

Supreme Court Denies Elon Musk's Appeal in Trump Criminal Investigation: What It Means for Tech and Politics

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On October 7, 2024, the Supreme Court of the United States announced that it would not hear an appeal from Elon Musk's social media platform X (formerly Twitter), relating to an investigation into former President Donald Trump.¹ Adding yet another chapter to Trump's historic ongoing legal battles. This blog will give an analysis of the legal, political and technological implications of this decision. Particularly the role of tech companies in criminal investigations.

This appeal arose from Special Prosecutor Jack Smith's criminal investigation into Trump's efforts to overturn his 2020 election loss to President Joe Biden. Smith's investigation began November 2022 and has been an ongoing investigation into potential interference with the peaceful transfer of power following the election.² The investigation also encompasses the events surrounding the January 6, 2021, riot at the United States Capital.

In January 2023, Smith obtained a warrant for information associated with Trump's X account, "@realDonaldTrump,"³ under the Stored Communications Act, which establishes procedures for law enforcement officers to obtain evidence from electronic service providers in criminal cases.⁴ Along with Smith's warrant came a nondisclosure order which required X to keep Smith's request for Trump's social media records a secret for six months.⁵ The Act allows the government to seek a nondisclosure order, which directs service providers "not to notify any other person" of a warrant or order's existence "for such a period as the court deems appropriate."⁶

U.S. District Judge Beryl Howell approved Smith's request for a search warrant directing X to produce records related to Trump's Twitter account.⁷ Judge Howell also upheld the nondisclosure order that prohibited X from informing Trump about the warrant, finding "reasonable grounds to believe" that disclosing the warrant to Trump "would seriously jeopardize the ongoing investigation" by giving him "an opportunity to destroy evidence, change patterns of behavior, (or) notify confederates."⁸ At first, X resisted complying with the warrant, resulting in the company being held in contempt of court and fined \$350,000. Eventually, X produced Trump's

¹ Lawrence Hurley, *Supreme Court turns away Musk's X appeal over Trump Criminal Investigation*, NBC NEWS (Oct. 7, 2024, 9:53 AM), <https://www.nbcnews.com/politics/donald-trump/supreme-court-turns-away-musks-x-appeal-trump-criminal-investigation-rcna174259> [<https://perma.cc/9QHL-W3SD>].

² *Id.*

³ John Kruzel, *US Supreme Court sidesteps case tied to probe of Trump social media account*, REUTERS (Oct. 7, 2024, 12:17PM), <https://www.reuters.com/world/us/us-supreme-court-sidesteps-case-tied-probe-trump-social-media-account-2024-10-07/>.

⁴ Stored Communications Act, 18 U.S.C. §§ 2701-13; *People v. Donald J. Trump*, No. 71543-23 (N.Y. Sup. Ct. filed Feb. 22, 2024).

⁵ Melissa Quinn, *Supreme Court won't step into dispute over Jack Smith's efforts to get Trump's X information*, CBS NEWS (Oct. 7, 2024, 9:44 AM), <https://www.cbsnews.com/news/supreme-court-trump-jack-smith-x-twitter/> [<https://perma.cc/KXX7-8E7B>].

⁶ *Id.*

⁷ *Id.*

⁸ Kruzel, *supra* note 3.

Twitter records to Smith in February 2023.⁹ On August 9, 2023, the U.S. Court of Appeals for the District of Columbia Circuit upheld Howell’s decisions.¹⁰ Ultimately prompting X’s appeal to the Supreme Court, citing concerns about the First Amendment and executive privilege.

Lawyers for X argued that the nondisclosure order violated the company’s free speech right to communicate with Trump, its subscriber. However, this argument seems far-fetched, given that search warrants are typically issued without notifying the target, to preserve the investigation’s integrity. X further argued that Howell should have ruled on its First Amendment challenge before allowing prosecutors to execute the warrant.¹¹ X claimed that this should have been done to preserve any potential claims by Trump involving executive privilege. Executive privilege is a legal principle that gives the President and other members of the executive branch the authority to withhold documents, information, or communications from the other branches of government.¹² Special Prosecutor Smith responded by urging the justices to deny X’s appeal on the grounds that the company’s claims were meritless and that the case is moot because the prosecutors have already obtained Trump’s Twitter information.¹³ Smith’s investigation eventually led to criminal charges being brought against Trump, and on August 1, 2023, Trump was indicted on four counts. He was charged with conspiracy to defraud the United States, obstructing an official proceeding, conspiring to obstruct an official proceeding, and conspiring against the right of Americans to vote.¹⁴ All to which Trump has pleaded not guilty.¹⁵

X’s argument that they have a right to inform users when their data is seized as a part of a criminal investigation’s seems counterintuitive to the nature of search warrants. The Supreme Court agrees that X’s arguments are far-fetched, denying the appeal without comment—a notable move considering their July 2024 ruling that presidents have broad immunity from prosecution for official acts taken in office.¹⁶

Nondisclosure orders are designed to protect ongoing investigations, and by informing account holders of such warrants could jeopardize the discovery of critical information to the investigation. While Trump’s Twitter posts are publicly viewable, X also holds non-public information on accounts like direct messages, drafts of posts, location data and the type of device used to send posts.¹⁷ Information that has the potential to be critical to the prosecutor’s case. For example, his direct messages (DMs) could reveal private conversations with individuals involved in efforts to overturn the election. Messages that might have coordination, planning, or discussions about influencing events like the January 6th riot. Or drafts of posts and deleted tweets to demonstrate his intentions or state of mind while certain events were happening. This kind of non-public data could serve as crucial evidence, helping prosecutors demonstrate intent, establish timelines, and connect Trump’s actions with broader efforts to disrupt the election process.

⁹ See *People v. Donald J. Trump*, *supra* note 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² See U.S. CONST. art. II, § 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

This raises the question should tech companies be forced to turnover nonpublic information of subscribers without the subscriber being notified. This case highlights the increasing role tech companies and their platforms in not only in legal matters, but politics as well. Raising questions about how much control they should have over user data and communications, and whether to turn over information to law enforcement. As tech companies become further entangled in political investigations, lawmakers may push for stricter regulations on how these platforms handle user data and cooperate with law enforcement.

The Supreme Court's denial of X's appeal has set an important precedent, showing that even high-profile tech companies are not above the law. Like everybody else, they must comply with subpoenas in criminal investigations. The Supreme Court demonstrated that all users of social media are subject to the same laws, including the president. So, what does this mean? It looks like going forward, nondisclosure orders regarding search warrants into social media and other electronic communication are here to stay. As the intersection between tech, politics, and the law grows, further legal battles are likely. Balancing user privacy, transparency, and government oversight will continue to challenge lawmakers, tech companies, and the public in the years to come.