

TRUMP'S MOTIONS TO DISMISS THINGS THAT AREN'T THE CHARGES AGAINST HIM

Last night, Trump *just* met the deadline for filing motions to dismiss his January 6 indictment.

I'm going to lay out what he filed. I'll review them at length in follow-ups. Here's a handy table to understand them.

Argument	Motion
"You can't prosecute me! I'm the former President! I have absolute immunity!"	MTD Absolute Immunity
"You can't prosecute me for lying!"	MTD Constitutional
"You can't prosecute me! No one in government actually believed my lies!"	MTD Statutory
"You can't talk about the way I mobilized a violent mob because you didn't charge me for mobilizing a violent mob!"	Motion to Strike Inflammatory Allegations
"Since I don't have anything to do with that violent mob that obstructed the vote certification, you can't charge me for obstructing the vote certification!"	MTD Statutory
"Sure, you've prosecuted over 300 people for some of these crimes, but prosecuting <i>me</i> too is selective prosecution because...Hunter Biden dick pics!"	MTD Selective and Vindictive Prosecution

Motion to Dismiss on Constitutional Grounds:
This 31-page motion cites Mollie "Federalist Faceplant" Hemingway. But it doesn't actually mention the charges in the indictment. Having not described how his (and his fake electors') false claims were charged as conspiracy to defraud the government, having not explained how orders to Mike Pence and the incitement of his mob obstructed the vote certification, having not acknowledged efforts to reverse vote counts in the states, Trump then claims he's being prosecuted for First Amendment protected speech.

In a section that significantly overlaps with his Motion to Dismiss on Absolute Immunity grounds, Trump claims the failed January 6 impeachment prevents him from being tried on substantially different crimes.

Motion to Dismiss on Statutory Grounds: This filing moves to dismiss the indictment for failure to state a claim, a motion similar to dozens if not hundreds that have failed for

January 6 defendants.

Trump moves to dismiss the 18 USC 371 charge against him because, he claims, all the lying alleged in the indictment (which he all but concedes was false in the MTD on Constitutional Grounds) didn't involve deceit. He even argues that because there was "a clear difference in form" in the fake electors submitted to NARA, no deceit (or forgery) was involved!

Interestingly, Trump says that his false statements to Congress under 18 USC 1001 (which, he notes, was not charged) would be exempted as advocacy. This ignores the abundant litigation finding the vote certification to be an official proceeding.

Trump's challenge to 18 USC 1512(c)(2) largely involves completely misrepresenting the finding of *Robertson*, which I wrote about here. I don't think Trump even engages with the "otherwise illegal" standard applied to Thomas Robertson. He definitely doesn't engage with the standard that right wing judges want to adopt: unlawful personal benefit.

Trump's attack on 18 USC 241 is particularly curious. In spite of the fact that *his own DOJ* was taking actions against false election claims online in 2020, he argues there was no court decision, in 2020, saying that it would be illegal (the Douglass Mackey prosecution, charged by a guy who had been one of the Bill Barr's top deputies, has since done so). More curiously, Trump doesn't even seem to understand that all his other attempts to prevent Joe Biden votes from being counted are also overt acts that support this prosecution.

Motion to Dismiss for Selective and Vindictive Prosecution: This is mostly a political document. It points to the scant evidence that Joe Biden was behind this prosecution. It claims that this indictment was retaliation for Trump's complaints about his stolen document indictment. He cites his own attacks on Hunter Biden (citing Congressional press announcements, not any of

his own posts, though he does include two of his own other posts on more general attacks), including one that post-dates this indictment (which was charged on August 1).

4 See Hunter Biden, Burisma, and Corruption: The Impact on U.S. Government Policy and Related Concerns, U.S. Senate Comm. on Homeland Security and Government Affairs and U.S. Senate Comm. on Finance (Sept. 22, 2020), https://www.hsgac.senate.gov/wpcontent/uploads/imo/media/doc/HSGAC_Finance_Report_FINAL.pdf, at 3.

5 See Second Bank Records Memorandum from the Oversight Committee's Investigation into the Biden Family's Influence Peddling and Business Schemes, House of Rep. Comm. on Oversight and Accountability (May 10, 2023), <https://oversight.house.gov/wpcontent/uploads/2023/05/Bank-Memorandum-5.10.23.pdf>, at 5, 9.

6 See Third Bank Records Memorandum from the Oversight Committee's Investigation into the Biden Family's Influence Peddling and Business Schemes, House of Rep. Comm. on Oversight and Accountability (Aug. 9, 2023), https://oversight.house.gov/wpcontent/uploads/2023/08/Third-Bank-Records-Memorandum_Redacted.pdf, at 2. [my emphasis]

This ploy is interesting, given the likelihood that Hunter Biden will file a parallel selective prosecution motion.

He also cites two articles showing that Garland *didn't* open an investigation into Trump right away as proof that he was unfairly targeted. I suspect Trump may try to call Steve D'Antuono, whose actions are described in one of them (the famous and problematic Carol Leonnig story), to talk about his own resistance to opening the

investigation. This motion doesn't do the least amount of things it'd need to do to actually get a hearing (in part because the evidence all shows the opposite of what Trump claims). But he would have fun if he somehow did get a hearing (and if he does not but Hunter does, he'll use Hunter's efforts to renew the demand).

Motion to Strike Inflammatory Allegations: This is an attempt to eliminate the language in the indictment showing how Trump mobilized his mob because he isn't charged with mobilizing the mob (as DOJ already laid out, that is one of the means by which he obstructed the vote certification). This is likely tactical, an attempt to remove one of the primary means by which he obstructed the vote certification to make his 18 USC 1512(c)(2) argument less flimsy.