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SEALED MATTER ENCLOSED

AUTHORIZED PERSONS ONLY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE: GRAND JURY SUBPOENA
GJ 42-17 AND GJ 42-69

Case No. 23-GJ-10

UNITED STATES OF AMERICA,

March 20, 2023

Interested Party,

Washington, D.C.

██████████,

Interested Party,

DONALD J. TRUMP,

Interested Party.

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

APPEARANCES:

FOR THE UNITED STATES:

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Julie Ann Edelstein, Esquire
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FOR ██████████:

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Washington, D.C. 20007

Elizabeth Lauren Martin, Esquire
Ellerman, Enzinna, Levy, PLLC
██████████
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APPEARANCES (Cont.):

FOR DONALD J. TRUMP:

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IFRAH, PLLC
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Washington, D.C. 20006

REPORTED BY:

Tammy Nestor, RMR, CRR
Official Court Reporter

1 The following proceedings began at 9:31 a.m.:

2 THE COURT: Good morning, everybody. Nice to see you.

3 THE COURTROOM DEPUTY: Good morning, Judge. Good
4 morning. We are on the record in sealed matter 23-GJ-10, Grand
5 Jury Subpoena, GJ-42 through 17, and GJ-42 through 69;
6 Interested party, United States of America, [REDACTED], and
7 Donald Trump.

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THE COURT: All right. Thank you very much.

I am going to deny the request for a stay, but I will give [REDACTED] 48 hours, in fact, until noon on Wednesday to comply with Judge Howell's order, which gives you time, Mr. Levy, and you, Mr. Trusty, to seek Court of Appeals assistance and administrative stay in the Court of Appeals.

Again, I am not giving you 5 hours or 3 hours or even 24 hours. I am giving you 48 hours, which I think is enough time to get to the Court of Appeals and seek an administrative stay. And you may well get that, and it may well go -- you may well get an appeal.

My reasons are as follows. And you both make good arguments, Mr. Levy and Mr. Trusty. And I think if it does go on appeal, I will be very interested to see what the Court of Appeals says, Mr. Levy, on some of these nuanced and difficult issues that you raised.

But the four stay factors everybody knows. They are set forth in the briefs. As to the first, the likelihood of prevailing on appeal, and again, it doesn't have to be likely

1 or probable, but in my reading, my careful reading, of Judge
2 Howell's lengthy opinion, which also the government argues is
3 reviewed on an abuse of discretion standard -- and I'm not sure
4 that's right, but it may be. But I find her opinion to be
5 strong and convincing and clear, and I don't believe that the
6 defense has sufficiently -- it's somewhat difficult to show
7 that she's wrong without more time to digest and look at her
8 opinion. But my review of the opinion, it seems to me a strong
9 opinion and one that is not likely to be overturned on appeal.

10 As to irreparable harm, again, this is interesting.
11 I'm not sure I would go so far as the government does in saying
12 that Mohawk would say you could never have irreparable harm in
13 this situation, because there's always a post-judgment remedy.
14 I'm not prepared to go that far. But I do think here that
15 where it is likely that the Court of Appeals would rule before
16 any trial occurred and the Court of Appeals could bar the use
17 of ██████████ testimony or the documents that he has to
18 produce under this order and the fact that this is secret in a
19 grand jury and is not going to be publicly available, that his
20 fact work product is not the disclosure of that at this stage
21 which again can be clawed back from the government ultimately
22 is not irreparable.

23 I think that Mr. Levy makes an interesting argument
24 that it's all opinion work product and Judge Howell's
25 distinction between fact and opinion isn't tenable. But at

1 this point, I don't think that that's correct. I think that
2 lots of opinion has been redacted, and she's done that
3 carefully.

4 And even if I didn't agree with every single sentence
5 in the red box about where it went, I think that this
6 distinction is sufficient, that it is not irreparable to
7 ██████████ that he has to testify and that these documents be
8 disclosed given the likelihood that, if Judge Howell was wrong,
9 that he wouldn't have to testify at trial and the documents
10 would be taken back, and this is secret so he's not -- his work
11 product is not disseminated into the public domain.

12 Finally, the last two factors merge, as everyone
13 agrees, which is harm to others and the government and also the
14 public interest. Here this tips strongly in favor of the
15 denial of the stay given that the case is of great importance.
16 There is a premium on moving this case through with expedition.
17 There have been lengthy delays already, which I place at the
18 feet of the former President, not the government. And the fact
19 that there is a special counsel and a desire in the great
20 public interest to move this case along quickly, that favors
21 not staying the matter.

22 So I will, as I said, deny the stay. But I will order
23 that ██████████ need not comply with Judge Howell's order in
24 terms of testifying or producing documents until Wednesday,
25 May 22 at noon.

1 Any questions or clarifications that anybody wishes,
2 Mr. Pellettieri?

3 MR. PELLETTIERI: Yes, Your Honor. We would just like
4 a clarification. Does this also include the former President's
5 motion for a stay as well?

6 THE COURT: Thank you. Yes. I'm sorry. I did not
7 make that clear as I should have. For the same reasons that I
8 deny [REDACTED] motion for a stay, I deny former President
9 Trump's motion.

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(The hearing concluded at 10:22 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.

3/21/2023

s/ Tammy Nestor
Tammy Nestor, RMR, CRR
Official Court Reporter
333 Constitution Avenue NW
Washington, D.C. 20001
tammy_nestor@dcd.uscourts