

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO: 23-CR-80101-AMC**

**UNITED STATES OF AMERICA,**

**v.**

**DONALD J. TRUMP,  
WALTINE NAUTA, and  
CARLOS DE OLIVEIRA,**

**Defendants.**

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**AMICUS CURIAE BRIEF OF NINETEEN (19) MEMBERS OF THE UNITED STATES  
HOUSE JUDICIARY COMMITTEE**

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## **I. INTEREST OF AMICI**

Amici are nineteen (19) members of the United States House Committee on the Judiciary (“Committee Members”), identified on Exhibit A. Amici are responsible for exercising the legislative and oversight powers that the Constitution assigns to the Legislative Branch. Those powers include oversight of the Department of Justice and Special Counsels appointed by the Attorney General. The Committee has a strong interest in the pending motions before the Court, which ask the Court to rescind its prior order enjoining release of Volume II of Special Counsel Jack Smith’s report (the “Injunction Order”).

The House Judiciary Committee has legislative jurisdiction over civil and criminal judicial proceedings and criminal law enforcement. *See* House Rule X, cl/ 1, sec. 1, as adopted by House Res. 5 of the 119th Congress. The Committee’s jurisdiction includes oversight of the Department of Justice and Special Counsels. The regulations that then-Attorney General Merrick Garland invoked in appointing Mr. Smith required Mr. Smith to prepare the report that is the subject of the pending motions. *See* Order No. 5559-2022; 28 C.F.R. § 600.8. Those regulations also require the Attorney General to report to the Chairman and the Ranking Member of the Judiciary Committee on the “conclusion of the Special Counsel[’]s investigation” and provide that the Attorney General may “determine that public release of these reports would be in the public interest.” *See* 28 C.F.R. § 600.9.

The Committee is currently investigating the Office of Special Counsel under Mr. Smith, including by deposing Mr. Smith and others from that Office. The report is directly relevant to that investigation. It has also been the subject of an express directive from the Committee Chairman to preserve relevant evidence, and is the subject of a formal request from the Chairman to the Attorney General. To the extent the Court’s order continues to prevent the Attorney General from disclosing the report to the Committee, that order would obstruct the critical flow

of information between Congress and the Executive branch and would impede the Committee’s exercise of its oversight authority.

## **II. ARGUMENT**

The Constitution gives Congress the power to oversee the Executive Branch. To fulfill that constitutional function, members of Congress must be able to access information about how the Executive has performed its duties. *See McGrain v. Daugherty*, 273 U. S. 135, 161 (1927) (each chamber has power “to secure needed information” in order to legislate). It is thus exceedingly rare—and exceedingly problematic—for an Article III court to bar the Executive Branch from disclosing information about its own conduct to Congress.

This Court previously found such an extraordinary order to be necessary to protect the due process rights of criminal defendants in ongoing criminal proceedings. But those proceedings have long since ended. And in the months following the Court’s January 2025 injunction, circumstances have changed in ways that weigh strongly in favor of rescinding that injunction: the House Judiciary Committee has proceeded to investigate the Special Counsel’s operations, obtained documents from the Department of Justice and Federal Bureau of Investigation, and took the testimony of multiple witnesses; and members of Congress have made repeated requests for Volume II in light of this investigation. The three particular factors the Court relied on in issuing the injunction either no longer apply or now cut the opposite way. And the significant public interest in the contents of Volume II—clear from the extensive press coverage of these proceedings and from the public spotlight following the Committee’s investigation—further weighs in favor of allowing the political branches to resolve disclosure of the report without judicial interference.

### **A. The Court’s Prior Rationale No Longer Supports the Injunction**

In January 2025, this Court issued an extraordinary order preventing the Executive

Branch from disclosing information about its own conduct to Congress. The Court gave three reasons for that order, and relied primarily on the first: (1) non-disclosure was necessary to protect the interests of criminal defendants in ongoing proceedings; (2) there was “no indication of pending legislative activity that could be aided by the proposed disclosure of Volume II to the specified members of Congress”; and (3) there was “no record provided of an official request by members of Congress for review of Volume II in the manner proposed by the Department.” Dkt. 714 at 10-11. The Court issued that order on an emergency basis after expedited briefing, citing the risk of irreparable harm to the two co-defendants and the need to preserve the status quo. *Id.* at 12-13.

Circumstances have changed significantly since January. Today, each of the three factors the Court cited either no longer obtains or cuts against the injunction.

