

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 22-CV-81294-CANNON

DONALD J. TRUMP,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

_____ /

**THE PARTIES' JOINT FILING RESPECTING THE COURT'S APPOINTMENT OF
A SPECIAL MASTER**

In compliance with paragraphs 3 and 4 of this Court's Order (Docket Entry ("D.E.") 64, at 24), the parties conferred on September 7-9, 2022, and submit this joint filing which:

- lists proposed special master candidates;
- attaches each party's detailed proposed order of appointment in accordance

with Civil Rule 53(b);¹ and

- identifies the substantive points on which the parties were able to agree and not agree.

Proposed Special Master Candidates

The Government proposes two candidates. Plaintiff proposes two candidates. The Government received the Plaintiff's proposed candidates shortly after 6:00 p.m. on the date

¹ The Plaintiff's proposed order is attached as Exhibit A, and the Government's proposed order is attached as Exhibit B.

of this filing. The Government and the Plaintiff will advise the Court about their respective positions on the other party's proposed candidates on Monday, September 12, 2022.

Government's Proposed Candidates

The Honorable Barbara S. Jones (ret.) – retired judge of the United States District Court for the Southern District of New York, partner in Bracewell LLP, and special master in *In re: in the Matter of Search Warrants Executed on April 28, 2021* and *In the Matter of Search Warrants Executed on April 9, 2018*.

The Honorable Thomas B. Griffith (ret.) – retired Circuit Judge of the United States Court of Appeals for the District of Columbia Circuit, special counsel in Hunton Andrews Kurth LLP, and Lecturer on Law at Harvard Law School.

Plaintiff's Proposed Candidates

The Honorable Raymond J. Dearie (ret.) – former Chief Judge of the United States District Court for the Eastern District of New York, served on the Foreign Intelligence Surveillance Court, formerly the United States Attorney for the Eastern District of New York.

Paul Huck, Jr.—founder, The Huck Law Firm, former Jones Day partner, former General Counsel to the Governor, former Deputy Attorney General for the State of Florida.

Areas of Substantive Agreement Between the Parties

The headings in the areas of agreement and disagreement follow paragraphs 3(b) of this Court's order (D.E. 64, at 24) and Civil Rule 53(b)(2).

1. Reporting and Judicial Review

The parties agree on reducing the default 21-day review period in Civil Rule 53(f)(2) to 10 days.

2. Engagement of Professionals, Support Staff, and Expert Consultants

The parties agree that the Special Master may request the assistance of additional professionals, support staff, or expert consultants from the parties and ultimately this Court.

Areas of Substantive Disagreement Between Each Party's Proposed Order

The paragraphs below list the substantive differences between the parties' proposed orders. The parties' more detailed suggested protocols are set forth in each party's Proposed Order. As stated orally in the parties' meet and confer, the Government plans to make available to Plaintiff copies of all documents recovered during the search that the Government assesses to be unclassified, both personal items and documents and Government documents (Presidential records). In addition, the Government will return to Plaintiff his personal items that were not commingled with records bearing classification markings.²

1. Duties and Limitations

Plaintiff's position is that the Special Master should review all Seized Materials, including documents with classification markings. Plaintiff also contends that the Special Master should examine the documents to evaluate potential Executive Privilege claims. The Plaintiff does not believe that the Special Master should, or needs to, consult with the National Archives and Records Administration ("NARA"). To the extent that the Special

² The Government notes that such property was within the scope of what the search warrant authorized.

Master determines such a need, the Plaintiff would suggest that the parties be heard by the Special Master, and possibly this Court, before that step is undertaken.

The Government's position is that the Special Master should not review documents with classification markings; should not adjudicate claims of Executive Privilege (but should submit to NARA any documents over which such claims are made); and should consult with NARA on the determination of Presidential records.

The parties generally agree on the categories of documents into which the materials to be reviewed by the Special Master should be allocated. Although Plaintiff originally identified five categories and the Government has four, that difference is only because Plaintiff separated personal items from personal documents. The Government combines those two personal categories and thus has one fewer category – four rather than five – and the Plaintiff agrees to these four categories of allocation before assessing the issue of Executive Privilege's impact on these categorizations.

