

Judge Points To Witness Risks In Mar-A-Lago Affidavit Fight

By **Ryan Boysen**

Law360 (August 22, 2022, 2:18 PM EDT) -- Citing the risk of witness intimidation, a judge said Monday he may unseal the key affidavit that led to the unprecedented FBI search of former President Donald Trump's Mar-a-Lago estate, but that it might be so heavily redacted as to be "meaningless."



A Florida judge said Monday that making public the full contents of the key affidavit that led to the FBI search of former President Donald Trump's Mar-a-Lago estate could lead to witness intimidation. (Charles Trainor Jr./Miami Herald/Tribune News Service via Getty Images)

In a 13-page ruling addressing requests to unseal the affidavit at the heart of the search warrant package, U.S. Magistrate Judge Bruce Reinhart said the potential consequences are simply too dire to justify making the full contents of the document publicly available, in light of the firestorm of controversy unleashed by the FBI search.

"Given the public notoriety and controversy about this search, it is likely that even witnesses who are not expressly named in the affidavit would be quickly and broadly identified over social media and other communication channels, which could lead to them being harassed and intimidated," Judge Reinhart wrote.

Judge Reinhart said he's still open to forcing the government to produce a redacted version of the affidavit, but appeared to dampen expectations about what that public version may look like. The government has a Thursday deadline to file a motion spelling out proposed redactions.

"I cannot say at this point that partial redactions will be so extensive that they will result in a meaningless disclosure, but I may ultimately reach that conclusion after hearing further from the government," the judge wrote.

Monday's order essentially puts into writing an **order** Judge Reinhart already handed down from the bench on Friday.

Shortly after the FBI searched Mar-a-Lago on Aug. 8, looking for classified documents that Trump was allegedly storing there, news organizations and one conservative activist group filed motions asking Judge Reinhart to unseal the search warrant package that justified the raid. No representatives of Trump's have filed anything thus far, Judge Reinhart said.

The government didn't oppose unsealing the search warrant itself and a redacted version of an inventory that shows what was taken from Mar-a-Lago and those documents have been publicly released.

But the government balked at releasing the affidavit, which contains information about how the government was tipped off about the classified documents — a question that's being hotly debated — as well as the names of FBI agents and others involved in the search and witnesses interviewed during the investigation that led up to it.

Judge Reinhart said concerns that unsealing the affidavit could lead to witness intimidation and other disruptions to the ongoing case are "not hypothetical."

He cited the rash of reported threats targeting FBI agents in the wake of the search and a recent incident in which a Cincinnati man tried to break into an FBI office with a nailgun. Judge Reinhart also said FBI agents involved in the search have already been harassed due to the release of the inventory.

Judge Reinhart also said releasing the affidavit would reveal sensitive details about Mar-a-Lago, potentially making it more difficult for Secret Service agents to protect Trump there.

Judge Reinhart acknowledged that the affidavit involves "matters of significant public concern," but said ultimately the risks of derailing the ongoing case and jeopardizing the safety of multiple government actors override that factor.

Judge Reinhart also noted that pre-indictment warrant materials, like grand jury proceedings, are rarely ever made public even in the most extenuating of circumstances.

"At the pre-indictment stage, the government's need to conceal the scope and direction of its investigation, as well as its investigative sources and methods, is at its zenith," Judge Reinhart said.

Nonetheless, Judge Reinhart said, these are certainly extenuating circumstances.

"Given the intense public and historical interest in an unprecedented search of a former president's residence, the government has not yet shown that these administrative concerns are sufficient to justify sealing," Judge Reinhart said.

The government is represented by Juan Antonio Gonzalez Jr. of the U.S. Attorney's Office for the Southern District of Florida.

The New York Times, CBS, McClatchy and Times Publishing are represented by Carol Jean LoCicero, Dana Jane McElroy and Mark R. Caramanica of Thomas & LoCicero PL.

The Washington Post, CNN, NBCUniversal and E.W. Scripps are represented by Charles D. Tobin and Elizabeth Seidlin-Bernstein of Ballard Spahr LLP.

The Palm Beach Post is represented by L. Martin Reeder Jr. of Atherton Galardi Mullen & Reeder PLLC.

Dow Jones and ABC are represented by Deanna Kendall Shullman, Rachel E. Fugate and Eugene B. Minchin of Shullman Fugate PLLC.

The Florida Center for Government Accountability is represented by Nellie Linn King.

Judicial Watch is represented by Michael S. Budwick and James C. Moon of Meland Budwick PA, and Paul J. Orfanedes and Michael Bekesha of Judicial Watch.

The case is In re: Sealed Search Warrant, case number 9:22-mj-08332, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Carolina Bolado, Stewart Bishop and Frank G. Runyeon. Editing by Orlando Lorenzo.