IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	No. 23-cr-257-TSC
v.	:	
DONALD J. TRUMP,	:	
Defendant.	:	

RESPONSE IN OPPOSITION TO
GOVERNMENT'S PROPOSED TRIAL CALENDAR

President Donald J. Trump, through counsel, submits this response in opposition to the government's proposed trial calendar, Doc. 23, and respectfully requests the Court place this case on the April 2026 trial calendar. In support, President Trump states as follows:

INTRODUCTION

"The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result a defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense. To do that is not to proceed promptly in the calm spirit of regulated justice but to go forward with the haste of the mob." *Powell v. State of Ala.*, 287 U.S. 45, 59 (1932).

This is an unprecedented case in American history. The incumbent administration has targeted its primary political opponent—and leading candidate in the upcoming presidential election—with criminal prosecution. The administration has devoted tens of millions of dollars to this effort, creating a special counsel's office with dozens of employees, many of whom are apparently assigned full-time to this case and this case alone.

Taking full advantage of the administration's blank check,[1] the government spent over two-and-a-half years investigating this matter. It, among other things, interviewed and subpoenaed hundreds of witnesses, executed over 40 search warrants, and compiled information from countless individual sources. The government included some, but not all, of these materials in a massive, 8.5-terabyte initial production, totaling over 11.5 million pages, together with native files, recordings, and other electronic data not amenable to pagination.

In this District, ordinary order when faced with such overwhelming discovery is to set a reasonable trial schedule, commensurate with the size and scope of discovery and complexity of the legal issues. The government rejects this sensible approach. Instead, it seeks a trial calendar more rapid than most no-document misdemeanors, requesting just four months from the beginning of discovery to jury selection. The government's objective is clear: to deny President Trump and his counsel a fair ability to prepare for trial. The Court should deny the government's request.

The public interest lies in justice and fair trial, not a rush to judgment. Moreover, if the rights to due process and counsel are to mean anything, a defendant must have adequate time to defend himself. The Speedy Trial Act embraces these considerations and so, too, should the Court.

Accordingly, President Trump respectfully requests the Court schedule this case to begin on the April 2026 trial calendar, with the following interim control dates:

- Week of December 4, 2023: Discovery Status Conference and Motions Hearing
- Week of April 15, 2024: Discovery Status Conference and Motions Hearing
- Week of August 5, 2024: Discovery Status Conference and Motions Hearing
- August 1, 2024: Rule 12 and Other Dispositive Motions Due
- August 22, 2024: Oppositions to Rule 12 and Other Dispositive Motions Due

[1] *See* U.S. Department of Justice, *Special Counsel's Office – Smith Statement of Expenditures November 18, 2022 through March 31, 2023*, (reporting approximately $5.4 million in direct expenditures and an additional $3.8 million "DOJ component expenses," through March 31, 2023 only, the majority of which relate to salaries and benefits).

- September 5, 2024: Replies in Support of Rule 12 and Other Dispositive Motions Due
- Week of December 2, 2024: Discovery Status Conference and Motions Hearing
- Week of April 7, 2025: Discovery Status Conference and Motions Hearing
- Week of August 4, 2025: Discovery Status Conference and Motions Hearing
- Week of December 1, 2025: Discovery Status Conference and Motions Hearing
- January 29, 2026: Motions *in Limine* Due
- February 12, 2026: Oppositions to Motions *in Limine* Due
- February 19, 2026: Replies in Support of Motions *in Limine* Due
- Week of March 2, 2026: Motions Hearing
- Week of March 23, 2026: Final Pretrial Conference
- April 2026: Jury Selection and Trial[2]

This more reasonable schedule—equal to the government's time spent investigating—will allow this case to proceed in an orderly fashion, with both parties having a fair opportunity to review all material information, advance appropriate motions, and apprise the Court of relevant legal issues. Additionally, President Trump's proposed schedule (the "Proposed Schedule") will: (1) avoid scheduling conflicts with other pending matters; (2) provide sufficient time to address the production of discovery under the Classified Information Procedures Act (CIPA); and (3) preserve President Trump's right to seek discovery from third parties, while also addressing significant gaps in the government's productions.

APPLICABLE LAW

In setting a trial date, the Court must allow the defendant and defense counsel "reasonable time to prepare," as "stripping away the opportunity to prepare for trial is tantamount to denying

[2] At this early stage, without having reviewed discovery, President Trump cannot estimate the time he will require to present his case at trial; however, for the present, and without any waiver of rights or arguments, President Trump will adopt the same calculation as the government—4 to 6 weeks for the defense case.

altogether the assistance of counsel for the defense." *United States v. Young-Bey*, No. CR 21-661 (CKK), 2023 WL 4706122, at *2 (D.D.C. July 24, 2023) (citation omitted).[3]

For that reason, the Speedy Trial Act directs the Court to consider the unusual or complex nature of a case, 18 U.S.C. § 3161(h)(7)(B)(ii), and the need to provide "counsel for the defendant . . . the reasonable time necessary for effective preparation, taking into account the exercise of due diligence," 18 U.S.C. § 3161(h)(7)(B)(iv).

Thus, "whether a delay is reasonable depends on all the surrounding facts and circumstances," including:

> the length of the requested delay; whether other continuances have been requested and granted; the balanced convenience or inconvenience to the litigants, witnesses, counsel, and the court; whether the requested delay is for legitimate reasons, or whether it is dilatory, purposeful, or contrived; whether the defendant contributed to the circumstance which gives rise to the request for a continuance; whether the defendant has other competent counsel prepared to try the case, including the consideration of whether the other counsel was retained as lead or associate counsel; whether denying the continuance will result in identifiable prejudice to defendant's case, and if so, whether this prejudice is of a material or substantial nature; [and] the complexity of the case.

Young-Bey, 2023 WL 4706122, at *2.

[3] *See also United States v. Verderame*, 51 F.3d 249, 252 (11th Cir. 1995) (quoting *Gideon v. Wainwright*, 372 U.S. 335, 343 (1963)):

> While we appreciate the heavy case loads under which the district courts are presently operating and understand their interest in expediting trials, we feel compelled to caution against the potential dangers of haste, and to reiterate that an insistence upon expeditiousness in some cases renders the right to defend with counsel an empty formality. In our system of justice, the Sixth Amendment's guarantee to assistance of counsel is paramount, insuring the fundamental human rights of life and liberty. "The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not still be done."

ARGUMENT

A. The Enormity of Discovery Warrants the Proposed Schedule

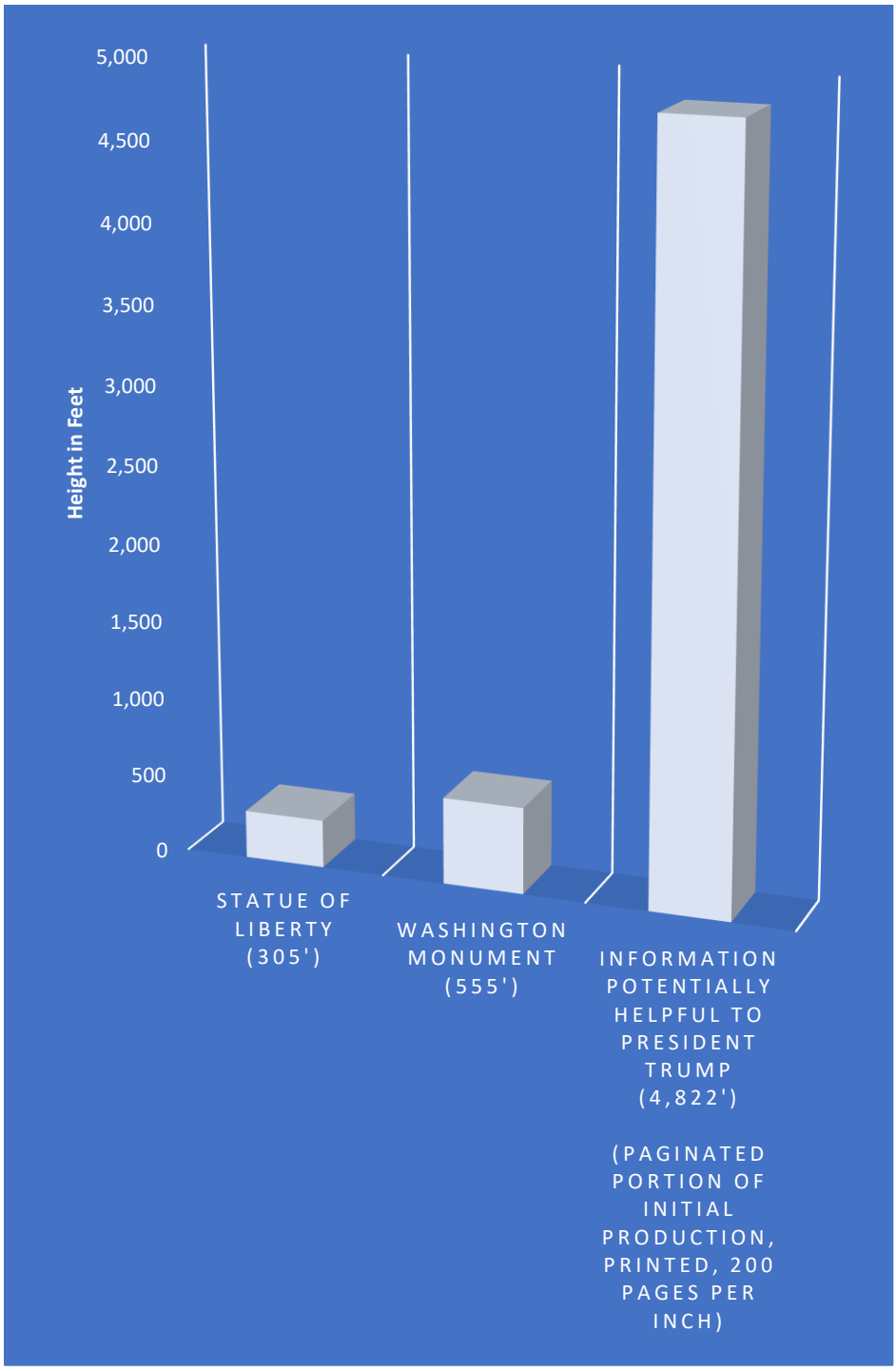
11.5 million pages is a difficult number to comprehend. Ordinarily, a complex, document-intensive criminal case might have a million pages at issue. *See, e.g.*, *United States v. Scarfo*, 41 F.4th 136, 176 (3d Cir. 2022) (open-ended continuance and complex case designation under 18 U.S.C. § 3161(h)(7)(B)(ii) appropriate where discovery included "approximately 1,000,000 pages of information."). To have over ten times that many pages at issue, against a single defendant, is largely unheard of. Such cases are, instead, almost always sprawling civil battles between large companies, which regularly take years to litigate. *See, e.g., Wal-Mart Stores, Inc. v. Visa U.S.A., Inc*., 396 F.3d 96, 118 (2d Cir. 2005) (seven years to litigate a case involving approximately 5 million pages of discovery).

To put 11.5 million pages in some perspective, we began downloading the government's initial production on August 13, 2023. Two days later, it was still downloading. We then requested the government send hard drives containing its initial production, which we received on August 16, 2023. Our technology vendor is now preparing to ingest the files into a document review database, but estimates such a large dataset will take several days to process.

Nonetheless, even assuming we could begin reviewing the documents today, we would need to proceed at a pace of 99,762 pages per day to finish the government's initial production by its proposed date for jury selection. That is the entirety of Tolstoy's *War and Peace*, cover to cover, 78 times a day, every day, from now until jury selection.[4] (Keeping in mind this is just to read the government's initial production a single time, to say nothing of trial counsel's need to analyze, organize, and integrate those materials into a cohesive defense presentation.)

[4] LEO TOLSTOY, WAR AND PEACE (Vintage Classics Ed., Dec. 2008).

Stated differently, if we were to print and stack 11.5 million pages of documents, with no gap between pages, at 200 pages per inch, the result would be a tower of paper stretching nearly 5,000 feet into the sky. That is taller than the Washington Monument, stacked on top of itself eight times, with nearly a million pages to spare:



Yet even this analogy belies the true scope of discovery: it includes only printed text, without considering native files, audio recordings, phone and electronic device image files, and other materials that will require substantial, labor-intensive review. *See, e.g.,* Ex. A at 38:1–3 (August 11, 2023, Hr'g Tr.) (government counsel describing "hundreds of recordings of witness interviews"); *id*. at 69:16–19 (describing "a hard drive with 2703(d) returns and extractions from other certain electronic facilities [that are] impossible to paginate or to identify by that").

Likewise, it does not consider the large number of additional documents that:

- the government has not, but still intends to produce. *See, e.g.,* Ex. A at 70:5–7 ([Government Counsel]: "We anticipate additional productions in the coming weeks and our goal is to have discovery substantially complete by August 28.");
- the government will obtain going forward. Doc. 23 at 5 (Government Response) ("The Government would then continue to produce to the defense on a prompt rolling basis any additional materials that are obtained going forward.");[5]
- President Trump may request from the government in discovery. *See* Fed. R. Crim. P. 16(a)(1)(E)(i) (requiring production of materials "within the government's possession, custody, or control" that are "material to preparing the defense"); *United States v. Libby*, 429 F. Supp. 2d 1, 7–8 (D.D.C. 2006) (defendant may make requests for 16(a)(1)(E)(i) material and that "the materiality standard is not a heavy burden." (citation and quotation marks omitted)); and

[5] The government's grand jury investigation appears to continue, suggesting the volume of additional materials will only grow. *See* Dan Mangan, CNBC, *D.C. grand jury that indicted Trump meets Tuesday as election probe continues*, (Aug. 8, 2023), https://www.cnbc.com/2023/08/08/trump-grand-jury-meets-again-as-election-probe-continues.html

- President Trump may request from third parties. Fed. R. Crim. P. 17(c) (permitting pretrial subpoenas with leave of court).[6]

For its part, the government suggests that it has "prepare[d] and organize[d] discovery in a manner that will assist the defendant in his review of produced materials." Doc. 23 at 2. Setting aside the dubious accuracy of this statement, prosecutorial organization of information cannot solve the defense's largest burden—reviewing the documents and preparing to use them at trial. That takes time—a lot of time in this instance—regardless of how the documents are labeled.

Similarly, the government claims it will "provide a compilation of certain key" documents and "identif[y] certain material within the discovery that is arguably favorable to the defendant." Doc. 23 at 5. This, again, is no answer. The government's view of importance surely differs substantially from the defense, and it goes without saying that a criminal defendant should not build his case on the word of his accusers.

Rather, President Trump has a right to review all material information, regardless of the government's view of the significance of such information to the defense. This is a critically important process, as identifying and presenting *Brady* material will be central to demonstrating President Trump's innocence. *Cf. Newman v. Hopkins*, 247 F.3d 848, 852 (8th Cir. 2001) ("[T]he right to present favorable evidence to a jury is clearly established by the [Supreme] Court's precedent."). [7]

[6] We anticipate seeking leave to issue multiple Rule 17(c) subpoenas. By way of just one example, we would request a subpoena directed to the House of Representatives for documents related to the investigation by the January 6th Select Committee. We will also need to address the reported destruction of documents by that committee, which could be potentially exonerative to President Trump.

[7] Even by its own terms, the government states only that it will identify "certain," but not all, documents it views as significant to its case or favorable to the defense. Doc. 23 at 5. Thus, whatever limited usefulness the government's key document folder might provide, it will not alter President Trump's need to fully review all discovery. Additionally, in cases such as this with

Simply put, the discovery in this case is enormous and growing. Although defense counsel will, of course, work diligently to review this material, the process will take time. For example, even under our Proposed Schedule, we would need to review approximately 12,000 pages per day to complete a first pass of the initial production by our proposed trial date. This is an exceedingly rapid pace, by any measure, and one that will only be manageable with intense diligence. The government's proposal, by contrast, is flatly impossible. No defendant can reasonably review nearly 100,000 pages of discovery per day.

Thus, "even exercising 'due diligence,'" the government's proposal would deny President Trump "reasonable time necessary for effective preparation," and, in so doing, violate his rights to due process and counsel.[8] *United States v. Taylor*, No. CR 18-198 (JEB), 2020 WL 7264070, at *7 (D.D.C. Dec. 10, 2020) (quoting 18 U.S.C. § 3161(h)(7)(B)(iv)); *see also United States v. Rice*, 746 F.3d 1074, 1079–80 (D.C. Cir. 2014) (affirming continuance based, in part, on complexity of the case and volume of discovery, and District Court's finding that "the defense itself is not going to be in a position to adequately provide the quality of representation the defendants are entitled to" without time to review pertinent discovery).[9]

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substantial discovery, the Court may require the government to go beyond identifying "certain key" documents, and instead identify all "those items it intends to offer in its case-in-chief at trial." *United States v. Anderson*, 416 F. Supp. 2d 110, 116 (D.D.C. 2006).

[8] It stands as no small irony that the government seeks to deny President Trump his constitutional rights in a prosecution where the government wrongly alleges President Trump violated the rights of others.

[9] The government contends that President Trump has been "aware of . . . certain relevant information made public through hearings and the report written by the House Select Committee to Investigate the January 6th Attack on the United States Capitol" and therefore should not need to thoroughly review discovery. Doc. 23 at 6. However, the government simultaneously advises only "a relatively small percentage of discovery" is non-sensitive. Ex. A at 28:11–12. As only non-public material may be marked sensitive, Doc. 28 at 1, that means President Trump had no meaningful ability to review the government's discovery prior to production. (Nor would he have

Without doubt, the public has an interest in the prompt resolution of this case; however, as the Speedy Trial Act recognizes, that interest must yield to the public and the defendant's overriding interest in a just proceeding. The Proposed Schedule allows President Trump to defend himself fairly. The government's proposal does not. Accordingly, the Court should adopt the Proposed Schedule.[10]

B. The Complexity of this Case Warrants the Proposed Schedule

The large volume of discovery in this matter is not happenstance, but reflects the reality that this is a complicated, unusual case. 18 U.S.C. § 3161(h)(7)(B)(ii) (permitting continuances for complex or unusual cases, or where the Court must address "novel questions of fact or law"). There are hundreds of potentially relevant witnesses spread across the country. Many are current or former government officials, including within the Department of Justice itself. Events alleged in the Indictment, and which are otherwise pertinent, likewise occurred throughout the country. Classified documents are at issue, as well as large quantities of search warrant materials that may be subject to suppression. As noted above, President Trump will seek Fed. R. Crim. P.

known what materials to review, as the government did give any pre-indictment explanation of its theory of the case, let alone identify any information it purports supports those charges.)

At the same time, the government has identified no good reason why it waited 31 months to seek an indictment. The notion that the government may, with all its vast resources, spend years investigating this case, only to turn and demand the defense be prepared for jury selection in just four months defies all notions of fairness.

[10] The government invokes the violence on January 6, 2021, as a reason to expedite the trial calendar, arguing it is "clearly a matter of public importance." Doc. 23 at 4. First, the Indictment does not charge President Trump with causing or participating in any violence. The fact that others have allegedly done so cannot factor into President Trump's trial date. Moreover, the widespread interest in these proceedings counsels a deliberate approach, protective of individual rights. The public's interest is in truth, fairness, and justice, not a rush to judgment.

16(a)(1)(E)(i) discovery from government departments and witnesses, as well as pretrial 17(c) subpoenas, which may raise a host of difficult issues for the Court to resolve.[11]

These factors alone suggest this case is complex under the meaning of the Speedy Trial Act and weigh in favor of a lengthier trial calendar. *See United States v. Raymond*, No. CR 21-380 (CKK), 2023 WL 2043147, at *4 (D.D.C. Feb. 16, 2023) (holding case as complex and granting government motion for continuance, over defendant's objection, based on, *inter alia*, dispersion of witnesses and classified information); *see also Barker v. Wingo*, 407 U.S. 514, 531 (1972) ("To take but one example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge.").

However, this case is not just complex or unusual. It is *terra incognita*. The protests at Capitol Hill aside, no person in the history of our country has ever been charged with conspiracies related to the Electoral Count Act. No president has ever been charged with a crime for conduct committed while in office. No major party presidential candidate has ever been charged while in the middle of a campaign—and certainly not by a Justice Department serving his opponent. These and numerous other issues will be questions of first impression, requiring significant time for the parties to consider and brief, and for the Court to resolve. The Proposed Schedule provides that time. The government's timeline does not. Consequently, the complexity and unusual nature of this case favors the Proposed Schedule.

[11] The government acknowledges that it considers materials obtained from a congressional committee and the United States Secret Service are material to this case. Doc. 23 at 5. Many other governmental agencies may have information favorable to the defense as well. The government cannot pick and choose what sources of information are important to the determination of this matter; justice requires that the defense be accorded the time to consider, request, and review all information material to the charges.

C. The Proposed Schedule is Consistent with Ordinary Order

As the Court stated at our August 11 hearing, and as the government then agreed, this case should "proceed[] in the normal course that our criminal justice system prescribes." Ex. A at 71:3–5; Doc. 15 at 8 (Gov't Reply in Support of Motion for Protective Order) ("Normal order should prevail."). As explained above, the normal course for complex, document-intensive cases is not a rush to trial, but a measured schedule that preserves the defendant's rights to review discovery and raise appropriate motions with the Court.

Indeed, the median time from commencement to termination for a jury-tried § 371 charge is 29.4 months—many times longer than the government's proposal schedule.[12] (And this reflects only the median, meaning half of all such cases take more time based on individualized assessments of discovery volume, complexity, and similar concerns.)

Likewise, this Court regularly allows far more time than the government proposes, even in cases involving protests at the Capitol on January 6, 2021. *See, e.g.*, *United States v. Foy*, No. 21-cr-0108 (28 months from indictment to stipulated bench trial on 4-page indictment); *United States v. Nordean*, *et al*, No. 21-cr-0175 (TJK) (21 months); *United States v. Crowl, et al*, No. 21-cr-0028 (APM) (23 months); *United States v. Kuehne*, *et al*, Case No. 21-cr-160 (29 months); *United States v. Hostetter, et al*, Case No. 21-cr-0392 (RCL) (24 months).

[12] Administrative Office of the United States Courts, *Table D-10: U.S. District Courts–Median Time Intervals From Commencement to Termination for Criminal Defendants Disposed of, by Offense, During the 12-Month Period Ending September 30, 2022*, at 2, jb_d10_0930.2022.pdf (uscourts.gov).

Ordinary order, in other words, is adherence to the Constitution and the Speedy Trial Act, together with their assurances of fair and just criminal trials, regardless of the government's ill-placed desire to hurry this case to a conclusion.[13]

D. The Government's Proposal is Unworkable Under CIPA

CIPA controls the disclosure of classified information in this matter. Doc. 23. As the government is aware, proceedings under CIPA are complicated, and "often lengthen the ordinary trajectory from indictment to trial." Ex. B at ¶ 7 (Decl. of Jay Bratt, June 23, 2023).

These delays can be extensive. As the Special Counsel's foremost expert on CIPA, Jay Bratt,[14] recently explained: the government is unaware of any case with classified discovery that went to trial in less than six months. Ex. C at 16:17–22 ([THE COURT]: "Can you point the Court to any other similar cases involving classified information that have gone to trial following production of discovery in less than six months?" [Mr. Bratt]: "So going to trial in less than six months, no.").

This case will be no different. The government acknowledges even uncomplicated CIPA cases involving "a very small number of documents with no substantive pretrial motions" take a minimum of eight months. *Id*. at 17:5–17. It is, therefore, puzzling that the government would propose a trial calendar the CIPA process cannot accommodate. Our Proposed Schedule, conversely, accounts for CIPA and will ensure any issues under that law are fully resolved by the time of trial.

[13] Another key factor in setting any trial date is the detention status of the defendant. That is not a factor here, and there is no reason that this Court should place the government's desire for a headline ahead of the interests of any detained defendant in this District who is awaiting trial.

[14] Mr. Bratt previously led the Department of Justice's Counterintelligence and Export Control Section and testified that he has "extensive experience with [CIPA]." Ex. B at ¶ 7.

