

Judge Aileen Cannon's Orders Sealing the Jack Smith Investigation Report

Research Question

What are the nature, history, and legal reasoning of U.S. District Judge Aileen Cannon's orders blocking the public release of Special Counsel Jack Smith's report on the Trump classified-documents investigation (Volume II), and what is the current status of the litigation?

Executive Summary

1. **Judge Aileen Cannon (S.D. Fla., Trump appointee) issued two principal orders** sealing the report: an emergency injunction on **January 21, 2025**, and a **permanent injunction on February 23, 2026**, both barring the DOJ from releasing Volume II of Jack Smith's final report.
 2. **The report was prepared by Smith after Cannon herself dismissed the underlying criminal case** on July 15, 2024, ruling that Smith's appointment as Special Counsel was unconstitutional under the Appointments Clause — a first in U.S. history.
 3. **Cannon's core legal reasoning** rests on three pillars: (a) Smith was "acting without lawful authority" when he compiled the report, (b) releasing it would cause "manifest injustice" to the defendants who were never convicted, and (c) the report contains "voluminous discovery" still subject to a protective order.
 4. **Two transparency groups — the Knight First Amendment Institute and American Oversight — have mounted the legal fight to unseal the report**, appealing to the Eleventh Circuit, which found Cannon engaged in "undue delay" and ordered her to rule.
 5. **The Eleventh Circuit Court of Appeals has scheduled oral argument for the week of November 16, 2026**, and a decision is expected later in 2026.
 6. **Volume I (the election interference report) was released publicly in January 2025; Volume II (the classified documents report) has never been made public.**
 7. **The case has drawn significant controversy**, with critics characterizing Cannon's rulings as unprecedented deference to Trump, while Trump's legal team and supporters argue the report should never have been created by an unlawfully appointed prosecutor.
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Background: The Classified Documents Case

The Underlying Investigation

Special Counsel Jack Smith was appointed by Attorney General Merrick Garland on November 18, 2022, to oversee two federal investigations into Donald Trump: (1) efforts to overturn the 2020 election, and (2) the retention of highly classified documents at Mar-a-Lago after Trump left the White House in January 2021. The FBI had searched Mar-a-Lago on August 8, 2022, recovering hundreds of classified documents, including materials stored in a bathroom, a ballroom, a shower, and a storage room.

On June 8, 2023, a federal grand jury in Florida indicted Trump on 37 felony counts (later increased to 40 via a superseding indictment on July 27, 2023) related to his handling of classified documents under the Espionage

Act, false statements, and conspiracy to obstruct justice. Two co-defendants — Trump aide Waltine ("Walt") Nauta and Mar-a-Lago property manager Carlos De Oliveira — were charged with obstruction of justice for allegedly helping move classified documents and attempting to delete surveillance footage.

Cannon's Assignment and Conduct of the Case

Judge Aileen Cannon, appointed to the Southern District of Florida by Trump in 2020, was randomly assigned the criminal case. She had previously presided over the related civil matter *Trump v. United States* (2022), where she appointed a special master to review materials seized in the Mar-a-Lago search — a ruling the Eleventh Circuit reversed and rebuked, finding she lacked equitable jurisdiction.

In the criminal case, Cannon developed a reputation for acceding to Trump's legal team's requests, granting multiple extensions for pretrial motions, and delaying the trial indefinitely. At the time she dismissed the case, she had nine fully-briefed motions still pending on her docket.

Cannon's Dismissal of the Case (July 15, 2024)

On July 15, 2024, Cannon dismissed the classified documents case in its entirety — the first time a federal judge had found a special counsel's appointment unconstitutional. Her key holdings:

- The attorney general lacked statutory authority under Title 28 of the U.S. Code to appoint Smith as Special Counsel.
- Smith's appointment violated the Appointments Clause of the Constitution because he was neither nominated by the president nor confirmed by the Senate (he was a "principal officer" requiring confirmation).
- The Supreme Court's 1974 decision in *United States v. Nixon* was not binding precedent on the appointment question because the issue had not been directly briefed or decided there.
- She cited Justice Clarence Thomas's separate opinion in the presidential immunity ruling that raised questions about the lawfulness of Smith's appointment.

Smith's office appealed the dismissal to the Eleventh Circuit on August 26, 2024. However, after Trump won the November 2024 election, the Justice Department dropped its appeal (citing longstanding DOJ policy against prosecuting a sitting president). The Eleventh Circuit dismissed the appeal against Trump on November 25, 2024, and the case against Nauta and De Oliveira was dismissed on January 29, 2025 (with the Eleventh Circuit formally dismissing the remainder on February 11, 2025). Cannon's dismissal ruling thus stood.

