

THE FORMER PRESIDENT'S SPAGHETTI-WALL ASSAULT ON THE TRUTH

Donald Trump's team has submitted its reply briefs on motions to dismiss:

- MTD Constitutional
- MTD Statutory
- MTD Selective and Vindictive

I reiterate the analysis I have made here and here: these motions (plus the Motion to Strike that Judge Chutkan already rejected), taken together, don't so much attempt to argue about Trump's conduct. Instead, they try to separate out the conspiracies alleged and the mob that was central to it from a claim that Trump has a right to lie, a right to repeat false claims about the 2020 election no matter how many times those false claims have been debunked in court.

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 too</i> is selective prosecution because...Hunter Biden dick pics!"	MTD Selective and Vindictive Prosecution

Trump made no effort to address certain key claims. As one example, Trump didn't mention prosecutors' observation that Trump *couldn't* have a Double Jeopardy claim from Impeachment given that this indictment does not charge him with what Congress did, incitement.

Perhaps recognizing what I pointed out here – that Trump had simply ignored the way in which he used the mob to obstruct the vote certification, he includes a new section in it. But it was lifted from his *reply* brief on the

Motion to Strike that already failed.

January 6.

The prosecution next repeats its false claim that President Trump “directed a large crowd of supporters, whom he knew to be ‘angry’ based on his election fraud lies, to go to the Capitol and obstruct the proceeding.” Doc. 139, at 19. But the indictment does not charge President Trump with any responsibility for the events of January 6, and rightly so. As set forth in detail in Doc. 156, President Trump encouraged the crowd marching to the Capitol to “peacefully and patriotically make your voices heard” and to “cheer on our brave senators and congressmen and women.”⁶ President Trump made clear that he expected to watch the electoral certification proceedings take place as planned that day. *Id.* And President Trump repeatedly denounced destruction of monuments and other symbols of American democracy, and he reminded the crowd that criminal penalties he signed into law for such actions. *Id.*

As the indictment itself alleges, the crowd gathered at the Capitol before President Trump finished speaking. Doc. 1, ¶ 107. The crowd already at the Capitol “broke through barriers cordoning off the Capitol grounds and advanced on the building” while President Trump was speaking. See *id.* The indictment does not mention that the 1,200 people who entered the Capitol was less than 1% the size of the crowd gathered to listen to President Trump, and that at least 99% of the crowd gathered to listen to President Trump did not enter the Capitol. William M. Arkin, Exclusive: Classified Documents Reveal the Number of January 6 Protestors, *NEWSWEEK* (Dec 23, 2021),

<https://www.newsweek.com/exclusive-classified-documents-reveal-number-january6-protestors-1661296>. 7

And having belatedly attempted to address the mob, Trump nevertheless shamelessly claimed that the people he lied to were sophisticated enough to see through his lies.

President's Trump's listeners—including the sophisticated elected officials described in the indictment—were free to agree or disagree with President Trump's views, and the prosecution does not allege otherwise.

Hundreds of January 6 defendants – conservatively – have explained that they pissed away their lives that day because they believed Trump's lies. Trump's reply briefs effectively amount to the argument that *his* First Amendment rights extend to being completely unmoored from any anchor to the truth, *his* First Amendment rights permit him to deliberately unmoor the truth to mobilize an attack on the country.

Perhaps unsurprisingly, I came away from a quick read of these filings exhausted, the exhaustion deliberately cultivated by the gaslighter. I could – I still might – go back and unpack every one of the gimmicks his attorneys have thrown at Judge Chutkan, like spaghetti at a wall. But ultimately it amounts to a demand that Trump be treated not just as above the law that the hundreds of his mobsters have already been held accountable to, but also above the truth.