

DONALD TRUMP INSISTS HE'S TOO SPECIAL TO USE SAME DATABASE 1,200 OTHER JANUARY 6 DEFENDANTS HAVE USED

In addition to his claim that he needs a bunch of intelligence so he can try to distinguish his influence operations from those of Russian spies, Donald Trump also submitted a filing claiming that Jack Smith has not done an expansive enough search on discovery.

To understand how frivolous this filing is, consider that it complains that Jack Smith has not included DC USAO materials on the January 6 investigation in its discovery to Trump.

Since the Order, the Special Counsel's Office has enjoyed constructive access to USAODC documents. In an August 11, 2023 discovery letter, the Office wrote that the USAO-DC "maintains a separate database of materials comprising discovery in the criminal cases related to the breach of the United States Capitol on January 6, 2021." Ex. G at 6. The letter stated that the "investigative team" in this case had "accessed certain materials within that database and has taken into its possession certain materials that the investigative team may rely upon or use at trial." Id. Given these alignments, there is no question that the USAO-DC is part of the prosecution team.

Twice over the course of these discovery letters, DOJ has told Trump if he wants access to the full database provided to all the other January 6 defendants, he can get it.

As we advised you, in the course of our investigation, we accessed certain materials within that database, took into our possession certain materials that we may rely upon or use at trial, and produced them to you in discovery in our case. In our August 11 letter, we also offered to facilitate your access to the USAO database. We reiterate that offer now.

In response, Trump complained about DOJ's unwillingness to identify everything in the database that might be helpful.

Seeking to avoid that obligation, the prosecution's November 25 letter again directed our attention to a "a separate database of materials comprising discovery in criminal cases related to the breach of the Capitol on January 6, 2021." Ex. F at 3; see also Ex. G at 6. Like SASC Windom's "full access to the FBI's trove of evidence about Oath Keeper and Proud Boy extremists involved in the riot," Doc. 116-1 at 9, the Office's conceded access to the USAO-DC's database further supports President Trump's position that the USAO-DC is part of the prosecution team.

However, it is not enough for the prosecution to offer the defense access to materials produced in those cases. "The government cannot meet its Brady obligations by providing [the defendant] with access to 600,000 documents and then claiming that [the defendant] should have been able to find the exculpatory information in the haystack." *United States v. Hsia*, 24 F. Supp. 2d 14, 29-30 (D.D.C. 1998). In *United States v. Saffarinia*, the court relied on *Hsia* and agreed with the defense that "the government's Brady obligations require it to identify any known Brady material to the extent that

the government knows of any such material in its production of approximately 3.5 million pages of documents.” 424 F. Supp. 3d 46, 86 (D.D.C. 2020); see also *United States v. Singhal*, 876 F. Supp. 2d 82, 104 (D.D.C. 2012) (directing prosecutors to disclose the “identity (by Bates number) of the specific witness statements and documents” that are “producible as Rule 16(a)(1)(E)(i) documents material to preparing the defense, regardless of whether those documents are inculpatory or exculpatory”). The discovery in this case dwarfs that at issue in *Hsia* and *Saffarinia*, and the prosecution must identify information that is subject to Brady by doing more than pointing to another huge database.

This issue has already been litigated, repeatedly, in other January 6 cases. His demand for more is a demand to be treated *better* than the people *at* the Capitol, the people actually depicted in and/or who took the video.

The argument itself is largely an attempt to exploit the fact that the defendant was once the President and so interacted with all parts of government. As DOJ quipped in an October 24 letter:

To point out but a few of the exceedingly broad errors in your assertion, the prosecution team does not include the almost three million civilian, active duty, and reserve members of the Department of Defense; the 260,000 employees of the Department of Homeland Security (or its CISA component); or the Intelligence Community writ large. Furthermore, your attempt to serve Rule 17(c) subpoenas, ECF No. 99—definitionally reserved for non-party witnesses—on the House Select Committee’s successor entity and a member of the White House Counsel’s

Office confirms your understanding that those entities are not members of the prosecution team.

It is not rooted in the actual evidence in the case or – as with virtually all the filings Trump’s teams have made – the actual charges against him.

That said, the associated filings are of some interest. It’s just that Trump’s team submitted them in the least useful way possible. I’ve put them below, in order.

