

United States Senate
WASHINGTON, DC 20510

December 7, 2023

The Honorable Merrick Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Attorney General Garland,

I write to condemn and demand accountability for a recently unsealed search warrant obtained by Special Counsel Jack Smith. Smith's warrant application was stunningly broad, untethered to any probable cause, and out of keeping with the Supreme Court's Fourth Amendment precedents. The warrant application should never have been filed, let alone granted. This is a black eye for the Department of Justice that will sow public distrust if left uncorrected.

It is hard overstate the breadth of the warrant that Jack Smith obtained. The warrant application's description of "Particular Things to be Seized," which was ultimately incorporated by reference into the warrant itself, is in no way particularized. The warrant allows federal law enforcement to seize Twitter's business records reflecting "all users who have followed" President Trump.¹ It empowers federal agents to seize information about the "third-party websites and mobile apps" that were in some way "connect[ed]" to President Trump's Twitter account.² And it even allows government agents to examine "[t]he content of all tweets" liked by President Trump—in many cases, tweets containing the free speech of ordinary Americans who have nothing to do with any subject of Smith's investigation.³

Under the Fourth Amendment, a valid warrant must "limit[] the authorization to search to the specific areas and things for which there is probable cause," ensuring that "the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit."⁴ Although any "justifications" offered in Smith's warrant application remain under seal, it is frankly impossible to believe that Smith had

¹ Warrant App. ¶ 3(a).

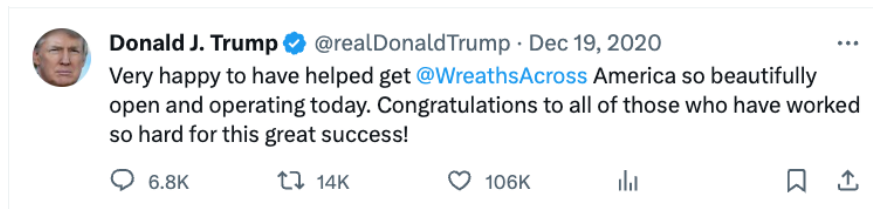
² Warrant App. ¶ 1(b).

³ Warrant App. ¶ 2(a).

⁴ *Maryland v. Garrison*, 480 U.S. 79, 84 (1987).

probable cause justifying a seizure of “all tweets that include the username associated with” President Trump’s Twitter account, including “mentions” of and “replies” to those tweets.⁵

Case in point: on December 19, 2020, President Trump tweeted the following praise for the nonprofit Wreaths Across America:



Wreaths Across America’s mission is to “[h]onor our nation’s veterans through the laying of wreaths on the graves of our country’s fallen heroes[.]”⁶ No respectable lawyer could argue with a straight face that probable cause supports seizing a record of this tweet’s existence. And yet, Jack Smith’s warrant application subjects this tweet to seizure anyway, along with “all [other] tweets created” by President Trump’s Twitter account in the four-month period between October 2020 and January 2021.

This administration has already shredded its own credibility by using the machinery of criminal justice to ensnare the current president’s leading political rival. The least it can do now is refrain from compounding its abuses with an overbroad search warrant that sweeps countless American citizens into scrutiny, simply because they happened to “mention” a comment made by President Trump on a social media platform.

As you know, I have placed holds on nominees to the DOJ, including U.S. Attorney nominees and nominees seeking office at Main Justice. My holds are designed to deter exactly this sort of conduct. Until DOJ leadership learns the important lesson that criminal justice must not be used as a weapon of partisan politics, my holds will continue. Some of us still remember the days when Democratic attorneys general cautioned that “to be closely identified with the . . . the machinery of a particular [political] party or faction may present a [federal] prosecuting officer with embarrassing alignments and associations.”⁷

In order to ensure that public trust in our criminal justice system is not further eroded, I demand that the Justice Department immediately repudiate the overbroad search warrant that Special Counsel Jack Smith obtained in January.

⁵ Warrant App. ¶ 3(b).

⁶ See Overview, Wreaths Across America, <https://www.wreathsacrossamerica.org/social/ARLINGTON-NationalCemetery?Sid=14720|0|0|1>.

⁷ Robert Jackson, *The Federal Prosecutor*, Address Delivered at the Second Annual Conference of United States Attorneys, Apr. 1, 1940.

Sincerely,

A handwritten signature in black ink, appearing to read 'JDV', with a horizontal line extending to the right from the end of the signature.

JD VANCE
United States Senator