Nos. 22A283

In the Supreme Court of the United States

DONALD J. TRUMP,
Applicant,
v.

UNITED STATES OF AMERICA,
Respondent.

ON APPLICATION TO VACATE THE ELEVENTH CIRCUIT'S STAY OF AN ORDER ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

MOTION FOR LEAVE TO FILE; AND AMICUS BRIEF OF CHRISTIAN FAMILY COALITION (CFC) FLORIDA, INC., IN SUPPORT OF APPLICANT AND VACATUR OF SEARCH WARRANT

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MOTION FOR LEAVE TO FILE

Amicus Christian Family Coalition (CFC) Florida, Inc., hereby moves to file its attached Amicus Brief which supports this Court's entry of an order which finally and completely resolves this entire case by enforcing the particularity requirement of the Fourth Amendment to the Constitution and by vacating the search warrant at issue.

The attached Amicus Brief highlights the importance and public interest in bringing a rapid conclusion to this highly charged controversy – as well as the need to enforce the particularity requirement of the Fourth Amendment and to promote the interests in judicial economy through a prompt resolution – by vacating the present search warrant and suppressing the evidence seized under it.

In light of the schedule set by the Court for responding to the Application, it was not feasible to give 10 days' notice or time to formally seek the consent of the parties.

For the foregoing reasons, *amicus curiae* respectfully requests that the Court grant leave to file the attached proposed brief *amicus curiae.*

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AMICUS BRIEF OF CHRISTIAN FAMILY COALITION (CFC) FLORIDA, INC., A NON-PROFIT CORPORATION

INTEREST OF AMICUS

Amicus, a non-profit corporation, is a human rights and social justice advocacy organization representing over 500,000 fair-minded voters. Amicus actively seeks to protect human rights and social justice in litigation and political forums. These rights include the rights of religion and speech and the right to be free from unreasonable searches and seizures, along with the corresponding protections of privacy inherent in the Fourth Amendment to the Constitution. [1]

INTRODUCTION AND SUMMARY OF ARGUMENT

In the District Court, Applicant raised the lack of particularity of the search warrant and its violation of the Fourth Amendment to the Constitution. The present search warrant contravenes the core purpose of the Fourth Amendment. The warrant purports to authorize an overbroad seizure of "any Presidential records" issued during a 4-year time span without meaningful particularity of the records to be seized. It is a general warrant at the core of the Fourth Amendment's prohibitions.

Even though Applicant did not address this issue in his present application, Applicant did raise it in the District Court. The clear invalidity of the search warrant mandates its prompt vacatur in the public interest in this high-profile case.

[1] No counsel or other representative or agent of any party in this case authored any part of this Amicus Brief or exercised any form of control or approval over it or any part of it. No person or entity, aside from Amicus or its counsel, made a monetary contribution to the preparation or submission of this Amicus Brief. Because of the emergency nature of the application before this Court, there was insufficient time to formally seek the consent of the parties to the filing of this Amicus Brief.

Vacatur of the search warrant also will serve the interests of judicial economy by bringing this case to a rapid close on an issue of law without need for remand. Vacatur also will avoid the political chaos that likely will ensue not only from further proceedings against the present Applicant but also from the precedent that further proceedings will set for use of the criminal process against former Presidents as typically occurs in Third World countries where opposition leaders are routinely harassed, prosecuted and imprisoned. This Court should vacate the search warrant and suppress the evidence seized under it.

ARGUMENT

This Court has the authority to reach an issue raised in the District Court which, although not raised in this appeal, can quickly and efficiently put this entire matter to rest by resolving this case on an issue of law shown by the record without need for remand. *Thigpen v. Roberts,* 468 U.S. 27, 32-33 (1984) ("The factual record is adequate and would not be improved by a remand to the Court of Appeals. And the case is decided by a straightforward application of controlling precedent."). While a Respondent in this Court may be limited by the relief granted below in the absence of a cross-petition, *id.* at 29-30, the present Applicant, in a role analogous to a Petitioner, is entitled to the full benefit of any antecedent or subsidiary question fairly included in his present application. *Cf.* Sup.Ct.R. 14(1)(a) ("The statement of any question presented is deemed to comprise every subsidiary question fairly included therein"). This includes the unconstitutionality of the search warrant, for

lack of particularity, which Applicant raised below (ECF 1 at pp.11-12, S.D.Fla. case 22-CV-81294).

The particularity requirement of the Fourth Amendment enshrines the core purpose of the Amendment to prevent "general warrants" which were used by British authorities against American colonists to search for and seize items without reasonable limit or specification. *Payton v. New York,* 445 U.S. 573, 583 (1980).