E. The Government's Proposal Conflicts with Other Cases

Finally, the government's proposal presents numerous conflicts with other pending matters, including:

- A civil case in New York state court, scheduled for a six-week trial beginning October 2, 2023. Ex. D (Scheduling Order);
- A civil case in the Southern District of New York, scheduled for a two-week trial beginning January 15, 2024. Ex. E (Scheduling Order);
- A criminal case in New York state court, scheduled for a 5-week trial beginning March 25, 2024 (trial date set by oral order);
- A criminal case in Georgia state court, for which the state has requested a March 4, 2024, trial. Ex. F (Proposed Pretrial Scheduling Order); and
- A criminal case in the Southern District of Florida, also prosecuted by the Special Counsel and scheduled for a 5-week trial beginning May 20, 2024. Ex. G (Order Resetting Deadlines).

President Trump must prepare for each of these trials in the coming months. All are independently complex and will require substantial work to defend. Several will likely require President Trump's presence at some or all trial proceedings. Moreover, beyond trial, these cases will include numerous pre-and-post trial hearings that will invariably conflict with the government's proposed trial calendar here. As one example, a pretrial hearing in the Special Counsel's Southern District of Florida prosecution of President Trump is scheduled for December 11, 2023—the same day the Special Counsel proposes jury selection begin in this matter. Ex. G.[15]

[15] Co-counsel in this matter, Todd Blanche, also represents President Trump in the Southern District of Florida and New York state court criminal matters.

Without question, President Trump's obligation to diligently prepare for this case does not end because of other pending matters. However, the Court may, and should, consider the practical effects these parallel prosecutions will have on President Trump's ability to meet the extraordinarily brief deadlines the government proposes. *See, e.g.*, *United States v. Schardar*, 850 F.2d 1457, 1459 (11th Cir. 1988) (noting "several continuances were granted because defense counsel was involved in other trials"); *United States v. Randall Everette Tennyson*, No. 2:21-CR-364-ECM, 2022 WL 686619, at *1 (M.D. Ala. Mar. 8, 2022) (granting continuance to provide additional preparation time in light of counsel's simultaneous preparation for state court trials).

Once again, the government's proposed schedule does nothing to address these significant concerns; our Proposed Schedule resolves them. Accordingly, the Court should adopt the Proposed Schedule.

CONCLUSION

The Proposed Schedule appropriately balances President Trump's constitutional and statutory rights to counsel and a fair trial with the public's need for promptness. The Proposed Schedule is further consistent with ordinary order and resolves significant conflicts presented by CIPA and other pending prosecutions. Accordingly, the Court should determine that the ends of justice outweigh the interest of the public and the defendant in a speedy trial, adopt the Proposed Schedule, and exclude time through April 1, 2026.

Dated: August 17, 2023

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	No. 23-cr-257-TSC
v.	
DONALD J. TRUMP,	
Defendant.	

RESPONSE IN OPPOSITION TO
GOVERNMENT'S PROPOSED TRIAL CALENDAR

Ex. A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	.	
	.	
Plaintiff,	.	CR No. 23-0257 (TSC)
	.	
v.	.	
	.	
DONALD J. TRUMP	.	Washington, D.C.
	.	Friday, August 11, 2023
Defendant.	.	10:00 a.m.
. . . . .		

HEARING ON PROTECTIVE ORDER
BEFORE THE HONORABLE TANYA S. CHUTKAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	THOMAS WINDOM, ESQ. MOLLY G. GASTON, ESQ. U.S. Attorney's Office 601 D Street NW Washington, DC 20530
For Defendant:	JOHN F. LAURO, ESQ. GREGORY M. SINGER, ESQ. Lauro & Singer 400 North Tampa Street 15th Floor Tampa, FL 33602 TODD BLANCHE, ESQ. Blanche Law 99 Wall Street New York, NY 10005
Court Reporter:	BRYAN A. WAYNE, RPR, CRR U.S. Courthouse, Room 4704-A 333 Constitution Avenue NW Washington, DC 20001

Proceedings reported by stenotype shorthand.
Transcript produced by computer-aided transcription.

P R O C E E D I N G S

THE DEPUTY CLERK: Good morning, Your Honor. This is Criminal Case No. 23-257, United States of America versus Donald J. Trump.

Counsel, please approach the lectern and state your appearances for the record.

MR. WINDOM: Good morning, Your Honor.

THE COURT: Good morning.

MR. WINDOM: Thomas Windom and Molly Gaston for the United States. With us at counsel table is FBI Special Agent Jamie Garman.

THE COURT: Good morning.

Who will be speaking for the government this morning?

MR. WINDOM: I will, Your Honor.

THE COURT: All right. Thank you.

MR. LAURO: Good morning, Your Honor. Nice to meet you.

THE COURT: Good morning.

MR. LAURO: John Lauro on behalf of President Trump. With me is Todd Blanche, my co-counsel, and also my partner, Greg Singer.

THE COURT: Good morning.

And who will be speaking for counsel this morning?

MR. LAURO: I will.

THE COURT: All right. Just so you know, because we're

going to be working through this, you all are free to remain at counsel table and seated if you want, just as long as you speak into the microphone so my court reporter can hear you. Even if I can hear you, if you're not on the microphone, he cannot, and he's got to keep the record. So you're welcome to stay at counsel table rather than hop up and down. It's totally up to you.

All right. We are here for a hearing regarding the parties' proposed protective orders in this case. The government has moved for imposition of a protective order in ECF No. 10, which is frequently used in criminal cases to ensure that certain information that the government shares with the defense is not disclosed to the public.

The defense has objected to the government's initial proposed order, and the government then proposed a second order to which the defense also has objections. The parties have been unable to so far resolve those objections and reach agreement on their own, and so I decided to schedule this hearing to work through those objections one by one.

And I want to thank the parties for making themselves available on such short notice. I know initially I said I wasn't available on Friday, and then I became available. So I really appreciate that because, as you all know, the government can't turn over discovery until there's a protective order in place, and so it's imperative that this be resolved

promptly so that discovery can be disclosed and the case can move forward in the regular order.

So a brief word about briefing schedules. Under Local Criminal Rule 47(b), a party may oppose a motion within 14 days of the date of service or at such other time as the Court may direct.

Likewise, under rule 47(d), the default deadline for replies in support of a motion is seven days after service of the memorandum in opposition; however, I routinely depart from the default 14- and 7-day time limits, as do many of my colleagues, when it serves the interest of justice and efficiency.

With respect to the government's pending motion, for instance, I determined that a shorter briefing schedule deadline was appropriate given the relative brevity of the proposed protective order and the need to proceed with discovery in this case. There may well be other instances and times in this case where my briefing schedule is shorter or longer than the one prescribed in our local rule.

And so now I intend to resolve the parties' objections by going through defendant's redline to the government's proposed order one by one as they're set forth in ECF No. 14, which is Exhibit A. There's a few minor differences between A and B, but I thought A best...

So I am prepared to rule immediately on some of the revisions. For others, I will have some questions. I will have

some questions of counsel before I make my decision, and after this hearing it's my intention to issue a protective order consistent with today's rulings as quickly as possible.

So Federal Rule of Criminal Procedure 16(d) provides that at any time the court may, for good cause, deny, restrict, or defer discovery or inspection or grant other appropriate relief.

Under binding D.C. Circuit precedent in *United States v. Cordova*, 806 F.3d 1085, 1090, the burden of showing good cause is on the party seeking the order, and among the considerations to be taken into account by the court will be the safety of witnesses and others, a particular danger of perjury or witness intimidation, and the protection of information vital to national security.

Relatedly, I must also comply with what the Supreme Court has said is my affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity, and that's from *Gannett Co. v. DePasquale*, 443 U.S. 368. The Supreme Court noted that after the commencement of the trial itself, inadmissible prejudicial information about a defendant can be kept from a jury by a variety of means. When such information is publicized before the trial, however, it may never be altogether kept from potential jurors.

As a result, the Supreme Court stated in *Alderman v. United States*, 394 U.S. 165, 185, that the trial court can and should, where appropriate, place a defendant and his counsel under

enforceable orders against unwarranted disclosure of materials which they may be entitled to inspect.

Mr. Trump, like every American, has the First Amendment right to free speech, but that right is not absolute. In a criminal case such as this one, a defendant's free speech is subject to the release conditions imposed at arraignment and must also yield to the orderly administration of justice, especially with respect to disclosure of materials obtained in discovery.

Without a protective order, a party could reveal information that would taint the potential jury pool, result in the harassment or intimidation of witnesses or parties in the case, or otherwise prevent a fair trial.

Accordingly, I'm going to review each disputed portion of the proposed orders today to ensure that they are consistent with the defendant's rights and the integrity of the judicial process — in other words, that there is good cause for the order that I'll issue.

So I want to begin with what is perhaps the parties' biggest disagreement: the scope of the protective order. The government proposes that the order govern all discovery material that it turns over to the defense. The defense proposes that the order govern only the materials that the government designates as sensitive. This disagreement is reflected throughout Defendant's Exhibit A, but the most relevant paragraphs are paragraphs 1 and 2.

So here I have some questions for you, Mr. Windom. In your motion, you stated that there was good cause shown -- excuse me -- that there was good cause for your proposal, and I quote, "because issuance of the government's proposed order would expedite the flow of discovery in this case, give the defendant prompt access to a large portion of the discovery he ultimately will receive, and protect the highly sensitive categories of material."

But I don't see why those same goals wouldn't be served by the defense proposal. So can you explain why you think there is good cause to cover all discovery materials rather than just sensitive materials? And I have a couple of follow-up.

MR. WINDOM: Yes, Your Honor. Thank you.

So that is the kind of larger philosophical difference between the government's proposed order and the defendant's proposed order. The government wants the protective order to cover all discovery. The defense only wants it to cover sensitive discovery.

THE COURT: Right.

MR. WINDOM: On this issue, in addition to the line from our motion that you read, in the paragraph underneath that it also talks about preventing the improper dissemination or use of discovery materials including to the public.

So the larger basis here is that, under the government's proposed order, it really follows three overlapping bases for

good cause. The first one is to ensure that the purpose of discovery is for the fair and efficient adjudication of the court in the courtroom as opposed to in the public.

The second is that, consistent with the Advisory Committee explanation for the purpose of the rule, it is to safeguard witness security, to prevent intimidation of the witnesses, to prevent harm to reputation or dignity of the witnesses, and to prevent personal information from being released, in addition to the third overlapping piece, which, as Your Honor noted, is the Court's affirmative duty to prevent prejudicial pretrial publicity.

Those are the overlapping three core objectives at which our protective order is aimed and which is, in some respects, different than what the defense has proposed.

The defendant's proposal specifically is tailored to permit them to try this case in the media. This is something that Your Honor, in the Rule 57.7 hearing in the *Butina* case, noted was an improper purpose, to try the case in the media.

Here, the defendant is asking for the Court's blessing to be able to use criminal discovery for political purposes. That is not a proper use of discovery. And what is, I think, telling is that the defendant's proposed order and the defendant's arguments do not actually indicate any way in which the government's proposed order hinders the defense's use of discovery material in defense of this case in the

courtroom.

THE COURT: I hate to interrupt you, Mr. Windom, but all that may be so, but how is that explaining why all of this material is both sensitive and nonsensitive? So my question really goes to what is the good cause shown for subjecting the nonsensitive material to the order.

MR. WINDOM: There is some sensitive material, a great amount of sensitive material that we would designate, and there's some nonsensitive as well.

THE COURT: Right. It's the nonsensitive I'm interested in.

MR. WINDOM: Yes, ma'am.

The nonsensitive falls within the exact same rubric that I just laid out. Even if it's nonsensitive, it still may be inadmissible, it may still be irrelevant, but it may be sensational. It may be something that is used by the defense or the defendant to pollute the jury pool, whether purposely or not.

The information the defense has set forth, both in the defendant's own posts and the defense counsel's statements on the Sunday shows last weekend, the defendant has set forth an intention to publicly disseminate any information that they deem, quote, "informative" is what the defense counsel said.

THE COURT: Well, defense has a First Amendment right to -- within limits, to speak about the case. What I'm

interested in is the Circuit says I have to enunciate good cause for protecting information, and certainly there's no -- I don't see any problem with the sensitive information.

Well, let me ask you this: What percentage of the discovery, if you can just give me a rough estimate, is nonsensitive?

MR. WINDOM: Giving you an estimate, Your Honor?

THE COURT: Yes. You said a "small amount."

MR. WINDOM: Yes, ma'am. I would say that the vast majority would be designated as sensitive within the government's definition of "sensitivity." Obviously, that's an issue of dispute between the parties, but I would say the vast majority. It's hard to give a percentage, because some of the discovery material may already be in the defendant's -- he may have the right to access that material otherwise.

THE COURT: But that's the sensitive material. Nonsensitive is what I'm focused on.

MR. WINDOM: Yes, ma'am.

For the nonsensitive material that the government intends to produce, there is some, obviously, nonsensitive material, which is a fairly small amount. Then there is another bucket of material which may be up to a quarter of the government's first production which we need to consult with defense counsel on because the defendant may have the ability to actually access that information other than us giving it to him.

THE COURT: And would that be sensitive or nonsensitive information under the definition as set forth in the protective order?

MR. WINDOM: Sure. Under the definition, assuming that the defense can affirm in writing that they otherwise are able to access that information, we would not consider it sensitive. We're talking about information specifically from the defendant's campaign entities or PAC entities.

THE COURT: All right. So if I understand what you're saying, your position is it's even the nonsensitive information could be used for witness intimidation or reputational damage or -- I mean, if so, why wouldn't it be sensitive, I guess?

MR. WINDOM: It would not be sensitive within the definitions we have laid out, but it still could be produced in discovery. And then Your Honor mentioned the First Amendment right.

As you know, and as you quoted from *Seattle Times*, there is simply a different calculus when it is discovery that is used in a judicial proceeding. There is much less of a First Amendment issue, and the only thing the court needs to look for, as you've said, is the good cause standard.

So I would just go back to the three animating principles they provide for protection for all of the discovery material for the government, both sensitive and nonsensitive. The main thing is -- well, it's all important, but as Your Honor said,

there is the potential of damaging reputations of witnesses, depending on what the nonsensitive information is. It doesn't simply need to include PII in or a witness's statement in order to potentially damage the witness's reputation.

But secondly, the larger issue here is the defense has broadcast their strategy; and that is not to try this case in this courtroom, and the Court should address that with this protective order.

THE COURT: I intend to, but my task here is somewhat narrower.

MR. WINDOM: Sure.

THE COURT: And it really focuses on how much -- you know, I don't want this order to be overinclusive.

MR. WINDOM: Yes, ma'am.

THE COURT: In other words, I don't want to just issue a blanket protective order over information that is not sensitive. But if you're talking about a small amount relative to what's being turned over, or if you can enunciate good cause, because that is what I have to find.

And, certainly, if I decide to have two categories and not have the nonsensitive information subject to the protective order, you can always go over the nonsensitive and consider if you need to designate it as sensitive. Isn't that right?

MR. WINDOM: That is right. I will put out an additional implication for the fair and efficient

administration of this case and getting this case to trial, which I think is an important consideration.

THE COURT: Oh, I agree.

MR. WINDOM: Should the Court -- the government has a blanket approach. The defense has the sensitivity designation or not, or simply outside the protective order. Should the Court go with the defense's approach, I anticipate that there will be never-ending battles over sensitivity designations, and perhaps every week we might be before the Court in order for the defense to raise an objection as to the government's sensitivity designation.

THE COURT: But if the amount of material you're describing as nonsensitive is relatively small -- I mean, I suspect we're going to be having disagreements about a lot of things in this protective order, but if the nonsensitive material you're describing is relatively small, that is a limited amount of disagreement we could have, isn't it?

MR. WINDOM: I think it's the flip, Your Honor. Since the sensitive amount is so large, under the government's order, if the government produces it in discovery, the defense simply cannot use it on the weekend shows. If the government -- if the Court goes to the defense's proposed order, then there will be the squabbles over what is sensitive --

THE COURT: Isn't that going to happen in any event? If I go with your request and designate it all as sensitive,

can't the defense come to me through motion and say, we believe this document is not sensitive? Isn't that going to be the case anyway?

MR. WINDOM: The defense could do that, Your Honor, but it would still be covered under the protective order and would not be permitted to be publicly disseminated.

THE COURT: Until I ruled otherwise.

MR. WINDOM: Unless you ruled otherwise under paragraph 16 of our proposed protective order.

THE COURT: Okay.

MR. WINDOM: The other thing to consider here that the government will attempt to lay out, this is a decision today to address what the Court sees as good cause and the best interest of this case and the fair administration of justice. Should it prove unworkable for some reason, paragraph 13 permits a modification; paragraph 16 permits document-specific adjudication by the Court.

So, for those reasons, the ones that we've set forth as our animating principles for all discovery, sensitive or not, and the potential for what the government believes to be endless litigation over sensitivity designation — so it's whether it's in or outside of a protective order — the government believes that the Court should enter our proposed protective order.

THE COURT: Thank you, Mr. Windom.

Mr. Lauro?

MR. LAURO: Yes, Your Honor.

I think you hit the nail on the head.

THE COURT: That may be the last time you say this for a while.

(Laughter)

MR. LAURO: I doubt it, Your Honor.

But truly, this kind of blanket order is extraordinary. The government has the ability to separate out sensitive and nonsensitive information. We have to face the fact that we are in uncharted waters here, where we have a presidential candidate running for office, and his opponent has the Justice Department bringing criminal charges against him. And in this situation, certainly President Trump has the right to respond and speak about these issues.

What we're asking for is for the government to show good cause as Your Honor has designated those items under Rule 16 as well as the case law. Extrajudicial speech, or public speech, is not one of the good-cause factors Your Honor described.

THE COURT: It is a good-cause factor if that extrajudicial speech causes witness intimidation or harassment or interferes with -- I mean, it must always yield. And so what the defendant is currently doing -- you know, the fact that he's running a political campaign currently has to yield to the orderly administration of justice. And if that means

that he can't say exactly what he wants to say about people who may be witnesses in this case, that's how it's going to have to be.

MR. LAURO: And that's a different issue, though, than a Rule 16 protective order, I believe, because --

THE COURT: But isn't a protective order under Rule 16 designed to protect the harassment or intimidation of witnesses or the dissemination of information that is sensitive?

MR. LAURO: Sure. It's directed if there is some cognizable harm or identifiable harm to a particular witness or an issue of perjury. Here we don't have that.

THE COURT: Well, Mr. Lauro, what about talking about a potential witness to a nationwide, or potential worldwide, audience and denigrating that witness? Isn't that the kind of -- isn't that the kind of situation that the protective order is designed and Rule 16 is designed to prevent?

MR. LAURO: Your Honor, you may have Mr. Pence in mind? Is that your concern?

THE COURT: Any witness.

MR. LAURO: All right. Well, obviously, on the campaign trail, since the prosecutors decided to bring this case in the middle of the campaign, President Trump has the ability to respond fairly to political opponents, and that's the problem with the way this order is structured.

THE COURT: The defendant's desire to conduct a

campaign, to respond to political opponents has to yield. Do you disagree with that, that there are limits regardless of what is going on in -- you know, I hate to say -- his day job?

I mean, this is a criminal case. The need for this criminal case to proceed in the normal order and protect witnesses and the integrity of the process means that there are going to be limits on the defendant's speech.

MR. LAURO: I can assure you that my client will abide by the integrity of the process, but he also can't be subject to some kind of a contempt trap, which this really is.

THE COURT: I think you're going -- I mean, nobody's talked about contempt. What we're talking about now are the parameters of this order, and the parameters of the order that we're all considering means that there are certain things, if they have an impact on the administration of justice or on witnesses, can't be said regardless of what endeavors the defendant is currently engaged in.

MR. LAURO: No one disagrees that any speech that intimidates a witness would be covered by this order and prohibited. What we're talking about, though, is the fair use of information. For example, if my client has a memory of a certain event that occurred and wants to speak publicly about it in the course of a campaign, he's certainly entitled to do that.

THE COURT: Not if that memory ends up containing

information that would intimidate a witness. It always has to yield to the fact that there are pretrial release conditions and a protective order will be in place.

MR. LAURO: And he'll abide by that, obviously, and has abided by it. But my concern here is that the first obligation is on the government, under Rule 16, to establish what's sensitive and what's not sensitive.

THE COURT: So let's go back to that, because we're kind of painting with a very broad brush here. Let's go back to the designation.

Is it your position that with regard to the nonsensitive information, that your client can say whatever he wants to say about the nonsensitive information?

MR. LAURO: No. Subject to the limitations that you've described, he has to abide by the rules of this court. Certainly, he has First Amendment rights, but in no way am I suggesting that any client could ever intimidate a witness or use that information. But we are in the middle of a campaign, and the way this order is structured, it would provide an enormous advantage to President Biden in the middle of a campaign, and that's my concern. It really --

THE COURT: What the effects of my order are on a political campaign are not before me and are not going to influence my decision here. This is a criminal trial. This is going to be a criminal trial brought at the time that the

government decided to bring the charges and they decided they were ready to bring charges. I don't have any control over that. But I cannot, and I will not, factor into my decisions the effect it's going to have on a political campaign for either side.

MR. LAURO: Although, Your Honor, one of the good-cause factors requires you to do the balancing that you described.

THE COURT: Of course.

MR. LAURO: And one of those is the impact on the defendant when you enter this order, and I think, as a result of that, the Court has to balance the factor and the impact on a defendant --

THE COURT: Mr. Lauro, your client has not seemed to have had any trouble talking about the prosecution of this case for some time and the investigation that he's been under for some time, and the protective order, in many ways, would not infringe on his right to talk about that.

MR. LAURO: And then we have no problem, if he can speak the way he's been speaking.

THE COURT: So let's go back to the sensitive versus nonsensitive designation. What would be the burden on the defense if I designated all materials, sensitive and nonsensitive, as subject to the protective order, to the defense simply moving to exempt certain documents? I mean, I suspect we're going to be dealing with discovery disputes

occasionally.

MR. LAURO: It would be a massive burden, Your Honor.

THE COURT: Tell me how.

MR. LAURO: Especially when they can designate sensitive versus nonsensitive information. We looked at all the Rule 16 orders that have been added on J6 cases. We haven't seen a single one that resembles this type of order in terms of breadth. I'll give you a practical example.

They designate all examples of testimony or interviews or videos as being sensitive, and they require us, as counsel, to sit with our client in the same room while our client reviews that material.

THE COURT: I'm going to get to that.

MR. LAURO: Okay.

THE COURT: I'm going to get to that.

MR. LAURO: But that's just one example of how over-burdensome that is. And the other issue is --

THE COURT: But that material is already designated as sensitive. I'm not inclined -- I'm not hearing a request to say that that material is not included in the sensitive designation. What I'm talking about is the nonsensitive. In other words, are you saying that those witness interviews should not be designated as sensitive?

MR. LAURO: Absolutely they should not be designated --

THE COURT: Okay. I'm going to get to that.

MR. LAURO: -- unless the government can come up with good cause as to why. But I think, as you've seen under Rule 16 in your experience and the orders that you've entered, the burden should be on the government --

THE COURT: It is.

MR. LAURO: -- first to designate what's sensitive and what's not sensitive. The nonsensitive material is subject to the regular rules of the Court that we all have to abide by in terms of what we can say and what we can't say about it.

But that nonsensitive information should not restrict, under the Sixth Amendment, our ability to represent our client and our ability to have an opportunity to discuss these issues with our client, but also not be required to sit in the same room as we go over a massive amount of documents in this case.

THE COURT: Well, again, I'll get to that.

MR. LAURO: I know we'll get to that. But, really, the burden is on the government under Rule 16, and here they're trying to switch it. They're trying to say the burden is on President Trump's team when it's not. It really has to be something that the government has to go through and provide good cause. These kinds of blanket orders really present an enormous problem here as well because of the ambiguity in this order.

