

HOW WOULD YOU ARREST A FORMER PRESIDENT?

As I was reading the four-journalist WaPo story noting what I noted (and provided far more details about) almost three months ago – that the investigation into Trump has been greatly complicated by the involvement of lawyers in his suspected crimes – I thought about how one might arrest Donald Trump. WaPo is interested in whether it can be done before the first debates in August. I'm interested in the logistics of it.

Especially given another temporal complication that WaPo, with all those reporters, doesn't mention: That the DC Circuit, a panel including two Trump appointees, is taking its own sweet time ruling on DOJ's application of obstruction to January 6, which was argued back in December. The January 6 Committee referred Trump for 1512(c)(2), which also happens to be the framework DOJ has been using since summer 2021. It's virtually certain that no matter how the DC Circuit rules, the application can still be applied to Trump (because he corruptly sought a personal benefit involving documents). But if I were Jack Smith, I'd wait to see the guideposts Trump's own appointees put on the application before I charged it. I have also long said that certain steps may be contingent on the Proud Boy trial, which seems like it'll go on forever.

I'm not promising Trump will be arrested. But think about the logistical complexities of the task, if Smith were to decide to do it. How do you arrest a rich man – if not quite a billionaire – with access to several planes and his own MAGA army? How do you stage it, given all the potential or likely co-conspirators?

The question of how to arrest Trump is likely also a pressing issue given the likelihood that DOJ still hasn't obtained all the documents

Trump stole, given the multiple properties that haven't been searched (including Trump's jet).

One way you might do that is to arrest him first on a limited set of charges tied to the crime scene, one that wouldn't obligate DOJ to turn over discovery on all the other things Jack Smith is still investigating, such as the targeting of Mike Pence, the defrauding of MAGAs and related campaign finance crimes, and the fake elector plots involving at least a dozen other top Republicans. Arrest him on a crime scene charge, and get it over with.

You arrest Trump and maybe one or two other people, get them in a pretrial release situation limiting their direct contact with other potential co-conspirators (and requiring a truthful statement of net worth to prosecutors, a statement that may reveal useful evidence about Trump's income from fraudulent claims and Saudi golf tournaments). Ground his plane ... and then search it. Search the other properties during the period when Trump is being processed. Prevent Trump, legally, from singing duets with other January 6 thugs.

And then you continue to investigate, superseding the initial charges after you get the testimony of Mike Pence and Evan Corcoran.

Again, this is just a thought experiment. But I thought I'd get ahead of where four-journalist teams from the WaPo will be in three months time.