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Florida Federal Court Releases Redacted Warrant Affidavit in Unprecedented Search of Former President Trump's Florida Residence

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A coalition of news organizations persuaded a federal court to unseal a redacted version of the affidavit of probable cause in the unprecedented search of former President Donald J. Trump's home at the Mar-a-Lago Club in West Palm Beach, Florida. Order to Unseal, [In re: Sealed Search Warrant](#), No. 22-mj-8332-BER (S.D. Fla. August 25, 2022).

National Archives Realizes Trump Took Classified Records

The investigation into whether Trump left the White House with classified records began after the National Archives and Records Administration, charged with preserving presidential records, determined that documents from the Trump Administration were missing. According to a [letter](#) to Trump's counsel that NARA released this week, the agency had "ongoing communications" with the former President's representatives about the records gap "throughout 2021." Those discussions culminated in the transfer of 15 boxes from Mar-a-Lago to NARA in January 2022.

In reviewing the boxes, NARA found information that it described as "Top Secret," "Sensitive Compartmented Information," and "Special Access Program" materials. NARA informed the Department of Justice, and the White House Counsel's office made a formal request of NARA to permit DOJ to review the 15 boxes.

Trump's representatives tried to block DOJ's review, claiming executive privilege, but NARA rejected the assertions. Meanwhile, a grand jury was convened, NARA was formally subpoenaed to provide the boxes to DOJ, and Trump was subpoenaed to provide Mar-a-Lago's surveillance footage to investigators.

After a series of correspondence between DOJ and Trump's representatives, federal officials – including DOJ's head of counterintelligence and FBI investigators – visited Mar-a-Lago to inspect the storage area where the documents were kept. The former President briefly stopped by the meeting but did not answer any questions.

DOJ and FBI Execute Search Warrant at Mar-a-Lago

On August 8, 2022, two dozen federal officials arrived unannounced at Mar-a-Lago and served a warrant for Trump's residence and storage area. According to the [search warrant and the property receipt](#), which the court released with the government's consent, investigators carted away 11 sets of classified documents in the search. Some of the boxes were labeled "Miscellaneous Top Secret Documents," "Miscellaneous Secret Documents," and "Miscellaneous Confidential Documents."

- 18 U.S.C. § 793 – a portion of the Espionage Act – which criminalizes gathering, transmitting, or losing defense information, and which carries a penalty of up to 10 years in prison;
- 18 U.S.C. § 2071, which criminalizes concealment, removal, or mutilation of government records generally, and which carries a penalty of up to three years in prison and disqualification from holding office;
- 18 U.S.C. § 1519, which criminalizes destruction, alteration, or falsification of records in federal investigations and bankruptcy, and which carries a penalty of up to 20 years in prison.

The release of the warrant and the property receipt followed Attorney General Merrick Garland's unusual [press conference](#) held three days after the search in response to caustic and unfounded claims by Trump and his allies of a government "witch hunt." Garland made clear that he "personally approved" the search, and he strongly rebuked the "unfounded attacks on the professionalism" of the federal officers. He announced that the government would ask the court to unseal the warrant and receipt "in light of the former president's public confirmation of the search, the surrounding circumstances and the substantial public interest in this matter."

Newsrooms Intervene, Attend Hearing, Win Access Ruling

Meanwhile, groups of news organizations, through top-flight Florida media counsel from several different firms including ours, filed a series of motions arguing for the unsealing of the search warrant affidavit and other documents that remain sealed. The affidavit is where law enforcement makes its case to a judicial officer to satisfy the Fourth Amendment requirement of "probable cause" to search private property.

The news organizations argued that, even in the middle of an investigation and before any indictment, a search warrant affidavit is a judicial record to which the presumption of public access attaches. The news organizations further argued that, while some aspects of the investigation may not be ripe for public disclosure yet, under both the First Amendment and common law rights of access, the burden rested with the government to establish that secrecy is essential to the integrity of the investigation as to every item to remain sealed. Media counsel ticked off for the court a list of facts already reported and argued that, at a minimum, these and any other public facts should be unsealed.

