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October 21, 2022

By ECF and Courtesy Copy

Judge Raymond J. Dearie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11202

Re: Donald J. Trump v. United States of America, Case No. 22-81294-CIV-CANNON
– Filter A Documents Respecting Document Categorization and Executive
Privilege

Dear Judge Dearie:

As articulated in the Special Master’s Order dated October 7, 2022 (ECF 138) the parties were directed “to confer and attempt to resolve or narrow the disputes regarding the claims of executive privilege and designations pursuant to the Presidential Records Act.” Further, by October 20, 2022, the parties were directed to “submit to the Special Master an updated log containing any remaining disputes” regarding the following documents:

- A-001 through A-005;
- A-017 through A-022;
- A-025-A-026;
- A-029-A-030;
- A-033;
- A-036 through A040;
- A-043 through A052;
- A-053 through A-055; and
- A-056-through A-058.

(ECF 138).

The parties conferred on October 19, 2022, discussing their respective positions on the documents, with the government identifying certain documents that it recognized were personal to the Plaintiff, as reflected in the Defendant’s submission, dated October 20, 2022 (ECF 150).



During the October 19, 2022 conference between the parties, Plaintiff's counsel stated generally its position regarding personal records under the Presidential Records Act; both parties acknowledged that their positions regarding personal versus Presidential characterizations, as well as whether executive privilege could be waived by the incumbent Administration, would require further briefing for the Court.

The log presented by the Defendant on October 20, 2022 does not accurately reflect the Plaintiff's position as discussed during the October 19, 2022 conference. The Defendant's submission mischaracterizes the Plaintiff's position as to the following documents: Document 8 (A-021 to A-022 and A-025 to A-026), Documents 9 (A-029-A-030) and 11 (A-033), Document 12 (A-036 to A-040), Document 13 (A-043 to A-052), Document 15 (A-054), and Document 16 (A-055). We clarify Plaintiff's position as to these documents below.

- Document 8 (A-021 to A-022 and A-025 to A-026): Plaintiff asserts claim of Executive Privilege;
- Documents 9 (A-029-A-030) and 11 (A-033): Plaintiff is not asserting any privilege, but we did not agree that these documents should be designated Presidential;
- Document 12 (A-036 to A-040): Plaintiff asserts claim of Executive Privilege;
- Document 13 (A-043 to A-052): Plaintiff asserts claim of Executive Privilege;
- Document 15 (A-054): As the parties agree to the personal records designation, there is no further matter to resolve;
- Document 16 (A-055): As the parties agree to the personal records designation, there is no further matter to resolve.

We apologize for any confusion the multiple filings from the respective parties may cause. Again, Plaintiff's counsel was surprised that the Defendant did not attempt to confirm the contents of its log at ECF 150 to ensure the parties' respective positions were accurately represented. The above discrepancies could have been addressed prior to any submission.

We will be happy to represent Plaintiff's positions ourselves and will confer with the Defendant for a briefing schedule on the substance of the categorization arguments. And going forward, Plaintiff's counsel will not assume that orders requiring submissions "from the parties" means a jointly drafted document.



Sincerely,

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