Plaintiff believes the Government's objection to the Special Master reviewing documents they deem classified is misplaced. First, the Government's position incorrectly presumes the outcome—that their separation of these documents is inviolable. Second, their stance wrongly assumes that if a document has a classification marking, it remains classified in perpetuity. Third, the Government continues to ignore the significance of the Presidential Records Act ("PRA"). If any seized document is a Presidential record, Plaintiff has an absolute right of access to it while access by others, including those in the executive branch, has specified limitations. Thus, President Trump (and/or his designee) cannot be denied

access to those documents, which in this matter gives legal authorization to the Special Master to engage in first-hand review.³

The principal difference in the parties' workflow is that Plaintiff sends materials categorized by his counsel directly to the Special Master, while the Government proposes that it review Plaintiff's categorization by logs to determine if it agrees or disagrees with the categorization. The Government anticipates that it may agree on many of the categorizations and thus minimize the workload of the Special Master and expedite the review. The Plaintiff contends that a full review of all seized documents remains an important part of the Special Master's duties, even if the parties ultimately agree as to the return of various seized items. As the Government has already reviewed and categorized the seized materials, the Plaintiff believes a review by the Plaintiff, and submission to the Special Master, is the appropriate process.

2. *Access to Information and Ex Parte Communications*

Both parties agree that the Special Master's report and recommendations must be provided to the Parties to allow either or both to seek the Court's review. Because its workflow transmits all categories of documents to the Special Master without logs, Plaintiff proposes authorization for regular *ex parte* communications on categorization with only the Special Master's final report and recommendation disclosed to the Government.

By contrast, the Government proposes to review Plaintiff's proposed designations before they go to the Special Master in order to minimize the number of disputes. The

³ Plaintiff anticipates filing a deeper analysis of these issues in upcoming filings.

Government's proposed workflow has the additional benefit of minimizing *ex parte* communications and enhancing the perceived fairness and transparency of the review process.

3. Compensation and Expenses

Plaintiff proposes to split evenly the professional fees and expenses of the Special Master and any professionals, support staff, and expert consultants engaged at the Master's request.

The Government's position is that, as the party requesting the special master, Plaintiff should bear the additional expense of the Special Master's work.

4. Schedule for Review

The Government sets a deadline of October 17, 2022, within which to complete the review process. Plaintiff suggests that 90 days likely will be required given the volume of documents, but ultimately defers to the Court and to the selected Special Master.

Conclusion

The parties are available to appear before the Court either in person or telephonically to discuss the Special Master candidates and to resolve the outstanding issues in the proposed appointment orders.

Respectfully submitted,

/s Juan Antonio Gonzalez
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 9, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s Juan Antonio Gonzalez
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 22-CV-81294-CANNON

DONALD J. TRUMP,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

_____ /

**PLAINTIFF'S PROPOSED ORDER OF
APPOINTMENT OF SPECIAL MASTER**

It is hereby ORDERED AND ADJUDGED as follows:

1. Pursuant to Rule 53(a)(1)(C) of the Federal Rules of Civil Procedure and this Court's inherent powers and authority, and subject to a declaration under penalty of perjury attesting to the absence of any ground for disqualification under 28 U.S.C. § 455, [name] is appointed Special Master.

Duties

2. The Special Master will review the materials seized during the August 8, 2022, execution of a court-authorized search warrant at the premises located at 1100 S. Ocean Blvd., Palm Beach, Florida 33480 (the "Seized Materials"); *including* any materials with classification markings. The specific duties of the Special Master are as follows and will include all powers necessary to carry out those duties:

a. Identifying personal items and documents in the Seized Materials;

b. Conducting a privilege review of the Seized Materials and making recommendations to this Court as to privilege disputes between the parties (including Executive Privilege);

c. Identifying any Presidential Records in the Seized Materials and making recommendations to this Court as to any classification disputes between the parties;

d. Additional duties may be assigned to the Special Master by the Court in subsequent orders, upon notice to the parties and an opportunity to be heard with regard to such additional duties; and

e. Once the Special Master has completed the review process set forth in this Order and any dispute has been fully adjudicated, any documents identified as Presidential records will be returned to the Archivist of the United States, and the process under the Presidential Records Act, 44 U.S.C. § 2204, will be followed to determine the assertion of any restriction on access.

