June 14, 2023

Chief Judge Cecilia M. Altonaga
Wilkie D. Ferguson, Jr. United States Courthouse
400 North Miami Avenue
Room 13-3
Miami, Florida 33128

Re: Recusal of Judge Cannon from *United States v. Donald Trump and Waltine Nauta*, No. 23-80101-CR-Cannon/Reinhart

Dear Chief Judge Altonaga,

We write with grave concern regarding the court's assignment of *United States v. Donald Trump and Waltine Nauta*, No. 23-80101-CR-Cannon/Reinhart to Judge Aileen M. Cannon. In a highly-criticized (and ultimately reversed) decision regarding the investigation leading to and evidence involved in this case, Judge Cannon demonstrated judicial error and extreme bias that, if left unaddressed, would significantly undercut the court's impartiality and the public's confidence in this proceeding. We call on you as Chief Judge to exercise your authority under federal law and internal court procedure to promptly reassign the matter if Judge Cannon fails to recuse herself from the case within 10 days of this letter.[1]

As is now widely understood, Judge Cannon heard former president Donald Trump's challenge to the government's examination of national defense materials that the government seized from his Mar-a-Lago compound under a duly authorized search warrant.[2] In September 2022, she issued a ruling purporting to extend the court's equitable jurisdiction over the matter, appointing a special master to assess records seized from the compound, and blocking the government

[1] 28 U.S.C. § 137 ("The chief judge of the district court shall be responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe."); *see also* INTERNAL OPERATING PROCEDURES § 3.03.00 (S.D. Fla. 2017) ("The Chief Judge ensures the case assignment system promotes the effective disposition of protracted, difficult, or unusual cases.").
[2] *Trump v. United States*, Case No. 22-81294-CIV-CANNON (S.D. Fla. Sep. 5, 2022).

from any further investigation—even counterintelligence investigations to assess the extent of harm caused by the unsecured national defense materials—pending the special master's review.

In her order, Judge Cannon insisted that normal principles of prosecution and law could not be applied to Trump because of his status as former president. She wrote that "as a function of [Trump's] former position as President of the United States, the stigma associated with the subject seizure is in a league of its own," and would "result in reputational harm of a decidedly different order of magnitude."[3] She again demonstrated that she could not apply equal justice before law in an order denying the government's request for a partial stay, emphasizing that her "consideration [was] inherently impacted by the position formerly held by [Trump]."[4]

The unprecedented and unprincipled ruling demonstrated that Judge Cannon could not be, nor even *appear* to be*,* an impartial decision-maker. In a particularly scathing opinion, a unanimous Eleventh Circuit panel excoriated Judge Cannon and reversed her order, calling her approach a "radical reordering of our case law limiting federal courts" and that it would "violate bedrock separation-of-powers limitations."[5]

For example, the Eleventh Circuit found that Judge Cannon's decision to establish extraordinary jurisdiction over Trump's motion for return of property was utterly insupportable because Trump did not even attempt to aver the legal requirements for such jurisdiction.[6] Judge Cannon, the Eleventh Circuit held, inexcusably exercised jurisdiction in a way that could allow virtually "any subject of a search warrant to invoke a federal court's equitable jurisdiction."[7]

Crucially, the Eleventh Circuit found that Judge Cannon's explicit deferential treatment of Trump defied "our Nation's foundational principle that our law

---

[3] *Id.* at 10.
[4] *Trump v. United States,* Case NO. 22-81294-CIV-CANNON (S.D. Fla, Sept. 15, 2022) (order denying motion for partial stay pending appeal).
[5] *Trump v. United States,* 54 F.4th 689, 701 (11th Cir. 2022).
four of these inquiries in a single paragraph.").
[7] *Id.*

applies 'to all without regard to numbers, wealth, or rank.'"[8] At the same time, the Eleventh Circuit found that Trump's status was the only remaining justification to explain Judge Cannon's outlandish decision.[9] In unequivocal terms, the Court rejected this justification, recognizing that a person's status as a former high official must in no way "affect our legal analysis or otherwise give the judiciary license to interfere in an ongoing investigation . . . no matter who the government is investigating," nor may Judge Cannon "write a rule that allows *only* former presidents to do so."[10]

Federal law requires judges to disqualify themselves when their "impartiality might reasonably be questioned," or when they have "a personal bias or prejudice concerning a party."[11] These principles of recusal do not require demonstrating actual bias. Rather, if an objective observer would question the judge's impartiality, the judge must recuse to avoid even the appearance of impropriety whenever possible.[12] Judge Cannon must recuse herself from this proceeding in both the interest of justice and *appearance* of justice.[13]

In this high-visibility, high-stakes proceeding, a judge who has exempted Trump from standard legal scrutiny undermines public confidence in the courts. Any move Judge Cannon makes in this matter will be tainted as either confirmation of existing bias or targeted efforts to appear neutral.

---

[8] *Trump*, 54 F.4th at 701 (quoting *State of Georgia v. Brailsford*, 3 U.S. (3 Dall.) 1, 4 (1794)).
[9] *Id.* ("Only one possible justification for equitable jurisdiction remains: that Plaintiff is a former President of the United States.").
[10] *Id.* (emphasis added).
[11] 28 U.S.C. § 455(a); *see also id.* § 455(b)(1) (requiring recusal when a judge "has a personal bias or prejudice concerning a party").
[12] *See Liljeberg v. Health Servs. Acquisition Corp.,* 486 U.S. 847, 860 (1988) ("[T]he purpose of the provision . . . does not depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew.").
[13] *Id.* at 861; *see also Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 447 (2015) (noting that "public confidence in judicial integrity does not easily reduce to precise definition, nor does it lend itself to proof by documentary record. But no one denies that it is genuine and compelling.").

To be clear, the issue is *not* that Judge Cannon is a Trump appointee, nor that her judgment was later reversed by the Eleventh Circuit, but rather her demonstrated bias favoring a party. Normally, judges are allowed a range of discretion but with the understanding that "the balance tips in favor of recusal."[14] But Judge Cannon has already shown a favorable bias toward Trump "so extreme as to display clear inability to render fair judgment" and thereby mandating recusal.[15]

At a minimum, Judge Cannon's prior history creates an unacceptable risk of an unavoidable appearance of bias in one of the most important proceedings in United States history. The public will view Judge Cannon as a biased decision-maker who opposes the prosecution, and who is prepared to enact unorthodox legal measures to favor Trump in court.

While normal court procedure allows judges considerable time to recuse themselves,[16] here the appearance of justice cannot wait. We urge you to preserve the court's impartiality and reputation for fairness by promptly reassigning the case if Judge Cannon does not recuse herself within 10 days of this letter. [17]

Sincerely,

Amira Mattar, Counsel
Courtney Hostetler, Senior Counsel
Ron Fein, Legal Director
John Bonifaz, President
Ben Clements, Chairman and Senior Legal Advisor
Free Speech For People

---

[14] *In re Boston's Child. First*, 244 F.3d 164, 167 (1st Cir. 2001) (citing *Nichols v. Alley*, 71 F.3d 347, 352 (10th Cir. 1995)).
[15] Liteky v. United States, 510 U.S. 540, 551 (1994).
[16] *See, e.g.* INTERNAL OPERATING PROCEDURES § 2.05.05 (S.D. Fla. 2017) (allowing new judges receiving transferred cases 120 days to decide whether to recuse).
[17] We also request that you examine the process by which Judge Cannon was assigned to this matter. Given the half-dozen or more federal judges available for random assignment of this matter, it seems striking that Judge Cannon was assigned Trump's case twice.