

AILEEN CANNON PRIORITIZED DONALD TRUMP'S REPUTATION OVER CIA ASSETS' LIVES

I mentioned the *Richey* factors yesterday: the now-11th Circuit precedent laying out factors a judge should consider before nosing into the government's warranted seizure of a subject's property. Here's how Judge Cannon laid them out before deciding she should nose into the government's business.

In making this determination, the Court relies in part on the factors identified in *Richey v. Smith*. 515 F.2d at 1245. 9 In that case, the former Fifth Circuit counseled courts to consider, for equitable jurisdiction purposes, whether the government displayed a callous disregard for the movant's constitutional rights, whether the movant has an individual interest in and need for the seized property, whether the movant would be irreparably injured by denial of the return of the seized property, and whether the movant otherwise has an adequate remedy at law.

As I laid out, Cannon did some crazy-ass stuff to get past the second factor, property ownership. She used materials that Trump might not even own that she herself had prohibited the government to share with Trump's lawyers last week, then usurped the authority of the President of the United States (among other things), to claim that Trump had a property interest in the 11,000 stolen government documents the FBI seized on August 8.

Her argument about the irreparable harm that Trump faces because the government seized 11,000 documents – some highly classified – that he

refused to return is still more appalling. I just want to look at one part of it, but I know you'll all enjoy the bit where she says it would harm Trump's reputation to be charged with a crime.

The same reasoning contributes to the Court's determination that the third factor—risk of irreparable injury—likewise supports the exercise of jurisdiction. In addition to being deprived of potentially significant personal documents, which alone creates a real harm, **Plaintiff faces an unquantifiable potential harm by way of improper disclosure of sensitive information to the public.**¹¹ Further, Plaintiff is at risk of suffering injury from the Government's retention and potential use of privileged materials in the course of a process that, thus far, has been closed off to Plaintiff and that has raised at least some concerns as to its efficacy, even if inadvertently so. See *infra* Discussion III. Finally, Plaintiff has claimed injury from the threat of future prosecution and the serious, often indelible stigma associated therewith. As the Richey court wrote, "a wrongful indictment is no laughing matter; it often works a grievous, irreparable injury to the person indicted. The stigma cannot be easily erased. In the public mind, the blot on a man's escutcheon, resulting from such a public accusation of wrongdoing, is seldom wiped out by a subsequent judgment of not guilty. Frequently, the public remembers the accusation, and still suspects guilt, even after an acquittal." 515 F.2d at 1244 n.10; see also *In the Matter of John Bennett*, No. 12-61499-CIV-RSR, ECF No. 22 pp. 26–27 (S.D. Fla. July 23, 2013) (explaining that, although some courts have rejected Richey's observation as to the harm

posed by indictments, Richey remains binding on district courts in the Eleventh Circuit). As a function of Plaintiff's former position as President of the United States, the stigma associated with the subject seizure is in a league of its own. A future indictment, based to any degree on property that ought to be returned, would result in reputational harm of a decidedly different order of magnitude.

11 When asked about the dissemination to the media of information relative to the contents of the seized records, Government's counsel stated that he had no knowledge of any leaks stemming from his team but candidly acknowledged the unfortunate existence of leaks to the press. [my emphasis]

Yes, it is outrageous that Aline Cannon places more value on Trump's reputation than those of hundreds of people he has falsely accused over his lifetime, most notably the Central Park Five, but also including Hillary Clinton and John Bolton, both of whom he falsely accused of the crime for which he is currently under investigation.

Yes, it is outrageous that she deems an irreparable harm the hypothetical deprivation of documents that not even the lawyer who claimed to have done a diligent search of these boxes can identify.

But consider Aileen Cannon's logic about leaks. Here's the exchange that, she says, amounts to DOJ's head of counterintelligence, Jay Bratt, "acknowledg[ing] the unfortunate existence of leaks to the press."

THE COURT: Let me ask also, there has been some discussion in the filings related to leaks or disseminations of information to the media. Are you aware, Mr. Bratt, of any such dissemination to

the media, relative to the contents of the seized records?

MR. BRATT: Not on the part of anybody that I'm working with. Obviously, you know, things – I see the same things in the press that other people do. It's bad. People are talking. If people on the Government's side are talking about it, I'm not aware of anybody that we work with that has had contact with the press and certainly don't condone it in any way.

Bratt not only didn't say that anyone on the investigative team *had* leaked to the press, he specifically said no one he was working with did. No one who would have access to the documents – which, remember, were seized from a padlocked closet in a hallway trafficked by hotel staff and potentially visitors and infiltrators, as well as Trump's desk drawer and, maybe, a hotel safe – none of those people have leaked to the press.

It's pretty obvious they haven't, because none of the leaks to the press have been accurate. The vast majority of them, in fact, can be matched to false claims Trump has made in his own filings.

Trump is leaking. The investigative team is not.

Ironically, in her order, Cannon also revealed details about the potentially privileged content seized from Trump. She's done more leaking than the investigative team has.

And so Judge Aileen Cannon's remedy for the risk of hypothetical leaks about Trump is to give the seized documents, including documents marked TS/SCI with compartments including, among other things, Human Source Operations, back to Trump and the lawyers who are leaking up a storm, not a single one of whom has a need to know about these Human Source Operations anymore.

Not only does Judge Aileen Cannon's remedy for a

hypothetical threat posed by leaks that haven't happened yet, but she also has forbidden the government from continuing to criminally investigate Trump and any co-conspirators he might have. She has forbidden the FBI from using the documents to try to chase down any *existing leakers* of these documents (though she has allowed a damage assessment that will be virtually impossible to do without the FBI side of the investigation).

Judge Cannon is worried about a hypothetical threat to Trump's reputation posed by the leak of materials seized from his hall closet and desk drawers, and because of that, she has prohibited the FBI from investigating Trump for willingly, knowingly, obstinately leaving stuff about Human Source Operations lying around a hotel targeted by foreign intelligence services.

For a year, Donald Trump left 325 files lying around his club, unsecured. After he gave 184 of them back in January 2022, he went to great efforts to prevent the FBI from reviewing what kind of damage he had done, delaying their access by a month. All the while, he secretly kept at least 141 more of those files in his desk drawer and hall storage room, even after it was public that he had been storing sensitive records in his poorly secured resort. The government subpoenaed him. He stalled again. He gave back 38 of those documents, while still hiding another 103, still lying around his poorly protected club. He bought a padlock, his lawyers have claimed in leaks to the press. Finally, on August 8, the FBI came and seized another 103 documents, still including documents protected as part of highly sensitive compartments that, if disclosed, could get people killed.

Judge Aileen Cannon has ruled that it is more important that Donald Trump's reputation be protected from hypothetical leaks than that FBI be able to remedy the possibility that leaks facilitated by Donald Trump's obstinance and neglect could get people killed.

Donald Trump has already been given 18 months in which his obstinance has prevented the government from preventing leaks of the sort that can get people killed. Now, out of fear of hypothetical reputational leaks, Judge Aileen Cannon has mandated that Trump and any co-conspirators be given still more time to get people killed.