3. The Special Master will have the full authority set forth in Fed. R. Civ. P. 53(c).

4. To review the Seized Materials (other than documents with classification markings), the Special Master will follow a precise workflow:

a. For documents identified by the government's filter team as potentially privileged –

i. the government will provide copies of the potentially privileged documents to Plaintiff's counsel;

ii. Plaintiff's counsel will review the potentially privileged documents and provide a privilege log to the Special Master stating for each document whether Plaintiff claims that the document is privileged, whether the document sought to be

withheld is an attorney-client communication or subject to the qualified work-product immunity, or some other basis (including Executive Privilege), and the basis for that claim sufficient to enable the government, Special Master, and Court to assess that claim; and

iii. if the government agrees with Plaintiff's position, the document will be returned to Plaintiff; if not, the dispute will go to the Special Master and, if the parties disagree with the Special Master's report and recommendation, to this Court for *de novo* review and decision;

b. For the Seized Materials excluding documents identified by the government's filter team as potentially privileged –

i. the government will provide copies of those documents to Plaintiff's counsel;

ii. Plaintiff's counsel will review those documents, allocate them to one of four mutually exclusive and cumulatively exhaustive categories, and prepare a log similar to the privileged log in 4(a)(ii) sufficient to support the categorization into one of the four categories, which are:

aa. Personal items and documents – not privileged,

bb. Personal documents – privileged as attorney-client communications or qualified work-product immunity,

cc. Presidential records – not claimed as Presidential communications privileged,

dd. Presidential records – claimed as Presidential communications privileged (hereinafter, "Executive Privilege").

Reporting and Judicial Review

5. Within seven days following the date of this order, the Special Master will consult with counsel for the parties and provide the Court with a scheduling plan setting forth the procedure and timeline for concluding the privilege review and adjudicating any disputes as to privilege. The scheduling plan should include a process for resolving disputes as to privilege.

6. The Special Master will file all written scheduling plans, orders, reports, and recommendations on the electronic docket, along with any additional information that the Special Master believes will assist the Court in reviewing those scheduling plans, orders, reports, and recommendations. Any potentially privileged, confidential, or national security material that is filed will be done so under seal. The Special Master will, during the pendency of this matter, including any appeals, preserve any and all documents or other materials received from the parties.

7. The Special Master will make *ex parte* reports to the Court on an ongoing basis concerning the progress in resolving the issues above as the Special Master believes appropriate or as the Court requests.

8. The parties may file objections to, or motions to adopt or modify, the Special Master's scheduling plans, orders, reports, or recommendations no later than ten calendar days after the service of each, and the Court will review those objections or motions, and any procedural, factual, or legal issues therein, *de novo*.

Access to Information

9. The Special Master will have access to individuals, information, documents, and materials relevant to the orders of the Court that are required to perform the Special

Master's duties, subject to the terms of this Order of Appointment. Such materials will be provided to the Special Master on an *ex parte* basis as the Special Master sees fit in connection with potentially privileged materials. The Special Master may communicate *ex parte* with the Court or either party to facilitate the review; *provided, however*, that all final decisions will be served simultaneously on both parties to allow either party to seek the Court's review.

10. At a minimum, the Government will provide to the Special Master a copy of the Seized Materials, the search warrant executed in this matter, and the redacted public version of the underlying application materials for the search warrant.

Compensation and Expenses

11. Each party will bear 50% of the professional fees and expenses of the Special Master and any professionals, support staff, and expert consultants engaged at the Master's request. The procedures for establishing and paying the Special Master's compensation and expenses will be determined in a later order. Within seven days following the date of this order, the Special Master and counsel for the parties will confer on this issue and the Special Master will submit a proposal for the Court's approval as to the procedures for paying the Special Master's compensation and expenses.

Engagement of Professionals, Support Staff, and Expert Consultants

12. If the Special Master determines that the efficient administration of the Master's duties requires the assistance of additional professionals, support staff, or expert consultants, the Master may submit a work proposal to the parties, who will have five business days to submit comments, after which time the Special Master may submit the proposal to the Court for consideration.

Other Provisions

13. As an agent and officer of the Court, the Special Master and those working at the Special Master's direction will enjoy the same protections from being compelled to give testimony and from liability for damages as those enjoyed by other federal judicial adjuncts performing similar functions.

14. As required by Fed. R. Civ. P. 53(b)(2), the Court directs the Special Master to proceed with all reasonable diligence and in any event to conclude its review and classifications by _____.

15. The Special Master will be discharged or replaced only upon order of this Court.

16. The parties and their agents and employees will observe faithfully the requirements of this Order of Appointment and cooperate fully with the Special Master in the performance of their duties.

