

April 30, 2024

Jeffrey Ragsdale, Counsel  
Office of Professional Responsibility  
United States Department of Justice  
950 Pennsylvania Avenue, N.W., Suite 3266  
Washington, D.C. 20530-0001

Re: Complaint of Election Interference Against Biden Special Counsel Jack Smith

Mr. Ragsdale:

I write today to request an ethics investigation of Biden Justice Department special counsel Jack Smith for abusing the resources of the federal government to unlawfully interfere with the 2024 presidential election. Jack Smith's multiple attempts to rush to trial the federal January 6<sup>th</sup> case against President Trump violated long-standing, explicit Justice Department policy. Further, Jack Smith's repeated violations of the United States District Court for the District of Columbia's stay of proceedings are a lawless breach of trial ethics and lawyerly conduct. Jack Smith's actions brought disrepute to the Justice Department and the federal government as a whole, and he should face discipline appropriately.

#### **ATTEMPTING TO EXPEDITE TRIAL IN VIOLATION OF DOJ POLICY**

In June 2023, Biden special counsel Jack Smith obtained an indictment against President Donald J. Trump. The indictment charges President Trump with several offenses in relation to the Capitol riot of January 6, 2021. President Trump is now the presumptive Republican nominee for President, having won enough delegates to secure the nomination on March 12, 2024. As we will demonstrate, Biden special counsel Jack Smith is attempting to expedite the trial in order to influence the general election in November. This conduct violates Section 9-85.500 of DOJ's Justice Manual to which Jack Smith is bound.<sup>1</sup>

Section 9-85.500 dictates that "[f]ederal prosecutors . . . may never select the timing of any action . . . for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party." Jack Smith first violated this rule when—in August 2023—he petitioned the District Court for a January 2, 2024, trial date. There exist approximately thirteen million pages of discovery for President Trump to review, plus thousands of hours of camera footage. Prosecutors bringing a case of this complexity—with so many consequential and novel legal issues to sort out—would normally never seek to bring it to trial within five months. The only reason to push for such an early trial date was to work to get the case tried before the November election, and the Justice Department Manual clearly forbids Jack Smith from taking any action on that basis.

Biden special counsel Jack Smith next violated this Justice Department provision when he petitioned the Supreme Court of the United States for a writ of certiorari before judgment in

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<sup>1</sup> See 28 C.F.R. § 600.7(a).

December.<sup>2</sup> This extraordinary petition sought to bypass the normal appellate process, which involves a decision by a Court of Appeals panel and, possibly, review by the en banc court. Jack Smith asserted that it was “imperative” for the Supreme Court to grant his highly unusual request,<sup>3</sup> but on December 22, 2023, the Supreme Court denied Jack Smith’s petition.

That Jack Smith was solely motivated by the desire to interfere in the November election was effectively proven two months later. In February, President Trump petitioned for certiorari on the issue of presidential criminal immunity for official acts.<sup>4</sup> Biden special counsel Jack Smith—having supported certiorari just two months earlier—now opposed certiorari. Jack Smith effectively repudiated his own arguments from two months earlier, with little explanation for his about-face other than his naked assertion that “[t]he nation has a compelling interest in the prompt resolution of this case.”<sup>5</sup> Opp. To Pet. For Cert. at 34-35. Aside from the upcoming election, what “compelling interest” does the public have in the prompt resolution of this case? Why should this interest—based on an unstated reason—override the due process rights of a criminal defendant?

Moreover, if the case were so important that Jack Smith believed the Supreme Court should take the extraordinary step of granting certiorari before the Court of Appeals could weigh in, how could he now argue that the case was not important enough for even a normal grant of certiorari? The only way to reconcile Jack Smith’s filings is to recognize that his obvious goal was not to seek justice and the neutral application of the law, but rather to get President Trump—and get him before November.

Smith and his team have claimed that they are not in violation of the Justice Manual because, he argues, the relevant provision applies only to the timing of the indictment itself, and not to cases that are already being litigated.<sup>6</sup> This is an implausible reading; Justice Manual section 9-85.500 applies to “any action” by “federal prosecutors and agents,” “including” (but not limited to) “investigative steps, criminal charges, or statements.” On its face, section 9-85.500 also applies to the “actions” by the Special Counsel undertaken in the course of prosecuting this case against President Trump, including the attempt to obtain a preposterously early trial date, as well as the filing of an extraordinary request for certiorari for judgment.

