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Office of the Inspector General
United States Department of Justice
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Inspector General Horowitz:

Earlier this month, the Supreme Court of the United States issued its decision in *Trump v. Anderson*, No 23-719. In her concurrence in the unanimous *per curium* decision, Justice Amy Coney Barrett noted explicitly what is readily apparent to all Americans, and legally relevant to your Department: already, we are in the “volatile season of a Presidential election.” On May 25, 2022, Attorney General Garland issued his “Memorandum for All Department Employees,” again noting that by that time, “the 2022 election season is upon us.”

That memo, attached, is quite clear, citing the Department’s Justice Manual, section 9-85.500, which Special Counsel regulations oblige Smith to follow: “Law enforcement officers and prosecutors may never select the timing of public statements (attributed or not), investigative steps, criminal charges, or any other action in any matter or case for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party. Such a purpose, or the appearance of such a purpose, is inconsistent with the Department’s mission and with the Principles of Federal Prosecution.”

Quite apart from any innuendo or conjecture (and it is wildly clear to the American public that no legitimate purpose exists for Smith’s investigation), a brief of the Special Counsel, before the Supreme Court of the United States, itself tacitly concedes a violation of Departmental rules. (*Brief of Jack L. Smith, Special Counsel, in Trump v. United States*, No. , Dec. 2023, available at https://www.supremecourt.gov/DocketPDF/23/23-624/292946/20231211144948077_U.S.%20v.%20Donald%20J.%20Trump%20-%20final%20final.pdf). Specifically, that reply brief repeatedly urges “rapid” review of the federal prosecution of Presidential Candidate Donald J. Trump, and the incredible “public importance” of the case, without once explicitly stating why the rapidity is warranted, or what the public importance is. Were there a legitimate, non-election related purpose for this request, these attorneys, who have filed in appeals courts many times, would have listed such. Since charges have been filed and the defendant himself is taking a legal position on timing and lodging various appeals, that justification cannot, for example, be the rights of the defendant under the Constitution or Speedy Trial Act.

So, there can be only one conclusion: Special Counsel Jack Smith sees it as of paramount importance to hold a trial before the November 2024 election, but he is unable to explicitly say so, as such a justification is in violation of Departmental policy and law.

Indeed, numerous commentators have publicly identified this apparent violation. For example, Harvard Law School professor Jack Goldsmith, formerly Senate-confirmed head of the Office of Legal Counsel, noted that “The argument for speed in the Colorado case was that the regularity of the presidential election process required a speedy decision on the question. There is no such rationale [in the Special Counsel’s case]. Normally the Court, if it grants at this stage, would set the case for oral argument in April and decide the case by late June. If the Court goes faster, the only conceivable rationales for doing so would be the political ones that have motivated Smith to rush to trial, canvassed above

[emphasis added].” See *The Consequences of Jack Smith’s Rush to Trial*, LAWFARE, February 14, 2024, available at <https://www.lawfaremedia.org/article/the-consequences-of-jack-smith's-rush-to-trial>.

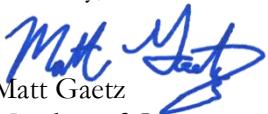
It is indisputable that we are already in an election season. However, the Justice Manual does not set hard dates. It is the core of prohibited conduct that a purpose (not the purpose) of any official action of a prosecutor be to affect any election: it may be morally correct that the American people should see swift resolution of this case, perhaps with dropped charges or a Trump acquittal before the November 2024 Presidential election, but wielding Executive Branch authority in the service of this is a violation of law. Prosecutors must be held to a higher standard.

The statutory mission of your office compels you to investigate his actions, to assess their compliance with Departmental policy and the laws of the United States. In Congress, we are quite sensitive to interbranch comity, and given our general practice of enabling the Executive Branch to “accommodate” our oversight requests in an iterative fashion, we are less equipped to make timely assessments than are you. To-date, the Department has failed to comply with narrow and reasonable oversight requests of the House of Representatives, a separate issue worth investigating. But as a result of this recalcitrance, we, the undersigned request your immediate attention into compliance of the Office of Special Counsel Jack Smith with Departmental regulations, particularly related to investigatory and prosecutorial actions during an election season.

The precise scope of an investigation may be as narrow as interviewing the Special Counsel, and determining that he has a lawful purpose in seeking the expediting of his case against Donald Trump, and determining that he did not have the purpose of keying a trial date to the election calendar. Or it may be wider.

Please alert my office of any developments in this matter.

Sincerely,


Matt Gaetz
Member of Congress