The present search warrant contravenes this particularity requirement. It expressly permitted the seizure without limit of "[a]ny governmental and/or Presidential records created between January 20, 2017 and January 20, 2021" – the entire 4 years of the Trump Presidency.

This is exactly the type of overreach that led this Court to invalidate the search warrant in *Stanford v. Texas,* 379 U.S. 476 (1965). In *Stanford,* this Court invalidated, for lack of particularity, a search warrant for "books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, and other written instruments concerning the Communist Party of Texas and [its] operations." *Id.,* at 486. This Court in *Stanford* held the warrant to be a prohibited "general warrant" with "indiscriminate sweep that … is constitutionally intolerable." *Id.*

The same is true here. The present warrant's provision for seizure of "[a]ny governmental and/or Presidential records created" during the entire 4 years of the Trump Presidency has no greater particularity than the *Stanford* warrant's seizure of all documents "concerning the Communist Party of Texas." Both are effectively

without limit, bringing within their broad sweep all documents of endless categories, for which the 4-year period in the present case does nothing to meet the requirement of particularity as to nature of the documents themselves. It is as if a search warrant were issued for every document generated by a household or business during a 4-year period. It is difficult to imagine a greater invasion of the particularity requirement of the Fourth Amendment.

Nor is the present warrant saved by the fact that Presidential records are property of the United States (44 U.S.C. § 2202). This does not avoid the need for particularity in the search warrant. The Presidential Records Act contemplates a collaborative, particularized process to separate the documents after the expiration of a President's term. This collaborative process involves the separation of copies of Presidential records from originals, § 2201(2)(B)(iv), further separation of (original) Presidential records from personal records, § 2203(b), separation of confidential records exempt from public disclosure, § 2204(b)(3), and separation of records protected by the constitutional privileges of the former President, § 2204(c)(2).

The present parties already were engaged in this collaborative process. Earlier Presidents did the same. For example, after the Obama Presidency, the nation's Archivist collaborated with President Obama regarding the transition of the Obama Presidential records from a furniture warehouse in the Chicago area (where Obama stored them) to the Archivist's control. *"Obama Has Classified Records Stored in Furniture Warehouse,"* https://www.weeklyblitz.net/international/obama-has-classified-records-stored-in-furniture-warehouse/; *"Letter*

Documents Obama Foundation Stored Classified Documents In Unsecured Warehouse," https://www. worldtribune.com/letter-documents-obama-foundation-stored-classified-documents-in-unsecured-warehouse/. [2]

In light of this collaborative and particularized process in dealing with Presidential records – shown both by the text of the Presidential Records Act and by the Government's own dealings with President Trump and his predecessors – the present search warrant cannot stand. Regardless of governmental title to "Presidential Records" (44 U.S.C. § 2202), there is no easy or automatic classification that permits summary treatment of all records that are arguably "Presidential." Rather, some degree of particularity is required in dealing with the records. And it is precisely that particularity that the present search warrant lacks. The present search warrant's broad provision for seizure of "any Presidential records" during the entirety of President Trump's 4-year term contravenes the Fourth Amendment's requirement of particularity.

Nor is the search warrant redeemed by its reference to the crimes of espionage (18 U.S.C. § 793), obstruction of justice (18 U.S.C. § 1519), and destruction or removal of records (18 U.S.C. § 2071). These crimes collectively are so broad and encompassing in their coverage of potential criminal activities by a President that they do not offer any meaningful particularization of the concept of "any Presidential records."

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[2] It is ironic that the Government had "problems" with President Trump's storage of his records in a double-locked storage room which the FBI itself approved and was located in Trump's home under 24/7 Secret Service protection, but apparently had no problems with Obama's storage of his records in an unsecure furniture warehouse

Finally, the broad range of crimes and criminal activity that are encompassed in the present search warrant distinguishes this case from *Andresen v. Maryland,* 427 U.S. 463 (1976). In *Andresen* this Court upheld the search warrant because its arguably broad language was modified by its limitation to the single crime of false pretenses and further limited to a particular piece of real property. 427 U.S. at 480 ("relating to the crime of false pretenses with respect to Lot 13T"). Here, by contrast, the broad language "any Presidential records" in the search warrant is not similarly limited by a narrow scope of alleged criminal activity in the search warrant but rather relates to a broad sweep of crimes and criminal activity across three separate criminal statutes which collectively offer no meaningful limitation or particularity to the warrant.

CONCLUSION

For these reasons, this Court should vacate the search warrant and should suppress the evidence seized under it.

Respectfully submitted,

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