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July 22, 2026

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Todd W. Blanche
Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Chairman Jordan and Acting Attorney General Blanche:

The House Judiciary Committee's referral to the Department of Justice of our client Jack Smith is based on a spurious claim that Mr. Smith provided false testimony during his eight-hour deposition on December 17, 2025. The referral is made not because Mr. Smith made a false statement—the letter concedes he did not—but because he did not proactively disclose information that was not responsive to a question asked. During his testimony, Mr. Smith provided truthful, responsive answers and candidly discussed his work as Special Counsel. This referral reflects a chilling eagerness to weaponize the justice system by attacking a career, nonpartisan public servant who faithfully and fearlessly performed his duties by following the facts and the law.

The purported predicate for this referral is based on the following exchanges:

Q: Did you seek a search warrant for the content of any text messages from Members?
A: From Members?
Q: Yes.
A: No, I don't recall that.
Q: Okay. It was just toll records?
A: Correct.

* * *

Q: Did the toll records that you requested from the Senators, did they include the content of the phone calls?
A: No.
Q: Did the records that you requested, the toll records from the Member of Congress, include the content of text messages?
A: No.

Those answers are unimpeachably truthful. The toll record subpoenas that were the focus of those questions did not call for the content of text messages. The questions and answers

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preceding and following these exchanges also make clear that the focus of the questions was on the toll records subpoenas. Notably, the referral letter does not contest the truthfulness of Mr. Smith's answers.

Perhaps in recognition of this deficiency, the referral letter instead relies on the unprecedented theory that Mr. Smith provided false testimony not because of what he said, but because of what he did not say. Specifically, the referral argues that by not proactively disclosing that the Special Counsel's Office collected from the National Archives records from White House phones that included text messages between White House officials and Republican and Democratic Members of Congress, Mr. Smith violated 18 U.S.C. § 1001, the federal false statements statute. The letter advances this theory even though that information was not responsive to any question asked.

This dangerous theory of criminal liability has no limiting principle and risks ensnaring every witness who testifies before a congressional committee who does not proactively disclose information that is not responsive to a question asked (*i.e.*, every witness). Accordingly, the D.C. Circuit has rejected it. *See United States v. Safavian*, 528 F.3d 957, 965 (D.C. Cir. 2008) ("The government essentially asks us to hold that once an individual starts talking, he cannot stop. We do not think § 1001 demands that individuals choose between saying everything and saying nothing. No case stands for that proposition.").

Mr. Smith approached the investigation into President Trump as he has approached every other investigation throughout his career as a prosecutor—following the facts and the law while adhering to Department of Justice protocol and regulations. Here, consistent with Department of Justice policy, Mr. Smith and his team set up a filter protocol for the specific and limited purpose of reviewing the content of electronic devices obtained pursuant to search warrants in order to identify and remove attorney-client communications. Throughout their investigation, Mr. Smith and his team diligently followed this protocol.

The records from White House phones produced by the National Archives were not intended or required to be reviewed by the filter team. It is standard practice that a filter team reviews some documents obtained in an investigation without reviewing every document obtained during an investigation, and there was no indication or suggestion that these records needed to go through a filter review.

Moreover, contrary to the referral letter's assertion, the Speech or Debate Clause was not implicated by the collection and review of text messages on the phones of White House officials. That important constitutional provision, which Mr. Smith and his team took seriously and safeguarded, protects Members of Congress from having their legislative acts used against them. It does not prevent prosecutors from using or reviewing text messages between Members of Congress and members of the Executive Branch in an investigation and prosecution of an Executive Branch official, which is precisely what happened here. This review of text messages did not involve an intrusion by the Executive Branch into the legislative sphere because the text messages were voluntarily sent by members of the Legislative Branch to members of the Executive Branch.

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Mr. Smith and his team were also transparent in disclosing these text messages to President Trump's personal counsel in discovery. If President Trump's attorneys thought that Mr. Smith and his team had done something unlawful or improper in obtaining these text messages, they could have filed a motion to that effect. Notably, they did not.

Mr. Smith agreed to testify before the House Judiciary Committee fully cognizant of the risk that President Trump's Justice Department would try to find something in his testimony to serve as the basis for a criminal charge. This risk existed not because Mr. Smith would make a false statement, but because President Trump has repeatedly ordered that Mr. Smith be prosecuted and jailed. That is not the rule of law. And it contravenes the principles that are critical to the vitality of our democracy. An honest assessment of the facts and the law compels a rejection of this meritless referral.

Sincerely,



Lanny A. Breuer



Peter Koski

cc: The Honorable Jamie Raskin
Ranking Member
Committee on the Judiciary
U.S. House of Representatives