



The DOJ Drops Major Hint in Court Challenge FBI's Mar-a-Lago Raid was a Classic 'Trap'

Description

USA: The Department of Justice fired off an angry appeal to the 11th Circuit Court of Appeals on Friday, which followed upon Florida Judge Aileen Cannon refusing to bend to its demands to return documents with 'classified' markings to prosecutors after the appointment of a 'special master' to review them.

In its appeal, the DOJ took exception to the court's appointment of a "special master" to review the documents seized at the former president's property at Mar-a-Lago on August 8 for those covered by attorney-client or executive privilege. However, the Justice Department's partial appeal did not challenge the appointment of the special master, but rather argued that the documents bearing classified markings be returned.

"Although the government believes the district court fundamentally erred in appointing a special master and granting injunctive relief, the government seeks to stay only the portions of the order causing the most serious and immediate harm to the government and the public by (1) restricting the government's review and use of records bearing classification markings and (2) requiring the government to disclose those records for a special-master review process," the DOJ wrote.

Judge Cannon had earlier appointed retired judge Raymond Dearie to review the approximately 100 documents with classified markings, as well as the nearly 11,000 presidential documents that are not marked classified.

"In a 29-page filing, the department asked the appeals court not to submit the roughly 100 files marked as classified through the vetting process of the arbiter, known as a special master — acquiescing to the review for 11,000 other documents seized from Mr. Trump's home and resort, Mar-a-Lago. The review has frozen the government's access to the material as it investigates Mr. Trump's handling of the documents," the New York Times reported.

The Department of Justice scolded the court for dismissing the FBI's arguments that it urgently needed the documents due to its concerns about national security.

"By enjoining the review and use of the records bearing classification markings for criminal-investigative purposes, the district court's order impedes the government's efforts to protect the Nation's security," the DOJ further argued.

"Disregarding a sworn declaration from a senior FBI official, the court dismissed such concerns as 'hypothetical scenarios' and faulted the government for not identifying an 'emergency' or 'imminent disclosure of classified information'," the DOJ added.

"Finally, requiring disclosure of classified records to a special master and to Plaintiff's counsel... would impose irreparable harm on the government," the DOJ claimed.

Legal observers believe that the Department of Justice may be angling to prosecute the former president on a 'process crime.'

"The FBI uncovered evidence that the response to the grand-jury subpoena was incomplete, that classified documents likely remained at Mar-a-Lago, and that efforts had likely been undertaken to obstruct the investigation," the DOJ argued in its appeal.

Hans Mahnke highlighted the appearance that the Department of Justice was laying the groundwork for a "perjury/obstruction" trap.

What [@KingMakerFT](#), [@Techno_Fog](#), [@15poundstogo](#) and I've been saying (and got shouted at for).

DOJ set a perjury/obstruction trap and Trump's lawyer walked right into it. They don't care about classified documents, they're setting up a process crime.

From DOJ's appeal tonight: pic.twitter.com/QUxjii73Ng

— Hans Mahncke (@HansMahncke) [September 17, 2022](#)

"DOJ set a perjury/obstruction trap and Trump's lawyer walked right into it," Mahnke argued. "They don't care about classified documents, they're setting up a process crime."

The New York Times earlier appeared to concede that the classification status of the documents may not be a legal issue, according to the search warrant affidavit.

No documentation has come to light confirming that Mr. Trump declassified the material, and the potential crimes cited by the Justice Department in seeking the search warrant for Mar-a-Lago would not hinge on the classification status of the documents.

The *Wall Street Journal*, in a recent editorial on the matter, corroborates the New York Times' tacit

concession that there is no ‘there, there’ in terms of Donald Trump having allegedly committed a crime affecting national security.

Nothing in the PRA suggests that the former president’s physical custody of his records can be considered unlawful under the statutes on which the Mar-a-Lago warrant is based. Yet the statute’s text makes clear that Congress considered how certain criminal-law provisions would interact with the PRA: It provides that the archivist is not to make materials available to the former president’s designated representative “if that individual has been convicted of a crime relating to the review, retention, removal, or destruction of records of the Archives.”

Nothing is said about the former president himself, but applying these general criminal statutes to him based on his mere possession of records would vitiate the entire carefully balanced PRA statutory scheme. Thus if the Justice Department’s sole complaint is that Mr. Trump had in his possession presidential records he took with him from the White House, he should be in the clear, even if some of those records are classified.

This indeed may be a classic ‘perjury/obstruction’ trap. The Biden administration undertook a sweeping, invasive FBI raid against a political rival of the sitting president over a document archive dispute. The DOJ may ultimately be relying on Trump’s reaction to the aggressive FBI investigation to capitalize on the lesson from Nixon: “It’s not the crime, it’s the cover-up.”

by Kyle Becker

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