receipt for property is ancillary to the request for the return of improperly seized property, the Court's equitable jurisdiction should

> extend to that request.
>
> [snip]
>
> At the outset, because the Government has not produced an adequately detailed receipt for property, it is impossible for Movant to assess the full contents of the seized material. The Government has already confirmed that it improperly seized Movant's passports (which were not listed on the Receipt for Property provided to Movant), and the Government's continued custody of similar materials is both unnecessary and likely to cause significant harm to Movant. In addition, the return of property pursuant to Rule 41(g) is the only mechanism for Movant to secure wrongfully seized property, and he has no influence on whether later proceedings will enable him to seek such relief. [my emphasis]

At the hearing on Thursday, after Cannon had given Trump's lawyers the more detailed inventory that shows that every single box that was seized had some official government documents inside, Jim Trusty complained — with Evan Corcoran sitting at a table beside him — that Trump's lawyers would remain purposely blinded unless Judge Cannon ordered the government to let them inspect the actual documents themselves.

> The next logical step would be to allow us to actually examine the documents and other items that were seized in this search.
>
> [snip]
>
> MR. TRUSTY: Your Honor, I think the difficultly in completely jumping through that hoop for the Court in terms of the Richey factors is that we are still purposefully blinded from large swaths of information. What we see from

> our side of the aisle is a warrant that looks like a general warrant and could be subject to challenge under Rule 41.
>
> [snip]
>
> The Court will probably recognize – I'm not asking for an opinion – that the warrant itself not only allows for gathering papers around their classified materials seizure, which again we even dispute whether it is classified or whether they are entitled to seize it or whether it is in the right paradigm, but boxes in the vicinity, documents in the vicinity. I mean, this was a colonial time search where the agents had discretion to take anything they want. And maybe they did, we are still trying to get through a legitimate inventory to figure that out. But there are significant substantial preliminary showings that this is a warrant that is suspect. And I can just tell the Court that our intention is to explore that, get the classifications through a special master and Your Honor that we can get, in terms of what the universe of items are, and pursue ideas like seeing the affidavit, maybe not for the general public, but at least for counsel to properly prepare for a Rule 41 and then litigating a Rule 41. This is what the rule is all about. It doesn't matter whether it is a president or guy on street corner in Baltimore, they have that right to challenge this preliminarily.
>
> [snip]
>
> We think the special master will be in a position to assess personal versus Presidential documents under the framework of the PRA and executive privilege. We think all of that is the type of thing it would be, I suspect, economical and make sense to be

> conducted along with the physical review of the documents to throw that to the special master, allow us to use that time. Ultimately, there may well be reasons to come back to this Court, but I think that's an efficient model for getting to a bottom line of where we disagree and where we agree, if anywhere, when it comes to the classification of all of these seized materials.

Again, this is all part of a two-part goal to first *learn* what was seized and, once they learn that, to make an argument that its seizure irreparably harms Trump. While Jay Bratt is treating this effort *as a Rule 41 motion*, Trump's lawyers, joined by Evan Corcoran, argue they won't be in a position to make a Rule 41 argument unless they first get a detailed look at what was seized.

Which, as I said, is pretty nutty, because according to the government, Corcoran told Bratt (and three FBI agents) the following:

> [C]ounsel for the former President represented that all the records that had come from the White House were stored in one location—a storage room at the Premises (hereinafter, the "Storage Room"), and the boxes of records in the Storage Room were "the remaining repository" of records from the White House. Counsel further represented that there were no other records stored in any private office space or other location at the Premises and that all available boxes were searched

And another of Trump's lawyers, Christina Bobb, signed a declaration claiming the following:

> Based upon the information that has been provided to me, I am authorized to certify, on behalf of the Office of

> Donald J. Trump, the following:
>
> a. A diligent search was conducted of the boxes that were moved from the White House to Florida;
>
> b. This search was conducted after receipt of the subpoena, in order to locate any and all documents that are responsive to the subpoena;
>
> c. Any and all responsive documents accompany this certification; and
>
> d. No copy, written notation, or reproduction of any kind was retained as to any responsive document.

As I noted yesterday, the government asked Beryl Howell to unseal the May 11 subpoena it served on Trump's office so it could debunk several claims Trump had made in its filings. One they focused on, in particular, is Bobb's claim that a diligent search "was conducted." DOJ wanted to be able to argue that,

> Contrary to [Bobb's] assertion, when the FBI conducted its search of Mar-a-Lago on August 8, it found over one hundred total documents bearing classified markings, from both the storage room and the space FPOTUS uses as an office."

I mean, it's an important point and all. But at this point, they don't even need to contrast the statements Trump's lawyers made with the inventory seized.

They can just point to assertions — signed or joined by Evan Corcoran — stating that Trump's lawyers, including Corcoran, have no fucking idea what was in those boxes and where they were stored. There is no way that Bobb's claim that a diligent search was done and Corcoran's claim that he knew all Presidential Records were stored in the storage room can be true and, at the same time, a team including Corcoran first needs to learn what's in the boxes and where the

boxes were stored before he can argue about the grave harm that has befallen Trump by seizing them.

All these claims that Trump's legal team has no idea what's in the boxes and where they were stored seems to be pretty compelling evidence that Trump's lawyers' claims to have actually searched these boxes were not true.