

# *Special Counsel Report Says Trump Would Have Been Convicted in Election Case*

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**By Alan Feuer and Charlie Savage**

Alan Feuer and Charlie Savage write about legal issues, including the former criminal cases against President-elect Donald J. Trump.

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Jack Smith, the special counsel who indicted President-elect Donald J. Trump on charges of seeking to cling to power after losing the 2020 election, said in a final report released early Tuesday morning that he believed the evidence was sufficient to convict Mr. Trump in a trial if his success in the 2024 election had not made it impossible for the prosecution to continue.

“The department’s view that the Constitution prohibits the continued indictment and prosecution of a president is categorical and does not turn on the gravity of the crimes charged, the strength of the government’s proof or the merits of the prosecution, which the office stands fully behind,” Mr. Smith wrote.

He continued: “Indeed, but for Mr. Trump’s election and imminent return to the presidency, the office assessed that the admissible evidence was sufficient to obtain and sustain a conviction at trial.”

The Justice Department delivered the 137-page volume — representing half of Mr. Smith’s overall final report, with the volume about the classified documents case still confidential — to Congress just after midnight Tuesday morning.

The report, obtained by The New York Times, amounted to an extraordinary rebuke of a president-elect, capping a momentous legal saga that saw the man now poised to regain the powers of the nation’s highest office charged with crimes that struck at the heart of American democracy. And although Mr. Smith resigned as special counsel late last week, his recounting of the case also served as a reminder of the vast array of evidence and detailed accounting of Mr. Trump’s actions that he had marshaled.

The partial release came only a day after the judge in Florida who oversaw Mr. Trump's other federal case — the one accusing him of mishandling classified documents — issued a ruling allowing a portion of the material to be made public. But the judge, Aileen M. Cannon, who was appointed by Mr. Trump himself, also barred the Justice Department from immediately releasing — even to Congress — a second volume of the report concerning the documents case.

For more than a week, Mr. Trump's lawyers — who were shown a draft copy of Mr. Smith's report in advance of its release — denounced it as little more than an “attempted political hit job which sole purpose is to disrupt the presidential transition.” At least one Trump ally, the former Justice Department official Jeffrey Clark, has come forward to complain that he, too, might be implicated in the report as an unindicted co-conspirator in the election interference case.

In August 2023, Mr. Smith charged Mr. Trump in Federal District Court in Washington with three intersecting conspiracy counts accusing him of plotting to overturn his loss in the 2020 election. Mr. Smith also filed a separate indictment in Florida, charging Mr. Trump with illegally holding on to classified documents after he left office and conspiring with two co-defendants to obstruct the government's repeated effort to retrieve them.

But after Mr. Trump won the 2024 election, Mr. Smith dropped the cases because of a Justice Department policy that prohibits prosecuting sitting presidents. Under a separate department regulation, he turned in a final report about both cases — one volume on each — to Attorney General Merrick B. Garland.

Last week, the Justice Department said Mr. Garland planned to hold off on issuing the volume about the classified documents case until all legal proceedings related to Mr. Trump's two co-defendants were completed.

Lawyers for the co-defendants, Walt Nauta and Carlos De Oliveira, fought the release by obtaining an initial injunction last week from Judge Cannon, who had dismissed the classified documents case last summer.

In her order on Monday, Judge Cannon told the defense and prosecution to appear before her on Friday in Federal District Court in Fort Pierce, Fla., to argue over the department's plan to release the classified-documents volume to Congress.

*This is a developing story. Please check back for updates.*

**Alan Feuer** covers extremism and political violence for The Times, focusing on the criminal cases involving the Jan. 6 attack on the Capitol and against former President Donald J. Trump. [More about Alan Feuer](#)

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