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Federal case law is mixed on that issue, with most courts finding at least a common law right of access, although, in many cases, holding that the government had met its burden to justify sealing pre-indictment. Compare *L.A. Times Commcn's, LLC v. United States (In re L.A. Times Commc'ns LLC)*, [28 F.4th 292](#), 297 (D.C. Cir. 2022) (recognizing common law right of access); *United States v. Sealed Search Warrants*, [868 F.3d 385](#), 396 (5th Cir. 2017) (same); *Baltimore Sun Co. v. Goetz*, 886 F.2d 60, 64 (4th Cir. 1989) (same); *In re Search Warrant for Secretarial Area Outside Office of Gunn*, [855 F.2d 569](#), 573 (8th Cir. 1988) (recognizing First Amendment right of access), with *Times Mirror Co. v. United States*, 873 F. 2d 1210, 1212-18 (9th Cir. 1989) (declining to recognize any right of access). The controlling Eleventh Circuit has never addressed the issue.

investigators who were already being threatened, and provide any potential targets with a roadmap of the investigation. The news media organizations responded with a consolidated [reply](#) brief.

The government opposed releasing any portion of the affidavit. It argued that the release of any material would jeopardize the safety of witnesses, chill further cooperation, risk harm to investigators who were already being threatened, and provide any potential targets with a roadmap of the investigation.

U.S. Magistrate Judge Bruce Reinhart held an in-person-only hearing on August 18. He rigorously questioned DOJ and media counsel about application of a presumptive right of access pre-indictment, the government's interest in the integrity of the investigation, and where he might draw lines. He announced at the end of the hearing: "I do find in the record before me that I am not prepared to find that the affidavit should be fully sealed. I believe, based on my initial careful review of the affidavit many times, that there are portions of it that at least presumptively could be unsealed."

The judge orally ordered the government to file a sealed version of the affidavit with its recommendations as to portions that could be unsealed, along with a legal memorandum. Within a few hours of the government's August 25 filing, the judge adopted its line-drawing and ordered the government to file the redacted affidavit the next day.

What We Now Know from the FBI's Sworn Affidavit

The public has learned much from the 38-page [redacted affidavit](#). In it, an FBI special agent informed the magistrate judge that:

- Classified national security materials were improperly taken to "unauthorized" locations at Mar-a-Lago;
- The search would also likely find "evidence of obstruction";
- The information in the files Trump took to Mar-a-Lago could compromise "clandestine human sources";
- Files previously retrieved from Trump's residence included "184 unique documents bearing classification markings, including 67 documents marked as CONFIDENTIAL, 92 documents marked as SECRET, and 25 documents marked as TOP SECRET";
- The National Archives and Records Administration had told the FBI those files that the documents previously retrieved also contained "highly classified records" that "were unfolded, intermixed with other records, and otherwise improperly identified" and also contained Trump's handwritten notes;
- FBI agents cited a [CBS news report](#) in January, following the initial request from the government for Trump to return documents, that "at least two moving trucks were observed" outside Mar-a-Lago just before the January 2021 Inauguration of President Biden.
- Trump's lawyers, in the months between the government learning the former President had taken these documents to his residence and the FBI raid, claimed that Trump had absolute authority to de-classify records, and the FBI also relied on a *Breitbart* article quoting Trump adviser Kash Patel as saying Trump had declassified these specific records.

review of the seized documents, accusing the DOJ and FBI of using the warrant process as “a weapon for political purposes.” District Judge Aileen Cannon issued a [preliminary order](#) reporting that she has a “preliminary intent to appoint a special master in this case” and ordering the government to file further briefing, some public and some sealed, with a more detailed description of the property seized and the status of review.

Charles D. Tobin and Elizabeth Seidlin-Bernstein, Ballard Spahr LLP, represent The Washington Post, CNN, NBC News, Scripps, and the Associated Press.

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