

# 11TH CIRCUIT SHOWDOWN: THE FIGHT TO GET THE DOCUMENTS TO CHARGE AGAINST TRUMP

A 2PM Eastern today, an 11th Circuit panel including William Pryor, Britt Grant, and Andrew Brasher will consider DOJ's expedited motion to overturn Judge Aileen Cannon's decision to appoint a Special Master. Oral arguments should be available here. The briefs are here:

- DOJ Appeal
- Trump Response
- DOJ Reply

Grant and Brasher were on the panel that already held that Cannon erred in intervening given that there was no evidence of callous disregard for Trump's rights, so I fancy DOJ's chances. That said, there's no predicting how Pryor would rule, and if he were to support Trump's support for Tom Fitton's erroneous theory that there was no basis to question a President's designations of something as a personal document, it might cause difficulties for an eventual prosecution.

For the reasons I laid out here, the decision the 11th Circuit makes, and how quickly they make it, will dictate how quickly DOJ could charge the stolen document case. DOJ likely has already discussed what documents they could charge without creating more national security damage. But particularly for any document that mixes classified documents with unclassified ones, DOJ first has to ensure possession of the documents they would charge before indicting (or even using the documents in interviews with Trump's associates).

Two documents that are likely to be charged also include unclassified information:

- The 11-page document compiling a confidential document, a secret document, messages (all post-dating Trump's presidency) from a pollster, a religious leader, and a book author, as well as a document over which Trump has claimed privilege. This document would show that someone in Trump's office accessed classified documents after leaving the White House and may show Trump using classified documents for his own benefit. The document was stored in a desk drawer in Trump's office.
- The packet including clemency for Roger Stone, which includes a one-page and a two-page document, one of which (presumably the information on the French President) is classified secret. This was also stored in a drawer in Trump's office, though not necessarily the same one as the compilation. There's no reason for Trump to include an official pardon in his desk drawer, but the tie between the Stone clemency and Macron may well explain why he did so. Given how

Stone insinuated he would harm Trump if he wasn't pardoned, the reasons Trump kept the document close at hand are likely to be quite interesting.

Trump's team has been aggressively trying to prevent DOJ from keeping possession of these documents, by claiming that the first packet is both personal, attorney-client, and Executive privileged, and by claiming that other pardon packets can be Trump's personal possession. It's highly likely that Raymond Dearie will rule for DOJ on both those disputes. But if and when he does, Trump would object and Aileen Cannon would get to consider it anew.

That would make these documents unavailable for investigative purposes until after the new year. Whereas, if the 11th Circuit rules for DOJ, the government would be able to present these to a grand jury within weeks (assuming a quick decision and SCOTUS declining to review the decision, as happened with the last decision).