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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE: Grand Jury
GRAND JURY SUBPOENAS No. 23-GJ-00012 (JEB)

UNITED STATES OF AMERICA April 3, 2023

Interested Party,
DONALD J. TRUMP, Washington, D.C.

Interested Party.

SEALED PROCEEDING
BEFORE THE HONORABLE JAMES E. BOASBERG
UNITED STATES DISTRICT COURT CHIEF JUDGE

APPEARANCES:

FOR THE UNITED STATES: [REDACTED], Esquire
[REDACTED], Esquire
[REDACTED], Esquire
Special Counsel's Office
950 Pennsylvania Avenue Northwest
Room B-206
Washington, D.C.20530

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

FOR DONALD J. TRUMP: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
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REPORTED BY: [REDACTED]
Official Court Reporter

1 The following proceedings began at 11:02 a.m.:

2 THE COURT: Good morning, everybody.

3 THE COURTROOM DEPUTY: Good morning, Your Honor. The
4 courtroom has been locked and sealed.

5 We are here for Grand Jury Case 23-12, In Re: Grand
6 Jury Subpoenas. Interested party, the United States of
7 America, and interested party former President Donald Trump.

8 Beginning with counsel for the government, please
9 approach the lectern and identify yourself for the record.

10 [REDACTED]: Good morning, Your Honor. [REDACTED]
11 United States. Also with me at counsel table [REDACTED]

12 [REDACTED]

13 THE COURT: Good morning to all of you.

14 [REDACTED]: Good morning, Your Honor. [REDACTED]
15 [REDACTED] on behalf of President Donald J. Trump. And with me
16 is [REDACTED]

17 THE COURT: Good morning, gentlemen. [REDACTED],
18 even though I have known you for 20 years, I'm not offended
19 that you keep getting my first name wrong in the pleadings.
20 I've never been John Boasberg, I promise, really. I thought
21 that we had a different relationship, but I'm sure you will
22 talk to your people about that.

23 [REDACTED] [REDACTED] [REDACTED]

24 [REDACTED]

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[REDACTED]

THE COURT: Thank you. All right. I am going to deny this motion for stay. I don't believe it's appropriate to be granted for a number of reasons. Again, we are all aware of the four-factor test. And on the merits, I agree with the government that there was a forfeiture of the argument regarding this ex parte preview proceeding in front of the Court.

But [REDACTED] position is not frivolous, that this is a broad, ongoing litigation. So even if there were no forfeiture or waiver, the proposal that I would be the one to question the witness I don't believe is a workable solution given that I don't -- I am not the investigator or the prosecutor. The government is. And for me to be inquiring about witnesses regarding specific conversations I don't have a background in I don't think is a workable solution.

To the extent that the solution would be for the government to question the witness in front of me, and that's not what the former President is proposing, but even if it was, I think, as the government points out here, that given that

1 they have [REDACTED] categories clearly delineated and that the
2 witnesses were asked questions in the grand jury and interviews
3 regarding those topics, that it has been sufficiently refined
4 such that I have -- that Judge Howell found, and I agree, that
5 it's not necessary to have this ex parte preview proceeding.

6 Similarly, in the motion to stay, the government did
7 not argue regarding the importance or the unavailability of
8 witnesses, but to the extent they are arguing that here as a
9 basis that they are likely to prevail on the merits, I think
10 the government is not likely to prevail.

11 I also have ruled on this in regard to [REDACTED]
12 [REDACTED] and found that the presidential
13 communications privilege is overcome by the grand jury's need
14 for this material given its importance and the unavailability
15 of obtaining it elsewhere, and I think the same analysis that I
16 performed there applies here.

17 This argument regarding other particularized forms of
18 privilege, I don't think it's valid here where I have never
19 heard from the former President what other potential privilege
20 that actually is beyond the presidential communications
21 privilege.

22 And so I find that the former President is not likely
23 to succeed on the merits and that even -- and again, I'm not
24 using a 51 percent scale because I know that under the
25 standard, they just have to show some solid chance of

1 prevailing, not a likelihood. And they don't meet that here,
2 the President doesn't meet that here for the reasons I set
3 forth [REDACTED]

4 In terms of irreparable harm, I think it is telling
5 that there was a two-week delay. And I understand from
6 [REDACTED] that there are other pieces of litigation the
7 President is involved in. However, he is not an indigent
8 client or one who can't afford lawyers. In fact, there are
9 four different law firms, in fact, on the pleading regarding
10 the motion to stay. So I think that with four law firms, that
11 he could have gotten something filed within a far shorter time
12 period than the two weeks here. And that alone, I think,
13 demonstrates there's no irreparability of harm.

14 But again, I think the reasons I stated in my
15 questioning do apply, that if the court of appeals does
16 reverse, either the government can be ordered not to use this
17 in front of a grand jury, and when I say this, I mean the
18 material and testimony that they obtained as a result of Judge
19 Howell's order, or it can be excluded in a trial. And so
20 therefore, there is no irreparable harm and there's no chilling
21 effect on future presidential administrations because, as I
22 said, the court of appeals will have ruled. So if, in fact, it
23 reverses, then that's law that any administration can be aware
24 of.