The risk is that someone can say something in the course of a heated debate or heated campaign, and they're going to throw

a flag and say, No, wait a minute, somewhere in the bowels of discovery there was something that mentioned what you just said, and therefore you're in violation of this order. And then we're off to the political spectacle of President Trump in violation of the order. All of this, Your Honor, unfortunately, has to be understood in context under the microscope of how the government decided to proceed.

And I will say one other thing. Everything that we do here now is under a microscope -- a political microscope, unfortunately -- because of the result of what the government has done. And I understand our requirement, and we will obey Your Honor's direction 100 percent --

THE COURT: I'm glad to hear that.

MR. LAURO: -- and not ever deviate from what Your Honor directs us to do. But there has to be fair play here. All we're asking for is fairness in terms of how we handle this discovery. We don't even know the magnitude of the discovery yet. They haven't even described it for us. Is it one terabyte? Is it three terabytes?

But the bottom line is we need something that's workable, that isn't ambiguous, that doesn't intrude on the attorney-client privilege, that affords my client the due process rights that he's entitled to in the context of a campaign. We can't ignore the fact that it's a campaign.

THE COURT: I intend to ensure your client is afforded

all the rights he's entitled to. I reiterate that the existence of a political campaign is not going to have any bearing on my decision other than, you know, any other lawyer coming before me saying that my client needs to be able to do his job. I will always, obviously, factor it in, but I intend to keep politics out of this.

And, Mr. Windom, since you have the burden, I'm going to let you to respond to Mr. Lauro.

Did I cut you off?

MR. LAURO: No. Absolutely not.

Your Honor, just in sum, the factors that are at issue here is whether or not the government can show good cause with respect to witness intimidation or perjury. We'll put national security aside because there's no question, no issue there. But they haven't done that yet. They haven't done that in terms of any cognizable or nonspeculative harm that exists.

THE COURT: As to the nonsensitive.

MR. LAURO: Exactly.

THE COURT: I keep trying to come back to the paragraph.

MR. LAURO: I understand your difference. And, Your Honor, that's our difference. That's why we wanted the order to separate out sensitive from nonsensitive and put the burden on the prosecutor to come up with what's sensitive at an initial blush.

Now, if they put something in the sensitive bucket, we can argue that it shouldn't be. But in fairness, they should have the first obligation to do that and not have this blanket assertion.

And one other point that I need to make on paragraph 1 before I forget, if I may, Your Honor, it says, "The order does not apply to records," and we should add "or information." "Records or information." Because that covers the *Seattle Times* issue where a client who is subject to a protective order may have some information from prior that's not connected to the discovery process.

THE COURT: Well, isn't that covered by another paragraph?

MR. LAURO: It's not, really, and we just wanted to make that clear in paragraph 1.

THE COURT: Okay.

MR. LAURO: But I think Your Honor knows our concerns in terms of a blanket order. We think it's much more practical and much more in accordance with the way that this Court has handled these orders, is to have the burden on the government at first issue.

THE COURT: Well, they always bear the burden when they move for the order. So I'll hear from Mr. Windom in response, and then I'll rule.

MR. LAURO: Yes.

MR. WINDOM: Thank you, Your Honor.

The government is happy to accept its mandates to bear the burden for good cause here. The defense counsel's made a bunch of comments that are obviously political in nature here in this courtroom. I'm not going to address those.

What I will say is that it is emblematic of what the defendant has done even more recently, since we filed a week ago, in posting things about potential witnesses in the case. Counsel also has made no secret about what his intention is. The good cause here is in order to, among what I already have said, to prevent pollution of the jury.

THE COURT: I really want you to focus -- I mean, we're just -- this is the first thing. We have a number of things to discuss, and I really want you to focus on the sensitive versus nonsensitive difference and whether it should all be subject to the order.

MR. WINDOM: Yes, ma'am. And the government's aim here is to prevent the use of any material produced in discovery for purposes of harming the jury pool, whether it's sensitive, whether it's nonsensitive. The aims control, the objectives control, regardless of the designation.

THE COURT: I agree. But you still have to show good cause for the nonsensitive. That's really what I'm trying to home in on.

MR. WINDOM: Yes, ma'am. And I cannot be more specific

than they have identified what they intend to do with it. Even if it is nonsensitive material, it still has the potential to pollute the jury pool. It still has the potential to intimidate witnesses, to damage witness reputation.

And I would say that this is not -- the defense has said this is some sort of extreme thing that the government's reaching for here. The defense agreed to these same protections in the Southern District of Florida not two months ago. The Court has entered an order with the same broad brush of covering all discovery in the *Butina* case in addition to the handful of cases that the government mentioned here in its brief.

THE COURT: I think the differences with the *Butina* case, which now seems so small and quiet, is that there was no argument from the defense there that the defendant in that case needed to speak, and we have a different situation. As I said to Mr. Lauro, the fact that there's a political campaign going on is not going to influence my decision one way or the other. But I do have to weigh the defendant's -- all limitations on a defendant's First Amendment rights.

And I would point out that even without the protective order, the defendant is -- Mr. Trump is subject to pretrial release conditions, which also prevent him from interfering with the orderly administration of justice and engaging in

behavior that could harass or intimidate a witness, because the release conditions are also there.

MR. WINDOM: That's also correct. What the protective order does is to prevent -- is to limit the amount of information and data that the defendant would be able to use in the event he wants to go after a potential witness.

THE COURT: And so the statement that you used where the defendant posted something about the former vice president, for example, that's not really -- that really wouldn't be covered, right, because that's not really information. That's covered under his conditions of release.

Isn't that right? I mean that's not from information that would be turned over in discovery. That's behavior that may be affecting his conditions of release but not really implicated on the protective order.

MR. WINDOM: That's correct. However, once the defendant receives discovery, if he says something that clearly he got from a transcript or from another document --

THE COURT: Well, we'll get to it, but a transcript may be designated as sensitive, so it's subject to the order. I'm really trying to determine if I need to subject the nonsensitive information to the order, and that's where I keep getting a lot of broad arguments. But I'm not --

MR. WINDOM: Sure. And it's a little hard to speak in the abstract, which is why --

THE COURT: I know.

MR. WINDOM: In addition to the overriding principles that the government has laid out, I guess I would say two other things.

First, in paragraph 1 of the proposed protective order, the government's order is appropriately limited. It does exempt information that is public. It does exempt information that the defendant or defense counsel come into possession of by independent means unrelated to the discovery process.

So we are talking about -- in terms of the nonsensitive versus sensitive, we're talking about a relatively small percentage of discovery. But nonetheless, the concern is that the defendant will still use that in order to affect the fair administration of justice to the extent that there is -- once we get the ability to be more granular, once discovery is produced, to the extent that there is an issue where there is a strong defense reason to rebut the government's good cause that we have set forth, the defense can come back to the Court.

THE COURT: All right. Thank you.

MR. WINDOM: Thank you, Your Honor.

THE COURT: It is close. But as I said, there are release conditions, and the government has an opportunity to, before turning over discovery once the protective order is issued, to go over its materials and add sensitive designations.

So, at this point, I am not persuaded that the government has shown good cause to subject to the protective order all the information in this case, and therefore I will adopt the defense'S revised scope. The protective order will govern only materials that the government designates as sensitive. At this stage, as I said, I haven't -- I'm not persuaded.

I will tell you, Mr. Lauro, that as I just said to Mr. Windom, the defendant is also covered by conditions of release, and all his behavior and statements are governed by those conditions of release.

So, regardless of whether statements are made that are derived from the discovery or not, if they are made and they have an effect on the administration of justice or have the effect of intimidating or causing harassment to a witness, I will be scrutinizing them very carefully.

All right. The remainder of the disputes about the protective order are largely confined to the defense's discrete edits in the particular paragraphs. So, as I said, I'm going to go through them in sequence as they appear in Exhibit A to defendant's opposition brief in ECF No. 14, beginning with paragraph 1.

I cannot accept the defense's edit that would exempt from the protective order any records that -- and I guess you would -- that would exempt from the protective order any records that, in quotes, "become publicly available."

Discovery materials could become publicly available through any number of ways, some improper. I am not willing to automatically allow the parties to disclose or confirm any materials just because, for instance, someone else manages to access and disseminate that information. So I'm not going to go for that edit, and the government language will stay.

Instead, I will retain the government's proposed language which exempts only records that are publicly available independent of the government's production. If certain records that are not publicly available now become so during the course of these proceedings, the defense may move to modify the protective order to exempt them.

Next we move to paragraph -- we're still in paragraph 1. I also cannot agree to the defense's other proposed edit to paragraph 1 which would exempt records which the defense came into possession by means other than government production.

As the government points out in its reply, that would allow the defense to subpoena sensitive information learned through discovery and then disseminate those materials, and I don't want that to happen. So I will therefore retain the government's proposed language which exempts only records that the defense obtains by independent means unrelated to the discovery process. I move now to paragraph 3.

MR. LAURO: Your Honor, if I may?

THE COURT: Yes.

MR. LAURO: I don't mean to interrupt.

Will the Court adopt our request that it should be "records or information" to cover the *Seattle Times* issue?

THE COURT: In paragraph 1?

MR. LAURO: In paragraph 1, yes.

THE COURT: Mr. Windom?

MR. WINDOM: The government has no objection to that, Your Honor.

THE COURT: I will.

MR. LAURO: Thank you, Your Honor.

THE COURT: Okay. Paragraph 3. The defense proposes broadening the definition of authorized persons who can view the protected materials to include not only persons employed to assist the defense, but also to any persons assisting the defense in any capacity, and I quote, "including any attorneys, investigators, paralegals, support staff, consultants, or expert witnesses who are advising or assisting defense counsel."

I am not comfortable with that broad a definition which could include just about anyone and would significantly heighten the risk of unauthorized disclosure. So I'm not going to alter that definition. I do note, however, that the parties' briefing suggested that the defense might be amenable to drafting a narrower definition to which the parties could agree.

Did you have a proposed alternative, Mr. Lauro?

MR. LAURO: We could submit one, Your Honor. Yes.

THE COURT: And, obviously, submit it to the government first because, to the extent that there's anything that is unopposed, I'm going to treat it much more quickly than I would if it's opposed. So I would appreciate it if you would do that.

MR. LAURO: Your Honor, may I speak to that issue, though?

THE COURT: Yes.

MR. LAURO: I'm assuming and want to represent to the Court that anyone on our team who has access to any discovery will be given a copy of this order, and we will require them to abide.

THE COURT: Actually, I'm going to get to it, but I'm going to add a provision that neither party had mentioned, that they sign a document.

MR. LAURO: Yes. And we understand that.

But one thing we want to be able to do, obviously, is as we build our team with this incredibly large case, to be able to have, you know, consultants and others who are working under our direction or with us, including in some instances people who volunteered to be volunteer lawyers and volunteer paralegals to assist us. They'll all be subject to this rule and subject to Your Honor's order.

This is a massive case, and it's impossible to get ready

under the terms that the government is seeking, which is in early January, without the kind of staff -- the special counsel, as I understand it, has over 60 lawyers and investigators working on this. We have a relatively small group here.

THE COURT: I understand.

MR. LAURO: And it's an impossible task unless we're able to enlist the help of people who are willing to abide by Your Honor's ruling, abide by this order, abide by the rules of the court, but who want to provide assistance. In order for us to defend this case, we have to have more help and more manpower beyond just the lawyers working on it.

THE COURT: I understand that. And no one is more aware than I that you and your team are defending Mr. Trump in more than one jurisdiction at the same time. I'm aware of that. Notwithstanding that fact, and the need for you to obtain assistance, there's a process. I cannot accept a definition that would basically let anyone, including, I might note, individuals who may be unindicted co-conspirators, to assist and to have access to this material without leave of court.

If there is a lawyer or legal personnel, you know, a paralegal or lawyer or consultant that you want to have assist you, then that person needs to fit the definition and be subject to the protective order, and the definition you have

currently is simply too broad. It allows just about anybody -- you know. I live in Washington. Everyone is a consultant.

(Laughter)

MR. LAURO: That may be, Your Honor, but not anyone would be operating under the direction of counsel and subject to the order. And if the government would like, they can give us a list of co-conspirators. Obviously, we would --

THE COURT: I'm sure you would like that, but I don't think they're ready for that yet.

MR. LAURO: Yeah, we can exclude those. But to basically disable us from having consultants or volunteer lawyers working on the case would hamstring us in an incredible way. In every large case I've had, and I'm sure Your Honor has had, there have been consultants, trial consultants, third parties that assist in the accumulation and processing of documents --

THE COURT: But those people are usually employed by the defense. They are people who are subject to, you know, all -- they're officers of the court. They are people who are subject not only to your supervision, but they must abide by the rules of this case.

But volunteers? I mean, you're asking for such a broad definition that it makes me very concerned, and I just cannot have it this open-ended and this broad a definition.

MR. LAURO: These outside consultants are often

employed by the client, or paid by the client. They're under my supervision, but I don't pay all the consultants.

THE COURT: The payment is less troubling to me than the broadness of the definition. I mean, I hear you and I understand your need to have assistance, but that -- I think allowing your definition would basically allow almost anyone to just sort of come in, and it would increase the chance and the possibility that information subject to the protective order would be improperly disseminated. But I'll hear Mr. Windom on this.

MR. LAURO: And, Your Honor, if we could submit, perhaps, alternative language. But I just want to make clear that anybody who sees any discovery in this case, it will be at my direction and co-counsel's direction. It will not be done in a haphazard --

THE COURT: Anybody who sees any discovery in this case has to sign a document indicating that they understand and are bound by the protective order.

MR. LAURO: We're fine with that, Your Honor.

THE COURT: Okay. Well, I'm not going to accept the language as you proposed. As with this order, it is subject to modification. If there's alternative language that you want to meet and confer with the government about, I'll hear you further down. But as it stands right now, I am not going to -- I'm going to leave the government language in. I'm not

going to change it to the language that you propose, at least in your motion. Mr. Windom?

MR. WINDOM: I don't need to be heard, Your Honor.

THE COURT: Sometimes it's good to just -- yeah, move on. All right.

Paragraph 4, which is the exception for generalized mental impressions. The government does not object to the defense's proposed exception to paragraph 4 for generalized mental impression, so I will accept it.

With regard to paragraph 5, agreement in writing, I will make one minor edit, as I said, that has not been requested by either side, which paragraph 5 provides, that all authorized persons must be provided with a copy of the protective order and agree to abide by it. And I am going to add that such agreement must be in writing.

Paragraph 6, exception for work products, etc. The government does not object to the defense-proposed exception to paragraph 6 for work product, notes, or other documents reflecting the content of protected materials. And I agree that that edit is appropriate, so I will accept it.

In paragraph 7, the defense proposes a similar exemption from the protective order for any records that become publicly available. For the reasons I discussed earlier, I will not add that language here. So that I will not add that edit, and that is for the reasons that I discussed in the information

that may become publicly available.

So next paragraph, 8(e). The defense proposes two changes to the definition of sensitive materials in paragraph 8. In paragraph 8(e), they replace "recordings, transcripts, interview reports, and related exhibits of witness interviews" with "information regarding the government's confidential sources or which may jeopardize witness security."

The government states that the defense definition would allow disclosure of discovery transcripts and audio recordings of witness interviews conducted outside of the grand jury process.

Let me ask you, Mr. Windom, the transcripts and audio recordings that you're concerned about that are not from confidential sources -- well, are the transcripts and audio recordings that you're concerned about not from confidential sources? Because if they are, wouldn't they be covered by the defense's proposed language?

MR. WINDOM: They would be covered by the defendant's proposed language, but let me give you a sense as to what we're talking about.

THE COURT: Okay.

MR. WINDOM: During the course of this investigation, it was the government's general practice to audio record witness interviews conducted outside of the grand jury. Those fall into interviews that occurred in preparation for grand jury. They fall into separate interviews conducted outside of

the local area. They fall into interviews that occurred at our office. There are hundreds of recordings of witness interviews.

What is or is not a confidential source, it's hard to say when you're simply talking about a percipient fact witness, for example, to the defendant's criminal conduct. Our approach is much cleaner.

It will prevent -- it is the functional equivalent of a grand jury transcript taken outside of a grand jury setting, and what it will prevent is what defense has forecast it's going to do. It will prevent the defendant from putting a post out and attaching a three-second snippet of an audio recording. It will prevent the defendant from putting out a Metro billboard with a quote or sending out a mass mailer targeted to the D.C. jury pool. It will prevent the defense from systematically and scientifically generating the grounds for a Rule 26 motion for change of venue. It will prevent the pollution of the jury pool.

That is the import of the government's proposed order with respect to that subparagraph.

THE COURT: Are there other materials you're concerned that the defense's proposed language would exclude?

MR. WINDOM: So the government's proposed language covers all of the transcripts and recordings. The defendant's proposed language, we would construe it broadly. We would

have to designate all of those transcripts should the Court decide to go with the defense here. But I anticipate that it would result in protracted weekly litigation over which sentence of which transcript that the defendant finds favorable that it wants to put out, you know, on the Sunday shows or put through a surrogate. Ours is much cleaner and straightforward and more efficient for this court.

THE COURT: Okay. Mr. Lauro?

MR. LAURO: Yes, Your Honor. Once again, it's too broad of a brush. For example, let's assume the government has obtained information, a transcript that came about during the J6 committee -- assuming that they haven't destroyed it -- and in the course of that, the government has that discovery. It's a transcript. It was never intended to be confidential. For whatever reason, the J6 committee did not decide to release it, but there never was any degree of confidentiality attached to it.

That clearly should not be designated as sensitive information, particularly if it contains *Brady* or *Giglio* material that would be very important to President Trump in terms of his defense and in terms of the -- you know, the wider scope of what he has to do to defend himself publicly.

THE COURT: But, again, you're sort of conflating what your client needs to do to defend himself and what your client wants to do politically, and your client's defense is supposed

to happen in this courtroom, not, you know, on the internet.

MR. LAURO: Well, and here's --

THE COURT: And to the extent your client wants to, you know, make statements on the internet, they have to always yield to witness security, witness safety. And that's what I'm concerned about. The subcommittee may not have designated those transcripts as confidential, but you start releasing snippets of witness interview transcripts, what do you think is going to happen to those witnesses?

MR. LAURO: The problem is, Your Honor, the way that this is drafted, if President Trump talks about something relating to that witness and it happens to be in a transcript, then they throw the red flag and they say there's been a violation.

THE COURT: Well, I'm finding it very difficult to envision the former president of the United States engaged in a political campaign talking about potential witnesses who may not have, you know, the kinds of protection that he has. I mean, I could see the possibility for a lot of problems here.

I'm not sure what right -- I mean, your client retains, as I said in the beginning, a First Amendment right. But I can see how, in advance of trial, making public statements about potential witnesses is going to, in and of itself, affect the orderly administration of justice and, Mr. Lauro, could run afoul of his release conditions. So the example you're giving

me is not helping. It's actually causing me some concern.

MR. LAURO: And I understand your concern, Your Honor. And President Trump will scrupulously abide by his conditions of release, and we will do everything to ensure that that happens, and it will happen. But let's take one example.

Vice President Pence is a political opponent now in a campaign, and there's going to be an exchange between the two of them. There's going to be arguments back and forth. And if, in one of President Trump's statements, it happens to overlap with something that's in discovery that's included in this definition, we suddenly have a problem.

And the other thing, Your Honor, respectfully, is President Trump, in the middle of a campaign, should not have that chill over him in terms of the way that he campaigns and advocates for his position.

THE COURT: He is a criminal defendant. He's going to have restrictions like every single other defendant. This case is proceeding in the normal order. I know there are obviously security concerns, and there are many, many concerns that we all have because of the unusual nature of this case, but the fact that the defendant is engaged in a political campaign is not going to allow him any greater or lesser latitude than any defendant in a criminal case.

MR. LAURO: We understand that, absolutely. But the problem is, the way that this order is written by the

government, it paints too broadly. All we're asking for is more specificity, particularly with respect to sensitive information that the government can designate with some particularity and have a reason for.

Simply saying a transcript is sensitive, that's not enough under Your Honor's original determination, because there's no good cause to identify that particular transcript as sensitive. Once again, we have to go back to the government showing good cause why it's sensitive and why it should be protected. That's all we're asking for.

THE COURT: Well, what I did in the beginning was agree with you that the government has to show good cause here for why certain materials should be covered by the protective order and shouldn't, and I agreed with you that, as to the nonsensitive information, it would not be covered.

But now we're talking about what can be designated as sensitive, and I have to tell you, so far I'm not being persuaded by your argument that witness transcripts or recordings of witness interviews shouldn't be sensitive for the reasons I have concern, and the examples you're giving me are not comforting. But I'll hear from Mr. Windom on this.

MR. LAURO: If I may say one last thing, Your Honor, respectfully.

THE COURT: Yes.

MR. LAURO: I think the government can easily identify

what they believe are sensitive transcripts, videos and so forth, and have some basis for making that argument based on Your Honor's order here. That's something that they're capable of doing. Rather than having this broad category, all we're asking is that the government have to be put to its burden to identify what's sensitive.

THE COURT: All right. Mr. Windom?

MR. WINDOM: Thank you, Your Honor.

The government's proposed order is much more specific than the defendant's proposed order. The defendant's proposed order is subjective and nebulous as to what is a confidential source or what could jeopardize safety. Ours is demarcated by the type of document it is.

The defense just said that the government should have to identify which transcripts or audio recordings are sensitive and which are not. Every single one of those people we interviewed is a potential trial witness. All of them are sensitive.

I guess the next argument from the defense would be, well, the government has to go through each one and designate specific paragraphs, designate specific pages. That is antithetical to the smooth and orderly discovery process that this court should impose here for the fair and efficient administration of justice.

THE COURT: All right. I am going to retain the

government's proposed language. The definition of "sensitive materials" will include all recordings, transcripts, interview reports, and related exhibits of witness interviews. Disclosure of any of those materials creates too great a risk that witnesses may be intimidated or that prejudicial information reaches the jury pool.

Mr. Trump is already bound by his conditions of release to, and I quote, "not communicate about the facts of the case with any individual known to him to be a witness, except through counsel or in the presence of counsel." That's ECF No. 13 at 3.

But I am concerned that members of the public -- I mean, in addition to the concerns I've already talked about with regard to witness security, I'm concerned that members of the public who are not bound by the release conditions and by these terms might use sensitive witness information in ways that intimidate witnesses or otherwise threaten the integrity of the proceedings, so I am going to go with the government's definition of sensitive materials.

Again, the order provides that either side may seek modification.

Moving on to paragraph 8(f), which concerns materials obtained from other governmental entities, the defense also proposes to change the definition of sensitive materials in paragraph 8(f). Specifically, they seek to exclude the category of materials obtained from other governmental

entities. Mr. Windom, I'm not sure I understand exactly what would fall into this category. Can you give me an example?

MR. WINDOM: Yes, ma'am. So paragraph 8(e) really was targeted at the SCO, the Special Counsel's interviews. Paragraph 8(f) is mainly dealing with a few things. The first bucket is the material that we've obtained -- or that we did obtain from the House Select Committee. There are nonpublic items that the House Select Committee provided to the government including transcripts of witness interviews that we do not believe are public.

THE COURT: But those will be covered by the previous paragraph, right?

MR. WINDOM: And perhaps this is poor wording on our part. The intention was for 8(e) really to be focused on what the -- the government's own interviews and for 8(f) to encompass the Select Committee's interviews. I see that it could be covered by both. So that is one category.

The second category is there's a large volume of material obtained from the Secret Service including internal emails which have, you know, the names of individuals, various things that the defendant may or may not have known in his time as president that deal with any number of issues that should be nonpublic.

Again, the blanket designation, the government believes, is appropriate for the reasons of not polluting the jury pool,

not intimidating witnesses, not naming people who are within the Service or within other governmental agencies. Should there be a specific document, we're happy to discuss that with the defendant under the paragraph 16 of the proposed order after discovery is released.

THE COURT: All right.

MR. LAURO: And, Your Honor, that clearly can be something they designate as sensitive.

THE COURT: I'm sorry?

MR. LAURO: I'm sorry. It clearly could be something they designate as sensitive if it's a Secret Service or other matter. But to just have it as this broad category, automatically sensitive, kind of --

THE COURT: Well, it fits the definition -- and wouldn't you agree, or do you agree, that some of this material under 8(f) would already be covered under 8(e), such as the transcripts of witness interviews?

