

AILEEN CANNON UNWOUND THE STOLEN DOCUMENTS PROSECUTION BACK TO NOVEMBER 2022

There's a detail of Judge Cannon's order throwing out the stolen documents case that people seem to be missing.

She unwound the prosecution back to the time when Jack Smith took it over from when Jay Bratt had the lead.

Here, as in *Lucia*, the appropriate remedy is invalidation of the officer's ultra vires acts. Since November 2022, Special Counsel Smith has been exercising "power that [he] did not lawfully possess." *Collins*, 594 U.S. at 258. All actions that flowed from his defective appointment—including his seeking of the Superseding Indictment on which this proceeding currently hinges [ECF No. 85]—were unlawful exercises of executive power. Because Special Counsel Smith "cannot wield executive power except as Article II provides," his "[a]ttempts to do so are void" and must be unwound. *Id.* at 283 (Gorsuch, J., concurring). Defendants advance this very argument: "any actions taken by Smith are ultra vires and the Superseding Indictment must be dismissed" [ECF No. 326 p. 9]. And the Court sees no alternative course to cure the unconstitutional problem.

There are a lot of people saying that DOJ can just charge the 18 USC 793 charges in SDNY or charge obstruction in either DC or SDNY.

But they can only do so relying on evidence

obtained prior to Smith's appointment. Some key things they got after that?

- Evan Corcoran's testimony
- Yuscil Taveras' cooperation
- Some, but not all, of the surveillance footage
- Testimony from Mark Meadows' ghost writers, reflecting Trump's knowledge that he had not declassified the Iran document

Probably, a simple obstruction charge limited to Trump's refusal to respond to the subpoena might survive (though such a case would be stronger with Corcoran's testimony). But there is no way they could charge the stolen documents case without recreating some of this investigation.

Update: Jack Smith has announced he will appeal.