Reading them together reveals that some of what Trump requested in his unclassified discovery request last night – such as the request for the classified backup to the 2016 ICA or the opportunity for foreign powers to hack the 2020 election – were already covered in DOJ’s motion to strike his CIPA 5 request.

Reading them together also shows a progression. As I’ve noted, his original request asked for:

43. Please provide all documents relating to communications or coordination by the Special Counsel’s Office and DOJ with any of the Biden Administration, the Biden Campaign, Hunter Biden, the Biden family, the Biden White House, or any person representing Joe Biden.

In the first response, DOJ addressed that question (and question 37(b) for materials on Executive Privilege) by describing five Executive Privilege waiver reviews

37b. The defendant was party to five miscellaneous matters regarding assertion of the executive privilege. Attachments to filings in those five matters included letters from the incumbent White House declining to invoke executive privilege over certain witness testimony. The defendant already

has those materials.

Trump must have made a follow-up at the November 21 meet-and-confer, because DOJ addressed it again, saying that whatever he wants is not in the prosecution team's possession and not covered by discovery obligations.

Requests 33, 40, 42, 43, and 44 seek information that exceeds the scope of our discovery obligations, is not within the possession of the prosecution team, and/or does not exist.

One interesting redaction in this most recent exchange pertains to Trump's request for injuries of law enforcement on January 6.

2. If you intend to introduce evidence at trial of any injuries sustained to law enforcement or anyone else at the Capitol on January 6, 2021, please provide all documents regarding those injured during the protest at the Capitol, including medical records.

DOJ's response to that is entirely redacted, suggesting that DOJ may well submit records of injuries, such as the heart attack Danny Rodriguez caused after being especially riled up at Trump's rally.

Request 2. [REDACTED]

Finally, of significant interest: Trump asks for the identities of all the people who've flipped.

16. Please provide all documents regarding offers of immunity, forgoing of prosecution, diversion, USSG 5K1.1 reductions, or any other consideration to persons under investigation or charged regarding activities related to January 6th.

DOJ included that request among those about which it said Trump was not entitled to discovery.

Requests 15-19, 34-36. All of these requests—regarding the pipe bomb investigation, offers of immunity to January 6 defendants, “Antifa,” sources, and various named and unnamed January 6 offenders—appear to be focused on others’ actions related to the January 6 attack on the Capitol. Many of them request information that exceeds the scope of our discovery obligations and/or is not within the possession of the prosecution team. To the extent that we possess any such materials, we have produced them to you. Relatedly, in our meet and confer, you stated that you believe that in certain other cases, the Department of Justice has taken a position inconsistent with the indictment’s allegations that the defendant is responsible for the events of January 6. We disagree. The Department’s position in other January 6 cases that the defendant’s actions did not absolve any individual rioter of responsibility for that rioter’s actions—even if the rioter took them at the defendant’s direction—is in no way inconsistent with the indictment’s allegations here.

Trump continues to argue he’s better than the members of his mob. And he’s trying to avoid being held accountable for any near murders his incitement caused.

August 11 DOJ letter accompanying first classified discovery; includes redacted reference to Secret Service at 6,

October 6 Trump letter addressing Document 1 and Document 5

October 23 Trump discovery letter with seven requests redacted (Unredacted copy)

October 24 DOJ response to classified discovery letter, describing scope of prosecution team

November 3 DOJ response to October 23 discovery letter rejecting most requests and telling Trump where to find some of it in discovery; this has a number of specific references to the requests in the October 23 letter

November 15 Trump discovery letter making broad requests for January 6 discovery

November 25 DOJ response to November 15 letter and November 21 meet-and-confer, providing additional responses to October 23 requests

Exhibit H (sealed; pertains to reason Bill Barr changed Public Integrity's approach to voter fraud claims)

Exhibit I (sealed; follow-up to letter Molly Gaston and JP Cooney sent about PIN)

Exhibit J (sealed; involvement of National Security Division in January 6 cases)

Exhibit K (sealed; involvement from FBI WFO on January 2)

Exhibit L (sealed; involvement from FBI WFO on January 3)

Exhibit M (sealed; reference to DHS I&A as attempt to get to CISA Election Task Force; ODNI involvement)

Exhibit N (sealed; related to DHS involvement in March 2021 report on 2020 election)

Exhibit O (sealed; related to DHS involvement on January 6)