17. The parties and their agents and employees will observe faithfully the requirements of this Order of Appointment, cooperate fully with the Special Master in the performance of their duties, and comply with the judicial protective order that shall follow – which will set forth restrictions on the disclosure by any person with access to Seized Materials and any documents generated in connection with this Order of Appointment.

18. The Court reserves the right to remove the Special Master if the Court finds that the parties are not expeditiously completing this work.

DONE AND ORDERED in Chambers at Fort Pierce, Florida, this ____ day of
September 2022.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 9, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

s/_____

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO. 22-CV-81294-CANNON

DONALD J. TRUMP,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

_____ /

**THE UNITED STATES' PROPOSED ORDER OF
APPOINTMENT OF SPECIAL MASTER**

It is hereby ORDERED AND ADJUDGED as follows:

1. Pursuant to Rule 53(a)(1)(C) of the Federal Rules of Civil Procedure and this Court's inherent powers and authority, and subject to a declaration under penalty of perjury attesting to the absence of any ground for disqualification under 28 U.S.C. § 455, [name] is appointed Special Master.

Duties

2. The Special Master will review the materials seized during the August 8, 2022, execution of a court-authorized search warrant at the premises located at 1100 S. Ocean Blvd., Palm Beach, Florida 33480; *provided, however*, the Special Master will not review any materials with classification markings (hereinafter the remaining materials will be referred to as the "Seized Materials without Classification Markings").¹ The specific

¹ As this process moves forward, if the government identifies any potentially classified information within the contents of any of the Seized Materials without Classification Markings, the government will so advise the Court and propose actions to ensure that any such material is

duties of the Special Master are as follows and will include all powers necessary to carry out those duties:

- a. Identifying personal documents and items in the Seized Materials without Classification Markings;
- b. Conducting a privilege review of the Seized Materials without Classification Markings and adjudicating privilege disputes between the parties; *provided, however*, that the only privileges to be adjudicated by the Special Master are the attorney-client privilege and work-product immunity;
- c. In categorizing Seized Materials without Classification Markings as personal items or documents, on the one hand, or Presidential records, on the other hand, the Special Master will consult with the National Archives and Records Administration (“NARA”); the government will facilitate the Special Master’s consultations with NARA; and
- d. Additional duties may be assigned to the Special Master by the Court in subsequent orders, upon notice to the parties and an opportunity to be heard with regard to such additional duties.

3. The Special Master will have the full authority set forth in Fed. R. Civ. P. 53(c).

4. To review the Seized Materials without Classification Markings, the Special Master will follow a precise workflow:

- a. For documents identified by the government’s filter team as potentially privileged –

handled appropriately.

- i. the government's filter team will provide copies of the potentially privileged documents to Plaintiff's counsel;
 - ii. Plaintiff's counsel will review the potentially privileged documents and provide a privilege log to the government's filter team stating for each document whether Plaintiff claims that the document is privileged, whether the document sought to be withheld is an attorney-client communication or subject to the qualified work-product immunity, and the basis for that claim sufficient to enable the government's filter team, Special Master, and Court to assess that claim; and
 - iii. if the government's filter team agrees with Plaintiff's position, the document will be returned to Plaintiff; if not, the dispute will go to the Special Master and, if either party disagrees with the Special Master's report and recommendation, to this Court for *de novo* review and decision;
- b. For the remaining approximately 11,000 documents – namely, the Seized Materials without Classification Markings and excluding documents identified by the government's filter team as potentially privileged –
- i. the government will make copies of those documents available to Plaintiff's counsel;
 - ii. Plaintiff's counsel will review those documents, allocate them to one of four mutually exclusive and cumulatively exhaustive categories, and no later than September 26, 2022, prepare a log similar to the privilege log in 4(a)(ii) sufficient to support the categorization into one of the four categories, which are:
 - aa. Personal documents and items – not privileged,

bb. Personal documents – privileged as attorney-client communications or qualified work-product immunity,

cc. Presidential records – not claimed as Presidential communications privileged,

dd. Presidential records – claimed as Presidential communications privileged (hereinafter, “Executive Privilege”).

iii. For any documents and items claimed by Plaintiff as personal documents and items – not privileged, the Special Master will review the claim in consultation with NARA;

iv. For any documents claimed by Plaintiff as personal documents – privileged as attorney-client communications or qualified work-product immunity, the Special Master will submit those additional potentially privileged documents to the government’s filter team and follow the process in 4(a);

v. For any documents identified as Presidential records – not claimed by Plaintiff as subject to Executive Privilege, those documents shall remain in custody of the government, with copies sent to the Archivist of the United States, and may be used by the government forthwith for any lawful purpose, including in the government’s criminal investigation;

vi. For any documents identified as Presidential records – claimed by Plaintiff as subject to Executive Privilege, copies of those documents will be sent to the Archivist of the United States, and the process under the Presidential Records Act, 44 U.S.C. § 2201 *et seq.*, may thereafter be followed.

