

RANSACKED! 120 MINUTES BEFORE 11TH CIRCUIT HEARING, TRUMP ATTEMPTS TO CREATE A FOURTH AMENDMENT INJURY

Less than two hours before the 11th Circuit hearing that may result in Judge Aileen Cannon being reversed for intervening in the Trump investigation, Trump's attorneys (notably excluding Chris Kise) filed a motion for access to the affidavit for his search.

That this is a transparent attempt to give Judge Cannon some basis to intervene in both the Special Master review and the 11th Circuit appeal has not stopped reporters from treating it as a reasonable request.

It's not.

Even if all the claims made in it were true, it still wouldn't provide basis to give Trump the affidavit that (among other things) identifies who he could retaliate against for cooperating with investigators.

One of the most important paragraphs (and footnote) is this one.

Moreover, Plaintiff's counsel has reviewed most of the seized materials over the last several weeks. The fact the Government took a huge volume of personal and family photographs, newspapers, thank-you notes, campaign materials, books, and golf shirts demonstrates that this search and seizure was nothing more than a general ransacking. ⁷ This raises serious questions about how the affiant characterized his or her assertion of

probable cause and the justification for seizing thousands of personal and private items. Plaintiff must have an opportunity to review the affidavit and determine whether the Fourth Amendment was respected, intentionally subverted, or recklessly violated by a DOJ bent on getting its nose under the Mar-a-Lago tent.

7 A general rummaging through the belongings of President Trump is a particularly ominous moment in law enforcement history. **With DOJ and some state officials engaging in various efforts to investigate President Trump, the search smacks of pretextual conduct with hopes of feeding personal documents to prosecutors or agents who might find use for them in unrelated pursuits.**

Authorization to seize “any other containers/boxes that are collectively stored or found together with the aforementioned documents and containers/boxes” is an invitation to “rummage,” which every court has recognized as barred under the Fourth Amendment. See *Andresen v. Maryland*, 427 U.S. 463, 480 (1976) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971)). [my emphasis]

Start with the books and sweaty golf shirts. According to a part of the affidavit that Trump has not contested (the highlighted items below are the ones that changed with an updated inventory), the FBI seized a total of 33 books in the search on August 8, across 33 items seized; the bulk, 23, were all in one box together. That box was likely close to another that had multiple Top Secret documents, as well as a book. Those books got seized because they were next to stolen Top Secret documents. There was likewise a piece of clothing or a gift the box with stolen Top Secret documents. And altogether, there were just 19 gifts or pieces

of clothing seized.

Item	Box Number	Provenance	Classified	Challenges	Challenges start	Challenges end	Contents	TS	Revised	Confidential	MD	Empty CLASS	Empty Date	Challenges	Book	New Date	New Date	New Date	Page Date	Page Date	Total Pages
1. Books																					
2. Correspondence																					
3. Presidential Records																					
4. Documents																					
5. Records of phone																					
6. Records of phone																					
7. Presidential notes																					
8. A-12																					
9. A-12																					
10. A-12																					
11. A-12																					
12. A-12																					
13. A-12																					
14. A-12																					
15. A-12																					
16. A-12																					
17. A-12																					
18. A-12																					
19. A-12																					
20. A-12																					
21. A-12																					
22. A-12																					
23. A-12																					
24. A-12																					
25. A-12																					
26. A-12																					
27. A-12																					
28. A-12																					
29. A-12																					
30. A-12																					
31. A-12																					
32. A-12																					
33. A-12																					
34. A-12																					
35. A-12																					
36. A-12																					
37. A-12																					
38. A-12																					
39. A-12																					
40. A-12																					
41. A-12																					
42. A-12																					
43. A-12																					
44. A-12																					
45. A-12																					
46. A-12																					
47. A-12																					
48. A-12																					
49. A-12																					
50. A-12																					
51. A-12																					
52. A-12																					
53. A-12																					
54. A-12																					
55. A-12																					
56. A-12																					
57. A-12																					
58. A-12																					
59. A-12																					
60. A-12																					
61. A-12																					
62. A-12																					
63. A-12																					
64. A-12																					
65. A-12																					
66. A-12																					
67. A-12																					
68. A-12																					
69. A-12																					
70. A-12																					
71. A-12																					
72. A-12																					
73. A-12																					
74. A-12																					
75. A-12																					
76. A-12																					
77. A-12																					
78. A-12																					
79. A-12																					
80. A-12																					
81. A-12																					
82. A-12																					
83. A-12																					
84. A-12																					
85. A-12																					
86. A-12																					
87. A-12																					
88. A-12																					
89. A-12																					
90. A-12																					
91. A-12																					
92. A-12																					
93. A-12																					
94. A-12																					
95. A-12																					
96. A-12																					
97. A-12																					
98. A-12																					
99. A-12																					
100. A-12																					

That’s what Trump wants you to think amounts to a ransacking.

Many of the other items are actually things about which there is an active dispute before Raymond Dearie (as noted in this filing).

For purposes of the yellow-highlighted Disputes, the Special Master will see that three issues account for the overwhelming majority of disputes. From the government’s perspective, the three conceptual issues are:

1. Annotations. – Books, magazine articles, and newspaper clippings with markings are original Presidential records.
2. Thank you notes for presidential acts or events. – Thank you notes reflecting gratitude for acts taken in the course of official duties are Presidential records.
3. Briefing book compilations with indexes. – Briefing material and other work product prepared by presidential staff for the President are Presidential records.

Trump wants to claim press clippings on which he made annotations are personal; the Presidential Records Act says otherwise. Trump wants to claim that thank you notes sent to him in his role as President are personal; the Presidential Records Act says otherwise.

Among the campaign materials taken were several letters written by Kurt Hilbert about stealing

the election in Georgia, as well as something written by Cleta Mitchell. Sure, those are campaign materials. They are also evidence of a crime. They were also returned already, and could have been returned earlier had Judge Cannon not intervened.

Trump's claim that it is unusual for the FBI to seize personal materials as part of a search warrant (bolded above) is particularly ridiculous, not least because Plain View doctrine clearly says that DOJ can refer items seized with a warrant for prosecution.

But it's particularly notable given this language in the order appointing Jack Smith.

The Special Counsel is authorized to prosecute federal crimes arising from the investigation of these matters. The Special Counsel is also authorized to refer to the appropriate United States Attorney discrete prosecutions that may arise from the Special Counsel's investigation.

It permits Smith to refer things for further prosecution, including (presumably) any evidence of a crime he sees in the materials seized from Mar-a-Lago.

At this late hour, after being reversed once already, Judge Cannon is unlikely to get further over her skis.

But it likely *will* come up in the hearing starting in (now) 45 minutes, so Jim Trusty can claim, for the first time, that there has been a Fourth Amendment violation that merits Judge Cannon's intervention under Richey.

Update: Even though improper to do so procedurally, Trusty did raise this argument, over and over at the hearing (he even complained that the FBI had taken Trump's Celine Dion photo). That led both William Pryor and Brett Kavanaugh to observe that Trump's argument kept changing over the course of the litigation

before the 11th Circuit. Sapan Joshi, arguing for DOJ, laid out five such changes.

More importantly, the Chief Judge of the 11th Circuit noted that the reason so many personal items were seized is because Trump chose to store stolen classified records with his personal belongings.

You've talked about all these other records and property that were seized. The problem is the search warrant was for classified documents and boxes and other items that are intermingled with that. I don't think it's necessarily the fault of the government if someone has intermingled classified documents and all kinds of other personal property.

I don't think Judge Cannon will be in a position to act on this motion for very long, but I think this comment from Pryor would give her pause before she did so anyway.