

AILEEN CANNON'S NOT-ABNORMAL ORDERS

Judge Aileen Cannon just issued three orders in response to the motions I described here as well as a standard Classified Information Procedures Act (CIPA) request. They've got people in a panic, so I want to break them down by request and response.

Request 1: Motion to Implement Special Conditions of Release

Before Trump's arraignment, DOJ asked for *no* special pre-trial release conditions, aside from Trump not breaking the law anymore. But Magistrate Judge Jonathan Goodman imposed one of his own: that Trump and Walt Nauta not communicate about the facts of the case with witnesses except through lawyers.

Goodman ordered the government to provide defendants with a list of witnesses this covered.

DOJ went beyond this – not only giving Trump and Nauta that list (of 84 witnesses), but also asking to file a sealed version on the docket, without explaining why it was doing so, and also asking Trump and Nauta to sign acknowledgment of the list.

Trump and Nauta objected to that part of it.

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.

I suggested, among other things, that Trump might oppose this because it could stymie his efforts to fundraise off of being an accused

felon.

After that, a media coalition opposed the government motion, asking that any list be filed unsealed.

Cannon's response, denying the motion without prejudice, basically requires the government to explain why it made the request in the first place.

PAPERLESS ORDER denying without prejudice 33 Government's Motion to Implement Special Condition of Release. The Government seeks an order implementing a special condition of bond related to Defendants' communication with eighty-four listed witnesses about the facts of the case, except through counsel [ECF No. 17 p. 4]. The Government conditions its request on the filing of the non-exhaustive list under seal. Defendants take no position on the Government's seal request but reserve the right to object to the special condition and the manner by which the Government intends to implement it. In the meantime, numerous news organizations have moved to intervene to oppose the Government's Motion to File Witness List Under Seal, citing the First Amendment and related legal principles 35 . Upon review of the foregoing materials, the Government's Motion 33 is denied without prejudice, and the Motion to Intervene 35 and accompanying Motions to Appear Pro Hac Vice 36 37 38 39 are denied as moot. The Government's Motion does not explain why filing the list with the Court is necessary; it does not offer a particularized basis to justify sealing the list from public view; it does not explain why partial sealing, redaction, or means other than sealing are unavailable or unsatisfactory; and it does not specify the duration of any

proposed seal. See S.D. Fla. L.R. 5.4(a), (c)(1). The Clerk is directed to return the Pro Hac Vice fees to the filing attorneys. Signed by Judge Aileen M. Cannon on 6/26/2023. (sj00) (Entered: 06/26/2023) [my emphasis]

As written, Cannon, is not reconsidering the limits on contact with witnesses. Rather, she's asking why the government feels the need to file the list and if so why it needs to be sealed.

Ultimately, Cannon is just shifting the presumptive power before she responds to the media outlets' request, properly requiring the government to justify sealing something before doing so. As Kyle Cheney laid out in a worthwhile review of her history, Cannon has in the past been receptive to media requests.

Also of note in the proceedings: Cannon partially granted a motion by the Miami Herald to unseal key sealed documents in the case, agreeing to do so with redactions sought by the government.

So DOJ will refile its request with more justification and we'll learn how Cannon really feels about this pre-release condition.

Request 2: Motion for a Continuance

On the same day, Friday, DOJ also asked for a multi-part motion for a continuance from the August trial date to a December one.

- Motion for Continuance
 - Jay Bratt Declaration
 - Proposed Schedule
 - Proposed Scheduling Order

It laid out the following logic:

1. The matter is not complex, meaning Trump doesn't need a

- year to review discovery
2. The matter *does* involve classified information, which will require using the Classified Information Procedures Act (CIPA), which takes some time
 3. Also, Trump will need more time to review discovery than the current schedule allows

DOJ provided some legal requests, as well as a proposed timeline.

In response to this request, Cannon asked the defendants what they think:

On or before July 6, 2023, Defendants shall respond to the Government's Motion for Continuance 34, either individually or in a combined filing.

This is normal.

Request 3: Motion on CIPA

The motion for CIPA, which is mostly boilerplate, reviews how the process works, including steps that are mandated by law. DOJ included a standard order requesting the following:

- Schedule a CIPA 2 conference to talk about the classified matters at issue
- Appoint a Court Information Security Officer

In her order, Cannon cited the defendants' lack of opposition.

The government has conferred with counsel for Defendant Trump and

Defendant Nauta about this motion. They have stated that they have no objection to this motion. 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.

Then she granted both of these issues, setting the CIPA 2 conference for July 14 and appointing a CISO, both normal steps in this process. She did say,

The Court expresses no view on the other matters addressed in the Government's Motion.

But *those matters* are dictated by law.

At this point, neither Cannon nor the defendants' lawyers know how this works. The conference is the first step in introducing them all to it.

Cannon did say that "Defendants are not required to be present" which is also standard, and would be better here to discuss how this is going to work.

There is nothing to panic about here. Mostly, it seems, Cannon is trying to be careful.

I promise you, I'll let you know if and when it is time to panic about Judge Cannon's orders. Thus far, these are reasonable orders.