Reporting and Judicial Review

5. Within seven days following the date of this order, the Special Master will consult with counsel for the parties and provide the Court with a scheduling plan setting forth the procedure and timeline for concluding the privilege review and adjudicating any disputes as to privilege. The scheduling plan should include a process for resolving disputes as to privilege.

6. The Special Master will file all written scheduling plans, orders, reports, and recommendations on the electronic docket, along with any additional information that the Special Master believes will assist the Court in reviewing those scheduling plans, orders, reports, and recommendations. Any potentially privileged, confidential, or other sensitive material that is filed will be done so under seal. The Special Master will, during the pendency of this matter, including any appeals, preserve any and all documents or other materials received from the parties.

7. The Special Master will make *ex parte* reports to the Court on an ongoing basis concerning the progress in resolving the issues above as the Special Master believes appropriate or as the Court requests.

8. The parties may file objections to, or motions to adopt or modify, the Special Master's scheduling plans, orders, reports, or recommendations no later than ten calendar days after the service of each, and the Court will review those objections or motions, and any procedural, factual, or legal issues therein, *de novo*.

Access to Information

9. The Special Master will have access to individuals, information, documents, and materials relevant to the orders of the Court that are required to perform the Master's

duties, subject to the terms of this Order of Appointment. Such materials will be provided to the Special Master on an *ex parte* basis as the Special Master sees fit in connection with potentially privileged materials. The special master may communicate *ex parte* with the Court or either party to facilitate the review; *provided, however*, that all final decisions will be served simultaneously on both parties to allow either party to seek the Court's review.

10. In particular, the government will provide to the Special Master a copy of the Seized Materials without Classification Markings, the search warrant executed in this matter, and the redacted public version of the underlying application materials for the search warrant.

Compensation and Expenses

11. Plaintiff, as the party who requested the Special Master, will bear 100% of the professional fees and expenses of the Special Master and any professionals, support staff, and expert consultants engaged at the Master's request. The procedures for establishing and paying the Special Master's compensation and expenses will be determined in a later order. Within seven days following the date of this order, the Special Master and counsel for the parties will confer on this issue and the Special Master will submit a proposal for the Court's approval as to the procedures for paying the Special Master's compensation and expenses.

Engagement of Professionals, Support Staff, and Expert Consultants

12. If the Special Master determines that the efficient administration of the Master's duties requires the assistance of additional professionals, support staff, or expert consultants, the Master may submit a work proposal to the parties, who will have five business days to submit comments, after which time the Special Master may submit the proposal to the Court for consideration.

Other Provisions

13. As an agent and officer of the Court, the Special Master and those working at the Master's direction will enjoy the same protections from being compelled to give testimony and from liability for damages as those enjoyed by other federal judicial adjuncts performing similar functions.

14. As required by Fed. R. Civ. P. 53(b)(2), the Court directs the Special Master to proceed with all reasonable diligence and in any event no later than October 17, 2022.

15. The Special Master will be discharged or replaced only upon order of this Court.

16. The parties and their agents and employees will observe faithfully the requirements of this Order of Appointment and cooperate fully with the Special Master in the performance of their duties. Consistent with and in furtherance of this Order of Appointment, the Court will separately enter a judicial protective order that among other provisions will require the Special Master; any professionals, support staff, and expert consultants retained by the Special Master; and any of Plaintiff's counsel and their staff who receive Seized Materials without Classification Markings during the review process not to disclose or disseminate such materials or their contents pending this Court's decision on their disposition.

17. The Court reserves the right to remove the Special Master if the Court finds that the parties are not expeditiously completing this work.

DONE AND ORDERED in Chambers at Fort Pierce, Florida, this ___ day of September 2022.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 9, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

s/_____
JUAN ANTONIO GONZALEZ
UNITED STATES ATTORNEY