

Merrick Garland's case against Donald Trump is probably airtight.
John Stoehr (Opinion)- AlterNet



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First, the news. The FBI executed a search warrant on Monday morning of the former president's home in Florida. Federal agents were looking for secret government documents that Donald Trump had taken with him after leaving the White House in January 2021.

The FBI's search warrant arose from a grand jury investigation that was opened after representatives of the National Archives last January had gone to Mar-a-Lago to retrieve 15 boxes of documents.

That visit was followed by another visit "in the spring," according to an unnamed Times source, this time by federal agents searching Trump's residence for classified documents. "At least one of the agents," the Times reported, "was involved in counterintelligence."

So as far as we know, Monday's was the third search. But the first to be authorized by a federal judge.

Second, the legal context. The search warrant executed on Monday morning is separate from the J6 committee's investigation of Trump's leadership of the sacking and looting of the US Capitol in 2021 in a bid to take over the US government. It is separate from a criminal investigation in Georgia of election meddling. It is separate from a civil investigation in New York state of property-value fraud.

Third, the legal process. Federal search warrants are authorized by federal judges. To get approval, prosecutors must show probable cause – reasonable suspicion of a crime having been committed. They have to show evidence of there being more evidence of the crime at the place to be searched. All of this process is under oath.

So the search is not a "preemptive coup," because coups are illegal. This search was lawful. It's not Watergate, because Watergate was a crime (burglary), as was its

cover-up. This search was lawful. Federal authorities suspected reasonably that there were more documents at Mar-a-Lago. They apparently asked politely first. When that didn't work, they presented the evidence they did have to a federal judge so that they could search the premises for more evidence of the crime.

At this point, we should pause to say that no one knows what the crime is, how many crimes there are or whether there are crimes at all. All we know is what's been reported. Everything else is noise.

Speaking of which, fourth, the political backlash. Trump's Republican allies say the search violates the tenets of American exceptionalism. We just don't do that here, said US Senator Marco Rubio.

"Using government power to persecute political opponents is something we have seen many times from 3rd world Marxist dictatorships."

That might sound like a principled warning, but it's garbage. No one ever said that American exceptionalism was cover for criming. Don't let your love of country get in the way of your love of equal justice.

The president's allies are also issuing threats. Without knowing anything more than that Trump's gaudy residence was searched by lawful warrant, they are vowing to investigate US Attorney General Merrick Garland. Here's House Minority Leader Kevin McCarthy.

"The Department of Justice has reached an intolerable state of weaponized politicization," he said last night.

"When Republicans take back the House, we will conduct immediate oversight of this department, follow the facts and leave no stone unturned."

Again, McCarthy hopes people see this as a principled position without noticing that there's no probable cause. There's no concrete reason to suspect a crime – unless McCarthy means that a lawful warrant is an unlawful act deserving of a congressional investigation.

And anyway, McCarthy is a material witness to the J6 insurrection who has thus far refused to cooperate with the J6 committee's investigation. Remember that inconvenient fact when considering his allegation that the Department of Justice has been politicized. Even if it were, why would we tolerate hearing that allegation from a possible co-conspirator in the worst political crime in US history?

Rubio, too, issued threats. In doing so, he told us exactly who the Republicans are. If they have to break the law to hurt their enemies, that's what they'll do, he said in so many words.

"Biden is playing with fire by using a document dispute to get the @TheJusticeDept to persecute a likely future election opponent," Rubio said today. "Because one day what goes around is going to come around."

In other words, Rubio is telling Biden – who had nothing to do with a federal judge authorizing a search warrant – that he should not do something that Rubio says is wrong or the GOP will do the same thing. But instead of being wrong, as he says it is now, it will be right.

That's not a principled statement.

That's a garbage statement.

That's also the real issue.

The question isn't whether the US will become a banana republic if a former president is prosecuted for committing crimes. You can still believe in American exceptionalism while believing that no one is above the law. In fact, if you believe in one, you believe in the other.

Anyway, we may be exceptional in the wrong way. People fear civil war if Trump is convicted, but lots of other democratic countries have convicted their former leaders without sinking into civil war.

The real question is how far the GOP will go to retaliate. Rubio and McCarthy have helpfully supplied the answer. They will investigate without cause. They will break the law. They might even defend a criminal president who led an attack on the seat of our government.

None of this is a defense of Merrick Garland or the Department of Justice. An attorney general can be political. See former AG Bill Barr. The FBI can be political. See former Director James Comey. Let's not fool ourselves into believing the myth of political neutrality in justice.

But it's because it's political that we can have confidence in this new phase of the former president's legal woes. I can't – and I'm sure you can't – imagine Merrick Garland signing off on this search, which he must have done given the demands of his recent policy memo, if he did not know that the case against Trump, whatever it is, is airtight.

*Politics is making Garland exceptionally careful.
That's the best way to honor American exceptionalism.*