

THE APPROACH TO CLASSIFICATION IN TRUMP'S STOLEN DOCUMENT CASE

The government has submitted materials in support of a requested continuance until December in Trump's stolen documents case:

- Motion to Implement Special Conditions
- Motion for Continuance
 - Jay Bratt Declaration
 - Proposed Schedule
 - Proposed Scheduling Order

The Motion to Implement Special Conditions is basically a bid to get a list of 84 witnesses submitted, via sealed filing, to docket, and so subject to Judge Aileen Cannon's discipline. Under the order issued by Magistrate Judge Jonathan Goodman, both Trump and Walt Nauta will be prohibited from speaking about the facts of the case with any of the 84 witnesses – a great many of whom are Trump employees – except through counsel.

Even at the arraignment, Todd Blanche balked at this condition, which Goodman imposed without DOJ requesting it. In particular, I think Blanche wants people to be able to discuss the case without counsel present so long as counsel has advised about that.

But per the filing, defense attorneys may yet object to the condition itself.

2 The government has conferred with counsel for Defendant Trump and Defendant Nauta about this motion. They have authorized government counsel to represent the following: "Defense

counsel takes no position on the government's motion to seal the list of witnesses, but the defense reserves the right to object to the special condition and the manner in which it was implemented by the government by providing a list of 84 witnesses in purported compliance with the court's order." Counsel for defendant Nauta, Stanley Woodward, has not yet been admitted pro hac vice or entered an appearance, but the government is providing him a courtesy copy of this pleading.

I would love to see briefing on this, because I think Blanche has specific concerns about preserving the nesting gatekeeping that has existed from the start of this. But this condition, if upheld, will also stymie Trump's efforts to fundraise by lying about this case.

The other request is a motion to delay the trial – which Aileen Cannon initially scheduled for August – until December, largely for CIPA to play out. This is totally normal, and given Cannon's past history in criminal cases – which Kyle Cheney reviewed here – there's no reason to expect she would object (indeed, legally, CIPA requires her to work through this process).

The proposed schedule would envision a trial before the first primary, but it triggers everything to Trump (and Nauta's) responsiveness. I suspect it was crafted to undermine any claims from Trump that DOJ is responsible for a trial as people are voting, but some of these deadlines are really aggressive.

Most interesting, though, is DOJ's treatment of clearances. According to Jay Bratt's declaration, once defense attorneys get their SF-86 filing in, the Litigation Security Group has committed to turning around their initial clearances unbelievably quickly: two days. And it has likewise committed to sharing SIGINT

documents based just off that interim clearance.

To be granted an interim security clearance, defense counsel must submit a Standard Form 86 – Questionnaire for National Security (“SF-86”) and supporting documentation. To date, not all of the defense counsel have submitted their SF-86s. Once an SF-86 and supporting documentation are submitted, **absent complicating circumstances**, an interim clearance may be granted within a matter of days. In this case, LSG has committed to reaching **an eligibility determination within 24-48 hours of the completed submission**. Once defense counsel are granted interim security clearances, the government will be able to provide the vast majority of classified discovery, consisting of documents marked CONFIDENTIAL, SECRET, and TOP SECRET, including documents within the following Sensitive Compartmented Information Compartments: SI, SI-G, and TK. [my emphasis]

You can see from the list of charged documents, that would encompass many of the charged documents (some of the redacted classifications are probably SI-G).

But there are others that require further read-in.

However, interim security clearances are not sufficient for the government to provide in classified discovery a small number of documents-**including some documents whose unauthorized retention is charged in the indictment**-that contain restricted compartments for which a final security clearance and additional read-ins are required. LSG estimates that final clearances may be granted within 45 to 60 days of submission of the SF-86 and related documentation, depending upon the

content of the applicant's SF-86. The additional read-ins can be conducted promptly upon access approval. [my emphasis]

Among the unredacted classification marks not included among those Bratt listed are FR (Formerly Restricted, a nuclear designation under the Atomic Energy Act and one Presidents can't declassify alone) and HCS-P (HUMINT product). The bolded language suggests that DOJ is planning to share *all* classified documents Trump stole; based on the redaction marks in the May 11 subpoena, I would be unsurprised if there were HCS-C, HUMINT collection, documents included as well.

This is an incredibly aggressive approach. As I've said, I think DOJ would prefer to find a way to get Trump to plead out, however unlikely that would be. The sooner they share documents with Trump and Nauta's lawyers, the sooner they might be in a position to persuade Trump how bad this will look if he goes to trial.

But note the two caveats: At least one of three known defense attorneys has not yet submitted his SF-86, the list of foreign contacts needed to obtain clearance. At least one of them – Chris Kise, who worked for Venezuela's government – may not be eligible.

So one other underlying context to this is that until Trump can find cleared attorneys, he may be responsible for delays that would result in a trial during the primary season.