

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re: Search Warrants Executed on April 28,
2021

Case No.: 1:21-MC-00425-JPO

SPECIAL MASTER REPORT

By Order of Appointment, dated June 9, 2021 [ECF No. 25] (the “Order”), the Court appointed me as Special Master to render decisions regarding “privilege issues relating to the materials seized in the execution of certain search warrants dated April 21, 2021, and April 28, 2021, and executed on April 28, 2021 (the ‘Seized Materials’).” *See* Order, § 2. This report is submitted to provide the Court with an update on the status of the review and the procedures regarding certain Seized Materials contained on the device seized from Ms. Toensing.

I. Background

On June 16, 2021, I filed a Report that set forth the procedure and timeline for conducting the privilege review of the Seized Materials. *See* Special Master Report at 1-2, June 16, 2021, ECF No. 27. There were no objections to this Report.

The Government has processed all accessible materials seized from Mr. Giuliani and Ms. Toensing. The Seized Materials have been provided to me, and materials seized from Mr. Giuliani’s devices have been provided to his counsel. The Government has provided Ms. Toensing’s counsel with the opportunity to view her Seized Materials on its vendor’s platform (as was requested by Ms. Toensing’s counsel). I have also provided Ms. Toensing with access to her Seized Materials on my vendor’s platform.

On September 16, 2021 the Court issued an Order resolving two issues relevant to my review. First, the Court limited the temporal scope of my review by excluding “any documents that clearly and entirely predate January 1, 2018, to the extent that such an exclusion can be applied efficiently.” Second, the Court granted the request of Dmitry Firtash for limited intervention in this matter to participate in the review of his privileged materials. *See* Order, dated September 16, 2021 (“September 16 Order”), ECF No. 31.

On September 23, 2021, I held a conference with counsel for the Government, Mr. Giuliani, Ms. Toensing, and Mr. Firtash to discuss the next steps in the review process, which is underway as described below.

II. Mr. Giuliani’s Devices

The Government has provided Seized Materials from 16 electronic devices seized from Mr. Giuliani. On September 28, 2021, I directed that Mr. Giuliani complete his review of the data contained on seven of these devices by October 6, 2021, which was later extended to October 12, 2021. These seven devices contain 2,226 items in total dated on or after January 1, 2018. Mr. Giuliani designated 3 items as privileged, and I am reserving decision on those 3 items. The remaining 2,223 items have been released to the Government.

Additional documents for review have been assigned to counsel for Mr. Giuliani, with the next set of designations due to me on November 5, 2021.

III. Ms. Toensing’s Participation in the Review Process

The Government has provided Seized Materials from one device seized from Ms. Toensing. Mr. Firtash’s counsel will be conducting the review of Seized Materials related to Ms. Toensing’s representation of Mr. Firtash (the “Firtash Materials”) under procedures set forth herein.

As to the remaining materials contained on Ms. Toensing's device, i.e., materials other than the Firtash Materials, I intend to hold a conference with her counsel to determine whether, and to what extent, they intend to conduct a review for privileged materials. Ms. Toensing previously indicated that given Mr. Firtash's participation in the review process, she did not intend to participate herself, but her counsel has now indicated that they would like more time to consider Ms. Toensing's position.

IV. Mr. Firtash's Participation in the Review Process

As noted above, Mr. Firtash has intervened in this matter to conduct the privilege review of the Firtash Materials. In order to identify the Firtash Materials, I requested that Mr. Firtash's counsel provide me with a written explanation describing the nature of Ms. Toensing's representation, as well as search terms that may be used to identify the Firtash Materials.

My vendor ran those search terms, and I have provided Ms. Toensing's counsel an opportunity to review the hits on those terms solely for the purpose of confirming that they are related to Ms. Toensing's representation of Mr. Firtash. If Ms. Toensing's counsel indicates that any item is not related to Mr. Firtash, I will conduct an independent review of that material to confirm the designation.

Materials designated by Ms. Toensing's counsel as being related to Mr. Firtash and any materials for which I disagree with Ms. Toensing's "unrelated" designation will be provided to Mr. Firtash's counsel to conduct the privilege review under the procedures in my June 16 Report.

Additional materials (such as voicemails) may be provided to Mr. Firtash's counsel in the future, and if so, I will identify them in a future Report and Recommendation.

Dated: New York, New York
November 2, 2021


HON. BARBARA S. JONES (Ret.)