MR. LAURO: Yeah, it could.

THE COURT: What about the material that Mr. Windom just referenced, for example, Secret Service emails? That would fit the definition of 8(f), materials from other governmental entities, and that is very sensitive.

MR. LAURO: Right. And it should be designated as sensitive, and they can do that. But what I'm concerned about is nonsensitive information that is swallowed in this broad

language of "anything that's obtained." You know, it just -- it makes it impossible to comply. That's our problem.

THE COURT: Well, I may one day regret saying this, but the parties are always free to seek modifications under the terms of the agreement. But I think, given the examples and given the good-cause argument that I've heard from the government, I am going to retain the government's proposed language. The definition of "sensitive materials" will include "materials obtained from other governmental entities."

I am persuaded that disclosure could compromise -- especially given the example that Mr. Windom has given me, and I can think of others, could compromise the confidentiality of those entities' own proceedings. And so I'm going to leave the language in as the government has stated. I'm not going to adopt the defense edit.

Now, if you want to propose language that narrows this, you're free to meet and confer with Mr. Windom about it.

MR. LAURO: I may have to, Your Honor, because it literally would include -- all of the J6 materials that the government obtained would be subsumed in this provision, again, assuming that J6 didn't destroy any documents.

THE COURT: Wouldn't some of that material already be publicly available?

MR. LAURO: Not necessarily, because --

THE COURT: But some of it would. So you said "all,"

and that's not actually correct. Right? So some of that material has been broadcast.

MR. LAURO: You know, talk about pretrial publicity, they had big TV screens going on. But the problem is that we don't know what's there and what's not there. For example, if there's something that was not publicly disclosed that came within J6, then it's all going to be considered sensitive even though there's not a good-cause showing. That's my concern.

THE COURT: I think the government has established good cause for materials that are defined in that paragraph, and, as I said, this order has to be read as a whole. And so there may be some of those materials that are just not sensitive because they are publicly available. And with regard to the subcommittee materials, there may be quite a bit of that that is publicly available given the public proceedings. So, at this point, I'm not going to adopt the defense language.

Now, paragraph 8, the final edit the defense proposes -- not the final. The final edit to paragraph 8 would require the government to conspicuously mark all sensitive materials.

Now, Mr. Windom, my understanding is -- well, tell me if I'm wrong. Do you intend to, when you produce the materials, segregate all sensitive materials from nonsensitive materials? Correct? And your reply brief suggests that it would be -- you said "logistically unworkable to mark all sensitive materials."

Can you explain why? Obviously, if you have to go through and stamp every single page "sensitive," that's really quite burdensome. But what about an interim measure, like stamp on the first page or -- I don't know. Aren't there some ways that could make sure that the defense doesn't inadvertently produce something that's sensitive that they could argue to me, well, we just didn't know; it wasn't clear that that was sensitive?

MR. WINDOM: So this is actually a -- it may not seem on its face, it's a very important point for the speed of getting discovery out.

THE COURT: And I'm -- you know, I'm all for that.

MR. WINDOM: Yes, ma'am. So what the government wants to do is in the -- whether it's in the cover letter or in the source logs -- and I have an example where the source logs have the exact production, by very organized title and description, the Bates number, and whether it is sensitive or nonsensitive.

THE COURT: Okay.

MR. WINDOM: That is the fastest and most efficient way to accomplish this. The defense has asked for a page-by-page stamping of them. If the Court went with that --

THE COURT: I'm not going with that.

MR. WINDOM: Thank you, Your Honor.

I will say that this approach also was adopted in a

protective order in a case in which Mr. Lauro was counsel in Florida about two years ago, with this language being permissible to include it not just on the face of the document, but also in cover letter or in transmittal information.

THE COURT: And the organization and designation that you describe in cover letter and transmittal would include a Bates range. Is that correct?

MR. WINDOM: Yes, ma'am. It is the source, the beginning Bates, the end Bates, the designation.

THE COURT: All right.

Mr. Lauro, I'll hear you if you want.

MR. LAURO: They're going to do what they're going to do.

THE COURT: Well, no. I mean, you enunciate a reasonable concern, which is you don't want to be in front of me saying, we released sensitive information, but we didn't know. And I want to make sure that you're not in a position where you may do that and that the production is designed so to ensure that there's no confusion.

The procedure that Mr. Windom has described sounds like it would make clear by Bates range and source and in every other way that, you know, what is sensitive and what is not. I do think that stamping every page would be not only unworkable but would delay this considerably for a reason that's not really a problem. I don't mind taking the time to ensure that

things are done right, but it seems like a solution in search of a problem.

MR. LAURO: Your Honor, based on the explanation that counsel gave, we're fine with it as long as we have identifiable sensitive information that we know exists.

THE COURT: Okay.

MR. LAURO: I just resent the fact that counsel has been searching for prior orders in cases that I had no idea about. So I just need to put that on the record.

THE COURT: Well -- you know. I hear you. I feel your pain. All right. Based on the parties' submissions and the arguments, I will retain the government's proposed language. I will not require the government to mark every record it designates as sensitive, and I'm willing to accept their representation that individually marking the documents would be too burdensome and unnecessary, frankly, in light of the government's representations as to how they will produce and segregate and designate the documents.

Now paragraph 9, which goes to assisting the defense, and that goes back to our discussion that I had, Mr. Lauro, with persons who are subject to the order.

In paragraph 9, the defense edits reiterate the expanded definition of "authorized persons" that I discussed earlier in relation to paragraph 3, and for the same reasons as my ruling on paragraph 3, I will not accept those edits and am going to

leave in place the government's definition of "authorized persons."

Also in paragraph 9, the defense's other edit extends permission to share sensitive materials to the counsel of persons to whom the materials solely and directly pertain. That edit and revision is unopposed, and I will enter it.

Paragraph 10, counsel review of defendant's notes. The defense edit to paragraph 10 would remove defense counsel's obligation to review Mr. Trump's notes regarding sensitive materials and ensure that they do not include any personal identifying information under Federal Rule of Criminal Procedure 49.1.

I am inclined to reject that edit. That obligation is imperative, as I mentioned earlier, to prevent witness intimidation and other potentially prejudicial consequences. With regard to paragraph 11 --

MR. LAURO: Your Honor, I have one question about paragraph 10, and this really does raise an important issue. If there are transcripts or documents of prior witness testimony, for example, I want to be able to allow my client to read those in private and have the ability to examine them without counsel present or without counsel being in the same room. And I think we have to have some degree of assurance that we don't have to literally sit next to our client while he reviews transcripts and otherwise sensitive information.

THE COURT: Well -- and I'll hear from Mr. Windom in a minute, but -- hold on.

(Court reviewing document.)

Wouldn't your client be able to review -- and Mr. Windom can correct me if my reading is incorrect. But he would be able to review those materials in private, but afterwards you would have to check his notes to make sure that personal identifying information wasn't included in those notes. It's not how he reviews the notes.

Am I wrong, Mr. Windom? I mean, Mr. Lauro's concern is that his client be allowed to review the notes in private.

MR. WINDOM: Just to make sure we're talking about the same thing, the notes or the sensitive discovery materials?

THE COURT: Mr. Lauro, as I understand it, wants his client to be able to review the sensitive material without him having to be there. Is that -- let's break it down. Is that agreeable to the government?

MR. WINDOM: So the -- I guess I would first note that Mr. Lauro did not object to that language in paragraph 10 in this proposal here. What it sounds like he's asking for is that he need not sit next to his client the entire time.

THE COURT: Right.

MR. WINDOM: I think as long as it is a person employed to assist with the defense to be with him when the sensitive materials are present and then to collect the material after

the defendant is done reviewing the sensitive material.

THE COURT: Hold on a second.

(Court reviewing document.)

So your objection, Mr. Lauro, is to the language that says "but defense counsel may not provide a copy of sensitive material to the defendant"?

MR. LAURO: Exactly, Your Honor. And we're not -- in terms of personal identifying information or that nature, we're fine with it. I mean, we can sit with the client. But in terms of -- and other orders, by the way, have done sensitive and highly sensitive differentiations.

What I'm saying is, if there's a transcript of a witness or if there's a video, I want to be able to share it with my client without having to sit in the room or having somebody from the defense team sitting in the room with him. That becomes impractical under the circumstances, and it really does impinge on Sixth Amendment rights.

We have a lot to do in this case, with a relatively small staff, and for us to have our folks sitting with a client as he reads through a transcript, maybe hours, really is an intolerable burden on us. At least allow us to have the client read transcripts, read information that could be relevant to the case, and then coordinate with us and communicate with us.

We can put in procedures to get that information back immediately, but we have to have a situation where the client

is allowed to review materials on his own, outside the presence of counsel.

THE COURT: You didn't object to that part. In your motion, you addressed the notes issue. You didn't address the reviewing on your own issue.

MR. LAURO: Well, that's correct, Your Honor. But in light of the fact of how sensitive information is now defined under this order, which will include these transcripts and interviews and so forth, the issue does come to the forefront, unfortunately, in terms of dealing with that issue.

THE COURT: Okay. Mr. Windom, Mr. Lauro has a point, which is -- tell me what it is you're worried about. So I'm already inclined to have the order require that the defense inspect any notes. So that would apply whether or not Mr. Trump is accompanied by counsel or other legal staff while he's reviewing the material or not. They're still going to have to check all notes that he makes.

So tell me the harm or the prejudice that you see arising from him being able to read the materials, which he's allowed to see, by himself, in another room, as opposed to having one of his lawyers or paralegals or legal staff be there with him.

MR. WINDOM: Yes, Your Honor. Three things on that.

First, defense counsel has a certain level of trust in the defendant that the government does not.

Second, the defense counsel agreed to an extraordinarily

similar position in Florida. It is defendant shall only have access to discovery materials under the direct supervision of defense counsel or member of defense counsel's team.

THE COURT: But that involves some very -- some classified and national security-implicated information, doesn't it?

MR. WINDOM: No, ma'am. This particular order that I'm reading from is the nonclassified protective order. There's a separate CIPA Section 3 classified protective order.

Third, publicly, the defense counsel and the defendant have had a divergence of views on the protective order, whether there should be one at all or not. The defendant says there should not be.

Second, the defendant has made claims in the press that his counsel has not adopted with respect to motions that should have already been filed or will soon will be filed. There's a delta that I'm concerned about.

THE COURT: But how would -- and I hate to interrupt you, but I'm going to. Because how -- and I share your -- but sometimes -- you know. I was a defense attorney. Sometimes there is a divergence.

But how would the procedure that you're talking about address that? In other words, whether Mr. Lauro or one of his legal staff is in the room or out of the room isn't necessarily going to solve that problem. Can you tell me how

it would?

MR. WINDOM: It would ensure that the defendant doesn't have unfettered access to sensitive materials to do with it as he wants.

THE COURT: But even if Mr. Lauro -- okay. Say I go with your provision and I require Mr. Lauro, one of his co-counsel or legal staff to be present. If the defendant is going to do something, he can still do it whether they were there or not there. I mean, the safety is the notes, right? Making sure that any notes that he takes are reviewed by defense counsel to make sure they don't include identifying information.

MR. WINDOM: Two things, Your Honor. First of all, the point of the protective order is to limit risk. It will limit risk in order to have a defense counsel or an employee --

THE COURT: How, though?

MR. WINDOM: Because of this: The defendant, when he only has the materials to himself, could elect to photocopy or otherwise reproduce, take a picture of, the sensitive materials. That risk is much lower when in the presence of a member --

THE COURT: You mean like live tweeting something?

MR. WINDOM: I mean literally just photocopying or taking a picture of something, having it in order to do whatever he wants with it. He has shown a tendency to desire

to hold onto material to which he should not have.

THE COURT: Well, you know --

I'll hear you, Mr. Lauro.

I'm still having a hard time figuring out how having somebody right there with him is going to -- and I hear you about the photocopy or photograph. I guess that's a possibility. But I'll hear your response on that, Mr. Lauro.

MR. LAURO: Yes, Your Honor. I'm quite surprised that counsel would say that, because it suggests that really what they want to do is just bog us down and bog President Trump down in the middle of a campaign, and maybe that's what they want to do. But the reality is, to have a lawyer physically with a client all the time --

THE COURT: Let me stop you.

Actually, Mr. Windom, would the government be willing to allow the defendant to review the material, provided that the defendant didn't review the material with a phone or -- I mean, just without access to those -- to the extent that that's a possibility, without access to those? Because Mr. Lauro does have a point. It's a lot of material, and they are stretched. And absent some real danger of what you're saying happens, I think it would be burdensome for the defense to require legal staff there all the time.

MR. WINDOM: The issue really is a custody or control one. I think Your Honor has identified some mitigating

measures. Should the defendant not be permitted to have electronic devices, not be permitted to have a replicating machine --

THE COURT: While he is reviewing the material.

MR. WINDOM: Yes, ma'am. And then also the other catch to that is, even though a defense counsel or member of the team wouldn't be sitting there, they would have to be immediately available to collect the material if the defendant goes to lunch, if the defendant --

THE COURT: Absolutely. That's sensitive material. That can't be left lying around.

MR. WINDOM: So if somebody is going to be there anyway outside the room, I'm not sure why they couldn't be in the room. That said, I understand Your Honor's mitigation measures.

I have yet to hear -- there has not yet been a motion to amend the specific language already employed in Florida, so I'm not sure what the actual aspect of the hypothetical harm here is.

THE COURT: That I forgot to ask you about, Mr. Lauro. You did agree to it in Florida. What's the problem now? And that case involves, as far as I know -- I don't know any details -- a lot of materials as well.

MR. LAURO: It does, Your Honor. And I'm not involved in the case in Florida. I'm not counsel.

THE COURT: Oh.

MR. LAURO: But the bottom line here is that we have to have a workable system that allows President Trump to review these materials without counsel either sitting in the room or outside the room. We are stretched incredibly thin in this case.

THE COURT: Well, what about Mr. Windom's point, which is -- I intend to retain the provision that says the notes have to be reviewed, so --

MR. LAURO: We can direct the client not to make any notes, obviously. I mean, this kind of intrusion --

THE COURT: But Mr. Windom's point, which is even if the defendant is reviewing notes alone, in a room where he doesn't have access to electronic devices that could reproduce those materials, somebody still has to be present to collect it, safeguard it. I mean, it's still going to require time. What about that?

MR. LAURO: The problem is, Your Honor -- respectfully, is the government has not shown good cause for that kind of intrusion into the attorney-client relationship.

THE COURT: But I'm saying, even if he's allowed to review it by himself, it's still going to require staffing to make sure that the conditions of the order are complied with. The materials can't be -- you know, they have to be safeguarded, and they have to be collected. Right?

MR. LAURO: That's the problem with the order as it stands now.

THE COURT: Oh, that's not going to change.

MR. LAURO: No, no. But I'm just saying the practicality of a case like this, of this magnitude, with the number of documents involved, based on what the folks here are requesting, would put President Trump and his defense team at an incredible disadvantage at a time when not only is he facing other prosecutions brought by this administration, but also other litigation.

He's in the middle of a campaign against this administration, and to have this kind of burden on us is enormous. And in 40 years of practice, I've never seen a situation in a white-collar case where counsel has to sit next to a client and literally sort of babysit what goes on in terms of what they review and what notes they take.

What Your Honor has in this order already are protections that if President Trump made any statements in violation of the order, then that's a problem. But having all of these oppressive kinds of conditions which they know will interfere with the campaign, that's the goal. They know that --

THE COURT: I'm not going to accept that premise, and again, I -- I'm not going into that.

MR. LAURO: But the practicality of it --

THE COURT: And I will tell you, I think the more

reasonable and what I see is -- I see a desire to move this case along. I haven't seen any evidence that this is politically motivated. I understand you have a different view, but it might be -- it might be more persuasive to me if the former president had not entered into this agreement in the Florida case. It certainly undercuts some of the strength of your arguments, that they're already agreeing to do it in Florida.

And I'm willing to consider a modification to that, but I am not willing to consider anything that's going to result in information that's sensitive being disseminated to the public. And I have concerns about that.

MR. LAURO: And, obviously, we will abide by your order, and we understand Your Honor's position. But there has to be some practical way of carrying this out so that it doesn't burden the defense. And as a defense lawyer, it's not easy to sit with a client for hours and hours while they read a document. It just doesn't work, Your Honor.

THE COURT: Okay. I agree with you, and therefore I am going to compromise here. I will allow the defendant to review the sensitive material without being accompanied, without having a member of the legal team sit next to him, but I am going to retain the provision that requires counsel, members of the legal team, to review any notes. And if you're saying you're going to instruct him not to take notes, so much

the better, but to ensure that there's no notes taken and no personal identifying information that is kept. And if the defendant's going to review those materials alone, the defendant cannot have access, during that review, to an electronic device, photocopier machine, or anything that could reproduce or copy those materials.

Mr. Windom?

MR. WINDOM: Your Honor, the issue remains about keeping custody or control on breaks or lunches and things like that.

THE COURT: Oh, yes. Those materials must be safeguarded. They cannot be left alone. Should the defendant need to leave the room for any reason, someone has to safeguard those materials, and certainly he can't carry them around with him.

Okay. Paragraph 11. The defense-proposed edits would permit the parties to include sensitive materials in any public filing without leave of court if all sensitive information is redacted. This doesn't materially alter the government's proposed approach, which likewise contemplates filing without leave redacted sensitive materials.

I will allow the parties to include in their public filings redacted sensitive materials without leave of court only if they have conferred and both sides agree to the redactions. I realize that exception may swallow up my ruling, but if the

parties disagree about the redactions, leave of court must be sought before the filing.

Again, with paragraph 11, filing sensitive materials under seal without leave, the defense similarly proposes an edit that would permit the parties to file unredacted copies of sensitive materials under seal without leave of court, I'm not going to accept. This edit is in violation of our local rules. Local Criminal Rule 49(f)(6)(I)(1) provides that no document may be sealed without an order from the Court.

In accordance with that rule, I will require the parties to follow the regular procedure for seeking leave to file a document under seal each time they wish to do so for sensitive materials.

I will also require that any motion for leave to file sensitive materials under seal shall attach a redacted copy of those sensitive materials so that the Clerk of the Court can file the redacted copy on the public record if I grant the motion. And I've consulted, and the Clerk of the Court is prepared and able to do that.

Paragraph 12, introducing sensitive materials under seal without leave. So the defense's edits propose, essentially, the same approach for handling sensitive materials at hearings as they do for filings; that is, the parties may (1) introduce redacted sensitive materials without leave, and (2) go under seal to introduce or discuss unredacted sensitive

materials.

My approach to those procedures and hearings will be the same as it is for filings. The parties may introduce redacted sensitive materials during hearings without leave of court so long as both sides agree to the redactions. However, they may not go under seal or introduce unredacted sensitive materials during hearings without first seeking leave of court. And that's unredacted.

Paragraph 12, handling sensitive materials at trial. The defense proposes an edit stating that the Court will determine the appropriate handling of sensitive materials at trial in a future order. And I'm not going to add this language at this juncture, but as we get closer to trial, the parties can move for modifications to the protective order that will change or specify different provisions for trial.

So are there any proposed or disputed edits from the defense, Mr. Lauro, that I haven't covered?

MR. LAURO: I don't believe so, Your Honor.

THE COURT: All right.

Mr. Windom, is there anything else?

MR. WINDOM: No, ma'am. Thank you.

THE COURT: All right. I will issue a protective order consistent with my decisions in short order, but for now I just have a couple more items of business.

First, as reflected on the docket, last night I denied a

motion from the government for leave to file a document under seal and ex parte. I intend for this case to proceed in the public record as much as possible, and the motion did not persuade me that there was a need to file the document ex parte. Accordingly, neither that motion nor its attached document had any bearing on my decision today, and that's why I denied it without prejudice.

Going forward, I want to underscore that any motions to file under seal, especially ex parte motions, must articulate the need for those designations, and I will carefully weigh the relevant factors to ensure that there's sufficient reason for keeping any material off the public record.

Second, yesterday the government moved to schedule a conference under the Classified Information Procedures Act, CIPA, to discuss what they said was a small amount of classified information that may be subject to discovery in this case. That's ECF No. 25. The government proposes that we hold that conference on August 28, which is the same day we have our next status conference in the case.

Mr. Lauro, are you available to do that? It makes sense to me. We could do it in the afternoon or, you know, right after the status.

MR. LAURO: I think, since we'll see you on the 28th, it might be a good time to discuss that as well, Your Honor.

THE COURT: Excellent. Then we'll do it then.

Okay. So I will schedule that conference. Actually, it'll just be part of our status conference on the 28th. I don't think I need to schedule another conference.

This is a good time to mention that, in the interest of efficiency and in keeping with my standard practice, I expect the parties to confer before filing any nondispositive motions and indicate in the caption whether it is opposed or not, and that way I can move speedily with regard to unopposed motions.

So just say, you know, defense opposed, defense unopposed motion, or say in a paragraph that the government opposes it, and then I'll know to give time and have a briefing schedule.

All right. Any other matters related to discovery or pretrial motions that we need to address, Mr. Lauro?

MR. LAURO: Yes, Your Honor. If I may approach?

THE COURT: Yes.

MR. LAURO: Your Honor, we've asked the government not to hide the ball and tell us how much discovery there is. They won't do that. We don't know if it's terabytes, you know, multiple terabytes, how many boxes, how they're organized. It's a humongous task, and Your Honor has been there, as defense counsel, and knows what it's like dealing with something like this.

We would like a Rule 16 conference with the government as soon as possible, no later than Monday at five o'clock, where we can discuss these issues because we have to respond to Your

Honor in terms of trial schedules, and we need to know how much discovery there is.

THE COURT: Well, so here's the thing. It seems to me -- and Mr. Windom can correct me if I'm wrong -- that the government is prepared to give you that information as soon as I enter a protective order. Is that correct?

MR. WINDOM: With respect to the --

THE COURT: The amount and -- well, tell me. You tell me.

MR. WINDOM: Thank you. If I may?

MR. LAURO: And if I may ask, how much is it?

THE COURT: Well, you may find out, as I said, immediately after I issue the order.

MR. WINDOM: The government has actively been trying to get the defendant discovery for some time now. We are producing, presumably today if the Court enters the protective order soon, the first production. There's an extraordinarily detailed, extensive source log in the same manner the defense is familiar with from the Southern District of Florida case, lays out exact Bates numbers, the exact organization of the discovery. So that information will be provided in that source log.

There is, in addition to that, a hard drive that we'll go over when the defense lets us know which address to send it to. That is the first discovery production.

THE COURT: And let me stop you.

Is there any reason why you can't tell Mr. Lauro how many documents? What are we talking about?

MR. WINDOM: Sure. And he'll have it in a letter, you know, by the end of the day --

THE COURT: Okay.

MR. WINDOM: -- in the first production. If Your Honor would like to hear it on record, I'm happy to provide the information. He's going to have it in a letter within 24 hours.

THE COURT: I'm just saying, is there any reason why we can't go on the record now?

MR. WINDOM: No, ma'am.

THE COURT: Well, go ahead.

MR. WINDOM: So, for the first discovery production, the volume of it is roughly 11.6 million pages, or files, which are load ready, available at length. There's also a hard drive with 2703(d) returns and extractions from other certain electronic facilities. Those are impossible to paginate or to identify by that.

I cannot go into the details because of various Rule 6 or sealing concerns. In general, I will say the material is extraordinarily well organized. Roughly a quarter of it comes from entities associated with the defendant already, and it may be that the defendant has access to that material already.

Some of the material is open-source. Some of it is also

necessarily duplicative just from an organizational standpoint, just to make sure that the defense knows precisely which documents came from where. As I, said this is the same format and the same process that is used in the Southern District of Florida. We anticipate additional productions in the coming weeks, and our goal is to have discovery substantially complete by August 28.

THE COURT: You heard Mr. Windom, Mr. Lauro. I can just imagine your motion for a trial date now.

MR. LAURO: I'm waiting for the deluge, Your Honor. It's going to come.