The Two Volumes of Smith's Final Report

Smith delivered his two-volume final report to Attorney General Garland on **January 7, 2025**, and resigned on January 10, 2025.

	Volume I — The Election Case	Volume II — The Classified Documents Case
Subject	Trump's efforts to overturn the 2020 election	Trump's retention of classified documents at Mar-a-Lago
Indictment	4 felony counts (D.C. grand jury, Aug. 1, 2023)	40 felony counts (Florida grand jury, June–July 2023)
Status	Released publicly in January 2025	Sealed — never publicly released
Presiding judge	D.C. federal court	Judge Aileen Cannon (S.D. Fla.)
Key findings	"Throughline of deceit"; 5 avenues of overturning efforts	"Powerful evidence" of willful retention and obstruction

Volume I documented five primary avenues through which Trump allegedly sought to overturn the election: pressure on state officials, the fraudulent elector scheme, misuse of the Justice Department, pressure on Vice President Pence, and the January 6 Capitol attack. It was released publicly shortly after delivery to Congress.

Volume II, by contrast, has been the subject of sustained secrecy litigation. According to Smith's congressional testimony (December 17, 2025, closed-door deposition; January 22, 2026, public hearing), Volume II documents evidence that Trump "willfully retained highly classified documents after he left office in Jan. 2021, storing them at his social club, including in a bathroom and a ballroom," and "repeatedly tried to obstruct justice."

Cannon's Sealing Orders: Detailed Analysis

Order 1 — Emergency Injunction (January 21, 2025)

On January 6, 2025, Nauta and De Oliveira filed an emergency motion to prevent release of Smith's report. On **January 21, 2025**, Cannon granted the emergency motion, issuing an order (sometimes called a "gag order") that prohibited the DOJ from disclosing any nonpublic information contained in the report — including to Congress. The rationale at the time was the **fair-trial rights of the co-defendants**, Nauta and De Oliveira, whose cases were still technically pending on appeal.

This order remained in effect even after all appeals in the criminal case were dismissed (February 11, 2025), meaning the injunction continued to block release nearly a year after the criminal proceedings had fully concluded.

The Delay and the Eleventh Circuit's Intervention

On February 24, 2025, the Knight First Amendment Institute filed a motion to intervene seeking to lift the injunction and compel release under the First Amendment and the common-law right of access. American Oversight pursued a parallel effort through the Freedom of Information Act (FOIA).

Cannon sat on the motion for **218 days** without ruling. On September 30, 2025, the Knight Institute and American Oversight filed a petition for a writ of mandamus with the Eleventh Circuit.

On **November 3, 2025**, the Eleventh Circuit found that Cannon's failure to rule constituted "**undue delay**" and gave her **60 days** to fully resolve the issues before the court took further action. Cannon denied the motion to intervene on **December 22, 2025** — 11 days before the deadline expired.

On December 22, 2025, Cannon also issued an order addressing her January 21 injunction: she temporarily lifted restrictions on the DOJ's ability to disclose the report, but declined to order its immediate release. Instead, she granted Trump and his co-defendants a **60-day window** (until approximately late February 2026) to challenge disclosure, keeping the report under seal during any appeal process.

Order 2 — Permanent Injunction (February 23, 2026)

On January 20, 2026, Trump filed a motion for a permanent injunction against release of the report. On January 30, 2026, Nauta and De Oliveira filed a motion seeking not only a permanent injunction but also the **permanent destruction of all copies** of Volume II.

On **February 23, 2026**, Cannon issued her ruling:

- She **granted the permanent injunction**, barring the DOJ from ever releasing Volume II.
- She **denied** the joint motion by the Knight Institute and American Oversight to intervene and to stay her ruling pending appeal.
- She **stopped short of ordering the physical destruction** of the report's copies.

Cannon's Stated Legal Reasoning

Cannon's opinion rested on several interlocking arguments:

