

How an Obscure Law About Government Secrets Known as CIPA Could Shape the Trump Documents Trial

Media Mentions

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Bracewell's **Seth DuCharme** [talked with CBS News](#) about the government's options if a judge decides that revealing classified information during a trial is necessary for a defendant to argue their case.

"There can be some negotiation around that," said DuCharme. "But ultimately, if the court determines that some or all of the classified information that the defense has identified [is] material to the defense, the court can tell the government, 'Look, it's classified. You can declassify it. You can do whatever you want. I'm just telling you, if they can't use it, in my opinion, they're not getting a fair trial. And I have very few remedies here. I can't compel you to declassify it. The only thing I can really do is dismiss your indictment because, in my view, you're not complying with your discovery obligations.'"

Short of dismissing the indictment, the judge could tell the prosecution to narrow its allegations, which would allow the government to avoid broader discovery obligations, DuCharme said. He added that he never had a case where the government dropped charges instead of disclosing classified information.

Congress enacted CIPA in 1980 to limit the practice of "graymail," in which defendants threatened to disclose classified information at trial in an effort to get prosecutors to drop charges rather than risk the disclosure of government secrets. The statute governs the litigation process between the government and defendant to determine how and if classified information can be used in criminal trials without being "unnecessarily" disclosed. It lays out a number of steps to help the government and defense narrow the classified information that will be used in court.

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