

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 22-CV-81294-CANNON

DONALD J. TRUMP,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

**THE UNITED STATES' MOTION FOR A ONE-WEEK EXTENSION OF TIME
PENDING ISSUANCE OF THE ELEVENTH CIRCUIT'S MANDATE**

The United States of America respectfully moves this Court for a one-week extension of time of upcoming deadlines pending the issuance of the Eleventh Circuit's mandate in *Donald J. Trump v. United States of America*, No. 22-13005 (11th Cir. Dec. 1, 2022) (*per curiam*).

1. In the above-referenced interlocutory appeal, the panel “conclude[d] that the district court lacked jurisdiction to consider Plaintiff’s initial motion or to issue any orders in response to it.” Slip op. at 10. “For that reason, we VACATE the September 5 order on appeal and REMAND with instructions for the district court to DISMISS the underlying civil action.” Slip op. 21.

2. Absent a stay or withholding of the mandate, the Eleventh Circuit’s mandate will issue next Thursday, December 8. By default, the mandate must issue “7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing *en banc*, or motion for stay of mandate,

whichever is later.” FED. R. APP. P. 41(b). But Federal Rule of Appellate Procedure 41(b) authorizes a Circuit Court to “shorten or extend the time by order.”

3. In this appeal, the Eleventh Circuit shortened the default time within which the mandate would issue and ordered the mandate to issue seven days from the date of today’s opinion, or Thursday, December 8, 2022: “Absent a stay or withholding of the mandate in the appeal to which this order is appended, the clerk is directed to issue the mandate after seven days of the date of this opinion.” Order in 22-13005 (Dec. 1, 2022); *see* FED. R. APP. P. 26(a) (days are calendar days, not business days, but must end on a business day). Accordingly, unless Plaintiff obtains a stay of the mandate from the Eleventh Circuit or United States Supreme Court, the mandate will issue next Thursday, December 8.

4. Pending the issuance of the Eleventh Circuit’s mandate, the parties and Special Master have deadlines and work that will be rendered moot when the mandate issues. The government has a response to Plaintiff’s motion to unseal the search-warrant affidavit (D.E. 189), which is due next Tuesday, December 6. Both parties have a response to the News Media’s Joint Motion for Access to Unredacted Search Warrant Affidavit (D.E. 192), which is due on Wednesday, December 14. And the Special Master is working diligently on his report and recommendation, as is reflected in yesterday’s joint filing by the parties in response to the Master’s questions (D.E. 193-1), which Special Master report and recommendation is due on Friday, December 16 (D.E. 125, at 5).

5. If the mandate issues, this Court’s one-week extension of time will conserve the resources of this Court, the Special Master, and the parties, consistent with Civil Rule 1, which governs this civil action. FED. R. CIV. P. 1 (“They [the Federal Rules of Civil

Procedure] should be construed, administered, and employed by the court and the parties to secure the just, speedy, and *inexpensive* determination of every action and proceeding.”)

(emphasis added).

6. If the mandate does not issue, the Court, Special Master, and parties will resume work where they left off under the extended deadlines with only one week’s delay.

7. Yesterday evening, we wrote to Plaintiff’s counsel and asked for Plaintiff’s consent to a motion to stay upcoming deadlines. As of the time of filing of this motion, we have not heard back from Plaintiff’s counsel.

CONCLUSION

For the foregoing reasons, the Court should extend upcoming deadlines pending the issuance of the Eleventh Circuit’s mandate in *Donald J. Trump v. United States of America*, No. 22-13005 (11th Cir. Dec. 1, 2022) (*per curiam*). The government suggests an extension of the three deadlines in paragraph 4 by one week -- specifically:

- The government’s response to Plaintiff’s motion to unseal the search-warrant affidavit (D.E. 189) be and hereby is extended to and including December 13, 2022;

- The parties' response to the News Media's Joint Motion for Access to Unredacted Search Warrant Affidavit (D.E. 192) be and hereby is extended to and including December 21, 2022; and
- The Special Master's report and recommendation (D.E. 125, at 5) be and hereby is extended to and including December 23, 2022.

Respectfully submitted,

JACK SMITH
SPECIAL COUNSEL

By: /s/_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 2, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Julie A. Edelstein
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