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SEALED MATTER ENCLOSED

AUTHORIZED PERSONS ONLY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE: Grand Jury
GRAND JURY SUBPOENA No. 23-GJ-13

UNITED STATES OF AMERICA April 10, 2023

Interested Party,
Washington, D.C.

Interested Party,

DONALD J. TRUMP,

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

FOR DONALD J. TRUMP: [REDACTED] Esquire

REPORTED BY: [REDACTED]
Official Court Reporter
333 Constitution Avenue Northwest
Washington, D.C. 20001
[REDACTED]

1 The following proceedings began at 10:01 a.m.:

2 THE COURT: Good morning, everybody.

3 THE COURTROOM DEPUTY: We are here regarding Grand
4 Jury Subpoena [REDACTED] Interested Party, The United
5 States of America; Interested Party, former [REDACTED]
6 [REDACTED] and Interested Party, former President Donald Trump.

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

9 [REDACTED] Good morning, Your Honor. [REDACTED]
10 for the United States. Also with me at counsel table are

11 [REDACTED]

12 THE COURT: Thank you. Welcome, all.

13 [REDACTED] Good morning, Your Honor. [REDACTED]
14 [REDACTED] on behalf of President Donald J. Trump.

15 THE COURT: Thank you. Good morning.

16 Okay. We are here today on the former President's
17 motion to stay. Let me just ask you, [REDACTED] do you have a
18 date yet for the testimony [REDACTED] and are you
19 willing to disclose that at this point?

20 [REDACTED] What I am comfortable saying is [REDACTED]
21 [REDACTED] will not testify this week.

22 THE COURT: Okay.

23 [REDACTED]

24 THE COURT: Great. Thanks.

25 Okay. [REDACTED]

1 ██████████ Your Honor, we will submit on the
2 papers.

3 THE COURT: Thank you very much.

4 All right. Again, we have been through this before,
5 and it won't be any surprise if my ruling is the same.
6 Although, I am also informed by the concurrence by Judge
7 Millett, I think, which bolsters certain points, and so I will
8 just make my ruling.

9 So I deny the stay. I find there is not a likelihood
10 of success on the merits here. This is a qualified privilege
11 which can be overcome, as I have said and Judge Millett also
12 points out, that ██████████'s position isn't relevant.

13 As she said, the protection focuses on the content of
14 the confidential communications to be disclosed, not the job
15 title of the person being questioned. And so despite the
16 insistence in the former President's papers that, given ██████████
17 ██████████'s status, there should be a special privilege, I
18 don't believe that Judge Millett thinks so, and I don't think
19 so either given that the question is the -- subject is the
20 topic of the communications, not the position held, and
21 particularly here where my ruling has said that he can refuse
22 to answer diplomatic and military secrets and come before me to
23 litigate those on a case-by-case basis. Given the topics that
24 the government wants to inquire on, it's unlikely or very
25 unlikely to include those.

1 The government has also shown the need to overcome a
2 qualified privilege, both that this is important information
3 and unavailable from other witnesses.

4 On the issue of whether there should be a
5 question-by-question review by the Court or whether the Court
6 should preview the testimony in camera before permitting [REDACTED]
7 [REDACTED] to testify, I find, despite what is said in the
8 reply, I find that this argument was forfeited because it was
9 not raised in the opposition of the motion to compel.

10 Even if it had been raised in the motion to compel, I
11 don't believe it's workable for the Court to step into the
12 government's shoes and conduct some inquiry about which it is
13 far less knowledgeable than is the government.

14 Second, I don't find there is irreparable harm.
15 Again, the former President waited 11 days to file this, which
16 has some relevance. But as Judge Millett points out, again,
17 the injury would be to the presidency, not to Mr. Trump
18 himself. And there's no injury to the presidency.

19 The current President did not assert a privilege. [REDACTED]
20 [REDACTED] can refuse to answer on specific diplomatic and
21 military questions. And, again, if there is a positive circuit
22 decision, meaning a circuit decision in his favor, then the
23 material would be excluded.

24 And so the specter, as the former President argues in
25 his motion, of transgressing [REDACTED]

1 communication forever isn't applicable because if there is a
2 positive court of appeals ruling for the former President, then
3 that will be the law going forward, and there won't be any
4 chilling effect henceforth.

5 Last, I find it is in the public interest to not stay
6 this given the importance of the testimony and the
7 investigation to move forward. And given the current President
8 has not exercised the privilege again speaks to the public
9 interest. So I will deny the motion.

10 So, [REDACTED] given that [REDACTED] isn't
11 going to be testifying this week, I will give you a little bit
12 longer than I had before.

13 Let me ask you, [REDACTED] is there any reason here
14 then not to give 48 hours to the former President to go to the
15 court of appeals, in other words, that I would deny the motion
16 to stay, but I would stay my ruling for 48 hours?

17 [REDACTED] No, that's fine. 48 hours is fine for
18 the government.

19 THE COURT: Okay. So I'll say that I'll stay my
20 ruling until noon on Wednesday.

21 [REDACTED] Appreciate that.

22 I just want to note for the record just because the
23 Court may not be aware of it, last week when it was essentially
24 a 24-hour turnaround, the Court correctly noted that you are
25 not involved in the scheduling by the D.C. Circuit, but what

1 they did, I think we got an order -- at least I saw an order
2 probably at 8:00 p.m. indicating that the government had until
3 4:00 a.m. in the morning to file their responsive papers, and
4 then we had until 9:00 a.m. after receiving them to file ours.
5 So there is this sort of compressed schedule, and it's helpful
6 to have a little more time here.

7 THE COURT: All right. I hope that will give a little
8 bit more. So although I'll note, [REDACTED] that I guess
9 one of your colleagues asked -- called my chambers when we were
10 discussing the schedule and asked was I aware that yesterday
11 was [REDACTED] The answer was, of course, but filing at
12 5:45 on Friday evening [REDACTED] doesn't necessarily
13 guarantee you a weekend off, so I'm sure you can let your
14 colleagues know that.

15 [REDACTED] It's good to learn. It's good to live
16 and learn.

17 The only last logistical thing that I would have is
18 that the parties could have access to this transcript without
19 further action by the Court.

20 THE COURT: Yes, so granted. Thanks for reminding me
21 of that.

22 Anything else from the government?

23 [REDACTED] No, Your Honor.

24 THE COURT: Thanks, everybody. Talk to you soon, I'm
25 sure.

(The hearing concluded at 10:11 a.m.)

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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.

4/10/23

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