One small point, though. I think Your Honor mentioned that, with respect to filing under seal, we would have to justify under the normal rules. I assume that the government will also have to establish a reason for filing anything under seal in terms of...

THE COURT: Rules apply to both sides.

MR. LAURO: Thank you.

THE COURT: I mean, I assume, if it's sensitive material, they have to file it under seal. They don't have to give additional reasons if it's sensitive material as defined under the order.

MR. LAURO: All right.

THE COURT: Okay.

All right. Thank you, all of you, for your preparation and

attention today. Before we conclude, I just want to make two points about this case going forward.

First, as I have said before, I am committed to ensuring that this case proceeds in the normal course that our criminal justice system prescribes. The protective order that I will issue is just one example of that. Courts across the country and in this district routinely issue similar orders in criminal cases for many of the same reasons that I've discussed today.

The defense has reiterated at length Mr. Trump's First Amendment right to speak about this case and the evidence in it. While I intend to ensure that Mr. Trump is afforded all the rights that any citizen would have, I also take seriously my obligation to prevent what the Supreme Court called in *Sheppard v. Maxwell* "a carnival atmosphere of unchecked publicity and trial by media rather than our constitutionally established system of trial by impartial jury."

"It is a bedrock principle of judicial process in this country," as the Supreme Court said in *Bridges v. California*, "that legal trials are not like elections, to be won through the use of the meeting hall, the radio, and the newspaper." Obviously, in *Bridges*, the internet hadn't been invented yet. This case is no exception.

Second, and relatedly, both parties' briefing on the protective order referred to certain public statements that Mr. Trump has made in recent days. There are no motions based

on these statements, nor does the government claim they violated the defendant's conditions of release. So I will not address them specifically, but I do want to issue a general word of caution.

As I have stressed at several points during this hearing, I intend to ensure the orderly administration of justice in this case as I would with any other case; and even arguably ambiguous statements from parties or their counsel, if they could reasonably be interpreted to intimidate witnesses or to prejudice potential jurors, can threaten the process.

In addition, the more a party makes inflammatory statements about this case which could taint the jury pool or intimidate potential witnesses, the greater the urgency will be that we proceed to trial quickly to ensure a jury pool from which we can select an impartial jury.

I caution all of you and your client, therefore, to take special care in your public statements about this case. I will take whatever measures are necessary to safeguard the integrity of these proceedings.

I'll see you all on August 28. We are adjourned.

(Proceedings adjourned at 11:39 a.m.)

* * * * * *

CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Bryan A. Wayne
Bryan A. Wayne

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	No. 23-cr-257-TSC
v.	
DONALD J. TRUMP,	
Defendant.	

RESPONSE IN OPPOSITION TO
GOVERNMENT'S PROPOSED TRIAL CALENDAR

Ex. B

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

CASE NO. 23-80101-CR-CANNON

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD J. TRUMP and
WALTINE NAUTA,

Defendants.
_____/

DECLARATION OF JAY I. BRATT

Pursuant to 28 U.S.C. § 1746, I, Jay I. Bratt, declare as follows:

1. I am employed as a Counselor to the Special Counsel in the Office of Special Counsel Jack Smith. I am one of the prosecutors involved in the above-captioned case and am familiar with it. The statements in this declaration are based on my personal knowledge and my conversations with other prosecutors and staff of the Special Counsel's Office, as well as the Litigation Security Group ("LSG").

2. Among the discovery to be produced by the government in this case are certain materials that are classified (the "classified materials"). The level of classification varies across the classified materials, but a security clearance is required to lawfully view any of them. According to counsel for defendant Trump and defendant Nauta, no defense counsel currently possesses a security clearance. As a result, they will need to obtain one to lawfully view the classified materials.

3. LSG has committed to significantly expediting the issuance of security clearances

in this case.

4. To be granted an interim security clearance, defense counsel must submit a Standard Form 86 – Questionnaire for National Security ("SF-86") and supporting documentation. To date, not all of the defense counsel have submitted their SF-86s. Once an SF-86 and supporting documentation are submitted, absent complicating circumstances, an interim clearance may be granted within a matter of days. In this case, LSG has committed to reaching an eligibility determination within 24-48 hours of the completed submission. Once defense counsel are granted interim security clearances, the government will be able to provide the vast majority of classified discovery, consisting of documents marked CONFIDENTIAL, SECRET, and TOP SECRET, including documents within the following Sensitive Compartmented Information Compartments: SI, SI-G, and TK.

5. However, interim security clearances are not sufficient for the government to provide in classified discovery a small number of documents—including some documents whose unauthorized retention is charged in the indictment—that contain restricted compartments for which a final security clearance and additional read-ins are required. LSG estimates that final clearances may be granted within 45 to 60 days of submission of the SF-86 and related documentation, depending upon the content of the applicant's SF-86. The additional read-ins can be conducted promptly upon access approval.

6. On June 21, 2023, the government began producing unclassified discovery to the defense. The production includes documents obtained via subpoena, evidence obtained via warrants, transcripts of grand jury testimony, memorialization of witness interviews, a reproduction of key documents that in the government's view are pertinent to the case, and copies of closed-circuit television footage the government has obtained during its investigation.

7. I have extensive experience with the Classified Information Procedures Act, Pub. L. 96–456, 94 Stat. 2025, 18 U.S.C. App. 3 §§ 1–16, and from that experience I am aware that the procedures provided for under that statute often lengthen the ordinary trajectory from indictment to trial. The additional procedures that may be required in this case are discussed in the government's Motion for a Pretrial Conference Pursuant to the Classified Information Procedures Act, which is being filed contemporaneously with this motion. These procedures address potential resolution of issues related to classified discovery and the use and admissibility of classified information at trial.

I declare under penalty of perjury that the foregoing is true and correct.

Jay I. Bratt

Dated: June 23, 2023

EXHIBIT B

The government proposes the below schedule for CIPA litigation in this case:

Date	**Event**
No later than July 10, 2023 (assuming timely interim clearance of defense counsel)	Government's initial production of classified discovery
August 14, 2023	Deadline for filing of government's first CIPA Section 4 Motion, if necessary
September 5, 2023	Deadline for all defense discovery requests
September 12, 2023	Deadline for any notice under CIPA Section 5
September 19, 2023, or seven days after defendant's initial CIPA Section 5 Motion, whichever is later	Deadline for government's initial Rule 16 expert disclosures and CIPA Section 10 notice
October 3, 2023, or 21 days after defendant's initial CIPA Section 5 Motion, whichever is later	Deadline for government to file initial CIPA Section 6(a) Motion Defense Rule 16 expert disclosures due
October 17, 2023, or fourteen days after government's initial CIPA Section 6(a) Motion, whichever is later	Deadline for defense to file response to government's CIPA Section 6(a) Motion Government's supplemental Rule 16 expert disclosures due
October 24, 2023, or seven days after defendant's response to government's initial CIPA Section 6(a) Motion, whichever is later	Deadline for government to file reply on its CIPA Section 6(a) Motion
October 31, 2023, or within seven days after government's reply on its CIPA Section 6(a) Motion, whichever is later	CIPA Section 6(a) Hearing

November 14, 2023, or fourteen days from filing of a final written Order on government's initial CIPA Section 6(a) Motion, whichever is later	Deadline for any government CIPA Section 6(c) Motion, if necessary
November 21, 2023, or seven days from filing of government's CIPA Section 6(c) Motion, whichever is later	Deadline for defendant's response to government's CIPA Section 6(c) Motion, if necessary
November 28, 2023, or seven days from filing of defendant's response to government's CIPA Section 6(c) Motion, whichever is later	Deadline for government's reply in support of its CIPA Section 6(c) Motion, if necessary
December 5, 2023, or seven days after the government's reply on any CIPA Section 6(c) Motion, whichever is later	Hearing to address any remaining CIPA issues, including CIPA Section 6(c), if necessary
December 11, 2023	Trial (jury selection begins)

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

CASE NO. 23-80101-CR-CANNON

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD J. TRUMP and
WALTINE NAUTA,

Defendants.
_____/

PROPOSED ORDER

The Court has received the government's Motion for Continuance and Proposed Revised Scheduling Order (ECF No. __), as well as the accompanying Declaration of Jay I. Bratt. Having reviewed the Motion, the accompanying Declaration, and all other relevant submissions of the parties, it is hereby

ORDERED that trial in this matter is continued until December 11, 2023, on which date jury selection will begin; and it is further

ORDERED that the delay resulting from the continuance of trial is excluded from the speedy trial calculation in this case, because the ends of justice served by continuing the trial date outweigh the best interests of the public and the defendants in a speedy trial; and it is further

ORDERED that Calendar Call for trial is continued until December 5, 2023; and it is further

ORDERED that any pretrial motions to be filed under Federal Rule of Criminal Procedure 12(b)(3) must be filed no later than July 31, 2023; and it is further

ORDERED that all other pretrial motions and motions *in limine* must be filed no later than November 20, 2023; and it is further

ORDERED that all provisions of this Court's Omnibus Order Setting Trial Date and Establishing Pretrial Instructions and Sentencing Procedures (ECF No. 28) that are not modified by this Order remain in full force and effect.

DONE AND ORDERED in Chambers in Fort Pierce, Florida, this _____ day of _____, 2023.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	No. 23-cr-257-TSC
v.	
DONALD J. TRUMP,	
Defendant.	

RESPONSE IN OPPOSITION TO
GOVERNMENT'S PROPOSED TRIAL CALENDAR

Ex. C

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

FORT PIERCE DIVISION

CASE NO. 23-80101-CRIMINAL-CANNON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONALD J. TRUMP and
WALTINA NAUTA,

Defendants.
_____/

FORT PIERCE, FLORIDA

JULY 18, 2023

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TRANSCRIPT OF MOTION HEARING

BEFORE THE HONORABLE AILEEN M. CANNON

UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Official Court Reporter
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P-R-O-C-E-E-D-I-N-G-S

THE COURT: Thank you. You may be seated.

Is it necessary to have this screen up, Ms. Casissi, or can I bring it down?

THE COURTROOM DEPUTY: You can bring it down, Your Honor.

THE COURT: All right. Good afternoon, everybody. I'll call the case.

This is case number 23-CR-80101, United States of America vs. Donald J. Trump and Waltine Nauta.

Let's have appearances of counsel, starting with the Government.

MR. BRATT: Good afternoon, Your Honor; Jay Bratt, David Harbach, and Julie Edelstein from the special counsel's office on behalf of the United States.

THE COURT: Good afternoon.

MR. BLANCHE: Good afternoon, Your Honor; Todd Blanche for President Trump.

THE COURT: Good afternoon.

MR. KISE: Good afternoon, Your Honor; Christopher Kise for President Trump.

MR. WOODWARD: Good afternoon, Your Honor; Stanley Woodward and Sasha Dadan for Mr. Nauta, who's also present today.

THE COURT: Good afternoon to you both.

And good afternoon to you, Mr. Nauta.

DEFENDANT NAUTA: Good afternoon, Your Honor.

THE COURT: All right. Before we get started, some preliminary remarks about decorum and compliance.

Of course, there is no permitted possession of cell phones or other electronic equipment in the courthouse. There shall be no broadcasting, video recording, photographing, or filming of any kind either in this courtroom or anywhere in the courthouse. And, of course, no circumvention of that rule either by folks here in the courtroom or in the overflow room.

For those who are seated in the courtroom, I ask that you remain seated during the duration of the proceeding to avoid disruption and distraction.

This is, as everybody is aware, a pretrial conference pursuant to Section 2 of the Classified Information Procedures Act, or CIPA for short. Classified information won't be discussed at this hearing except at a very high level, as already referenced in public filings.

The purpose of this hearing is to establish a schedule in accordance with the procedures of CIPA and more broadly to establish at least a partial pretrial schedule for deadlines in this case, based on the interests of the parties and the actual needs of the litigation.

At this point -- can everybody hear me okay?

UNIDENTIFIED SPEAKER: Your Honor, if I may, the

audio and the screen in the overflow room has been cut off.

THE COURT: Perhaps that's because I -- okay.

There might be a need to restart this?

THE COURTROOM DEPUTY: One moment, Your Honor.

UNIDENTIFIED SPEAKER: Your Honor, is it okay if I may approach for IT?

THE COURT: Yes, that's fine. Thank you.

I think we might have to rejoin the meeting.

UNIDENTIFIED SPEAKER: Yes.

(Brief pause in proceeding)

THE COURT: All right. Okay. I will repeat those preliminary remarks because the audio, I understand, was not transmitting to the overflow room.

There shall be no recording of this hearing in any form. No broadcasting, photographing, audio recording, or filming of any kind in this courtroom or anywhere in the courthouse, including in the media overflow room. And no attempt to circumvent those rules.

This is a pretrial conference pursuant to Section 2 of CIPA. The purpose of today's hearing is to establish a schedule in accordance with that statute along with a broader schedule to advance this case with due regard to the interests of all parties and the particular circumstances of the case.

Pending before the Court now are two motions. The first is the Government's motion to continue the current trial

date. The current trial date is mid August of this year with pretrial motions due in about six days, I believe. The Government seeks to continue that trial date to December 11th of this year. I've reviewed the motion along with all related filings. I'm prepared to hear argument on that motion both specific to CIPA and the benchmarks in CIPA as well as more broadly. I'd also note that there's a separate pending motion filed by the Government. This was filed yesterday. It seeks a protective order under Section 3 of CIPA. That motion is not yet ripe, and it doesn't appear that it has been the subject of meaningful conferral. I understand there are objections to certain provisions of that protective order.

So with that very brief background, let me turn it over first to Mr. Bratt. What I'd like to start off with, Mr. Bratt, is an overall view of the discovery that has been provided thus far. I understand there have been two productions, the first on the 21st of June, I think it is, and one yesterday with specifics in terms of volume as well as any anticipated production.

MR. BRATT: Yes, Your Honor. Do you want me to speak from here or from the podium?

THE COURT: Whatever you prefer.

MR. BRATT: I'll go up to the podium.

Good afternoon again, Your Honor.

THE COURT: Good afternoon.

MR. BRATT: So we have now made two productions of discovery to the Defense. The first was on June 21st to President Trump's counsel, and then last week, July 6, to Mr. Nauta's counsel. The first production consists of about 800,000 pages, although as we note in our reply to the motion for continuance, a significant portion of that is noncontent from headers and footers of emails that were received pursuant to 2703(d) orders.

In producing the discovery --

THE COURT: I'm sorry, what do you mean by "noncontent"?

MR. BRATT: Just showing the "to/from" on emails.

THE COURT: Okay.

MR. BRATT: So nothing as to what is in the body of the emails themselves.

When we produced the discovery to both counsel, we also gave them a discovery log showing the sources of all the information we are providing. We identified what we believed to be key documents in the case, which is a subset of about 4500 pages. The contents of what we provided included all search warrants and corresponding applications for search warrants; the evidence, the scoped evidence that we obtained from the search warrants and subpoenas; all witness statements through May 2nd of this year; all grand jury testimony transcripts from both the D.C. grand jury and the Southern

District of Florida grand jury; all of the CCTV footage was obtained through the date of the indictment. And we also produced, in another separate folder subfile and on a hard drive, what we believe again to be key footage for the Defense.

The second production that we sent out yesterday is about 300,000 pages. It provides the relevant content from three devices that were provided to us voluntarily, all witness statements between May 2nd and June 23rd, a number of FBI forms, and a number of materials, primarily emails, that we obtained from the Secret Service.

What is left, we have two devices for Mr. Nauta. We were able to search those devices in one form, but we were not able to search it sort of more forensically. We now have the ability to do that. It is undergoing filtering and then scoping. And once we are done with that process, we will be providing to the Defense that content as well.

In addition, there is some CCTV footage that was obtained post-indictment and then, of course, there's certain *Jencks* materials that we have yet to gather together.

In sum, we produced about 1.1 million pages, we identified key documents, and we've given the relevant content from all devices we acquired during the course of the investigation, except some subset of Mr. Nauta's devices.

So that is the status of unclassified discovery.

THE COURT: So what's the projected timeline for the

production of any additional nonclassified material?

MR. BRATT: So I would think the Nauta materials should be producible in the next couple weeks, we hope. And certainly in a case like this, we do talk to witnesses from time to time, so those would generate new witness reports. Those types of things we'll provide on a rolling basis as they occur. But once we provide the Nauta device -- the Nauta devices, I should say, the remaining content, that is in the main the Government's discovery.

THE COURT: All right. So I've heard about I think you said 1.1 million pages, did you say?

MR. BRATT: Correct.

THE COURT: Okay. And in terms of the footage, how many months does that run through?

MR. BRATT: So it covers a nine-month period, but not all the cameras were -- but it is not all the cameras at Mar-a-Lago or Bedminster; not all the cameras were always running. And the retention period that the Trump organization had varied from camera to camera, so it is not a solid nine months of video footage.

THE COURT: Do you have a sense for just straight up viewing time?

MR. BRATT: Let me confer with my colleagues.

(Off record discussion amongst Governmental Counsel)

MR. BRATT: We don't know, Your Honor. And these are

motion-activated cameras, so there can be long periods of time when they're just not active and then something happens.

THE COURT: Okay.

Okay. Now, as far as the classified discovery, I know that has not yet begun. It appears to be contingent upon finalization of the Section 3 protective order, is that correct?

MR. BRATT: That is correct.

THE COURT: Okay. And that could itself spawn additional litigation depending on what's contested?

MR. BRATT: In terms of the Section 3 protective order?

THE COURT: Correct.

MR. BRATT: As things currently stand, Your Honor, we filed our motion. We've been advised by the Defense that they have some objections. We've asked that the time limit for responding be shortened. We're obviously open to hearing what their concerns are; and to the extent we can address them, we'll try to address them. But at the same time, it may be that the Court has to resolve those differences. But I would think that presumably some time in the next of couple weeks, that will have been resolved and we'll be in a position to produce the first tranche of classified discovery.

THE COURT: Now, when I was reading the Section 3 protective order as proposed by the Government -- is it the

Government's intention to withhold certain portions of classified discovery from the defendants themselves?

MR. BRATT: Not at this point, Your Honor. So that would be the subject of a Section 4 motion that we would bring to the Court, if we feel that there is any potentially discoverable classified materials that we think either needs to be deleted or needs to be provided in the form of a summary or stipulation. But in terms of what we have to produce, we are producing all of it, as proposed in the -- in both our motion and in the protective order.

THE COURT: I thought there was a provision in the proposed Section 3 protective order that did contemplate potentially withholding certain documents from Defendants themselves as distinct from Defense Counsel.

MR. BRATT: Yes, sorry, Your Honor. Yes, yes, I'm sorry, I misunderstood.

Yes, in terms of once Defense Counsel have access to it, there are times when the clients, the defendants, will seek to see it, and we have provisions in the protective order that addresses those situations when the defendants are seeking access. And I can just tell you, at least with respect to the former president that we likely, upon request, would agree to -- in order for him to assist his counsel, for him, since he's already seen the documents, to be able to review them with his counsel.

THE COURT: All right. Okay. It wasn't clear to me to what extent the Government was going to be seeking to withhold any information from either former president Trump or Mr. Nauta; but it does appear, at least on the text of the proposed order, that that could happen based on the proposed language.

MR. BRATT: That's correct.

So I mean, we have, particularly with respect to Mr. Nauta, somebody who no longer has a clearance, the former president never had a clearance, so they're different from their counsel in that respect. And again, it can happen in these types of matters that there are instances when counsel want to share something with their client or the client wants to see something and discuss it with counsel, and that's what that portion of the protective order is meant to address.

THE COURT: Okay. Well, I haven't seen what the objections are to that. Was there meaningful conferral on the Section 3? I wasn't sure why it was filed without meaningful conferral pursuant to the rules.

MR. BRATT: So we tried. We reached out to them.

THE COURT: When did you try?

MR. BRATT: So we had an email exchange on Friday -- trying to set up a call on Friday, and we were advised by Counsel that they were tied up. I suggested that we could make some time over the weekend to talk, if that was possible. We

did not hear a response from them.

THE COURT: All right. So you tried to confer on a Friday before filing on a Monday something that is presumably quite important. That seems a bit rushed.

All right.

MR. BRATT: And we're still happy to talk to them.

THE COURT: Certainly, and I think that's going to be necessary so that the Court has a more crystalized view of what's actually contested, if anything. Perhaps there are no disagreements and that would streamline things, but I'm not sure, at this point, given the lack of conferral.

All right. Now, as far as I think you said Section 4 litigation, you don't anticipate any Section 4 litigation? Did I hear correctly?

MR. BRATT: So no, we don't anticipate extensive Section 4 litigation. It may be very little. We are in the process of reviewing things that are potentially discoverable, but that would be something that we think, at least in terms of our initial Section 4, would be fairly minimal.

THE COURT: Okay.

MR. BRATT: It is possible, as sometimes happens in these cases, that the defense will make discovery requests and some of those discovery requests may hit on things that could cause us to, as part of our response to them, seek to either delete discovery or provide the information in the form of a

summary or stipulation. So there could be sort of follow on Section 4 litigation; but in terms of what we're looking at for our initial filing, we don't anticipate it to be very extensive.

THE COURT: Okay.

Now, in terms of the classified discovery, just big picture in terms of volume, can you provide any guidance?

MR. BRATT: I can tell you what is currently ready to be produced, once the protective order is in place and a location is identified for us to provide it to the Defense. There are 1,545 pages of classified material. And what Counsel will be getting access to is what their interim clearances will permit them to see. So they'll be seeing -- getting access to about 80 percent of the documents that went from the White House to Mar-a-Lago. And for purposes of kind of dividing them up, that consists of documents that were returned to NARA in January of 2022, some of the documents of the 38 that were provided in response to our May 11th grand jury subpoena, and then documents that were seized on August 8th of 2022.

In addition, there are classified 302s and interview notes and some transcripts of classified interviews. There are about 375 pages related to the interviews and about 250 pages of some interview transcripts. There are some additional documents we received from NARA, and they will be receiving the unredacted photograph that is pictured in paragraph 31 of the

indictment.

They will not see any of what I'll call Mar-a-Lago documents that are classified at a higher level than what their interim clearances permit. And there are some of the 302 interview transcripts that also have information at a higher level than that.

THE COURT: All right. Okay.

In terms of any pretrial motions anticipated by the Government, does your team anticipate any pretrial motions from your side?

MR. BRATT: The only things that I think we would do -- and we read Your Honor's omnibus order -- is we would have some form of omnibus motion in limine relating to evidentiary and issues relating to proper argument and defenses.

THE COURT: All right.

MR. BRATT: But otherwise, we don't anticipate filing any affirmative motions on our own.

THE COURT: So in terms of looking at the proposed schedule you offered, I think at docket entry 34-2, we're already I guess behind according to that proposal because that would have contemplated an initial production of classified discovery as of July 10th.

MR. BRATT: That is correct.

THE COURT: Okay.

MR. BRATT: We've looked at this, Your Honor, and we do think that if we move the dates two weeks forward -- and the assumption on that is that it will take the full period of time for the final clearances, the 60 days, so my understanding as of last Thursday, the 13th, all of the forms were submitted, and some of the interim clearances have been approved, that -- assuming that it takes another 60 days for the final clearances, and hopefully it will be less than that, that even assuming that period of time, and on September 12th, the Defense gets access to the remaining classified discovery, that if we move the dates two weeks forward that we could still finish the CIPA process before the December 11th -- before the December 11th date that we propose to begin jury selection.

THE COURT: I guess, but nowhere in this proposal do I see any allowance for nonclassified Rule 12(b) motions, for example, or any Court review or any hearings, and so which leads me to my next question. Can you point the Court to any other similar cases involving classified information that have gone to trial following production of discovery in less than six months?

MR. BRATT: So going to trial in less than six months, no. I think we gave the Court two examples from the Eastern District of Virginia where -- and particularly the one case out of Norfolk, where in about eight months, they went from the beginning of the case to verdict.

THE COURT: Yeah, I think I took -- let me go and see that case. Hold on.

MR. BRATT: It's *United States vs. Hoffman*, Your Honor.

THE COURT: Uh-huh.

