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November 23, 2022

VIA ELECTRONIC FILING

David J. Smith
Clerk of the Court
United States Court of Appeals
for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Re: Donald J. Trump v. United States of America, Docket No. 22-13005
(Oral Argument held on November 22, 2022)

Dear Mr. Smith:

Appellee President Donald J. Trump respectfully requests, pursuant to Federal Rule of Appellate Procedure 28(j) and Internal Operating Procedure 6 thereto, that the Court consider the following supplemental authority on a point raised during oral argument.

The question raised was whether a court has previously asserted equitable jurisdiction to enjoin the government from using seized materials in an investigation pending review by a special master. The answer is yes. The United States agreed to this approach – and the existence of jurisdiction – in *In the Matter of Search Warrants Executed on April 28, 2021*, No. 21-MC-425-JPO (S.D.N.Y.) (involving property seized from Hon. Rudolph W. Giuliani) – and, under mutual agreement of the parties, no materials were utilized in the investigation until the special master process was completed.¹ *See, e.g.*, Exhibit A. The process worked. On November 14, 2022, the United States filed a letter brief notifying the District Court that criminal charges were not forthcoming and requested the termination of the appointment of the special master. *See* Exhibit B. On November 16, 2022, the matter was closed. *See* Exhibit C.

Sincerely,

A handwritten signature in black ink that reads "Donald J. Trump". The signature is written in a cursive style with a large, stylized "D" and "T".

¹ *See* Brief of Appellee in this matter at page 68 of 82.



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cc: Counsel of Record

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re: Search Warrants Executed on April 28,
2021

Case No.: 1:21-MC-00425-JPO

SPECIAL MASTER REPORT

By Order of Appointment, dated June 9, 2021 [Dkt. No. 25] (the “Order”), the Court appointed the Hon. Barbara S. Jones (Ret.) as Special Master to render decisions regarding “privilege issues relating to the materials seized in the execution of certain search warrants dated April 21, 2021, and April 28, 2021, and executed on April 28, 2021 (the ‘Seized Materials’).” *See* Order, § 2. This report is submitted to provide the Court with a scheduling plan setting forth the procedure and timeline for conducting the privilege review of the Seized Materials and resolving any disputes as to privilege. *See* Order, § 4.

Pursuant to § 4 of the Order, the Special Master has conferred with the parties regarding the status of production of the Seized Materials and a procedure for review. The Government is currently processing the Seized Materials. The Government will provide electronic copies of the materials to counsel for Mr. Giuliani and Ms. Toensing on an expedited and rolling basis.¹

The procedures for review are as follows. As the materials become available, the Special Master will designate batches of documents in the order that they will be reviewed. For each batch, counsel for Mr. Giuliani and Ms. Toensing will conduct a privilege review and submit privilege designations to the Special Master. These designations shall identify potentially privileged documents and contain descriptions regarding the nature of the attorney-client relationship, the

¹ The Government will provide Mr. Giuliani’s counsel copies of the materials seized from Mr. Giuliani, and it will provide Ms. Toensing’s counsel copies of the materials seized from Ms. Toensing.

subject matter, the nature of the advice provided and/or the work product created as a result of the relationship. In addition, counsel for Mr. Giuliani and Ms. Toensing may submit designations for highly personal information, such as medical records or similar materials. It is understood by all parties, however, that the Special Master will not conduct a review of all materials for responsiveness. After all privileged or “highly personal” designations are made by counsel for Mr. Giuliani and Ms. Toensing in a batch, the remaining, non-designated documents or materials will be released to the government.

The designation submissions from counsel for Mr. Giuliani and Ms. Toensing and any subsequent conferences regarding those submissions, which may be necessary to assist the Special Master in making privilege determinations, will be *ex parte*. Should the Special Master require additional facts or background information to assist her in making privilege determinations, she may also confer with the Government – and receive submissions from the Government – on an *ex parte* basis. The Special Master will not provide designated documents or materials to the Government.

Once the Special Master has considered the privilege positions of Mr. Giuliani and Ms. Toensing, the Special Master will render decisions on the materials and submit a Report and Recommendation to the Court. The Special Master’s final privilege determinations will include the following categories: (1) Privileged Materials; (2) Partially Privileged Materials; (3) Non-Privileged Materials; or (4) Highly Personal Materials. Pursuant to § 7 of the Order, any objections to the Report and Recommendation must be filed with the Court no later than seven days after the Report and Recommendation is filed.

The Special Master will provide the Court with a timeline for concluding the privilege review once she better understands the volume of the materials to be reviewed.

Pursuant to § 9 of the Order, the Government has provided the Special Master with a copy of the search warrants executed in this matter, and the underlying application materials for those warrants.

Pursuant to § 10 of the Order, the Special Master has conferred with the parties regarding her compensation and expenses. The Government will be responsible for the payment of the Special Master's compensation and expenses if the review proceeds in the manner described above. The Special Master has discussed the relevant hourly rates with the Government, and the Special Master intends to submit invoices for the Court's review and approval monthly.

Dated: New York, New York
June 16, 2021



HON. BARBARA S. JONES (Ret.)



*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

November 14, 2022

BY ECF

The Honorable J. Paul Oetken
United States District Judge
Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

Re: In re Search Warrants dated April 21, 2021, and April 28, 2021, 21-MC-425(JPO)

Dear Judge Oetken:

The Government writes to notify the Court that the grand jury investigation that led to the issuance of the above-referenced warrants has concluded, and that based on information currently available to the Government, criminal charges are not forthcoming. Accordingly, the Government respectfully requests that the Court terminate the appointment of the Special Master, the Hon. Barbara S. Jones.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By: _____/s/_____
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(counsel for Rudolph Giuliani)
Michael Bowe, Esq./ E. Patrick Gilman, Esq. (counsel for Victoria Toensing)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re SEARCH WARRANTS DATED
APRIL 21 AND APRIL 28, 2021

21-MC-425 (JPO)

ORDER

J. PAUL OETKEN, United States District Judge:

On November 14, 2022, the government filed a letter stating that the grand jury investigation that led to the issuance of the warrants in this matter has concluded and that criminal charges are not forthcoming. (Dkt. No. 51.) Accordingly, the appointment of the Special Master in this proceeding, the Hon. Barbara S. Jones, is hereby terminated. The Court is grateful for the outstanding service that the Special Master has performed for the Court.

The Clerk of Court is directed to mark this matter as closed.

SO ORDERED.

Dated: November 16, 2022
New York, New York



J. PAUL OETKEN
United States District Judge