

# TRUMP WILL STAGE AN EMERGENCY TO BAN JACK SMITH'S BOOK REPORT

I expect, on top of everything else this week, Trump's lawyers are going to claim an emergency to try to ban Jack Smith's book report, currently due Thursday.

As you'll recall, after Judge Tanya Chutkan finally got the Trump January 6 case back, she agreed with Jack Smith's proposed path forward: They would submit a brief explaining how the superseding indictment complies with the Supreme Court's immunity opinion. Chutkan set a deadline of September 26, Thursday, for that brief.

Trump seems certain that if voters see that brief, he will lose the election.

Last Thursday, Trump's lawyers submitted what was supposed to be a discovery filing, in which they basically said, "N0000000!!!! No briefing before the election."

Dismissal is required to protect the integrity of the Presidency and the upcoming election, as well as the Constitutional rights of President Trump and the American people.

Judge Chutkan does not have to rule on those issues before determining the immunity question, though, so the filing was better read as, "Help me Sammy Alito!!!! Help me John Roberts!!!! You're my only hope!!!"

Yesterday, Jack Smith submitted a request to file excess pages, 180 pages instead of 45. In it, he disclosed that Trump objected and wanted a chance to respond, with the deadline set for Tuesday, September 24.

Defense counsel opposes the Government's

motion at this time, and requests that the Court set a deadline of September 24, 2024, 5:00 PM ET for the defense's response.

Judge Chutkan ordered Trump's team to file their opposition one day earlier, Monday September 23 (note: Trump's team filed their last filing after 5PM, after which Judge Chutkan made it clear she'll permit no more of that).

Defendant shall file any opposition to the Government's [237] Motion for Leave to File Oversized Motion by September 23, 2024 at 5:00 PM ET.

Trump will oppose not just the excess pages, 180 instead of 45, but the entire filing. Now he's got one less day to make that argument.

Which is what you need to understand the other things in the Jack Smith request. Trump is going to stage an emergency to get this question elevated to SCOTUS to prevent the filing this week. He will try to take things SCOTUS ordered Chutkan to do out of her hands, to put them back before SCOTUS.

Anticipating that, Smith starts his request by laying out that he is just trying to do what Chutkan ordered, to show that *SCOTUS ordered precisely this briefing*.

In *Trump v. United States*, 144 S. Ct. 2312, 2340 (2024), the Supreme Court emphasized the "necessarily factbound" nature of any presidential immunity analysis. See *id.* at 2339 ("Determining whose characterization may be correct, and with respect to which conduct, requires a close analysis of the indictment's extensive and interrelated allegations."); *id.* at 2340 ("The analysis therefore must be fact specific and may prove to be challenging."); *id.* ("Knowing, for instance, what else was said contemporaneous to the excerpted

communications, or who was involved in transmitting the electronic communications and in organizing the rally, could be relevant to the classification of each communication.”). The Supreme Court remanded to this Court “to determine in the first instance—with the benefit of briefing we lack—whether [the defendant’s] conduct in this area qualifies as official or unofficial.” Id. at 2339.

A few paragraphs later, he describes that *because* this review will be what SCOTUS reviews on appeal, the record must be comprehensive. Thus the need for 180 pages.

The Court has been directed to conduct a detailed, factbound, and thorough analysis of the Government’s case to make appropriate immunity determinations. Because the Court will make determinations “in the first instance” that will be subject to exacting appellate review, it is essential that the Court ensure that the record in support of its determinations is complete. The Government believes that a comprehensive brief by the Government will be of great assistance to the Court in creating that robust record, and the Government thus seeks leave to exceed the typical limit for a single motion. See Local Crim. R. 47(e) (limiting opening motions and oppositions to 45 pages and replies to 25 pages).

Smith goes into detail about the breakdown of those 180 pages: half is narrative, thirty pages are footnotes, a bunch are exhibits. Those details will only matter if we ever get to see it.

Remember: Trump is looking for some basis to cause an emergency that will allow him to get

back to SCOTUS. So Jack Smith will (and probably would have, in any case) submit the filing under seal, and only afterwards work on unsealing it for the voting public.

For the Court's awareness, the opening brief and its exhibits contain a substantial amount of Sensitive Material, as defined by the Protective Order. Consistent with the Protective Order, the Government intends to file a motion for leave to file under seal that attaches an unredacted copy of the motion and appendix and proposed redacted versions to be filed later on the public docket at the Court's direction. See ECF No. 28 ¶¶ 11-12. Because of the extensive and time-consuming logistics involved in finalizing the brief, appendix, and proposed redacted public versions of the same, the Government respectfully requests the Court's decision on this motion as soon as practicable.

Voila, no emergency.

But without creating such an emergency, then Chutkan will get a look at the argument.

I honestly have no idea how it'll end up. I've been wracking my brain for what procedural reason Trump's team could use to declare an emergency.

But with this SCOTUS, it doesn't have to be all that plausible.