

# AS XITTER'S LAWYER STALLED DOJ, ELON MUSK MET WITH JIM JORDAN (TWICE!) AND KEVIN MCCARTHY

Elon Musk has been eerily quiet about being held in contempt by Beryl Howell since the DC Circuit opinion was first released on August 9.

It's not like him to pass up the opportunity to make an obnoxious comment.

Which is why I'm interested in what Musk was doing during the period when Xitter's counsel was stalling on the DOJ request – including a visit to Kevin McCarthy on January 26.

Beryl Howell approved the warrant on January 17. After several failed attempts, the government served it to the official portal on January 19. But then Xitter's senior-most legal person stalled for 12 days, until she told DOJ that Xitter was going to make a First Amendment challenge so Trump could invoke executive privilege.

The government's initial service attempts on Twitter filed twice, with the government's receipt both times of an automated message indicating that Twitter's "page [was] down." Gov't's Mot. at 2 (alteration in original). On January 19, 2023, the government was finally able to serve Twitter through the company's Legal Requests Submissions site. Id

Twitter, however, somehow did not know of the existence of the Warrant until January 25, 2023—two days before the Warrant returns were due. That day, the government contacted Twitter about the status of the company's compliance with

the Warrant, and Twitter's Senior Director of Legal, JN [redacted], indicated she was not aware of the Warrant but would consider it a priority." Id; see also Decl. of [redacted], Senior Director of Legal for Twitter ("[redacted] Decl") 2 (SEALED), ECF No. 9-1. The government indicated that they were looking for an on time production in two days time" to which [J redacted] responded, "without knowing more or taking any position that would be a very tight turn around for us." [J] Decl. ¶ 2. The government sent the six pages of the Warrant and the NDO directly to [J redacted] later that evening Meanwhile, [J redacted] directed Twitter's personnel to preserve data available in its production environment associated with the Target Account, and "have confirmed that the available data was preserved." Id. ¶ 4.

Twitter notified the government in the evening of January 26, 2023, that the company "would not comply with the Warrant by the next day, "Id. 5, and responded to the government's request for more specific compliance information, by indicating that "the company was prioritizing the matter and taking it very seriously" but that [redacted] had the Warrant and NDO only "for two days," id. ¶ 8, even though the government had tried to submit the Warrant and NDO through Twitter's Legal Requests Submissions site nine days earlier. The Warrants deadline for compliance makes no exception for the provider's failure to have a fully operational and functioning system for the timely processing of court orders.

On January 31, 2023, Twitter indicated for the first time that the company would not comply with the Warrant without changes to the NDO, stressing as

“essential to Twitter’ business model including [its] commitment to privacy, transparency, and neutrality) that [Twitter] communicate with users about law enforcement efforts to access their data.” *Id.* 10.

The Legal Director’s declaration is more obnoxious than that. She made no mention of DOJ’s attempts to serve the warrant before she got involved and makes much of a claim that it took the AUSA two efforts to *email* a separate copy to her. Her assurances that everything was preserved – made as of January 25 – don’t rule out any deletions before that.

It wasn’t until February 1 that WilmerHale was officially involved.

And in the meantime, Elon Musk had made a widely covered trip to DC. He met with Jim Jordan on Thursday January 26, Kevin McCarthy that evening, and then Jordan (again) with James Comer the next day (Axios, NYT, CNN)

As of now, at least, Jordan and McCarthy are two of the just 51 people that Trump follows, who could have sent him DMs.

The next week, Comer formally announced his dick pics hearing, which (as Allison Gill observed yesterday) took place the day between two hearings on the warrant, as contempt fees started piling up. In that hearing, Republicans spun Musk’s willful violation of the consent decree against Xitter as an assault on the First Amendment.

As it was happening, Musk posted a tweet with nothing more but a period.



Elon Musk    
@elonmusk

1:03 AM · Feb 8, 2023 · 69.9M Views

This was happening in the period when Xitter was doing more intensive searches to get – for example – the second preservation of Trump’s account from January 12, 2021 and all other accounts associated, via common device, cookie, or IP, with Trump’s own.

In the February 7 hearing, then-Chief Judge Beryl Howell questioned whether Xitter was stalling on this production because Musk “wants to cozy up with the former President, and that’s why you are here?”

But it may be more than that.

Musk is solidly part of the far right culture that might have been involved in any DM lists organizing the insurrection. One of the main reasons he started considering buying Xitter is because of the efforts Xitter took in the aftermath to crack down on violence.

And in the lead-up to Musk’s purchase of Xitter, someone – there’s reason to believe it might be Stephen Miller, who had been interviewed by Jack Smith’s prosecutors in November, before he was interviewed in a privilege-waived interview in April – texted Musk personally to raise the sensitivities of restoring Trump to Xitter.

And one of Musk’s phone contacts appears to bring Trump up. However, unlike others in the filings, this individual’s information is redacted.

“It will be a delicate game of letting right wingers back on Twitter and how to navigate that (especially the boss himself, if you’re up for that),” the

sender texted to Musk, referencing conservative personalities who have been banned for violating Twitter's rules.

The anonymous texter then offers up a suggestion for "someone who has a savvy cultural/political view to be the VP of actual enforcement." That suggestion: "A Blake Masters type."

Any delays and obstruction may not *just* be an effort to protect Trump.

It could be Musk's effort to protect his own network – and people in DC like Jim Jordan.