

Judge Cannon dismisses classified documents case against Donald Trump

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In a blatantly political ruling on Monday, federal Judge Aileen M. Cannon of the Southern District of Florida dismissed the classified documents case against Donald Trump on the grounds that the appointment of Special Counsel Jack Smith violated the US Constitution.

The ruling is a further blow to the feeble and belated legal proceedings brought against Donald Trump and his cabal of fascist supporters, who attempted to overthrow the US Constitution and keep Trump in the White House on January 6, 2021, and his ongoing conspiracy against democratic rights in the 2024 presidential election.

In her 93-page judgment, Judge Cannon agreed with a motion by Trump's lawyers for dismissal of the grand jury indictment brought against the former president in June 2023—with 32 felony counts for mishandling classified documents and eight counts for making false statements, engaging in conspiracy and obstruction of justice—that Attorney General Merrick Garland appointed Smith without Senate approval and confirmation.

The judge also ruled that Smith's office was improperly funded by the Justice Department because it was not approved by Congress. The dismissal means that the charges against Trump's two co-defendants, Waltine "Walt" Nauta and Carlos De Oliveira, have also been dropped.

In her ruling, Judge Cannon wrote:

Upon careful study of the foundational challenges raised in the Motion, the Court is convinced that Special Counsel's Smith's prosecution of this action breaches two structural cornerstones of our constitutional scheme—the role of Congress in the appointment of constitutional officers, and the role of Congress in authorizing expenditures by law.

The timing of the ruling—less than two days after the assassination attempt on Donald Trump at a Pennsylvania rally, two weeks after the US Supreme Court ruling in favor of Trump's claim of presidential prosecutorial immunity, and on the opening day of the Republican National Convention—makes clear that Judge Cannon was taking advantage of the political

moment.

Legal experts say the ruling will likely be overturned on appeal, in all probability ending up before the US Supreme Court. In any event, Judge Cannon is ensuring that the November election will take place without Donald Trump facing court proceedings on the documents case. Meanwhile, the three other criminal cases against him are either over or frozen.

Trump's lawyers are using aspects of the Supreme Court immunity ruling to press for dismissal of Trump's conviction on 34 counts of falsifying business records in the hush money trial involving porn star Stormy Daniels that ended in late May, and to throw out the stalled state case concerning Trump's effort to overturn his 2020 election loss to Joe Biden in Georgia. The case stemming from Trump's attempted coup of January 6, 2021 has been effectively quashed by the Supreme Court's July 1 ruling placing the president, for all practical purposes, above the law.

Judge Cannon's ruling contradicts decades of precedent in US law and practice in the appointment of special counsels or special prosecutors by the Justice Department. Under a federal law passed in 1966, the attorney general has the power to appoint attorneys "specially retained under authority of the Department of Justice" as "special assistant[s] to the attorney general or special attorney[s]."

Another provision of the law, called "Authority for legal proceedings; commission, oath, and salary for special attorneys," says that a lawyer appointed by the attorney general may "conduct any kind of legal proceeding, civil or criminal" that other US attorneys are "authorized by law to conduct."

Peter Carr, a spokesman for Jack Smith, said in a statement:

The dismissal of the case deviates from the uniform conclusion of all previous courts to have considered the issue that the Attorney General is statutorily authorized to appoint a special counsel.

Carr announced that the Justice Department had authorized an appeal of Cannon's ruling.

In a *New York Times* Op Ed, Neal K. Katyal, a professor at Georgetown University Law Center who worked at the Justice Department in the 1990s, wrote:

Eight separate judges had already rejected the claim that Judge Cannon has now endorsed (including, by the way, the judge presiding over Hunter Biden's criminal case).

Katyal continued, "We've had special counsels and special prosecutors since at least the time of President Ulysses Grant after the Civil War."

While the US Justice Department and special prosecutor laws are by no means guarantors of democratic rights, the dismissal of the classified documents case is, like the July 1 Supreme Court ruling, a lifting of criminal liability for executive branch lawlessness, and, as such, another attack by the judiciary on democratic norms.

Judge Cannon is fully aware of previous repeated use of special counsel procedures. An entire section of her ruling is devoted to the issues involved in the 1974 Supreme Court ruling in the case *United States v. Nixon* during the Watergate crisis.

When special prosecutor Leon Jaworski sought to obtain President Richard Nixon's Oval Office tapes, Nixon argued that, as president, he had the "final say" in a dispute with the Justice Department, which was part of the executive branch of government.

In its unanimous decision, the Supreme Court rejected Nixon's claims and asserted that "Congress has vested in the Attorney General the power to conduct the criminal litigation of the United States Government," and, "It has also vested in him the power to appoint subordinate officers to assist him in the discharge of his duties."

Judge Cannon's ruling advances the absurd argument that the Supreme Court ruling against Nixon did not constitute a precedent on the question of the appointment of a special prosecutor by the Justice Department.

She quotes from and supports Trump's motion that the Supreme Court language from the Nixon case about the attorney general's authority "is non-binding dictum and thus should not control the Court's statutory analysis." Judge Cannon then writes that the attorney general's authority in the Nixon case "was not raised, briefed, argued, or disputed before the Nixon Court," and that the Supreme Court at most assumed that the attorney general had authority without expressly ruling on it.

Another indication of the connection of Judge Cannon, who was appointed to the bench by Donald Trump in 2020, to far-right politics is the fact that she cited Justice Clarence Thomas' concurrence from the July 1 immunity ruling in Trump's favor.

In his document, which no other justices joined, Thomas said that the Nixon case only "gave passing reference to the cited statutes" and "provided no analysis of those provisions' text."

Judge Cannon's ruling dismissing the charges against Trump is a continuation of her repeated interventions into the classified documents case in support of the former president's defense team.

Trump and his co-defendants were indicted more than two years after the National Archives and Records Administration (NARA) became aware that documents from the Trump White House were missing from the National Archives. Numerous efforts by NARA to retrieve 15 boxes of documents from the former president elicited false information and deliberate attempts to conceal their whereabouts.

Following a grand jury subpoena issued in May 2022, Trump certified that he would return all the documents. However, the Federal Bureau of Investigation (FBI) determined shortly thereafter that the former president had moved the boxes at his residences in Mar-a-Lago, Florida and Bedminster, New Jersey.

The FBI raided and searched Mar-a-Lago in August 2022 and found over 13,000 government documents, including 300 that were classified. At that point, Trump launched a civil lawsuit and demanded the appointment of a special master, which was granted by Judge Cannon, to review the seized documents. This ruling was later overturned by an appeals court.

In November 2022, the FBI investigation of Trump's possession of government documents was taken over by Special Counsel Jack Smith, who was appointed by Attorney General Merrick Garland.

Once the grand jury indictment was handed down, Judge Cannon sought to bring every objection by the defense, no matter how frivolous, into the courtroom for argument, instead of issuing decisions from the bench. This was a deliberate tactic intended to extend the process as much as possible and make sure it never reached a jury before the November election.



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