Yes, I saw that case. I think it was a four-count case, if I'm not mistaken, involving a very small number of documents with no substantive pretrial motions, at least that I could tell, which really is the nature of my question.

In your experience, I know you provided a declaration and you're familiar with CIPA litigation, these matters often require more time simply given the classified nature of some of the materials.

Do you have any other I guess authority for the Court on such a compressed timetable?

MR. BRATT: So I would say not beyond what we presented the Court. My observation, Your Honor, is that we acknowledge we have presented an aggressive schedule. This case is unique in a number of different ways. We are committed to doing the work that is necessary to achieve the schedule. At the same time, we recognize that there could be some things that come up that throw the schedule off. There could be things that -- there could be a Defense discovery demand that reveals something that is more complicated and understandably that would throw the schedule off.

And Mr. Harbach will address in more detail the motion to continue, but we feel it's very important to have a trial date to work from understanding that that trial date may not be set in stone.

THE COURT: All right. Thank you.

Let's see if I have any other questions at this time.

All right. I'll get back to your team, Mr. Bratt unless --

Mr. Harbach, do you have particular observations with respect to the motion to continue that you'd like to offer now, before I turn to the defense attorneys?

MR. HARBACH: I'd be happy to, Your Honor, if it suits the Court.

THE COURT: All right, so I guess any additional argument you wish to offer on your motion to continue. Like I said, I've read the papers.

MR. HARBACH: Yes, Your Honor.

Just a few points that I'd like to make, Your Honor. One is a framing issue. As Your Honor may have seen from the response the defendants filed to our motion to continue, they have repeatedly framed this as the Government seeking an expedited trial, and in our view, they have inverted the analysis. I won't belabor this since it's adequately addressed in our papers, but the simple point is that it is not a speedy trial that has to be justified, it's deviation from a speedy

trial that has to be justified. We think the statute provides a framework for that analysis and that none of the framework that is in place as a result of the statute or interpretive case law requires the Government to substantiate a need to move expeditiously, is what the framework contemplates. So that's the first point.

The second thing I'd like to address briefly is something that is plainly intentioned here, and that is the Defense's view that Mr. Trump in particular should be treated differently in light of the circumstances, whether it's the fact that he's a former president or the fact that he's running for president or what have you. In our view, he should be treated like anybody else, and so we see that plainly as attention here; but our view we think is supported by the Constitution, the United States Court of Appeals for the Eleventh Circuit, not to mention a fundamental tenet of the republic. In short, Mr. Trump is not the president. He is a private citizen who has been indicted by a lawfully empaneled grand jury in this district, and his case should be governed by the Constitution, the United States Code, and the Federal Rules of Criminal Procedure, just like anyone else's.

Third thing, the fact that he's running for president, how should the Court take that into account? We think there are two possibilities, neither of which would justify this Court doing so. The first is Mr. Trump's own

interests in running for president. In short, it would be unfair to force him to go to trial because his schedule will not allow him to do it. He has too much to do. At that level alone, our position is that he is no different from any other busy important person who has been indicted.

The second possibility is a putative public interest in his candidacy or his running for president and the effects that putting him to trial might have on that public interest, and our -- the point we would like to emphasize on this, Your Honor, is that it is important that the Court and nobody else conflate the public interest, as they might argue it here, with the public interest formulation that is in the Speedy Trial Act. We think it's important to keep those distinct, because the latter isn't just the public interest writ large. According to the Speedy Trial Act, it is the ends of justice finding that Your Honor, this Court, will have to make if excluding time as a result of the continuance, it references the best interests of the public and the defendant or defendants in a speedy trial.

So it is abundantly clear, as I know the Court knows, Your Honor has a whole lot of discretion in setting a trial date and deciding whether to grant a continuance. The case law is very clear on that. However, in light of the relief that the Defense has sought here, namely indefinite deferral of even discussion of setting a trial date because the Defendant is

running for office would be unwise, and so we would urge the Court not to indulge the relief that Defendants seek for those reasons.

THE COURT: On the speedy trial issue specifically and the designation of this case as complex, I take it the Government objects to designation of this case as complex?

MR. HARBACH: Yes, Your Honor, and it's because we don't think it meets any of the requirements for that designation in the statute. The number of defendants is two. The novelty or complexity of the legal issues that are involved, we don't believe obtains in this case for the reasons we set out in our pleading. And I'll make a brief side point here that the observation of Counsel for the Defense that they think they may have a couple of potentially dispositive motions that might, might, were the Court to rule in their favor, obviate the need for a trial is no reason not to set a trial date in the first instance.

THE COURT: I'm not so sure it's the merit of the potential motion as it is the extensive motion practice which nonetheless would have to be conducted. Of course, the Court would need adequate time to review, so focusing just on that coupled with the very voluminous discovery plus the classified information aspect of the case. I looked around so see if the government had ever objected to a complex designation in a CIPA case, I wasn't able to find any such objection, and so that's

the reason for my question.

Precisely why don't you think it would fall within that complex designation under the act?

MR. HARBACH: Can I have just a moment to grab the statute, Judge?

THE COURT: Yes.

MR. HARBACH: Okay. So I'm going to answer Your Honor's questions by reference to the statute.

So the pertinent portion there -- and I know Your Honor is familiar with it -- says whether the case is so unusual or so complex due to -- and then there's a litany of things. The first one is the number of defendants which we've already talked about and does not merit designation in this case. The second is the nature of the prosecution, which I'll come back to in a moment. The third is the existence of novel questions of fact or law. And in any of those instances such that it's unreasonable to expect adequate preparation for trial within the time limits. So that's the framework.

To the point Your Honor was just raising a moment ago about the potentially dispositive pretrial motions -- and Your Honor is right, it's not just a question of the merits, of course not, but it is -- according to the statute, it is -- the Court should take into account to some degree the novelty of the type of relief that's being sought. This is something that we address in our brief. The two subjects that are noted by

the Defense as, in their view, filling the bill here are, number one, an attack on the special counsel's ability to maintain this action in the first instance as a matter of jurisdiction and power without regard to anything else. And as we point out in our brief, that, while an important legal issue, please don't misunderstand me, is not something that is being writ on an entirely blank slate. It has been litigated extensively both in the Supreme Court of the United States and in the Court of Appeals for the D.C. Circuit.

Now, I'll readily acknowledge that in the Southern District of Florida and perhaps even in the Eleventh Circuit, there's a degree to which this is a new topic; but my point is that it's not tabula rasa. And so on the ultimately pertinent question of, well, gosh, can we possibly get to trial while still briefing this issue, we think the answer is yes.

And the other important point we make -- and I'll get to their second motion in just a second. The other point we make is that neither the discovery schedule nor anything related to classified information being produced or the timeliness of CIPA proceedings should impact the Defense's ability to make that motion. Whether the special counsel has authority to bring this action is a motion they could have been working on since they got the indictment over a month ago. So when evaluating whether their need or their desire to file this motion necessarily has to impact the trial schedule, we just

ask Your Honor to keep that in mind, first of all.

So the other motion that they mentioned was a --

THE COURT: I think at the intersection of the --

MR. HARBACH: Thank you. The intersection of the Presidential Records Act and the statute.

Now, we took a potshot in our brief at their legal theory and, in our view, that was justified because we don't -- on the face of it, we genuinely don't believe that there is any reasonable argument to be made that the Presidential Records Act could either, A, form a basis for dismissal of the indictment; or B, justify the relief that they're seeking, namely an indefinite deferral of consideration of the trial date. Now, that one, there's a degree to which it's new, I suppose, which is one might say that the argument has never been made in precisely that way before. I mean, I'm shooting in the dark a little bit because I don't know the full contours of their theory, but I do know that to some extent, the intersection of the Presidential Records Act with Mr. Trump's ability to retain the materials in question has been the subject of some litigation before this Court and some briefing by this -- before this Court, including by Mr. Kise, one of President Trump's counsel.

And so why do I mention that? I mention that only as another factor for the Court to consider in deciding whether these are really the types of pretrial motion issues that

necessitate putting off trial indefinitely or by a number of months in the way that the statute contemplates.

So I apologize for that detour about their pretrial motions, but I want to circle back to the first factor that's listed in the statute, which is the nature of the prosecution.

Obviously, circumstantially this is an unusual case because of the identity of the defendants and the conduct that's at issue. What's not unusual about it is the theories of liability. They're pretty straightforward. Whether it's 793 or any of the variations on obstruction that the indictment alleges Defendants engaged in, that part is not complicated. So in our view, the nature of the case is not -- it's pretty standard fair as those types of cases go. So it's a long-winded way of hopefully answering your question which was why doesn't the Government agree this case should be designated as complex, and so those are the reasons.

I need to sit down, but the one last point, with Your Honor's indulgence, I'd like to make is about a point that Defendants have made about the difficulty -- or the potential difficulty in selecting a jury here. And the reason I think it's worth emphasizing is because it's not an overstatement to say -- and they have said it in their brief that in their view, they would not be able to get a fair trial during a presidential election cycle because essentially it would be impossible for this Court to a select a jury. There is

doctrine on this subject, but the cases they point to in their brief involving heinous acts of violence and so forth don't help them for the reasons we lay out in our brief, and I'm not going to reiterate them here. Suffice it to say, this isn't the type of issue that would ordinarily justify continuance on these facts.

The division of opinion in our country over Mr. Trump I think it's fair to say long predated his indictment and will long post date the election, however it turns out. As with the trial of any public figure, whether it is a politician or a movie star or a corporate executive, whatever, there will be surely be a need for more thorough and careful voir dire. There's no question about that. But in the Government's view, none of that means that the Court should just throw up its hands and say, "Well, I guess we can't have a trial until after the election." We think that's -- would be far too rash of a reaction, and that's especially so -- it's especially so when there's no reason to believe that the situation, vis-a-vis public differences about Mr. Trump, is going to be any better after the election than it is right now.

So the real question here in our view is whether this Court can rely on the mechanisms that judges have used in this country for generations to select fair and impartial juries. That's the first thing. And then the second thing the Court will have to rely on, as it does in any case, is the honesty

and fairness of ordinary citizens who take an oath to judge the case based only on the evidence that's presented to them and instructions on the law from the Court. And if the question is whether those two things are adequate enough to rely on to ensure a fair jury trial in this case, the Government's view is that the answer has to be yes.

I know you said you read our pleadings, Your Honor, so those are all the remarks I'd like to make at this point.

THE COURT: Thank you. If I have further questions, I'll turn back to you.

Let me turn now to the Defense attorneys starting with Mr. Blanche. I'm not sure if there's a division of labor here contemplated.

MR. BLANCHE: Thank you, Your Honor.

Your Honor, just starting with a question you asked Mr. Bratt a while ago about just one part of the discovery, which is the CCTV footage, which is extraordinarily significant to this case, not only as what's obvious from the indictment, but it also in part gave rise to the search warrant, the affidavit, and the probable cause to search Mar-a-Lago. As of this morning, there's 1,186 days of footage that we have uploaded so far, and our vendor is not finished uploading it. And again, I'm not questioning Mr. Bratt's position about the time period, but there's multiple cameras that were subpoenaed and that have been produced to us as Rule 16 discovery; and as

of today, it's over three years' worth of video.

Now, I'm not suggesting to the Court that we're going to sit for three years and watch three years' worth of video, but it's a tremendous amount of data and information, and we're just -- I'm just talking right now about the CCTV footage. While the Government is correct that they have pointed us to the few days that they believe are the most significant to them as it relates to the charges in the indictment and presumably the search warrant, they're not the most significant to us. I mean, the movement of boxes and where boxes were on given days is extraordinarily significant not only to the justification for the search warrant of the President's residence but also to the defense of the case. And so the CCTV footage alone, over 1,186 days, makes the schedule the Government proposed pretty disingenuous, Your Honor.

Secondly, there's over 400 -- including yesterday's production, Your Honor, over 450 gigabytes of data. And I accept the representation of the Government that a chunk of those emails are going to be blank pages that just say to/from, but that doesn't change the fact that I have an obligation, as does the rest of my colleagues, to make sure that that's right. And the fact that the Government has identified the material that they believe is the most significant to them and to the indictment is significant and helpful, and the discovery is relatively organized. But not the question that we believe the

Court needs to address or answer when considering the volume of discovery, and the amount of discovery, and the manner in which it was produced, and the timing of which it's produced. We received -- we have over 190,000 emails. And it doesn't matter, Your Honor, that many or even most of those emails are not going to be significantly relevant to the defense of this case. It doesn't excuse our obligation to view them and to look at them or to at least have a process in place to understand who they're from, what they are. There's nearly 100 custodians, Your Honor, that we've received so far from the Government; and, again, we're talking about as recently as yesterday. So the sheer volume of discovery that has been provided to us just in the past couple of weeks is very, very significant. And putting aside -- and I think I'm stating the obvious, but this is an unusual case.

This isn't a case that's like many of the cases in federal courtrooms around this country. The fact that President Trump was indicted and the reason why he was indicted for possession of classified -- purportedly classified documents in a series of boxes in his residence, many of which were moved, we believe, before President Trump even left office. Some of them were maybe there afterwards, we don't know, that's something that we're looking at in discovery.

This is not a normal case. This is not a usual case. And the fact that the Government stands in front of the Court

today and put in their papers that the schedule they suggested, which is that motions should be due in two weeks, and that we don't have clearances -- I found out today that I have an interim clearance, but we haven't looked at any of the classified discovery which I'll get to in a moment, but the fact that we're supposed to consider and review all of the evidence that they have provided to us over the past two weeks and be prepared to file substantive motions in two weeks is disingenuous, Your Honor.

THE COURT: And I can appreciate that more time is necessary, but we need to set a schedule, and so I guess my question for you would be: What can you offer the Court in terms of concrete specific projected timelines that actually suit the needs of the case and the defendants' interests in reviewing this discovery? Because at least some deadlines, I think, clearly can be established now. And your motion at this point, although it speaks to some of these concerns in fairly general terms, really doesn't provide the Court with any specific road map. So I think it is incumbent upon the defense team to offer more in the form of particulars so the Court can establish an appropriate schedule that adequately takes into account all parties' needs, along with the Court's obligation to review any motions filed appropriately.

MR. BLANCHE: Of course, and completely understood, Your Honor.

This is in our opposition paperwork, but just to briefly address it now, just talking about Counsel's schedule which isn't the only primary concern but should be an appropriate concern given the circumstances of this case. There is no -- and I'm happy for Mr. Kise and Mr. Woodward to address their own schedules, but there's no meaningful way that the Defense can prepare and file motions on either CIPA Section 5 motions or as it relates to the 12(b) substantive motions in this case until at least December. And let me step back for a moment and explain why I say that date as even being the potentially first date.

The number of -- and the amount of discovery that I just laid forth doesn't get into the actual nature of the discovery which, to be honest, we obviously haven't gotten our way through yet, but we've gotten through some of it. There are meaningful substantive motions beyond the two that Mr. Harbach mentions, although we very strongly believe that both of those motions are something that the Court will need time to consider, and we don't believe that they're in any way frivolous and we think --

THE COURT: Do those motions depend on sort of detailed granular review of discovery? Are there some that are just more discrete legal issues that could be filed now or close to now?

MR. BLANCHE: I mean certainly there are potentially

some motions that are separate and apart from the discovery produced, absolutely, Your Honor, of course; but it's a little bit -- you know, to the extent that we're writing substantive motions that don't require our review and consideration of the materials provided by the Government, that's time that we're not reviewing -- we very strongly believe that it's much more efficient, not only for the Defense but also for the Court, to do those motions at one time.

Just by way of one example, as the Court knows from the indictment, one of the Government's main witnesses in this case is President Trump's lawyer, and the Government was investigating this -- the grand jury, initially in this case, was in D.C., and everything regarding the grand jury and what happened there was in D.C. There's a U.S. Attorney manual provision that states very clearly that a case should not be presented to a grand jury in the district unless venue for the offense lies in that district. There's no scenario under which most of the statutes charged against President Trump that would have ever lied in the District of Columbia; but that being said, that's where this case was presented, and it still continues to be, at least in part, presented there based on our understanding. That's a significant issue, but it requires review of the discovery.

It requires us to read the briefing and the grand jury transcript and what happened that led to that very

significant issue that talk about something that this Court doesn't see very often and indeed none of us see very often, the President's personal lawyer is required to testify about conversations, privileged communications that he had with the President. That's a significant issue that requires our review of discovery.

Similarly, the search warrant that Your Honor is somewhat familiar with of Mar-a-Lago, but there were multiple search warrants executed in this matter mostly for cell phones and computers. And the affidavits that gave rise and that gave probable cause purportedly for those search warrants are all in some way similar but in some ways very different, we need to be able to review those, and not only review the warrants and the affidavits but also the material that was collected from many of the witnesses or for -- fair enough, for some of the witnesses that involved a team of lawyers at the Department of Justice that were -- that could taint team because there were privileged materials. That's all something that we have to look at as well. But we can't make a motion based upon any potentially improper conduct as it relates to that until we review those materials and until we've had a chance to think about that.

And I'm not trying to lay it on too thick, Your Honor. That's just two -- two, three motions that we're talking about. That's not actually talking about the actual

evidence in this case which is purportedly -- while the indictment speaks to over 100 documents that had classified markings on them, 30 documents that were interspersed between multiple boxes at various locations at Mar-a-Lago that we need to understand. And this gets a little bit into the CIPA litigation, Your Honor, but that we need to understand the circumstances under which they were found, which box they were found in, where in the residence they were found. That matters, and that's something that also goes to -- will ultimately go to potentially a pretrial motion but also just our understanding of the evidence in this case.

Beyond that, Your Honor, I just -- I'd very much disagree with the Government, very much so, that they expect and they ask the Court to treat President Trump like any other defendant that walks in here. I do not think it's appropriate for the Court or for the Government to ignore the fact that he is running for president and that the next year is a presidential election year which, right now, he's -- you know, we don't know what's going to happen in the primaries, of course; but right now, he's the leading candidate and if all things go as we expect, the person he is running against, his administration is prosecuting him. And so the idea that the Government is putting forward that the Court should just ignore that and say, "well, you're like any other defendant," I very much disagree with that, Your Honor.

And I appreciate that there's tension and that Your Honor has a tremendous amount of discretion in how to address that issue, but it's, in my view, intellectually dishonest to stand up in front of this Court and say that this case is just like any other case, Your Honor. It is not.

And the reality is, as we saw from earlier today, there appears to be even more charges coming against President Trump from the special counsel. He has already been indicted and has a trial scheduled in March in New York. As we put in our letter, but Mr. Kise can certainly address more substantively, he has been charged civilly by the New York attorney general. There are depositions that Mr. Kise is attending next several weeks and then motion practice and a two-month trial that starts in October of this year of Mr. Trump and his companies.

In the middle of all that, President Trump, he is running for reelection. And I do need to spend time with him preparing him for this case and understanding the evidence, and understanding what the evidence can mean as it relates to a criminal trial in this courtroom. And so the fact that we're talking about the volume of discovery, the schedules that we have, and the schedule of President Trump, we're not asking for special treatment. That's the reality. That's not something that -- I'm not making that schedule up, I'm not making up any facts here, Your Honor.

And so when we asked in our papers -- we didn't ask for an indefinite date. We didn't just say put it off until never, never land. At the time that we wrote our opposition brief, we hadn't processed most of the discovery. We now have more discovery. We still don't know the nature of the classified documents. We now understand there's over a thousand pages, but we don't understand, you know, what that means or what they are. And so what we asked is to return to the Court at a date when we can speak intelligently about what --

THE COURT: So how much time would you need to do sort of at least an initial triage of the discovery?

MR. BLANCHE: So we will be prepared to file motions in December, Your Honor, and that will give us time to --

THE COURT: That's not my question. My question is: How much time do you need to do an initial triage of the discovery so that you can formulate a more refined proposal in terms of schedule?

MR. BLANCHE: Understood; sorry, Your Honor, for not answering.

Given what was represented today, Your Honor, and given -- and I'll let Mr. Woodward speak to his schedule for Mr. Nauta; but Mr. Kise's schedule, at least until early November, Your Honor, to review -- and this includes the classified information as well, Your Honor -- and come back at

talk about what we've seen.

On the classified information, this is -- and you asked Mr. Bratt about this, there's no case like this. I mean, the President has original declassification authority. He's one of a few people in this country that possess that as President. Whether that's part of the review of classified materials, we don't know yet. And Your Honor is right, the proposed protective order right now doesn't allow us to discuss anything with our client as it relates to any of the materials that we see that are classified, without getting permission from the Government. And so there are complicated Section 5 motion practice for things that will take place that we can't speak intelligently about yet because we haven't seen the documents. But it's not like a typical case when somebody has classification authority, illegally possesses documents and then is arrested for it. That's not just what this case is.

THE COURT: All right. So in terms of security clearances, there has been I think a good amount of progress on that front, and I want to thank the litigation security group for all that it's done to move those along expeditiously.

Does the Defense anticipate any additional members of the defense team working on this case such -- what I don't want to run into is a scenario where three months from now, all of a sudden there are five new people, and we're now delayed on account of additional clearance processing.

MR. BLANCHE: Your Honor, possibly, but I can represent to the Court that we will not seek a delay, given what I've said today in connection with the timing that we've requested if new people are added meaning we will not come back to this Court and say, oh, geez, we just added a new lawyer, reset deadlines. We're here, and we may add members to our team, but we will work with the Department of Justice and the security folks to do that quickly, and we have one potential new member who already has security clearance and so that will be very efficient. But I commit to the Court that that will absolutely not happen.

THE COURT: In terms of that March 2024 trial in New York, do you know if that's a firm trial date? Has that that previously been continued? Do you have any information about scheduling as far as that case is concerned?

MR. BLANCHE: You mean as far as like how long it will last and whatnot?

THE COURT: Yes, and whether it's really going to go in March.

MR. BLANCHE: Yes, Your Honor, our understanding from the judge is that -- from the state judge is that he has instructed all lawyers to -- and President Trump to clear the schedule and to be prepared to go to trial on that date. And we do not anticipate that date moving. We believe, based upon the people of New York, the people's representations, that it's

approximately a three-week trial with some potential give, of course. That -- sorry to jump around. That's the other thing about this case, Your Honor. It's potentially a six- or seven-week trial.

The Government indicated when filing the indictment that their case is 21 days. When you work in jury selection -- and I have no idea, if any, what Defense case there would be, but let's assume it's a couple days to a week, you're talking about a very significant amount of time for the Court that should also be considered, especially as it relates to President Trump and his ongoing campaign for president.

THE COURT: All right, thank you.

Let me hear from Mr. Woodward, unless Mr. Kise has particular commentary with respect to Mr. Trump.

MR. KISE: Thank you, Judge. Good afternoon. Good to see you, albeit under the circumstances.

I'm going to be brief, and I'll try not to cover things that Mr. Blanche covered. Just a couple points that Mr. Harbach raised that are also raised in their reply that I think are worth the Court's at least consideration a little bit in this context.

The Government in its reply brushes away the *Sheppard* and *Coleman* cases that we cite, and they focus really more on the crime that was at issue. But really, the focus of those cases is the actual publicity, it's not really what's causing

the publicity. The Court's focus is on the publicity and the impact of that publicity on a fair trial. And the press coverage in both *Sheppard* and *Coleman* was indeed significant, as they lay out in those cases, but it really doesn't compare to this case. I don't think anything does, and I'm going to get to that just briefly in a second.

But the *Sheppard* court made something very clear, and that is that where there's a reasonable likelihood that prejudicial news will prevent or impede a fair trial, then the Court should continue the trial until the threat abates. It doesn't say that it should continue it until it goes away completely, but it does say that it should continue it or at least consider continuing until it abates.

Here, you have what can easily be described, I think fairly, as extraordinary and unrelenting press coverage. As Mr. Blanche pointed out, you have essentially the two right now leading candidates for the presidency of the United States squaring off against each other in the courtroom, at least that's how the public views it. That's certainly how the media views it, and there's really no way right now to contain this.

