

JUDGE CANNON BLOWS OFF CONCERNS ABOUT WALT NAUTA'S CONFLICTED REPRESENTATION

Before I attempt to explain the substance of the order that Aileen Cannon issued in response to DOJ's request for a Garcia hearing, let me point out how it looks on the docket.

08/02/2023		SYSTEM ENTRY - Docket Entry 95 restricted/sealed until further notice. (amb) (Entered: 08/02/2023)		
08/02/2023		SYSTEM ENTRY - Docket Entry 96 restricted/sealed until further notice. (amb) (Entered: 08/02/2023)		
08/02/2023	97	MOTION for Hearing on Potential Conflicts of Interest, pursuant to United States v. Garcia, 517 F.2d 272 (5th Cir. 1975), by USA as to Waltine Nauta. Responses due by 8/16/2023 (Thakar, Michael) (Entered: 08/02/2023)		Judge Cannon ordered these two struck
08/07/2023	100	ORDER STRIKING SEALED FILINGS AND ORDERING BRIEFING: Order denying 95 Sealed Motion. Clerk is directed to Strike from the docket sealed entries 95 and 96. Waltine Nauta shall file a response to the Motion for a Garcia hearing 97 on or before 8/17/2023. Special Counsel shall reply on or before 8/22/2023. Signed by Judge Aileen M. Cannon on 8/7/2023. See attached document for full details. (jmd) (Entered: 08/07/2023)		Where are docket numbers 98 and 99?
08/07/2023		SYSTEM ENTRY - Docket Entry 101 restricted/sealed until further notice. (jmd) (Entered: 08/07/2023)		101 remains sealed

Before DOJ filed its motion for a hearing on potential conflicts, it tried to submit something under seal in dockets 95 and 96 – probably details on the two other witnesses whose representation by Stan Woodward may present a conflict. Judge Cannon said the government hadn't provided sufficient reason to seal, and so ordered the request, and the sealed information, to be struck.

Simultaneously, the Special Counsel moves for leave [ECF No. 95] to file under seal a "Supplement" containing additional information "to facilitate the Court's inquiry" [ECF No. 96; see ECF No. 97 p. 2 n.2, p. 6]. The Special Counsel states in conclusory terms that the supplement should be sealed from public view "to comport with grand jury secrecy," but the motion for leave and the supplement plainly fail to satisfy the burden of establishing a sufficient legal or factual basis to warrant sealing the motion and supplement.

2. The Special Counsel's motion for leave to file under seal [ECF No. 95] is DENIED.

3. The Clerk is directed to STRIKE from the docket sealed entries 95 and 96.

Before her order, there were two more docket entries missing – numbers 98 and 99. I’m not familiar enough with SDFL’s docketing rules to understand whether there’s something under seal in those dockets or not, but there could be. Perhaps Stan Woodward submitted something?

Then there’s Cannon’s order. Rather than scheduling a Garcia hearing to see whether Woodward can adequately represent Nauta going forward, she instead ordered briefing – adding two more weeks of delay, but more importantly, delaying the question of whether Woodward can represent Nauta without conflict.

Her order for briefing focuses primarily on something else: whether DOJ was pulling a fast one by using a non-SDFL grand jury to pursue matters pertinent to the SDFL matter before her.

Waltine Nauta shall file a response to the Motion for a Garcia hearing [ECF No. 97] on or before August 17, 2023. Among other topics as raised in the Motion, **the response shall address the legal propriety of using an out-of-district grand jury proceeding to continue to investigate and/or to seek post-indictment hearings on matters pertinent to the instant indicted matter in this district.** The Special Counsel shall respond to that discussion in a Reply in Support of the Motion [ECF No. 97], due on or before August 22, 2023. The remaining Defendants may, but are not required to, file briefs of their own related to the grand jury issue referenced herein, but any such briefs are due by August 17, 2023, and may be submitted in combined or individual fashion.

1 This request for supplemental briefing is not intended to substitute and/or to

limit any future motion brought pursuant to Fed. R. Crim. P. 12(b). [my emphasis]

Contrary to some commentary on this, Cannon did not disclose the continued activity in the DC grand jury (bolded above). That was made clear both in DOJ's motion for a Garcia hearing and in other materials.

The grand jury in this district and a grand jury in the District of Columbia continued to investigate further obstructive activity, and a superseding indictment was returned on July 27, 2023.

Woodward and Trump's lawyers have been outspoken that they intend to question whether DOJ should have investigated this from the start in DC, or whether it should always have been in SDFL supervised by SDFL's chief judge.

That issue was frivolous: DOJ didn't know when the investigation was predicated where potential crimes happened.

This may be frivolous too. After all, most witnesses who testified before May testified in DC. So if one of them committed perjury, they would have to clean that up in DC (and that may be what happened with Taveras, either on his own or as part of a plea agreement).

But Cannon – perhaps prompted under seal by one of the defendants – seems intent on making it a big deal. And she made it clear that this set of briefing will be in addition to further motion practice, including motions complaining about misuse of a grand jury.

And it may well *not* be frivolous. DOJ is not permitted to use grand juries to continue to investigate an already charged crime. DOJ was explicit that it was not. It was investigating other kinds of obstruction. But we don't know. And because Cannon struck DOJ's sealed motion, she may have struck a perfectly reasonable

explanation for all this, and instead left a sealed one from the defense.

This would be not dissimilar to a stunt Woodward pulled before Judge Trevor McFadden a few weeks ago, where he showed up late for Freddie Klein's representations and – without prosecutors present – made accusations about what went down in a grand jury session that day with another of his clients.

The thing that matters in the short term, though, is Cannon seems to have no interest in walking Nauta through ways that Woodward's continued representation of him may be a problem. And whatever other inquiry she may feels is necessary – whether frivolous or meritorious – she is causing at least two more weeks of delay before she'll deal with that potential conflict.