**First**, and most significantly, there are no ongoing criminal proceedings. The United States has voluntarily dismissed the criminal cases against all defendants. Dkts. 677, 716. Accordingly, disclosure can no longer implicate any defendant’s constitutional right to a fair trial. The Injunction Order rested almost entirely on the need to protect those rights, a justification that no longer exists.

**Second**, there is now pending legislative and oversight activity that Congress needs Volume II of the report to fully and faithfully perform. *See McGrain*, 273 U.S. at 161. Since January 2025, the Committee has been investigating the “operations of the Office of the Special Counsel” under Mr. Smith.<sup>1</sup> Over the past year, the Committee has deposed former Counselor to Special Counsel Jay Bratt, interviewed and deposed former Senior Assistant Special Counsel

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<sup>1</sup> See Letter from Hon. Jim Jordan, H. Comm. on the Judiciary, to Pamela J. Bondi, Att’y Gen., U.S. Dep’t of Justice (Mar. 18, 2025), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2025-03-18-jdj-to-bondi-doj-re-ti-requests.pdf>.

Thomas Windom, and interviewed former Deputy Special Counsel J.P. Cooney.<sup>2</sup> And as part of its ongoing investigation, the Committee has subpoenaed Mr. Smith to appear for a deposition before it on December 17, 2025. The Department of Justice has specifically authorized Mr. Smith to testify at that deposition about information contained within Volume II of the Special Counsel’s report.<sup>3</sup> The Committee’s investigation would be significantly aided by disclosure of Volume II.

**Third**, there have now been repeated requests by members of Congress for Volume II of the report. The information in Volume II is at the core of the Committee’s investigation. In November 2024, Chairman Jordan sent a letter to Mr. Smith demanding that he “preserve all existing and future records and materials related to the Office of Special Counsel’s investigations and prosecutions of President Trump,” including specifically “[a]ll documents and communications between or among the Office of Special Counsel, the Office of the Attorney General, or the Office of the Deputy Attorney General referring or relating to the investigation and prosecution of President Donald Trump” and “[a]ll documents and communications referring or relating to meetings between FBI and Justice Department officials sent to or received by you prior to the execution of the search warrant on President Trump’s private residence.”<sup>4</sup> Senator

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<sup>2</sup> See Deposition of Jay Bratt, Counselor to Special Counsel, (May 14, 2025), [bratt-deposition-transcript-with-errata redacted.pdf](#); Transcribed Interview of J.P. Cooney, Deputy Special Counsel, (June 24, 2025); Transcribed Interview of Thomas Windom, Senior Assistant Special Counsel USAO D.C., (June 12, 2025); Deposition of Thomas Windom, Senior Assistant Special Counsel USAO D.C., (Sept. 30, 2025), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/windom-depo-transcript-with-errata redacted.pdf>.

<sup>3</sup> Authorization Letter from Patrick D. Davis, Assistant Att’y Gen., U.S. Dep’t of Justice, to Lanny A. Bruer & Peter Koski (Nov. 12, 2025) (on file with author).

<sup>4</sup> Letter from Hon. Jim Jordan, H. Comm. on the Judiciary and Barry Loudermilk, Subcomm. on Oversight, Comm. on H. Admin., to Jack Smith, Special Counsel, U.S. Dep’t of Justice (Nov. 8, 2024), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/JDJ%20and%20Loudermilk%20to%20Jack%20Smith%2011.8.24.pdf>



Richard J. Durbin and other members of the Senate Judiciary Committee sent a similar preservation demand to former Attorney General Merrick Garland on January 13, 2025.<sup>5</sup> Those requests clearly cover Volume II, which is the central document memorializing the Special Counsel’s investigation and prosecutorial decisions in the matter concerning President Trump’s retention of classified documents.

More recently, on October 29, 2025, Chairman Jordan wrote to Attorney General Bondi seeking “[a]ll DOJ documents and communications referring or relating to Jack Smith’s Special Counsel investigation for the period November 18, 2022, to January 20, 2025.”<sup>6</sup> Members of both the House and Senate Judiciary Committees have made additional requests for Volume II as well, and the Senate plans to hold a series of hearings about the Special Counsel’s investigation in the new year.<sup>7</sup>

No member of the House Judiciary Committee—Republican or Democratic—has seen

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<sup>5</sup> Letter from Hon. Richard J. Durbin, S. Comm. on the Judiciary, et al., to Attorney General Merrick Garland (January 13, 2025), <https://www.judiciary.senate.gov/imo/media/doc/Letter%20to%20DOJ%20on%20Records%20Preservation.pdf>.

