

# IN MOTION FOR A STAY, DOJ RAISES PROSPECT THAT TRUMP LEAKED CLASSIFIED DOCUMENTS

In the government's motion for a stay submitted to the 11th Circuit last night, it suggested the investigation into Trump's stolen documents may have expanded to focus on whether the former President shared the content of highly classified documents with others.

It describes that Aileen Cannon's order only permitted the government to review the classified documents for hypothetical risk of future disclosure. It notes that that would prohibit the government from investigating whether these documents have already been disclosed. It then raises the empty folders as a problem that must be solved, in part by identifying the patterns of Trump's theft to identify what else he may have stolen.

The district court specified that its order should not interfere with the IC's "classification review and/or intelligence assessment," A14, and later clarified that "to the extent that such intelligence review becomes truly and necessarily inseparable from criminal investigative efforts," the order "does not enjoin the Government from proceeding with its Security Assessments," A9. But that is not sufficient. The IC's review and assessment seek to evaluate the harm *that would* result from disclosure of the seized records. A40-A41. The court's injunction restricts the FBI—which has lead responsibility for investigating such matters in the United States—from using the seized records in its criminal-investigative tools to assess which if any records *were in fact*

*disclosed*, to whom, and in what circumstances.

For example, the court's injunction bars the government from "using the content of the documents to conduct witness interviews." A9. The injunction also appears to bar the FBI and DOJ from further reviewing the records to discern any patterns in the types of records that were retained, which could lead to identification of other records still missing. See A42 (describing recovery of "empty folders with 'classified' banners"). And the injunction would prohibit the government from using any aspect of the seized records' contents to support the use of compulsory process to locate any additional records.

Disregarding a sworn declaration from a senior FBI official, the court dismissed such concerns as "hypothetical scenarios" and faulted the government for not identifying an "emergency" or "imminent disclosure of classified information." A11. But the record makes clear that the materials were stored in an unsecure manner over a prolonged period, and the court's injunction itself prevents the government from even beginning to take necessary steps to determine whether improper disclosures might have occurred or may still occur.

Significantly, the government doesn't even use language to suggest that these documents were compromised, without Trump's involvement – that some fake Rothschild or a hotel valet had snuck into the closet and stolen documents. It suggests these documents may have been disclosed, intentionally and knowingly.

This is not the only hint in the filing that the investigation may have expanded beyond mere unauthorized retention of classified records.

The motion also describes that Trump's lawyers might be witnesses, plural, suggesting that Jim Trusty could be hidden in the search affidavit as the FPOTUS Counsel 2 implied by the affidavit's description of Evan Corcoran as FPOTUS Counsel 1 (Christina Bobb is referred to merely as Individual 2).

The government came very close to saying that Judge Cannon has prohibited the government from preventing leaks in process.