

[Opinion: I signed countless warrants. Search of Trump's house is shocking — and constitutional.](#)

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Body

The [execution of the search warrant](#) at former President Donald Trump's Florida home caused consternation for some that the warrant was politically driven. Serving a search warrant on President Trump has political implications, but that does not mean that it was done without a proper constitutional basis.

As an initial matter, the individuals seeking the search warrant made a determination that President Trump's home contained evidence of a crime or items that were illegally possessed. In other words, officials with the Federal Bureau of Investigation, in conjunction with attorneys at the United States Department of Justice, concluded that such evidence probably was inside the home. Given that this search warrant was unprecedented, it is hard to imagine that those officials or attorneys took the decision lightly.

Even if one believes that those officials and attorneys engaged in rampant political misconduct, an external check exists. In order for federal law enforcement officials to obtain a search warrant, they had to obtain such authorization from a neutral United States magistrate judge. The FBI agent had to present an affidavit, swearing under oath and penalty of perjury to all of the details in the affidavit that supported the assertion that there is probably evidence of crime. It cannot be any vague assertion that some crime happened. Instead, the affidavit must have information that particularly describes the expected discoverable evidence in support of the allegations related to the specific crime.

In order for the magistrate judge to sign the search warrant, that person had to find that probable cause existed based on the totality of the circumstances. Federal magistrate judges are not political nominees; they are highly trained legal experts who are selected to work for a federal court based on merit.

As a former U.S. magistrate judge, I signed countless search warrants, but never one as high profile as this one. Each time I reviewed an application for a search warrant, I read and analyzed all of the documents carefully, ensuring that there was full compliance with the Fourth Amendment before I signed the warrant. I can only imagine that if I was reviewing a warrant application for a former president that my standard high level of diligence would have somehow

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increased even higher. I would expect whoever signed this search warrant exercised a similar exacting level of legal analysis.

If somehow the oversight and review by the FBI and the Department of Justice as well as the magistrate judge's analysis all failed, President Trump still had options. He could have gone to federal court seeking to quash the search warrant with arguments that it violated the Fourth Amendment. Another federal judge would have then reviewed the search warrant to ensure that it complied with Fourth Amendment requirements. President Trump, with his legal resources, did not choose to have a federal judge immediately review the warrant's constitutionality, which likely indicates that nothing readily appeared to be unconstitutional.

As search warrants are a law enforcement tool in criminal investigations, the Fourth Amendment authorizes their issuance provided they meet a number of parameters including particularity and reasonableness. The execution of the warrant may not lead to any charges against any individual, including President Trump, as there is no certainty that the FBI agents will find evidence of a crime. Probable cause based on a totality of the circumstances is the standard, as opposed to certainty.

However, if President Trump is charged with a crime based on any evidence obtained from the search of his home, he will have another chance to challenge the search warrant. He can file a motion to suppress with the federal judge overseeing the charges against him that could challenge the allegations and information in the agent's sworn affidavit, any shortcomings in the magistrate judge's review of the warrant application, or any problems with the execution of the warrant at his home. Finally, President Trump can appeal any unsuccessful motion to suppress to the federal appellate court as well as to the United States Supreme Court.

Many of President Trump's supporters decried the execution of the search warrant. None of these supporters, however, pointed to any concrete Fourth Amendment violations in the warrant. President Trump chose to forgo filing a motion to quash. A number of constitutional safeguards exists if necessary. Ultimately, the search warrant, while shocking given its target, appears to comply with the Fourth Amendment based on what we currently know.

Brian L. Owsley is an associate professor of law at UNT Dallas College of Law where he teaches, among other topics, federal criminal procedure, which concerns the Fourth Amendment. He served as federal magistrate judge for the United States District Court for the Southern District of Texas from 2005 until 2013.

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