I had some basic research done of what's called Brandwatch data which helps reveal a little bit of the extent of this coverage. The federal indictment alone, just from the 38 days from June 8 until July 16th, generated 88,306 news stories, that's over 2300 stories a day; 2,070,111 social media

posts, that's almost 55,000 social media posts per day. Every motion, every hearing, everything generates a story.

I filed a motion for pro hac vice admission for Mr. Blanche's partner, Mr. Weiss, the other day, that generated a news story. I've never in my career seen a pro hac vice motion generate a news story, but it generated a news story. So there's no way to escape this. And as Mr. Blanche pointed out, what the Government is trying to ask this Court to do -- and I appreciate the Court is in a challenging position here, but I think these factors should respectfully be considered and weighed carefully and not in a hurry.

We have to recognize the reality of where we are, and they certainly have this sort of Oz-like approach that they just want to compartmentalize this. And so every word that's spoken in this courtroom is going to generate hundreds if not thousands of stories. There's going to be pundits and experts during the course of the election, where we are at the peak, the zenith of interest, focused on this, and it will be just like in the *Sheppard* case, very difficult to separate the facts that are going to be developed in the courtroom from the facts that are going to be developed outside on the courthouse steps in the media. You see it already now. There is pundit after pundit after pundit, expert after expert after expert on TV 24/7 talking about -- they're going to do it today. They're going to talk about the arguments the Government made, they're

going to talk about the arguments that we made; and there's going to be all of this subjective commentary that is going to find its way into the jury pool.

THE COURT: But won't that just continue? I mean --

MR. KISE: Respectfully, I think it will abate somewhat post-election, I do. And if you'd like us to develop that argument further, then perhaps we can. But I think it will simply because the interest is at its peak, and it will remain at its peak as long as these two individuals are squared off directly against each other. It will never go away.

THE COURT: So your position is that there can be no trial until it's after the election.

MR. KISE: I certainly think that's the best course of action for a fair trial for this defendant because this defendant, like the defendant in *Sheppard* and like the defendant in *Coleman*, deserves to have the evidence in the courtroom and only the courtroom dictate the outcome. And so that's a very difficult thing in this context, and so I would ask the Court to carefully consider this and let's think about this before we make any final decision. But as the *Sheppard* court made clear, where there is a reasonable likelihood that the prejudicial news will prevent or impede a fair trial, the Court really should continue the trial until that abates.

THE COURT: I think, at least it seems to me, that we should be focused on the volume of discovery, the legal issues

that are expected to be presented, the extent of motion practice, the complexity of the classified information, if it is complex, and those sorts of CIPA procedures. I think that framework guides the Court's continuance inquiry in a more concrete way, and one that I think is more suitable to the Speedy Trial Act.

Anything further, Mr. Kise?

MR. KISE: I want to talk about the schedule conflict to your points, Your Honor. And the schedule conflict -- they cite two cases in their papers, the *Hanhardt* case and the *DeCastro-Font* case, and I just want to point out that there's a different context here as well. We're not talking about schedule conflicts, at least not with respect to me and with former President Trump. We're talking about schedule conflicts that involve the same client. So it's not that I have a case for Client X or Client Y that is precluding me from being here. I think that's a very relevant consideration and a real one, but I think it's even more focused with respect to President Trump.

The trial that I have beginning in October involves him and his companies. There is another trial scheduled with him and his companies in January in the Southern District of New York. There is the trial that you know about in March of 2024 with Mr. Blanche. So these are the same lawyers dealing with the same client trying to prepare for the same sort of

exercises, and so I think that's highly relevant.

The *Hanhardt* case involved different clients. It involved a commercial arbitration versus a criminal trial, and the conflict there between the two was really very different than the context here.

The *DeCastro-Font* case also involved a conflict between two different trial schedules for two different clients, and the complexity and the volume of discovery there, to Your Honor's point, is nowhere near comparable. There, there were 20,000 pages of documents and 10,000 emails. We have 1.1 million pages of documents and counting, 190,000 emails. None of this is present here, so I would say that the only cases cited by the Government are simply inapposite, and I think that's very relevant for Your Honor's consideration.

In terms of the schedule here and my own schedule for this same client, we are involved as of today, in fact. I mean, I'm missing the depositions. We have expert depositions every single day this month until the end of the month, until July 28th. Summary judgment motions are due on August 4th, and they will be comprehensive. The oppositions are due several weeks later, on September 1st. The witness and exhibit list is due November 8th. The summary judgment reply is September 15th. The summary judgment hearing is September 22nd, that is the same day that we will have to file all of our pretrial motions, including *Daubert* motions. The

final pretrial conference is only five days later, on September 27th; and the trial begins on October 2nd. It is an extraordinarily compacted schedule.

The trial itself involves well more than 20 fact witnesses and 18 experts. My experience in the New York State Supreme Court leads me to conclude that we're going to have roughly six hours of trial per day. So this is why we anticipate the trial to go at least through mid November to Thanksgiving. All of that is by way of saying that it would be extraordinarily difficult to prepare effectively to participate in this proceeding, even as to the Presidential Records Act issues Mr. Harbach mentioned. I think we need time to understand the documents at issue; I certainly do. Yes, those arguments were touched upon when we were last before Your Honor, but the real issue was that since we never knew what the documents were, it was very difficult to frame those arguments in sort of the esoteric environment that we were operating in. I'm going to need to understand -- Defense Counsel is going to need to understand exactly which documents are at issue and how those relate to the charges in order to advance the argument. So it is a legal argument, but that legal argument is dependent upon the facts that don't become clear until at least we see what it is that we're talking about. So we need time to do that.

I would also say that, as Mr. Blanche mentioned, the

target letter that has become public today, there are other proceedings that we're going to be involved in. We don't know, because the investigation is ongoing, even in this particular context, whether the Government plans on any superseding indictment. They haven't said so, but certainly the fact that they're continuing to subpoena individuals and send out target letters might lead you to conclude that that's a possibility.

And lastly, I would just reiterate again, Your Honor, that the novel questions that we have here --

THE COURT: Can you articulate more precisely what those novel questions are from your perspective?

MR. KISE: I can, Your Honor.

The Presidential Records Act is a novel question, despite the dismissive nature with which the Government presents it. There is a structure in place for presidents -- unfortunately, there is -- while there is some guidance under the Presidential Records Act, what is lacking with respect to classified information or purportedly classified information that's at issue here, what is lacking for all chief executives of the United States and has been lacking since the Presidential Records Act was adopted is what happens after the fact. What happens to these classified records?

There's actually no -- that's what's going to get developed in this trial -- there's no real guidance. This is why you see Vice President Pence, President Biden,

President Obama, President Bush -- I mean every president that has had to wrestle with these issues because there really actually is no direction and guidance. For all of the care and concern that the Government brings to this courtroom and says that they protect this information, when a chief executive leaves office, there isn't a whole lot of direction.

What is governing --

THE COURT: So what's the novel question?

MR. KISE: The novel question is, is which takes priority? The novel question is: Does the Presidential Records Act govern how the president makes decisions about his documents or her documents, as the case might be, or do these other laws intersect and govern?

We are going to maintain the position that the Presidential Records Act governs because that is what governs how the president manages and disposes of information in his possession during his term of office. And once he makes decisions about that information, whether it be classification decisions, whether it be presidential records versus personal records, those decisions are not assailable except under the Presidential Records Act.

I mean that's the sum and substance of it.

THE COURT: All right. Thank you.

This is my last question, then I'd like to hear from Mr. Woodward.

MR. KISE: Yes, Your Honor.

THE COURT: There's a reference in your opposition to a careful and complete review being necessary of the, quote, procedures that led to this indictment. Can you put any more meat on the bones to that?

MR. KISE: Your Honor, I think that's what Mr. Blanche was referencing, sort of the search warrant and those procedures, the grand jury procedure that he mentioned, Washington versus South Florida, and all of the issues surrounding Mr. Corcoran's testimony and the appropriateness or not of that testimony.

And lastly, Your Honor, respectfully, I would urge the Court still to please do consider the publicity aspects of this and perhaps maybe not postpone it until post-election, but I think that they are permissible for consideration under 3116.

Thank you, Your Honor.

THE COURT: Thank you.

All right. Mr. Woodward.

MR. WOODWARD: Thank you, Your Honor.

Just picking up where Mr. Kise left off, I have serious questions about how an investigation that had been pending for months and months and months in the District of Columbia ended up here, in the Southern District. You know, as the Court is aware, I was personally involved in a fair amount of litigation in the District of Columbia, and so I'm

especially curious, as we see discovery, to know what was done in D.C. and then what was done in Miami and whether there's a motion for abuse of grand jury process in this case. Those are rare, I understand that; but this is a new case, and we can't bring such a motion before Your Honor without understanding whether there's any merit there, and the only way for us to understand whether there's merit is to review the discovery.

And so, you know, to state the obvious, my client is not running for election, and so I'm not going to stand before you and talk about why a trial of my client couldn't happen until after the election. Instead, I agree with the Court that we can talk today about the practicalities of a trial. I don't know how much it's worth our time discussing a December trial because the Government stood before you just a short while ago and told you that they have not provided us with my client's cell phones.

They seized my client's cell phones pursuant to a search warrant in November, and they're telling you today that they can't make forensic copies of my client's cell phones available to us. Why did they indict a case that they don't have the cell phones to produce in discovery the minute that this indictment is returned? And the Government --

THE COURT: Mr. Bratt made some comments about potentially not being able to fully access the phone until a later date which might explain why it has taken longer for them

to produce or to try to at least process.

MR. WOODWARD: Well, that's the first I'm hearing of that, and it leads to a broader issue in this case. I mean, they seized my client's cell phones despite knowing that he was represented by counsel and counsel that was engaged in frequent discussions with the Government. Now, that's their prerogative if they decide that they want to seize cell phones regardless of whether they could have gotten a grand jury subpoena, I understanded that; but those are the types of questions that we're going to ask this Court to take a close look and to scrutinize.

With respect to --

THE COURT: So from your perspective, the pretrial motions that you envision, do they match up with the types of pretrial motions that have already been discussed or are there additional motions that you see in the future?

MR. WOODWARD: There's one very important motion that is going to be unique to Mr. Nauta, and that's whether he moves to sever, and he cannot make an informed decision and I cannot advise him on how to make that decision until we've seen the discovery and, in particular, until we've seen the classified discovery because there are 32, I think, counts involving classified discovery as against former President Trump that do not relate to Mr. Nauta.

And so the idea that the Government would rush ahead

to having motions being filed -- and, again, I don't know how much it's worth our time to talk about a deadline in two weeks or in six days, as the Court's current order is, but how can I advise my client? How can I provide him effective counsel under the Sixth Amendment when I don't know what the discovery is that's going to be admitted as against his codefendant?

I'm not suggesting we will be filing the motion because I don't know, and that's what I think the theme of this hearing is today. There's so much that we don't know and -- you know, so respectfully, I think our ask is that we'll come back as often as the Court would like, whether that's in 30, 45 days to just check in and let the Government tell us where we are in discovery. And Your Honor, I have no doubt, is going to ask me where I am in my review of discovery; and if I come before you in 45 days and say, Your Honor, you know, I've made no progress, I don't think you're going to allow that. You know, I don't think you're going to allow an indefinite continuance of a trial in this case. I think you're going to want us to provide you with real practicalities.

Your Honor, I want to comment on the video in this case, as well, because that is a critical element of discovery, and I didn't know before my co-defense counsel shared with me that there's a thousand days of video. And I actually take issue with the suggestion that I won't be reviewing it all. Now, maybe I personally won't be reviewing it all, but this

case is about what was happening on that video.

It's curious to me to learn that the Government doesn't have all of the video because their allegation that my client was moving boxes and that that is the sum and substance of the obstruction count, well, we need to see what was on that video in order to understand what they allege my client to have done or not to have done.

As Your Honor is well aware -- and I want to thank the Court for understanding my schedule last week, I was in trial in a case involving video last week. In that case, Your Honor, my client was alleged to have been captured on video for less than a total of two hours, and that client was arrested in March of 2021 and, for almost three years, this United States Department of Justice came before a federal court and said that that case was complex because of video. And so for them to come today and say that this case isn't complex because 500,000 documents and a million pages of discovery and a thousand days worth of video isn't a lie, we have a hard time reconciling that.

Now, yes, I have a busy schedule; and, yes, I understand the Government has cited a 20-year-old case and a 15-year-old case that suggests that that's not reason enough for the Court to push off a trial, but the Court doesn't have to rely simply on my busy schedule. The Court can rely on the fact that we have a lot of discovery issues left unresolved.

It may take them time to get access to Mr. Nauta's phones, but for us to come to you and commit to a briefing day when we don't know when we're going to get the phones, I think that's --

THE COURT: I think what I heard was a couple of weeks hopefully on the phones, but Mr. Bratt I'm sure will clarify that if I'm mistaken.

As far as the complexity under the Speedy Trial Act, this opposition, I don't have a separate motion to declare this case complex. So my question for you, Mr. Woodward and potentially for your colleagues, is whether that's built in or subsumed within this opposition?

MR. WOODWARD: Yes, Your Honor, I believe it is. I believe that under 3161, when the Court is considering the interests of justice, complex is one of the factors that the Court is to conclude. And so if Your Honor is asking whether we're prepared to toll under the Speedy Trial Act based on the complexity of the case, the answer is yes.

Now, I would also observe that tolling is happening right now. The Government yesterday filed a motion and that automatically tolls time under the Speedy Trial Act.

THE COURT: Are you aware of any other CIPA case with voluminous discovery that hasn't been deemed unusually complex?

MR. WOODWARD: I'm not, Your Honor.

And the CIPA issues I think are issues that we need

to resolve for the reasons I've already said. You know, I appreciate that the Government is working -- all aspects of the Government are working studiously dealing with the security clearance issues, but I think it's premature for any of us to assume that there won't be extensive CIPA briefing because I don't know what I don't know.

I'm told today that I have an interim security clearance; but, as the Court is aware, I have concerns about where that goes next. You know, we'll discuss with the Government the proposed protective order, but I have serious concerns about, as Mr. Nauta's counsel, consenting to a protective order that doesn't give him access to the discovery. I feel like as a defense counsel, we have a role not to make such a concession. Now, if the Court orders it --

THE COURT: I think the Section 3 needs to be conferred upon by the parties, and if there are any lingering disputes, that would be potentially the subject of additional litigation. But at this point, I have an unripe motion that wasn't truly conferred upon.

All right. Anything further, Mr. Woodward?

MR. WOODWARD: No, Your Honor. Thank you.

THE COURT: Okay.

All right. Let me hear from the Government with any rebuttal.

MR. HARBACH: Thank you. You predicted my question.

Thank you, Your Honor.

I'm going to address a number of things that were mentioned by our counterparts, but to the extent the Court might have any questions in particular on specific subjects, my colleague, Mr. Bratt, is going to handle questions or issues that were raised related to classified production, the volume of video footage, and those sorts of things.

I would like to make a few comments starting with where Mr. Blanche started. Actually, I should rephrase that -- where the Court started.

The Court's first question to Mr. Blanche was a request for a more concrete road map and some more particulars about the type of delay that they're requesting here and the reasons for it. And what Your Honor got in response to that was, at first at least December, although it wasn't clear what the "at least December" deadline was. And then later, Mr. Blanche said at least early November to file motions; and it occurred to me, as we were hearing the colloquy about motions that need to be filed, that it might be worth a brief detour to potentially bifurcate the types of motions we're talking about.

When I said earlier that the majority of the pretrial motions that they've -- they had mentioned in their written papers up to this point were not the types of motions that necessitated a thorough review of discovery, it's also the case

that if you look at Rule 12, it's Rule 12(b)(3), the motions that must be made before trial. There is a list there, and almost none of them require a fulsome review of discovery. The one potential exception to that is a motion for suppression of evidence; and as Defense Counsel have acknowledged, we've provided all of the search warrants, search warrant applications, and the fruits of stuff that were seized.

So my point of mentioning that is that to the extent the Court is considering setting interim deadlines for pretrial motions writ large, one option that the Court might consider is setting a deadline for motions that in the Court's view do not require extensive review of discovery and set purely legal motions, motions about the sufficiency of the indictment, severance motions, the catalog of -- I don't know how quite to put an umbrella over them, but some abuse of process allegations that they've been talking about. Those types of things don't require extensive review of discovery, and there's no reason to hold them up, certainly no reason to hold them up until November at the earliest in the Government's view.

I further take issue with Mr. Blanche's suggestion to the Court that it would be more efficient to do all of them at one time. I'm not sure quite what the rationale is there, but for the reasons I just stated, we think there are plenty of motions that could be handled sooner rather than later.

The Government more broadly does not take issue with

the notion that discovery has to be reviewed and has to be reviewed thoroughly by Defense Counsel in order to discharge their duties, of course. But let's not forget, part of the reason we're here is that it is the Government that sought a four-month continuance from Your Honor's currently operative trial date in part for that very reason, in order to accommodate both parties having enough time to review discovery, not to mention the CIPA procedures.

I reiterate that only to let Your Honor know that we are sensitive to that issue, and that factored into our own determination about a date to recommend to the Court that attempted to take into account those issues while still moving things along.

Briefly, I would like to address Mr. Blanche's claim that it was intellectually dishonest for the Court to -- or for the Government -- excuse me -- to suggest to the Court that Mr. Trump is like any other defendant. I've already made my point about that; but, suffice it to say that this is not just a philosophical musing about his station. This is an important principle that, as I said earlier, we think the Constitution, the Eleventh Circuit, and all associated case law made quite clear about how a private citizen who has been indicted should be treated by the rules, by this Court, and by the United States Code. So I don't think there's anything intellectually dishonest about it because the bedrocks that we stand on are

the ones that I mentioned earlier.

Both Mr. Blanche and Mr. Kise made reference to the fact that this case is being maintained by one political opponent as squaring off against another political opponent. Mr. Kise went so far as to say that the media has latched on to that and, in his view, is propounding that narrative.

For the Court's benefit, the Defendants, and to the extent that any of the media are in here today, the Government says that the claim is flat out false. That is not the case.

The Attorney General appointed the special counsel to remove this investigation from political influence, and there has been none, none.

It is worth pointing out that all of us who are sitting at the table today and all of our teammates are career prosecutors. No one on the team is or has been a political appointee, and none of us would be here working on this case if we thought we were just doing somebody's political bidding.

There has been lots of rhetoric about this in all of the media outlets that Mr. Kise mentioned, in social media and so forth, but that is all intended perhaps for the court of public opinion. In a court of law, that rhetoric has no legal construct. There's nothing for it to latch on to.

We are here because a grand jury of citizens in this district returned an indictment against these defendants, and the law requires a trial. If they want to make a motion about

some sort of abuse of process because that's what they think is going on, they can make a motion, and we can respond accordingly. But for present purposes, this argument, this claim is nothing more than that. It doesn't even purport to be more than that. It is just a naked argument. It is false --

THE COURT: I think it's an argument about publicity and how that would impact jury selection.

MR. HARBACH: Yes.

THE COURT: So I don't know if we need to get ahead of ourselves here. I'd like to stay focused again on the issues related to the continuance, the pretrial schedule, the demands of this case in particular. I think that's really what needs to guide the Court's inquiry.

Anything further on those subjects?

MR. HARBACH: Yes, Your Honor, and thank you for the nudge. I just wanted to put on the record that the claim is false.

You're absolutely right that Mr. Kise also talked about the degree of publicity about the case in general and the extent the Court should take that into account. He made a point of attempting to distinguish the -- excuse me -- of attempting to dismiss our distinguishing of the two cases they put in their brief. As I mentioned earlier, our view is those cases are distinguishable because of the crimes that were at issue. And yes, the cases aren't necessarily restricted to

cases involving violence or heinous crimes or that sort of thing, but the familiar principle that is common in case law typically tends to emanate from cases like that.

More to the point, the publicity surrounding President Trump is chronic and almost permanent. There is no reason to think that it's going to get any better. Perhaps to the contrary, depending on the result of the election. Who knows what's going to happen? And all we're saying is, the fact that there is publicity is something that courts routinely deal with not only in selecting juries but also in conducting trials. It is commonplace to issue instructions to a jury saying "don't pay attention to social media, don't pay attention to what's in the news, don't pay attention to this and that." And if we're in a world where we can't trust juries to abide by courts' instructions along those lines, then we would never be able to pick a jury with any party of any public notoriety at all.

And so although, as I said earlier, we fully acknowledge the importance of voir dire here, and perhaps the need for some creative additional procedures to make sure both sides and the Court are satisfied that there's an impartial jury, we're not denying any of that. All we're saying is that is not enough of a reason to continue the case indefinitely or even for any significant period of time.

The last thing I would like to say before I turn it

over to my colleague is -- I would like to briefly touch on the other obligations of Counsel and how the Court should take that into consideration.

It is -- the cases that we have cited to Your Honor -- Mr. Kise has pointed them out -- both of those cases and the standards that were involved there were, in fact, cases where lawyers had -- I was about to call it an actual conflict, but I don't mean it in the ethical sense, I mean it in terms of their calendar, where they were -- you know, they had two trials scheduled on the same day, or something like that, and were physically unable to be at both. And even in those circumstances, the courts concluded that the defendant's limited Sixth Amendment right to counsel of choice had to give way. So we cited those courts just for that proposition -- we cited those opinions just for that proposition.

I should point out that there is a Fifth Circuit case, a presplit Fifth Circuit case called *Gandy vs. Alabama* that is mentioned essentially by extension in the *Hanhardt* case because *Hanhardt* cites another case called *Hughey* which is another Fifth Circuit case that in turn cites *Gandy*. I mention that citation to the Court only to the extent it might inform the Court because it also includes some of the factors that courts consider in deciding whether to grant a continuance when there is a situation of an actual conflict. And to the extent the Court finds those factors informative here, it might be

useful for Your Honor. That citation is 569 F.2d 1318, and it's Fifth Circuit, 1978.

Now, Mr. Woodward chided us for the age of some of the cases we cited, and I have an Eleventh Circuit case from 2000 that cites *Gandy*. It's called *United States vs. Bowe*, B-O-W-E, 221 F.3d 1183. Suffice it to say that some of the most well-established principles in the law are actually quite old.

I'm just checking my notes, Your Honor. Can I please have one moment?

THE COURT: You may.

(Brief pause in proceedings)

MR. HARBACH: Unless Your Honor has any questions, I'll turn it over to my colleague.

THE COURT: Thank you.

MR. BRATT: Thank you, Your Honor. I'll try to be brief. We've been here for a while.

First, one response that I actually should have given to you when I was up here previously about other cases that have gone to trial this quickly, and it was really something that should have been obvious to me that I should have pointed out which is one way in which this case is different is I can't think of any other case that we've done where essentially from day one, we've had all the discovery and been able to produce it and to have the case ready from our perspective to go to

trial.

Just to turn to the *Mallory* case by contrast which went to trial again within a year and that's a case I'm very familiar with. In *Mallory*, some of the most inculpatory evidence that was used in that case was acquired in the search warrant that was executed on the day that he was arrested. And things had to be processed on the basis of searches of his house, of his devices that were recovered in his house. That was not the situation here. We were able to -- our key search we did now almost a year ago, we were able to compile all the evidence and have it ready to be produced right at the outset of the case. So that does make it different from our other cases.

THE COURT: But even there, you're talking about 11 months and no substantive pretrial motions. Were there in *Mallory*?

MR. BRATT: There was motions. There was extensive CIPA hearings in that case.

THE COURT: Other than CIPA specific motions.

MR. BRATT: I would have to go back and look, Your Honor. Like it is rare for -- and federal public defenders were representing Mr. Mallory, it's rare for them not to file any substantive motions; but I can go back and check.

Just to touch briefly on Mr. Nauta's phone, we had the phone, we searched it thoroughly. We provided the scope

results of those searches to Defense Counsel. Evidence from that phone is in the indictment. The picture I referred to in paragraph 31 of the indictment, that is from Mr. Nauta's phone. Text messages that are in the indictment are from Mr. Nauta's phone.

THE COURT: When is that material going to be turned over?

MR. BRATT: It already has been turned over.

THE COURT: Okay.

Any other device productions that you anticipate and when?