25 Lastly, the public interest is significant in not

1 granting the stay. The special counsel's investigation is
2 moving quickly. There is an imperative that it moves quickly
3 particularly so as not to interfere with the 2024 election
4 cycle. So when the former President's pleading says that there
5 will be a nominal impact from a delay, I think that is a vast
6 understatement, that there would be a serious and deleterious
7 impact from a delay, and that harms the public interest, which
8 is in a speedy and -- a speedy resolution that considers all
9 relevant information.

10 Okay. So I am happy to -- let's talk for a minute
11 about I'm happy to stay my ruling for a brief but reasonable
12 window. So I will ask [REDACTED]
13 [REDACTED] that the government couldn't require
14 his testimony within 48 hours.

15 Does the government -- is that same time table
16 workable for the government if I say you cannot put any
17 witnesses -- any of these witnesses in the grand jury until
18 noon on Wednesday, thus giving the former President the chance
19 to seek an administrative stay in the court of appeals? Is
20 there any reason why I shouldn't do that, [REDACTED]?

21 [REDACTED]: We would oppose that. And before I say
22 why, I would just like to seek the Court's permission under
23 Rule 6(e) to inform counsel for the former President about
24 grand jury schedule for an upcoming witness.

25 THE COURT: You may.

1 [REDACTED]: So we expect to have a witness going into
2 the grand jury [REDACTED]. That is why we would oppose the
3 48-hour turnaround. And we think that would give the former
4 President sufficient time to alert the court of appeals and
5 brief this on an admittedly expedited but, we think, doable
6 schedule.

7 [REDACTED] [REDACTED]
8 [REDACTED]

9 [REDACTED]
10 [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED]
12 [REDACTED]

13 [REDACTED] [REDACTED]

14 [REDACTED] May I be heard?

15 THE COURT: Sure.

16 [REDACTED]: I know, Your Honor, you will be
17 developing your own procedures, obviously, going forward. I
18 will just say that we would respectfully ask the Court to
19 consider on briefing issues the real nature of expediency. I
20 fully understand the Court's statements with regard to the need
21 for the special counsel to move forward expeditiously. I would
22 simply add from a very practical perspective that the
23 conversations that we are talking about between the President
24 and [REDACTED] happened sometime ago, meaning, you know, in
25 January of, not even the last year, but the year before. The

1 difference between the memory of a person over one day, two
2 days, three days, four days is going to be negligible at this
3 point.

4 THE COURT: I don't think -- the government is not
5 arguing that.

6 [REDACTED]: There is no statute of limitations
7 issue that's involved, and there is no witness availability
8 issue that's involved. And so from a purely practical
9 perspective, giving any client, any movant, only 24 hours to
10 obtain action by the D.C. Circuit on an issue, I don't want to
11 say first impression, but important constitutional issues that
12 come up every 10 or 20 years puts not only --

13 THE COURT: But I'm not doing that. I'm just saying
14 you've got to get it -- they don't have to consider the merits
15 in 24 hours. They can issue an administrative stay just as
16 they did last time and then consider the merits. So I think
17 the point is just this gives you time to file, and then they
18 can decide. But I think that's the idea.

19 Again, your filing can crib -- your filing is not
20 going to be difficult. I assume you will file the same thing
21 you filed in front of me or generally. And then they will
22 issue an administrative stay while they have briefing. I mean,
23 their briefing is, I would agree with you, is quite an
24 interesting briefing schedule they set last time, but that's
25 them, not me.

1 [REDACTED]: I understand that. I'm simply saying
2 that in my view, it pushes the D.C. Circuit into a mind-set,
3 and it certainly pushes all the litigants into a mind-set that
4 all this needs to be done overnight. And as somebody who has
5 been dealing with this for some many months of rush, rush,
6 rush, we would simply ask the Court to consider that. If you
7 can give us 48 hours, we would greatly appreciate it. Thank
8 you, Your Honor.

9 THE COURT: All right. [REDACTED]
10 [REDACTED]

11 [REDACTED] So until the witness can -- no witness can be -- no
12 witness who is affected by my order may appear in front of the
13 grand jury before noon tomorrow, [REDACTED]. Do you understand
14 that?

15 [REDACTED]: I do. Thank you, Your Honor.

16 THE COURT: Yes, [REDACTED].

17 [REDACTED]: Your Honor, just an administrative
18 matter. Is it possible without further written order to have
19 the transcript available to the parties if they order it?

20 THE COURT: I so order.

21 [REDACTED]: Thank you, Your Honor.

22 THE COURT: Thank you.

23 Thanks, everybody.

24 (The hearing concluded at 11:59 a.m.)

25 - - -

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

4/4/23

████████████████████
████████████████████
Official Court Reporter
333 Constitution Avenue NW
Washington, D.C. 20001
████████████████████