Jack Smith has not talked about the election in his filings because it is an obviously improper reason to expedite President Trump’s trial. Biden special counsel Jack Smith’s actions, however, leave no doubt that the election is driving his timing decisions. No other plausible reason exists for why he is rushing this case against a criminal defendant in a manner inconsistent with the Justice Department’s usual practice.

## **VIOLATIONS OF COURT-ORDERED STAY**

Biden special counsel Jack Smith also repeatedly and deliberately violated the District Court’s stay of proceedings, in violation of D.C. Rule of Professional Conduct 3.4(c). When President Trump appealed the District Court’s interlocutory order denying his motion to dismiss

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<sup>2</sup> United States v. Trump, No. 23-624 (U.S. filed Dec. 11, 2023) (“Petition for Cert. Before Judgment”).

<sup>3</sup> Petition for Cert. Before Judgment at 2.

<sup>4</sup> Pet. For Cert., Trump v. United States, No. 23-939 (U.S. filed Feb. 12, 2024).

<sup>5</sup> Opp. To Pet. For Cert., Trump v. United States, No. 23A745 at 34-35 (U.S. filed Feb. 14, 2024).

<sup>6</sup> Transcript of Scheduling Conference and Motions at 80-81, United States v. Trump (S.D. Fla. Mar. 1, 2024) (No. 23-cr-80101).

the case on presidential immunity grounds, the District Court issued a stay of proceedings as required by unambiguous Supreme Court precedent.<sup>7</sup> Thus, the District Court rightly stayed “any further proceedings that would move this case towards trial or impose additional burdens of litigation on Defendant.”<sup>8</sup>

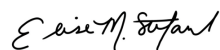
But Jack Smith repeatedly flouted the District Court’s order. First, Jack Smith served nearly 4,000 pages of discovery on President Trump.<sup>9</sup> Then, after the Supreme Court rejected his petition for certiorari before judgment, Jack Smith filed a motion in limine in District Court.<sup>10</sup> Jack Smith did so despite representing to the Supreme Court in his certiorari petition that “the case is now on hold” in District Court.<sup>11</sup> If the Special Counsel wants to speak out of both sides of his mouth, he should face the disciplinary consequences for those misrepresentations.

D.C. Rule of Professional Conduct 3.4(c) prohibits counsel from “[k]nowingly disobey[ing] an obligation under the rules of a tribunal.”<sup>12</sup> Jack Smith’s refusal to abide by the District Court’s stay violates this rule. Moreover, Jack Smith’s assertions to the Supreme Court that the lower court matters were frozen pending the D.C. Circuit’s disposition of President Trump’s appeal serve as compelling evidence that Jack Smith knew his District Court filings violated the stay order. This conduct strongly supports the opening of an ethics investigation to hold Biden special counsel Jack Smith accountable for prosecutorial misconduct.

Jack Smith emphatically said that “no one in this country . . . is above the law.”<sup>13</sup> If that is true, then he should be open to, and welcome, an ethics investigation into conduct that, on its face, implicates potential violations of DOJ policy and multiple rules of professional conduct. Biden special counsel Jack Smith’s highly unusual and clearly improper attempts to expedite trial, and his blatant violation of District Court orders, evidence his partisan attempt to influence the results of the 2024 presidential election.

Thus, your office should open an investigation into Biden special counsel Jack Smith’s apparent violations of Justice Department standards and his other ethical duties, in Biden special counsel Jack Smith’s obvious attempt to politicize his criminal prosecution and unlawfully interfere in the 2024 presidential election.

Sincerely,



Elise M. Stefanik

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<sup>7</sup> See *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 739–44 (2023).

<sup>8</sup> *United States v. Trump*, No. 23-257, 2023 WL 8615775, at \*1 (D.D.C. Dec. 13, 2023).

<sup>9</sup> President Trump’s Motion for Order to Show Cause Why Prosecutors Should Not Be Held in Contempt at 4, *Trump*, No. 23-257 (Jan. 4, 2024).

<sup>10</sup> *Id.* at 1.

<sup>11</sup> Reply Brief for Petitioner, *supra* note 7, at 5.

<sup>12</sup> D.C. RPC 3.4(c).

<sup>13</sup> Answering Brief at 12, *United States v. Trump*, No. 23-3228 (Dec. 30, 2023).