1. **Unlawful appointment of the Special Counsel:** The central pillar. Cannon cited her own July 2024 ruling that Smith's appointment was unconstitutional. She wrote that "Special Counsel Smith, acting without lawful authority, obtained an indictment in this action and initiated proceedings that resulted in a final order of dismissal of all charges." She characterized Smith's decision to compile the report after her dismissal as a **"brazen stratagem"** and a **"concerning breach of the spirit of the dismissal order."**
2. **"Manifest injustice" to the defendants:** Cannon held that releasing the report would "cause irreparable damage to former defendants from disclosure of non-public" material exchanged between the prosecution and defense, involving "still-contested grand jury and privilege concerns." She invoked the presumption of innocence, writing: "There is the matter of manifest injustice to the former defendants that would result from disclosure of Volume II." Since "no adjudication of guilt has been reached following initiation of criminal charges," releasing the report would "contravene basic notions of fairness and justice in the process."
3. **Voluminous discovery under protective order:** Cannon wrote that Volume II contains "voluminous discovery" that remains subject to a protective order issued during the early stages of the case. Allowing release would lead to large amounts of case-related material becoming public.
4. **Not customary for dismissed cases:** Cannon attempted to distinguish Smith's report from prior special counsel reports, arguing: "While it is true that former special counsels have released final reports at the conclusion of their work, it appears they have done so either after electing not to bring charges at all or after adjudications of guilt by plea or trial." She argued it is "not customary" for a prosecutor to release a report containing large amounts of evidence after a criminal prosecution is "dismissed in a final order without an adjudication of guilt."
5. **Attorney General Bondi's deliberative-process determination:** Cannon also cited AG Pam Bondi's determination that Volume II should not be released, in part because of questions surrounding the legality of Smith's appointment.

What Cannon Did Not Do

- She did **not** order the destruction of Volume II, despite Nauta and De Oliveira's request.
- She did **not** lift the protective order over the discovery materials.
- She did **not** address the First Amendment and common-law right-of-access arguments advanced by the transparency groups in depth, because she denied their motion to intervene (meaning they were not parties before her).

The Appeals: Current Status

Both the Knight Institute and American Oversight filed notices of appeal immediately after Cannon's December 22, 2025, denial of their intervention motions, and again after the February 23, 2026, permanent injunction. The **Eleventh Circuit has consolidated the appeals.**

Key appellate developments

- **November 3, 2025:** Eleventh Circuit finds "undue delay" and orders Cannon to rule within 60 days.
- **December 23, 2025:** Knight Institute files notice of appeal of Cannon's denial of intervention.
- **February 9, 2026:** Knight Institute files opening brief with Eleventh Circuit.
- **February 13, 2026:** Knight Institute files petition for writ of mandamus with Eleventh Circuit.

- **March 5, 2026:** Appellants' motion to consolidate appeals.
- **March 11, 2026:** America First Legal Foundation files amicus brief **in support of** Trump/defendants, arguing transparency groups have no legal right to access Volume II.
- **March 13, 2026:** Yale Law School Media Freedom and Information Access Clinic files amicus brief arguing the report qualifies as a "judicial record" subject to common-law access rights.
- **May 28, 2026:** Eleventh Circuit issues order consolidating appeals and setting briefing schedule.
- **June 11, 2026:** Knight Institute files supplemental opening brief.
- **June 18, 2026:** Brief of U.S. Senators as amici curiae in support of appellants.
- **July 13, 2026:** Consolidated response filed; DOJ files supplemental appendix.
- **July 27, 2026:** Knight Institute and American Oversight file reply briefs.
- **July 28, 2026:** Knight Institute and American Oversight file a brief arguing the DOJ's push to release Biden's private memoir tapes undercuts the Trump administration's effort to keep Smith's report sealed.

Current status

Oral argument is scheduled for the week of November 16, 2026, before the U.S. Court of Appeals for the Eleventh Circuit. A decision is expected later in 2026.

The arguments on appeal

The transparency groups' principal contentions:

- Cannon's permanent injunction is "impossible to square with the First Amendment and the common law."
- Cannon lacked jurisdiction to enjoin release of the report, particularly after all criminal proceedings concluded.
- Cannon's gag order gagged even Congress from receiving the report, which would ordinarily be subject to FOIA disclosure.
- The delay tactic effectively gave Trump "a roadmap for burying the report through delay and procedural gamesmanship."

The defendants' and DOJ's contentions:

- Smith was unlawfully appointed and therefore had no authority to compile or release the report.
- The report contains protected grand jury testimony and discovery materials from a dismissed case.
- Transparency groups lack standing or a legal right to access Volume II.

Legislative and Political Context

- **Jack Smith's testimony:** Smith sat for a closed-door deposition before the House Judiciary Committee on December 17, 2025 (approximately 8 hours; 255-page transcript released December 31, 2025). He testified publicly on January 22, 2026. His testimony was constrained by Cannon's January 2025 order — the DOJ told him he could not discuss any nonpublic information from Volume II. Democrats characterized this as effectively "gagging" Smith from informing Congress about his own investigation.
- **H.R. 8215, the "Volume II Transparency Act of 2026":** Introduced by Rep. Steve Cohen (D-TN) on April 9, 2026, this bill would direct the attorney general to disclose Volume II. It was referred to the House Judiciary Committee.
- **Retaliation against Smith's team:** On January 27, 2025, the DOJ fired more than a dozen career officials who had worked on Smith's investigations, with termination letters citing their roles in prosecuting the president.

