

MERRICK GARLAND NAMES WAR CRIMES PROSECUTOR JACK SMITH TO OVERSEE TRUMP INVESTIGATIONS

To my mind, the best part of appointing war crimes and public corruption prosecutor Jack Smith as Special Counsel to oversee the twin investigations into Donald Trump is that it will be a cinch, now, to subpoena Ginni Thomas.

Otherwise I have mixed feelings about the decision. I think the letter of DOJ guidelines requires it. But I don't think it will change how much of a clusterfuck Trump makes of it.

It does have certain other advantages, other than making it easier to subpoena Ginni. It might even make it easy to subpoena Mike Pence.

First, this will make it very easy to refuse Jim Jordan's demands for information about the investigation.

It will ensure the continuity of any prosecution after 2025, no matter who is elected (neither hypothetical Trump prosecution – the stolen documents or the coup attempt – would be done by then, even if it were indicted on December 15, the earliest possible date for either).

I don't *think* this will create much of a delay. The stolen documents case, which is the first that *could* be prosecuted (assuming the 11th Circuit overturns Judge Aileen Cannon's special master order) is fairly self-contained, so would only take a day to be briefed into. The coup attempt is far, far more complex, but I think there was no way Trump himself would be indicted before February or March anyway, probably longer.

The jurisdictional boundary is of interest: Anyone who crimed at the Capitol will be

prosecuted by DC US Attorney Matthew Graves. Anyone who was not physically present at the Capitol would fall under Smith's investigation.

It's unclear where Alex Jones would fit in that schema. Roger Stone, though, would be moved under Smith.

My favorite part of the order appointing Smith is this part:

(b) The Special Counsel is authorized to conduct the ongoing investigation into whether any person or entity violated the law in connection with efforts to interfere with the lawful transfer of power following the 2020 presidential election or the certification of the Electoral College vote held on or about January 6, 2021, as well as any matters that arose or might arise directly from this investigation or that are within the scope of 28 C.F.R. § 600.4(a). This

The language authorizing a Special Counsel to investigate anything that "might arise directly from this investigation" is standard Special Counsel language. It generally covers efforts to obstruct the investigation.

Only, usually, it only appears in the subjunctive, covering matters that might arise, in the future.

This authorizes Smith to investigate things that already have. Which would only be necessary if such matters had already arisen.

The order also authorizes Smith to spin off prosecutions.

(d) The Special Counsel is authorized to prosecute federal crimes arising from the investigation of these matters. The Special Counsel is also authorized to refer to the appropriate United States Attorney discrete prosecutions that may arise from the Special Counsel's investigation.

Again, that's not boilerplate. It may suggest Garland has already seen evidence of criminality that could and should be spun off.

Mostly, I think this is an "Eh" decision. It doesn't change Garland's role in the process. I don't think it delays things. I think it carries certain advantages, two of those named Ginni and Jim.

But otherwise, the investigation continues with
– as Garland said – urgency.

Update: Overnight I thought of this: Garland said there were recent developments, plural, that led to this decision. One could be the GOP taking over control of Congress. After all, Scott Perry, head of the Freedom Caucus, must be a subject of this investigation. But it's not outside the realm of possibility that the incoming House Judiciary Committee Chair is too. And depending on the final split in Congress, it's also not outside the realm of possibility that enough members are under investigation – with Perry, Jim Jordan, Marjorie Taylor Greene, Andy Biggs, Paul Gosar, and Matt Gaetz – that it could, briefly anyway, alter the majority in Congress.