<sup>6</sup> Letter from Hon. Jim Jordan, H. Comm. on the Judiciary, to Pamela J. Bondi, Att’y Gen., U.S. Dep’t of Justice (Oct. 29, 2025) (on file with author).

<sup>7</sup> See Letter from Hon. Jamie Raskin, Ranking Member, H. Comm. on the Judiciary, to Acting Att’y Gen. James McHenry, U.S. Dep’t of Justice (Feb. 2, 2025), [https://democrats-judiciary.house.gov/sites/evo-subsites/democrats-judiciary.house.gov/files/migrated/UploadedFiles/2025-02-02\\_Raskin\\_Goldman\\_et\\_al\\_to\\_McHenry\\_DOJ\\_re\\_Special\\_Counsel\\_Report.pdf](https://democrats-judiciary.house.gov/sites/evo-subsites/democrats-judiciary.house.gov/files/migrated/UploadedFiles/2025-02-02_Raskin_Goldman_et_al_to_McHenry_DOJ_re_Special_Counsel_Report.pdf); Letter from Hon. Jamie Raskin, Ranking Member, H. Comm. on the Judiciary, to Pamela J. Bondi, Att’y Gen., U.S. Dep’t of Justice (July 8, 2025), <https://democrats-judiciary.house.gov/sites/evo-subsites/democrats-judiciary.house.gov/files/evo-media-document/2025-07-08.raskin-goldman-et-al-to-bondi-doj%29-re-smith-report-epstein-files.pdf>; Letter from Hon. Richard J. Durbin, Ranking Member, S. Comm. on the Judiciary, et al., to Hon. Charles E. Grassley, Chairman, S. Comm. on the Judiciary (October 30, 2025), [https://www.durbin.senate.gov/imo/media/doc/2025-10-30\\_letter\\_to\\_sjc\\_chair\\_re\\_jack\\_smith.pdf](https://www.durbin.senate.gov/imo/media/doc/2025-10-30_letter_to_sjc_chair_re_jack_smith.pdf); Hailey Fuchs, *Senate Judiciary Plans Hearings Around Jack Smith Probe*, POLITICO (Dec. 8, 2025), <https://www.politico.com/live-updates/2025/12/08/congress/senate-judiciary-plans-smith-hearings-00681147>.

Volume II of the report. Committee Members have by now repeatedly requested it, and need access to it to participate meaningfully in the investigation into the Special Counsel's Office and to effectively carry out the Committee's work overseeing the Department of Justice.

## **B. The Public Interest Supports Recission**

The Special Counsel's investigation into President Trump's retention of classified documents was one of the most significant criminal investigations in American history. It concerned allegations of grave criminal conduct by the nation's highest-ranking official. Volume II of the Special Counsel's report is the definitive account of that investigation.

The public interest in that document is self-evident and profound. The final reports of prior Special Counsels, including the investigation of President Biden's handling of classified documents, have been made public in recognition of the overriding public interest in those investigations.<sup>8</sup> The public interest in understanding how the Department of Justice investigated President Trump is no less compelling, regardless of whether one views the investigation as legitimate or as partisan overreach. The extensive press coverage of this dispute reflects the obvious: the American public wants to know what the Special Counsel found.<sup>9</sup> The Department of Justice itself recognizes the weighty public interest in this matter by expressly authorizing Mr. Smith to testify about his investigation into the classified documents matter.<sup>10</sup>

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<sup>8</sup> See, e.g., Special Counsel Tobert K. Hur, "Report on the Investigation Into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn Biden Center and the Delaware Private Residence of President Joseph R. Biden, Jr." (Feb. 2024) (reporting on Special Counsel investigation into President Biden's possession of classified documents while a private citizen after leaving Vice Presidency).

<sup>9</sup> Robert Alexander, *Donald Trump Intervenes in Court Case to Release Jack Smith Report*, NEWSWEEK (Dec. 3, 2025); Kyle Cheney, *Trump: Jack Smith Classified Documents Report Should Remain Secret*, POLITICO (Dec. 2, 2025).

<sup>10</sup> Authorization Letter from Patrick D. Davis, Assistant Att'y Gen., U.S. Dep't of Justice, to Lanny A. Bruer & Peter Koski (Nov. 12, 2025).

