

TRUMP WANTS TO HIDE HIS ATTEMPT TO ASSASSINATE MIKE PENCE FROM VOTERS

In 2016, Donald Trump bragged, “I could stand in the middle of Fifth Avenue and shoot somebody, and I wouldn’t lose any voters, OK?”

This election, Trump wants to hide from voters details of how he almost killed his Vice President, Mike Pence, and his claim that doing so was an official act protected by presidential immunity.

That’s the primary thing you need to know about the joint status report presented to Judge Tanya Chutkan in Trump’s January prosecution last night.

Jack Smith doesn’t propose a schedule (thereby avoiding any claim he’s trying to push pre-election developments), but he’s ready to get this process started right away. He does want Judge Chutkan to make determinations regarding immunity first and foremost. He cites Chutkan’s own order and SCOTUS’ remand order to justify that.

The Court has indicated that it intends to conduct its determinations related to immunity first and foremost. See, e.g., ECF No. 197 (Order denying without prejudice the defendant’s motion to dismiss the previous indictment on statutory grounds and specifying that he “may file a renewed motion once all issues of immunity have been resolved”). The Government agrees with this approach, both because the Supreme Court directed such a process on remand, see *Trump v. United States*, 144 S. Ct. 2312, 2340 (2024), and because the Supreme Court has “repeatedly . . . stressed the importance of resolving immunity

questions at the earliest possible stage in litigation,” *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (internal citations omitted).

Trump, by contrast, wants to stall any consideration of immunity until December 13 by first litigating a challenge to Jack Smith’s appointment that Aileen Cannon approved but which conflicts with several binding precedents in the DC Circuit (and which Trump pointedly didn’t try before Chutkan last fall, when he submitted all his other motions to dismiss).

Trump-appointed Judge Mark Scarsi rejected Hunter Biden’s similar attempt to challenge David Weiss’ Special Counsel appointment in the wake of Judge Cannon’s ruling as untimely, and there’s good reason to believe that would be the likely outcome here, even before getting to the binding DC Circuit precedent.

You need look no further than Trump’s description of *what* he wants to challenge in the superseding indictment to understand why Trump wants to delay this fight until December: As I predicted, he wants to have the Mike Pence allegations thrown out.

In addition, while continuing to strongly maintain that many classes of conduct alleged in the Superseding Indictment are immune—including, but not limited to, Tweets and public statements about the federal 2020 Presidential election, communications with state officials about the federal election, and allegations relating to alternate slates of electors—President Trump may file a motion to dismiss focused specifically on the Special Counsel’s improper use of allegations related to Vice President Pence, along with other potential key threshold motions. Namely, in *Trump*, the Supreme Court held that President Trump is “at least presumptively immune from prosecution

for” all alleged efforts “to pressure the Vice President to take particular acts in connection with his role at the certification proceeding.” Trump v. United States, 144 S. Ct. 2312, 2336 (2024). These same allegations are foundational to the Superseding Indictment and each of its four counts. See Doc. 226 at ¶¶ 5, 9(b), 11(c)-(d), 14, 51(b), 55, 67–90, 99–100. If the Court determines, as it should, that the Special Counsel cannot rebut the presumption that these acts are immune, binding law requires that the entire indictment be dismissed because the grand jury considered immunized evidence. Trump, 144 S. Ct. 2312, 2340 (2024) (“Presidents . . . cannot be indicted based on conduct for which they are immune from prosecution.”).

The Special Counsel’s inability to rebut the presumption as to Pence is dispositive to this case. The special counsel will be unable to do so as a matter of law, thus rendering the remainder of the case moot. Trump, 144 S. Ct. 2312, 2337 (2024) (“We therefore remand to the District Court to assess in the first instance, with appropriate *input* from the parties, whether a prosecution involving Trump’s alleged attempts to influence the Vice President’s oversight of the certification proceeding in his capacity as President of the Senate would pose any dangers of intrusion on the authority and functions of the Executive Branch.” (emphasis added)).

To be sure, he’s not wrong to challenge the inclusion of the Pence allegations. Nor is he wrong in his view of how central Pence is to this indictment (though he overstates when he claims it would moot all else; the fake electors plot might survive the excision of the Mike

Pence allegations).

As I explained, Justice Roberts raised the conversations with Pence specifically. But as I also explained, that is one of the shrewd things Jack Smith did in superseding the indictment: he stripped out all other things that obviously fit under Roberts' guidelines, leaving only Trump's efforts to get Pence to throw out the votes of 81 million Biden voters and when Pence refused, Trump's action – a tweet – that almost got Pence assassinated.

Trump may well succeed in arguing that he can't be prohibited from asking Pence to overturn the results of the election so the two of them could remain in power because any such prohibition would chill the normal conversations between Presidents and their Vice Presidents. That is simply the absurd logical result of Roberts' opinion: that a President can order his Vice President to steal an election because any prohibition on doing so would chill the authority of the President.

But if Jack Smith has his way, Trump will have to make that argument – once, probably in a court filing in October – before voters go to the polls in November.

There are a bunch of legal details in this status report. But given the near certainty that if Trump wins, the entire prosecution will go away, the only one that really matters is that, this election, Trump isn't so sure that he would lose no votes if he shot someone on Fifth Avenue – or if voters learned why and how he almost had his Vice President assassinated in the US Capitol – as he was in 2016.

Trump doesn't want to tell voters he thinks that as President, he could have Mike Pence shot on the Senate floor – shot as punishment because his Vice President refused an illegal order to steal an election – and be immune from any consequences for doing so.