JUDGE AILEEN CANNON RISKED THE SAFETY OF THE COUNTRY TO PROTECT TWO PROBABLY PUBLIC LETTERS

There's a detail from yesterday's Raymond Dearie hearing that I've seen no other journalist cover: that filter team attorney Anthony Lacosta described sending a public link of this document to Trump attorney Jim Trusty on September 30.

> If it'll help the parties, I sent email to Trusty on 9/30 that sent a copy of letter at issue. I sent link, they appear to be the same, all that's missing is signature.

We know from the privilege inventory that was accidentally docketed that it's an 11-page letter from then Trump attorney Marc Kasowitz to Robert Mueller.

05	Unsigned letter from Kasowitz Benson & Torres to Robert Mueller dated 6/23/2017	FILTER-A-006 to FILTER-A-016

Lacosta mentioned that the letter had been published. That must mean the letter is this one, published by the NYT on June 2,2018 (here's the text for those who can't access the NYT).

As I noted weeks ago, this document from the same inventory also is almost certainly a letter released publicly years ago, too.

01	Medical letter from Dr. Harold N. Bornstein dated 9/13/2016	FILTER-B-001

Harold Bornstein, who was then Trump's personal physician, released a one-page letter dated September 13, 2016 as part of Trump's campaign for President.

In other words, two of the documents that Judge

Aileen Cannon pointed to in order to claim that Trump was suffering a grave harm that justified enjoining an ongoing criminal investigation into some of the most sensitive documents in US government have probably been public for years. Indeed, the Bornstein letter was released by Trump himself.

Here's how the government described the harm Judge Cannon caused to the United States by enjoining DOJ's access to these documents in their appeal to the 11th Circuit.

> a. The government has a "demonstrated, specific need" for the records bearing classification markings
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> The government's need for the records bearing classification markings is overwhelming. It is investigating potential violations of 18 U.S.C. § 793(e), which prohibits the unauthorized retention of national defense information. These records are not merely evidence of possible violations of that law. They are the very objects of the offense and are essential for any potential criminal case premised on the unlawful retention of the materials. Likewise, these records may constitute evidence of potential violations of 18 U.S.C. § 2071, which prohibits concealment or removal of government records.
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> The records bearing classification markings may also constitute evidence of potential violations of 18 U.S.C. § 1519, prohibiting obstruction of a federal investigation. As described above, on May 11, 2022, Plaintiff's counsel was served with a grand-jury subpoena for "[a]ny and all documents or writings in the custody or control of Donald J. Trump and/or the Office of Donald J. Trump bearing classification markings." DE.48-1:11. In response, Plaintiff's counsel produced an envelope

> containing 37 documents bearing classification markings, see MJ-DE.125:20-21, and Plaintiff's custodian of records certified that "a diligent search was conducted of the boxes that were moved from the White House to Florida" and that "[a]ny and all responsive documents accompany this certification," DE.48-1:16. As evidenced by the government's subsequent execution of the search warrant, all responsive documents did not in fact accompany that certification: more than 100 additional documents bearing classification markings were recovered from Plaintiff's Mar-a-Lago Club. Those documents may therefore constitute evidence of obstruction of justice.
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> The government's compelling need for these records is not limited to their potential use as evidence of crimes. **As explained in the stay proceedings, the government has an urgent need to use these records in conducting a classification review, assessing the potential risk to national security that would result if they were disclosed, assessing whether or to what extent they may have been accessed without authorization, and assessing whether any other classified records might still be missing.** The district court itself acknowledged the importance of the government's classification review and national security risk assessment. DE.64:22-23. The government has further explained, including through a sworn declaration by the Assistant Director of the FBI's Counterintelligence Division, why those functions are inextricably linked to its criminal investigation. DE.69-1:3-5. For example, the government may need to use the contents of these records to conduct witness interviews or to discern whether there are patterns in the types of records that were retained.

> **The stay panel correctly concluded that a prohibition against using the records for such purposes would cause not only harm, but "irreparable harm."** Trump, 2022 WL 4366684, at *12; see also id. at *11. Plaintiff has never substantiated any interest that could possibly outweigh these compelling governmental needs, and none exists.
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> b. The government has a "demonstrated, specific need" for the remaining seized records The government also has a "demonstrated, specific need" for the seized unclassified records. The FBI recovered these records in a judicially authorized search based on a finding of probable cause of violations of multiple criminal statutes. The government sought and obtained permission from the magistrate judge to search Plaintiff's office and any storage rooms, MJ-DE.125:37, and to seize, inter alia, "[a]ny physical documents with classification markings, along with any containers/boxes (including any other contents) in which such documents are located, as well as any other containers/boxes that are collectively stored or found together with the aforementioned documents and containers/boxes," MJ-DE.125:38. The magistrate judge thus necessarily concluded that there was probable cause to believe those items constitute "evidence of a crime" or "contraband, fruits of crime, or other items illegally possessed." Fed. R. Crim. P. 41(c)(1), (2); see MJ-DE.57:3.
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> That is for good reason. As an initial matter, the unclassified records may constitute evidence of potential violations of 18 U.S.C. § 2071, which prohibits "conceal[ing]" or "remov[ing]" government records. Moreover, unclassified records that were stored in

> the same boxes as records bearing classification markings or that were stored in adjacent boxes may provide important evidence as to elements of 18 U.S.C. § 793. First, the contents of the unclassified records could establish ownership or possession of the box or group of boxes in which the records bearing classification markings were stored. For example, if Plaintiff's personal papers were intermingled with records bearing classification markings, those personal papers could demonstrate possession or control by Plaintiff.
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> Second, the dates on unclassified records may prove highly probative in the government's investigation. For example, if any records comingled with the records bearing classification markings post-date Plaintiff's term of office, that could establish that these materials continued to be accessed after Plaintiff left the White House. Third, the government may need to use unclassified records to conduct witness interviews and corroborate information. For example, if a witness were to recall seeing a document bearing classification markings next to a specific unclassified document (e.g., a photograph), the government could ascertain the witness's credibility and potentially corroborate the witness's statement by reviewing both documents.
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> In short, the unclassified records that were stored collectively with records bearing classification markings may identify who was responsible for the unauthorized retention of these records, the relevant time periods in which records were created or accessed, and who may have accessed or seen them. [my emphasis]

The government needs to figure out whether

Trump’s negligence caused any compromise of highly sensitive documents.

But Judge Cannon decided that letters Trump released to impress voters are more important.