

NINE MONTHS OF SURVEILLANCE VIDEO: TRUMP'S NEWFOUND WORRIES HIS DISCOVERY WILL LEAK

As I alluded to here, hidden in Trump's bid to push his trial out past the November 2024 election is a confession that the discovery he has gotten in the case is really damning – more damning than the documents seized last August.

In his filing, his attorneys say that the discovery is so sensitive, it is impossible to use contractors to help review the discovery.

[U]nlike most cases, all the discovery materials are sensitive and high-profile, the Defendants are unable to utilize contract or other third-party reviewers to the extent such resources would normally be available.

It's hard to explain what a stunning claim this is, particularly given that Trump was perfectly happy to trust just such a third-party service in his Special Master bid before Judge Aileen Cannon last year, as evidenced by a series of filings last September and October.

Consistent with Judge Cannon's order (ECF 125, at 3), the parties entered contracts with thirdparty vendors to scan, process, host, and provide a review platform for the Seized Materials.

Even though a key argument in Trump's bid for that Special Master pertained to leaks, he nevertheless let a third party handle every unclassified document seized from Mar-a-Lago in August.

1 The Government is apparently not concerned with unauthorized leaks regarding the contents of the purported “classified records,” see, e.g., Devlin Barrett and Carol D. Leonnig, Material on foreign nation’s nuclear capabilities seized at Trump’s Mar-a-Lago, WASH. POST (Sept. 6, 2022), <https://www.washingtonpost.com/national-security/2022/09/06/trump-nuclear-documents/>, and would presumably be prepared to share all such records publicly in any future jury trial. However, the Government advances the untenable position in its Motion that the secure review by a Court appointed and supervised special master under controlled access conditions is somehow problematic and poses a risk to national security.

That’s not surprising: such vendors are involved in every legal case involving voluminous digital discovery. And their business model is so wrapped up in signing and upholding protective orders, they don’t leak.

Yet Trump’s lawyers imply they might here.

With that in mind, I want to look at what Trump says he has seen in discovery so far.

The Government anticipates producing discovery in stages due to the sheer volume of documents collected and because of procedural mechanisms necessary to protect against the unlawful production of classified information. The Government produced its “first production of unclassified discovery” on June 21, 2023. 1 That initial production was substantial and voluminous. Therein, the Government produced more than 428,300 records (in excess of 833,450 pages) consisting of approximately 122,650 emails (including attachments) and 305,670 documents

gathered from over ninety (90) separate custodians. The initial production also included some **57 terabytes of compressed raw CCTV footage (so far there is approximately nine months of CCTV footage**, but the final number is not yet certain).

In addition, “there will be additional productions of discovery” provided by the Government, as it continues to process “some devices and search warrant returns.” Notably, the Government has not produced all interview-related materials, including certain witness statements and associated memorialization of those statements. [my emphasis]

Some of this doesn't look that burdensome, or surprising. Trump mentioned 90 separate custodians. Well, DOJ has a list of 84 witnesses with whom it doesn't want Nauta and Trump to speak, so this is partly saying that witnesses who testified were asked for discovery. The likely additional custodians are going to be entities like Trump's own corporation, NARA, and the Secret Service.

Some of those records will include texts. The list of Bates stamps released last year shows 21,792 pages of unclassified documents seized last August that Trump's lawyers already got to review in detail. The government may be obliged to turn over copies of some or all of the 15 boxes returned in January 2021, too, since Trump's sort through them is part of the indictment.

It's a lot. But it wouldn't be a lot if Trump were using a discovery vendor.

What I find more interesting are the “devices and search warrant returns” that Jack Smith's team is still processing. There are phones or computers that the government has not yet finished searching. And there are witness

statements that – whether for ongoing investigative reasons or other sensitivities – DOJ has yet to turn over. That’s interesting!

Then there are the *nine months of surveillance footage*. As I noted in this post, in response to the original June subpoena for five months of surveillance footage, Trump turned over just two months. It’d be easy to see how DOJ came to request surveillance footage through December of last year (because documents kept moving around), and it’s unclear whether this includes footage from Bedminster in addition to Mar-a-Lago.

Still, all that footage came from Trump’s own properties! He’s just getting what he already owns back.

DOJ obtained far, far more surveillance footage after that original batch focused just on a basement hallway. And it’ll show the much more mundane stuff of Trump’s corrupt flunkies wandering around his properties – and possibly who knows what foreign parties nosing through boxes in the gaudy bathroom to see what kind of documents Trump brought home. DOJ will undoubtedly point Trump to what *they* consider the highlights. But I can understand why Trump wouldn’t want that video in the hands of anyone he couldn’t trust implicitly, often for reasons entirely unrelated to the case at hand.

All that said, DOJ has had this information for months and months.

And contrary to what leaks to that favorite right wing outlet Devlin Barrett would have you believe, it hasn’t leaked. Trump says a vendor whose entire business model depends on keeping secrets can’t be entrusted with these secrets. But the FBI has been sitting on some of them for almost a year and they haven’t leaked.

Trump’s lawyers may just be bullshitting here because it is the surest route to get this case declared a complex matter, entitling them to expanded pretrial delays. But the claims about the sensitivity of the discovery they’re making

to support that argument are fairly astonishing.