MR. BRATT: Just to sort of explain what occurred is that we did a search of Mr. Nauta's devices, also searched his iCloud and had those results and already produced them. There came a point in time when certain software was necessary to continue the searches. It took -- for reasons that I don't understand, it took a few months to get that software. We got the software right around the time of the indictment which has enabled us to do an even more thorough search of the phone, and that is what is occurring now, and that is what should be producible within the next couple of weeks. But they have received extensive evidence from Mr. Nauta's phone already, and we offered defense counsel for Mr. Nauta a forensic copy. On July 6th, we offered them a hard drive that had a forensic copy of the phones and said, "Where can we send them?" We still

have not heard from them where they want us to send the forensic images. But they have a considerable amount of evidence from Mr. Nauta's phones.

With respect to the closed circuit television and the movement of boxes, I would just note that the movement of boxes occurred between May 24th and June 2nd. So it's not years' worth of video with respect to the movement of boxes.

With respect to the classified information, I know Mr. Blanche --

THE COURT -- the Defense would have to review all of the footage to be properly informed about the scope of the footage. I mean, it's not the case that they're going to zoom in on whatever period of time the Government isolates as critical.

MR. BRATT: Of course, but a lot of what they're going to be doing is having -- not themselves, having somebody run through the video and seeing essentially nothing happening or, you know, seeing somebody walk across a particular area and being filmed, none of the people who have any relevance to this case. But, yes, that takes time, but it's also -- it's not -- you know, it's not like reading documents. It is, you know, it's viewing something.

With respect to the classified materials that the Defense will see, understand it's their right to not concede that they are classified. They refer to them -- Mr. Blanche

referred to them as "purportedly classified." I would just advise the Court and Defense Counsel that all the documents have now, at this point, gone through a classification review. They are classified. In the course of our investigation, we saw no evidence from NARA or other records that any of these documents ever were declassified. We do have evidence that they have or will see about declassification, some of it in unclassified discovery they already have, some of it in the classified discovery they'll be receiving. And, yes, there were things that were declassified, and there was a process for it; not these particular documents.

And then finally, just to touch briefly on the PRA, and we'll obviously have another forum to brief that to the Court, but the PRA is very clear. In fact, I believe it's the initial provision in the PRA which is that, at the end of a president's term, the presidential records belong to NARA, belong to the U.S. Government. Prior counsel for President Trump have made statements both in pleadings and publicly that there's a two-year period to review, that there's a period for negotiation with NARA. None of that is correct. All presidential records belong to the U.S. government at the end of a president's term.

Unless the Court has other questions.

THE COURT: No. Thank you very much.

All right. Unless the Defense attorneys have focused

and brief rebuttal...

MR. BLANCHE: Very brief, Your Honor.

THE COURT: Okay, very briefly.

MR. BLANCHE: Very quickly, just to be clear, we do believe this should be a complex case given our briefing on behalf of President Trump.

And to the extent there was confusion about our ask, as Mr. Harbach just alluded to, our ask is that we come back at some point around November, having had a chance to do a preliminary review of the CIPA classified discovery and the discovery -- Rule 16 discovery and talk about a schedule then.

The Court then asked me about when we could file motions. I asked for December. We do not think a trial date should be scheduled today or at this time. If the Court wants to and believes a trial date does need to be scheduled at this point, we ask for it to be at some point in mid November or later of next year.

THE COURT: All right.

MR. BLANCHE: Thank you, Your Honor.

THE COURT: All right. Mr. Woodward, anything further?

MR. WOODWARD: Not unless the Court has questions. And we're happy to come back whenever you'll have us. So if we come back in 30 or 45 days and we check on the status of discovery, that's acceptable to us, and we can set motions

deadlines then; or, if the Court wanted to set motions deadlines and bring us back in November, that's okay. We're not going to ask the Court to -- we'll come back whenever you'll have us, Your Honor.

MR. BRATT: Your Honor, I'm sorry.

THE COURT: Yes.

I'd like to wrap this up.

MR. BRATT: My colleagues just advised me that I misstated something about what we offered Mr. Woodward last week. It was a hard drive with the CCTV, but we gave them the contact information for the filter attorney who currently has the forensic image of the phone. I just wanted to correct that for the record.

And one other thing I also neglected to mention, while I was sitting there, Your Honor, when I was first up, had said, are there any motions that the Government intends to file? And actually, we don't expect this will be a significantly complex proceeding, but there are some *Garcia* issues that we're going to have to bring to the Court's attention.

THE COURT: All right. Okay.

Okay. Well, thank you all for that overview of the scheduling concerns. It will assist me in thinking about and reviewing what an appropriate schedule in this case will look like. I will issue an order promptly following this hearing.

As far as the pending motion for protective order is concerned, because of the lack of meaningful conferral and because I think it would help the parties to sit down and go through those provisions carefully rather than file a motion without that careful conferral, I'm going to deny that motion without prejudice to be refiled following meaningful conferral pursuant to the local rules.

Any questions before we adjourn, Mr. Bratt?

MR. BRATT: Not for the Government, Your Honor.

THE COURT: Any from the Defendants?

MR. BLANCHE: No, Your Honor. Thank you.

THE COURT: Okay.

MR. WOODWARD: No, Your Honor.

THE COURT: All right. Thank you all for being here. Safe travels back home. The Court is in recess.

(PROCEEDINGS ADJOURNED AT 3:43 P.M.)

C-E-R-T-I-F-I-C-A-T-E

I hereby certify that the foregoing is an accurate transcription and proceedings in the above-entitled matter.

7/10/2023
DATE

/s/DIANE MILLER
DIANE MILLER, RMR, CRR, CRC
Official Court Reporter
United States District Court
101 South U.S. Highway 1
Fort Pierce, FL 34950
772-467-2337

S

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	No. 23-cr-257-TSC
v.	
DONALD J. TRUMP,	
Defendant.	

RESPONSE IN OPPOSITION TO
GOVERNMENT'S PROPOSED TRIAL CALENDAR

Ex. D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, *et al.*,

Defendants.

Index No. 452564/2022

ORDER

It is hereby ORDERED that the Preliminary Conference Order, entered on November 22, 2022 (NYSCEF Doc. No. 228), as modified by the Orders dated March 24, 2023 (NYSCEF Doc. No. 598) and May 1, 2023 (NYSCEF Doc. No 628), is further modified as follows:

1. All parties shall identify any rebuttal experts on or before June 19, 2023;

2. All parties shall produce their rebuttal expert reports on or before June 30, 2023;

3. Depositions of expert witnesses (which may be taken at any point after the opening report is served) shall be completed on or before July 28, 2023. Parties are presumptively limited to one deposition of each expert identified by another party.

4. Expert discovery shall close on July 28, 2023.

5. Trial depositions for all non-party witnesses who are unavailable for trial as provided for in CPLR § 3117 shall be held by July 28, 2023.

6. **End Date for All Disclosure:** July 28, 2023.

7. **Note of Issue:** Plaintiff shall file a Notice of Issue and Certificate of Readiness on or before July 31, 2023;

8. **Dispositive Motions:** Any dispositive motions shall be made on or before August 4, 2023. Any opposition brief shall be filed on or before September 1, 2023. Any

reply brief shall be filed on or before September 15, 2023. Oral argument on any dispositive motions shall be heard on September 22, 2023;

9. Additional Directives:

a. Final witness lists, final exhibit lists, deposition designations, and proposed facts to be proven at trial shall be filed on or before September 8, 2023;

b. Pre-trial motions shall be filed on or before September 22, 2023;

c. Final pre-trial conference is scheduled for September 27, 2023; and

d. Trial shall begin on October 2, 2023.

Dated: New York, New York
June 9, 2023

Hon. Arthur Engoron, J.S.C.
HON. ARTHUR F. ENGORON J.S.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	No. 23-cr-257-TSC
v.	
DONALD J. TRUMP,	
Defendant.	

RESPONSE IN OPPOSITION TO
GOVERNMENT'S PROPOSED TRIAL CALENDAR

Ex. E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

E. JEAN CARROLL,

Plaintiff,

-against-

20-cv-7311 (LAK)

DONALD J. TRUMP, in his personal capacity,

Defendant.

SCHEDULING ORDER

LEWIS A. KAPLAN, *District Judge.*

Unless this case previously has been entirely disposed of, trial of this action shall commence on January 15, 2024 absent contrary order of the Court.

SO ORDERED.

Dated: June 15, 2023

Lewis A. Kaplan
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	No. 23-cr-257-TSC
v.	
DONALD J. TRUMP,	
Defendant.	

RESPONSE IN OPPOSITION TO
GOVERNMENT'S PROPOSED TRIAL CALENDAR

Ex. F

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA v. DONALD JOHN TRUMP, RUDOLPH WILLIAM LOUIS GIULIANI, JOHN CHARLES EASTMAN, MARK RANDALL MEADOWS, KENNETH JOHN CHESEBRO, JEFFREY BOSSERT CLARK, JENNA LYNN ELLIS, RAY STALLINGS SMITH III, ROBERT DAVID CHEELEY, MICHAEL A. ROMAN, DAVID JAMES SHAFER, SHAWN MICAH TRESHER STILL, STEPHEN CLIFFGARD LEE, HARRISON WILLIAM PRESCOTT FLOYD, TREVIAN C. KUTTI, SIDNEY KATHERINE POWELL, CATHLEEN ALSTON LATHAM, SCOTT GRAHAM HALL, MISTY HAMPTON a/k/a EMILY MISTY HAYES Defendants.	CASE NO. 23SC188947

MOTION FOR ENTRY OF PRETRIAL SCHEDULING ORDER

COMES NOW, the State of Georgia, by and through Fulton County District Attorney Fani T. Willis, and requests this Honorable Court enter a pretrial scheduling order governing the deadlines for 23SC188947, State of Georgia v. Donald John Trump et al.

In light of Defendant Donald John Trump's other criminal and civil matters pending in the courts of our sister sovereigns[1], the State of Georgia proposes certain deadlines that do not conflict with these other courts' already-scheduled hearings and trial dates. Further, the proposed

[1] United States of America v. Donald J. Trump, 1:23-CR-00257-TSC (D. D.C.); United States of America v. Donald J. Trump et al., 9:23-CR-80101-AMC (S.D. Fl.); People of the State of New York v. Donald J. Trump, 71543-23 (S. Ct. N.Y. Cty., N.Y.); People of the State of New York v. Donald J. Trump et al., 451685/2020 (S. Ct. N.Y. Cty., N.Y.).

dates are requested so as to allow the Defendants' needs to review discovery and prepare for trial but also to protect the State of Georgia's and the public's interest in a prompt resolution of the charges for which the Defendants have been indicted. The State attaches to this Motion a proposed Pretrial Scheduling Order for the Court's consideration containing the State's proposed deadlines and other relevant dates.

Respectfully submitted this 16th day of August, 2023.

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

By:
/s/Nathan J. Wade
Nathan J. Wade
Georgia Bar No. 390947
Special Prosecutor
Fulton County District Attorney's Office
136 Pryor Street SW
3rd Floor
Atlanta, GA 30303

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA v. DONALD JOHN TRUMP, RUDOLPH WILLIAM LOUIS GIULIANI, JOHN CHARLES EASTMAN, MARK RANDALL MEADOWS, KENNETH JOHN CHESEBRO, JEFFREY BOSSERT CLARK, JENNA LYNN ELLIS, RAY STALLINGS SMITH III, ROBERT DAVID CHEELEY, MICHAEL A. ROMAN, DAVID JAMES SHAFER, SHAWN MICAH TRESHER STILL, STEPHEN CLIFFGARD LEE, HARRISON WILLIAM PRESCOTT FLOYD, TREVIAN C. KUTTI, SIDNEY KATHERINE POWELL, CATHLEEN ALSTON LATHAM, SCOTT GRAHAM HALL, MISTY HAMPTON a/k/a EMILY MISTY HAYES Defendants.	CASE NO. 23SC188947

[PROPOSED] PRETRIAL SCHEDULING ORDER

The following proposed Order shall govern this criminal case. Absent express permission from the Court, no exceptions, extensions, or waivers to the requirements set forth herein are allowed. The term "Defendant" refers to each of the named defendants individually.

A. ARRAIGNMENT:

1. Arraignment for the various Defendants shall take place the week of September 5, 2023.

2. The Clerk of Fulton County Superior Court shall mail to each Defendant and his/her counsel, if applicable, notice of this date at least five days prior to this date, pursuant to Georgia law.

B. DISCOVERY:

1. Defendant has until 10 days after arraignment to opt into reciprocal discovery as set forth in O.C.G.A. § 17-16-1 *et. seq*.
2. If Defendant elects to participate in reciprocal discovery pursuant to O.C.G.A. § 17-16-1 *et. seq*, all parties shall serve discovery materials then in its possession upon opposing counsel no later than September 29, 2023. Any additional discovery shall be provided to opposing counsel on a rolling basis and as soon as practicable once available within the time frames as set forth in O.C.G.A. § 17-16-4. If Defendant procures new counsel, it shall be the duty of the original attorney for the Defendant to provide all discovery served upon him/her to the new attorney.

C. MOTIONS HEARINGS:

1. All demurrers and claims of immunity are to be filed within ten (10) days of arraignment in accordance with O.C.G.A § 17-7-110.
2. All particularized motions and notices, including but not limited to (a) motions to suppress and (b) notices of evidence of other crimes, wrongs, or acts (including, but not limited to, 404(b) notices) shall be filed on or before October 31, 2023.
3. Hearings for motions filed by October 31 shall commence on December 11, 2023 and continue until completion.
4. Generalized and omnibus motions will not be considered by the Court. All motions shall specify, with particularity, the item, statement, and/or event at issue. Thus, for

example, a motion to suppress any and all statements is insufficient: the motion must identify the specific statement the movant is seeking to suppress, as well as the theory of suppression.

5. All motions in limine shall be filed at least five (5) days prior to the call of the trial.

D. FINAL PRETRIAL CONFERENCE AND TRIAL DATES:

1. The final pretrial conference shall be held on February 20, 2024.

2. The trial shall commence on March 4, 2024.

EXTENSIONS OF DEADLINES MAY BE GRANTED WHEN REQUESTED IN WRITING AND GOOD CAUSE IS SHOWN.

SO ORDERED, this _____ day of _____, 2023.

_____
SCOTT MCAFEE
Fulton County Superior Court
Atlanta Judicial Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	No. 23-cr-257-TSC
v.	
DONALD J. TRUMP,	
Defendant.	

RESPONSE IN OPPOSITION TO
GOVERNMENT'S PROPOSED TRIAL CALENDAR

Ex. G

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

CASE NO. 23-80101-CR-CANNON

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD J. TRUMP and
WALTINE NAUTA,

Defendants.
_____/

ORDER GRANTING IN PART GOVERNMENT'S MOTION TO CONTINUE TRIAL AND RESETTING DEADLINES

THIS MATTER comes before the Court upon the Government's Motion to Continue Trial and Request for Revised Scheduling Order [ECF No. 34]. The Court has reviewed the Motion, Defendants' Response in Opposition [ECF No. 66], the Government's Reply to Defendants' Response [ECF No. 76], and the full record. The Court also held a Pretrial Conference Pursuant to Section 2 of the Classified Information Procedures Act (CIPA), Pub. L. 96–456, 94 Stat. 2025, 18 U.S.C. App. III §§ 1–16 (1980), on July 18, 2023 [ECF No. 82].

Following review, it is **ORDERED AND ADJUDGED** as follows. The Government's Motion to Continue Trial and Revised Proposed Schedule [ECF No. 34] is **GRANTED IN PART** for the reasons stated below. The Court finds that the interests of justice served by this continuance outweigh the best interest of the public and Defendants in a speedy trial. 18 U.S.C. § 3161(h)(7)(A). The Court has considered the factors in 18 U.S.C. § 3161(h)(7)(B) in reaching this determination. Having done so, the Court finds that the period of delay resulting from this

continuance—i.e., from the date the Motion was filed, June 23, 2023, to the date trial commences—is excludable time under the Speedy Trial Act. *See* 18 U.S.C. § 3161.

DISCUSSION

This case is currently set for trial commencing on August 14, 2023, with a deadline to file pretrial motions on or before July 24, 2023 [ECF Nos. 28, 55]. All parties agree that a continuance of the current trial date is warranted. The Court concurs; proceeding to trial on August 14, 2023, "would deny counsel for the defendant[s] or the attorney[s] for the Government the reasonable time necessary for effective preparation" [ECF No. 34 (quoting 18 U.S.C. § 3161(h)(7)(B)(iv))].

The parties disagree as to the length of the continuance and to the appropriateness of setting a schedule at this time. As a preliminary matter, the Court rejects Defendants' request to withhold setting of a schedule now; the Court deems it necessary to manage this proceeding through important stages of discovery, CIPA briefing, motion practice, and trial, and does not see a sufficient basis on this record to postpone entry of a scheduling order. Nevertheless, the Government's proposed schedule is atypically accelerated and inconsistent with ensuring a fair trial. As it stands, the Government's timeline spans less than six months from the first discovery production (June 21, 2023) to trial in a CIPA case involving, at the very least, more than 1.1 million pages of non-classified discovery produced thus far (some unknown quantity of which is described by the Government as "non-content"), at least nine months of camera footage (with disputes about pertinent footage), at least 1,545 pages of classified discovery ready to be produced (with more to follow), plus additional content from electronic devices and other sources yet to be turned over. By conservative estimates, the amount of discovery in this case is voluminous and likely to increase in the normal course as trial approaches. And, while the Government has taken steps to organize and filter the extensive discovery, no one disagrees that Defendants need adequate time

to review and evaluate it on their own accord. To add further complication, a material portion of the discovery in this case is subject to the procedures in CIPA—procedures that all agree often lengthen the ordinary trajectory from indictment to trial [*see* ECF No. 34-1 p. 3]. That is no less the case here, where the matter involves a substantial quantity of classified discovery that has yet to be produced pending Court resolution of a forthcoming (and so far contested) protective order under Section 3 of CIPA, security-clearance briefings, processing of final security clearances for certain portions of the classified discovery, and additional logistics for the review of such materials, including expedited preparations for an accredited facility in the Northern Division of this District. Then there is the matter of extensive pre-trial motion practice as described by Defendants in the Response and at the Section 2 Hearing, the bare minimum of which will require considerable time for Court review, independent of the ultimate merits of any such motions.

Defendants, for their part, characterize the Government's approach to this case as unusually expedited and cursory, request additional time to conduct an initial review of the voluminous discovery (including yet-to-be produced discovery), and describe the case as falling squarely within the "unusual or complex" designation in 18 U.S.C. § 3161(h)(7)(B)(ii) [ECF No. 66].[1] Defendants maintain that this proceeding raises various "novel, complex, and unique legal issues," citing the interplay between the Presidential Records Act and the various criminal statutes at issue; constitutional and statutory challenges to the authority of the Special Counsel to maintain this action; disputes about the classification status of subject documents; challenges to the grand jury process that led to the indictment (including questions of attorney-client privilege); requests for

[1] 18 U.S.C.A. § 3161(h)(7)(B)(ii) (directing a court to consider, in determining whether to grant a continuance, "[w]hether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section").

defense discovery; and other pre-trial motions, including possible motions to suppress and a motion to sever [ECF No. 66; *see* ECF No. 82]. As a final category, Defendants identify various additional factors the Court deems unnecessary to resolution of the Government's motion at this juncture, most principally the likelihood of insurmountable prejudice in jury selection stemming from publicity about the 2024 Presidential Election [ECF No. 66 p. 9].

Upon review of the parties' competing arguments, it is clear to the Court that a continuance is warranted and in accordance with the requirements of the Speedy Trial Act. First, as the record reveals, discovery in this case is exceedingly voluminous and will require substantial time to review and digest in accordance with Defendants' right to a fair trial. Second, this is a CIPA case, which although on its own may not be a fact warranting designation of this case as complex under the Speedy Trial Act, *see* 18 U.S.C. § 3161(h)(7)(B)(ii), strongly counsels in that direction here given the substantial quantities of classified discovery, anticipated CIPA briefing [*see* ECF No. 34-2], and the need for Defendants and the Court to adequately review the classified discovery under appropriate safeguards and following resolution of pending logistics. Third, even accepting the Government's contested submission that nothing in this case presents a "novel question[] of fact or law" [ECF No. 34 p. 2], the fact remains that the Court will be faced with extensive pre-trial motion practice on a diverse number of legal and factual issues, all in connection with a 38-count indictment. These factors are sufficient to designate this case complex under 18 U.S.C. § 3161(h)(7)(B)(ii), and the Court is unaware of any searchable case in which a court has refused a complex designation under comparable circumstances.

For all of these reasons, taking due account of the public's interest in a speedy trial and the rights of the parties, the Court hereby sets the following pre-trial and trial schedule.

SCHEDULE

Calendar call in this matter will be held on **Tuesday, May 14, 2024, at 1:45 p.m**. in the Fort Pierce Division. The case is set for Jury Trial in the Fort Pierce Division during the two-week trial period commencing on **May 20, 2024**. The parties shall adhere to the following pre-trial and trial deadlines and are reminded to comply with the Local Rules in all respects and the instructions in the Court's Orders Setting Trial [ECF Nos. 28, 55] except as superseded by this Order:[2]

Defense Review of Unclassified Discovery	Ongoing
Renewed Section 3 Motion for Protective Order	July 27, 2023
Any Opposition to Renewed Section 3 Motion	August 9, 2023
Government's Reply to Renewed Section 3 Motion	August 14, 2023
Hearing on Section 3 Motion (if necessary)	August 25, 2023
Initial Production of Classified Discovery[3]	September 7, 2023
Joint Discovery Status Report	September 14, 2023
Government's CIPA Section 10 Notice	September 14, 2023
Government's CIPA Section 4 Motion (Ex Parte)	October 10, 2023
Any Defense Challenge to Section 4 (Ex Parte) Filing	October 10, 2023

[2] All hearings will begin at 9:30 a.m. except as modified by separate Order. As circumstances demand, hearings may be held in camera for classified information purposes.

[3] This review will take place at a temporary location until sufficient security measures have been implemented on an expedited basis for placement at a final location.

Hearing on Section 4 Motion (if necessary)	October 17, 2023
Deadline for the Filing of Any Defense Motion to Compel Discovery or Any Discovery-Related Request	October 20, 2023
Deadline for the Filing of Any Pretrial Motions	November 3, 2023
Government's Rule 16 Expert Disclosures	November 8, 2023
Defense Rule 16 Expert Disclosures	November 15, 2023
Any Defense CIPA Section 5 Notice	November 17, 2023
Government Discovery Status Report	November 21, 2023
Status Conference	November 28, 2023
Hearing on Pretrial Motions (Evidentiary and/or Non-Evidentiary)	December 11, 2023
Government's CIPA Section 6(a) Motion	December 15, 2023
Defense Response to CIPA Section 6(a) Motion	January 4, 2024
Government's Supplemental Rule 16 Expert Disclosures	January 4, 2024
Government's Reply to CIPA Section 6(a) Motion	January 8, 2024
CIPA Section 6(a) Hearing	January 16, 2024
Defense Reciprocal Discovery Under Fed. R. Crim P. 16(b)(1)(A)	February 5, 2024
Joint Discovery Status Report	February 12, 2024
Hearing on Any Remaining Pretrial Motions (Evidentiary and/or Non-Evidentiary)	February 26, 2024

Deadline for the Filing of Any Motions in Limine	March 20, 2024
Deadline for the Filing of Any Motion to Introduce Evidence Under Fed. R. Evid. 404(b)	March 20, 2024
Government's CIPA Section 6(c) Motion (if necessary)	April 11, 2024
Hearing on Motions in Limine	April 17, 2024
Defense Response to CIPA Section 6(c) Motion	April 25, 2024
Government's Reply to CIPA Section 6(c) Motion	May 2, 2024
Hearing on Remaining CIPA Issues/Calendar Call	May 14, 2024
Jury Trial[4]	May 20, 2024

DONE AND ORDERED in Chambers at Fort Pierce, Florida, this 21st day of July 2023.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record

[4] Jury selection procedures will be the subject of additional briefing/argument, to be set by separate Order.