

# AILEEN CANNON ISSUES ANOTHER PERFECTLY ROUTINE ORDER

Judge Aileen Cannon set Donald Trump's trial for hoarding 31 highly classified documents for August 14, 2023.

The trial won't happen that quickly. This is, instead, an order stemming from Speedy Trial Act (and in any case, the trial would be set back a few weeks once Walt Nauta is arraigned, because barring a plea or other unforeseen developments, they will be tried together). Per the boilerplate, the two sides have to file Speedy Trial notices every 21 days from here on out.

Other parts of the boilerplate order are more interesting. For example, Judge Cannon ordered that each side can propose no more than 10 voir dire questions to be used in jury selection. This suggests that Cannon plans to conduct the questioning of the jury (again, this is routine in many places) and that she doesn't envision the kind of 200 word questionnaire I would have envisioned to weed out bias.

Counsel shall be prepared to conduct limited voir dire following the Court's questioning of the panel. Prior to Calendar Call, each party may file no more than 10 proposed voir dire questions (including any sub-parts) for the Court to consider asking of the venire. **The Court will not permit the backstriking of jurors.**

As I understand it, the reference to "backstriking" means that the two sides must issue peremptory challenges against jurors in real time, rather than seeing everyone who is qualified and picking the most unfavorable to kick off the jury.

This part of the order, more than anything else

in this filing, could determine Donald J. Trump's fate before a SDFL jury, because it would limit the degree to which both sides could hand pick a jury.

Another part of the order that may matter pertains to Rule 404(b) notices.

All responses pursuant to the Standing Discovery Order and/or Local Rule 88.10 shall be provided in a timely fashion in accordance with the dates scheduled by the magistrate judge. Noncompliance with the Standing Discovery Order, the Local Rules, or the Federal Rules of Criminal Procedure may result in sanctions. **Any notice submitted pursuant to Federal Rule of Evidence 404(b) must be filed as a motion—not as a notice—and must identify with particularity the evidence to be introduced and the factual and legal basis supporting admission. Responses to such motions are due in accordance with the standard timing requirements set forth in Local Rule 7.1(c).**

404(b) notices pertain to related conduct that is not itself part of the charges. Often it pertains to events that happened before the crime in question that show a predisposition to commit a crime (but character evidence is prohibited).

In the indictment, for example, the incident in which Trump leaked details of an Iran document may need to be introduced as Rule 404(b), because while it is itself a crime, it is not the crime charged in the indictment. Similarly, DOJ could try to introduce evidence that Trump selectively spilled classified information even as President.

Cannon will have discretion to exclude such information as prejudicial, among other things. And because the Milley incident is key to proving that Trump knew he could no longer

declassify information, it could harm the case.

But we honestly don't know whether she would do that! This order is boilerplate, and all it shows is that Cannon is, thus far, treating the trial of a former President as she would any other trial.

Update: This piece from Kyle Cheney is a useful review of how Judge Cannon has treated the few trials over which she has presided.