Consistent with that extraordinary public interest, the Committee’s investigation of Mr. Smith has unfolded in significant part in public. Chairman Jim Jordan has released transcribed interviews of former members of the Special Counsel team.<sup>11</sup> He has repeatedly levied public accusations against Mr. Smith and his team that their work was “partisan and politically motivated,” accusations based on an incomplete record.<sup>12</sup> Indeed, Mr. Jordan has issued at least a half dozen press releases about the Committee’s investigation since the Court’s January 21, 2025, order.<sup>13</sup> The Senate Judiciary Committee recently announced that it will investigate the Special Counsel’s office as well.<sup>14</sup>

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<sup>11</sup> See Referral Letter from Hon. Jim Jordan, H. Comm. on the Judiciary, to Pamela J. Bondi, Att’y Gen., U.S. Dep’t of Justice (Nov. 19, 2025), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2025-11-19-jdj-to-doj-re-windom-referral.pdf/>.

<sup>12</sup> Letter from Hon. Jim Jordan, H. Comm. on the Judiciary, to Jack Smith, Former Special Counsel (Oct. 14, 2025), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2025-10-14-jdj-to-smith-re-ti-request.pdf>; Letter from Hon. Jim Jordan, H. Comm. on the Judiciary, to Thomas Windom, Former Assist. Special Counsel (April 7, 2025) (on file with author); Letter from Hon. Jim Jordan, H. Comm. on the Judiciary, to Pamela J. Bondi, Att’y Gen., U.S. Dep’t of Justice (Mar. 18, 2025), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2025-03-18-jdj-to-bondi-doj-re-ti-requests.pdf>.

<sup>13</sup> See e.g., Press Release, H. Comm. on the Judiciary, Chairman Jordan Subpoenas Prosecutor from Former Special Counsel Jack Smith’s Team for Deposition (July 21, 2025), <https://judiciary.house.gov/media/press-releases/chairman-jordan-subpoenas-prosecutor-former-special-counsel-jack-smiths-team>; Press Release, H. Comm. on the Judiciary, Jim Jordan Demands Testimony from Jack Smith (Oct. 14, 2025), <https://judiciary.house.gov/media/press-releases/jim-jordan-demands-testimony-jack-smith>; Press Release, H. Comm. on the Judiciary, Rep. Mike Kelly and Chairman Jim Jordan Release Statements on Jack Smith (Oct. 15, 2025), <https://judiciary.house.gov/media/press-releases/rep-mike-kelly-and-chairman-jim-jordan-release-statements-jack-smith>; Press Release, H. Comm. on the Judiciary, Chairman Jordan Refers former Jack Smith Attorney to the Justice Department for Obstruction of Congress (Nov. 19, 2025), <https://judiciary.house.gov/media/press-releases/chairman-jordan-refers-former-jack-smith-attorney-justice-department>; Press Release, H. Comm. on the Judiciary, Biden-Harris Justice Department Gathered Chairman Jordan’s Phone Records for Over Two Years (Nov. 20, 2025), <https://judiciary.house.gov/media/press-releases/biden-harris-justice-department-gathered-chairman-jordans-phone-records-over>.

<sup>14</sup> Hailey Fuchs, *Senate Judiciary Plans Hearings Around Jack Smith Probe*, POLITICO (Dec. 8, 2025), <https://www.politico.com/live-updates/2025/12/08/congress/senate-judiciary-plans-smith->

Volume II nonetheless remains secret. That creates an untenable asymmetry: the Committee is conducting a public investigation and drawing public conclusions about the conduct of the Special Counsel, but the central document produced by that Special Counsel remains locked away. Neither the Committee nor the public can meaningfully evaluate Mr. Smith's conduct, or assess the Committee's accusations, without access to the report that memorializes what the Special Counsel actually did and why. Whatever interests may have justified the Court's original order, those interests cannot support perpetuating a one-sided public record indefinitely.

\* \* \*

The rationale of this Court's prior order thus no longer applies. The criminal proceedings have been dismissed, and the House Judiciary Committee has proceeded with a formal investigation into the Special Counsel's operations. And the circumstances that weigh in favor of rescinding the injunction—allowing Congress to exercise its full investigatory and oversight authority and obtain information directly from the Executive Branch—have only grown more compelling. The continued suppression of Volume II now serves only to obstruct the constitutional processes by which the political branches oversee one another and report to the American people.

This Court's January 21, 2025, order can no longer stand as a roadblock to the Department of Justice disclosing Volume II of the Special Counsel's report. The Court should dissolve the injunction.

Dated: December 12, 2025

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that on December 12, 2025, I electronically filed the foregoing with the Clerk of Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Thomas Burns

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