- **Former CIA Director John Brennan** reportedly urged court leadership in the Southern District of Florida to prevent a separate investigation from being assigned to Cannon, citing a pattern of rulings favoring Trump.

Methodology and Limitations

This brief was compiled from web searches and primary-source review conducted on August 28, 2026. Sources include major news outlets (NBC, CBS, CNBC, PBS, BBC, Washington Post, Newsweek, The Hill), legal analysis sites (Just Security, LegalClarity), advocacy organizations directly involved in the litigation (Knight First Amendment Institute, American Oversight, America First Legal), and Wikipedia background articles. The actual court orders and opinions were not directly obtained; the reasoning is reconstructed from journalistic and institutional summaries. Some dates are approximate where sources differed slightly. The Eleventh Circuit has not yet ruled on the pending appeals, so the legal outcome remains unresolved.

Source Notes

Source	Credibility	Last updated
Knight First Amendment Institute — United States v. Trump case page	5/5	Jul 28, 2026
Knight Institute — Cannon "permanently" blocks report release	5/5	Feb 23, 2026
LegalClarity — Jack Smith Report: Both Volumes, Key Findings, and Fallout	4/5	Jun 28, 2026
NBC News — Cannon blocks release of Smith's report	5/5	Feb 23, 2026
CBS News — Judge permanently blocks release of Smith's report	5/5	Feb 23, 2026
CNBC — Judge blocks release of Trump documents case report	5/5	Feb 23, 2026
PBS NewsHour — Judge permanently blocks release of Smith's report	5/5	Feb 23, 2026
BBC — Judge blocks release of Jack Smith report	4/5	Feb 24, 2026
Washington Post — Cannon orders secrecy for report	5/5	Feb 23, 2026
Newsweek — Cannon put on clock to release Smith's files	4/5	Nov 2025
The Hill — Cannon keeps report sealed for now	4/5	Dec 2025
American Oversight — Appeals Cannon order	4/5	Jan 2026
American Oversight — Condemns permanent block	4/5	Feb 23, 2026
American Oversight — Eleventh Circuit presses Cannon on delay	4/5	Nov 3, 2025
Just Security — Cannon finds Special Counsel unconstitutional	5/5	Jul 15, 2024
Wikipedia — Federal prosecution of Trump (classified documents case)	4/5	-
Wikipedia — Aileen Cannon	4/5	-
Wikipedia — Trump v. United States (2022)	4/5	-
The Week — Judge moves to bury report	3/5	Feb 2026
TCPalm — Who is Aileen Cannon?	4/5	Feb 24, 2026
America First Legal — Urges court to order destruction of report	3/5	Mar 11, 2026
FOIA Advisor — Watchdogs try another route to report	3/5	Jul 29, 2026

Caveats: Advocacy organizations (Knight Institute, American Oversight) are parties to the litigation and their summaries favor release; America First Legal favors suppression. News outlets generally corroborate the

same factual timeline. The actual court opinions were not directly obtained — reasoning is reconstructed from summaries. The Eleventh Circuit has not yet ruled.

Open Questions

1. **Will the Eleventh Circuit reverse Cannon?** Oral argument is set for the week of November 16, 2026. The court previously found "undue delay" but has not yet ruled on the merits of the permanent injunction or the intervention question.
 2. **Does Cannon have jurisdiction to enjoin release of a report after all criminal proceedings have concluded?** The transparency groups argue she does not; this is a core appellate issue.
 3. **Is Volume II a "judicial record" subject to common-law access rights?** The Yale Law School amicus brief argues it is, because it was submitted to the court to resolve a substantive motion.
 4. **Could Congress force release legislatively?** H.R. 8215 (Volume II Transparency Act) has been introduced but remains in committee with uncertain prospects.
 5. **Will Volume II ever be destroyed?** Cannon stopped short of ordering destruction, but Nauta and De Oliveira's motion for destruction remains a live threat if the injunction is upheld.
 6. **Does the DOJ's position on releasing Biden's memoir tapes undercut its position on keeping Smith's report sealed?** The Knight Institute raised this argument in a July 28, 2026 brief — whether the appeals court finds it persuasive remains to be seen.
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Recommendations / Next Steps

- **Monitor the Eleventh Circuit:** The oral argument in the week of November 16, 2026 is the next major milestone. Track the consolidated appeals *Knight First Amendment Institute v. United States* and *American Oversight v. United States*.
- **Review the actual court opinions** if accessible via PACER or the Knight Institute's case page, which links to the primary filings (the February 23, 2026 "Opinion (granting permanent injunction)" and the January 21, 2025 "Order (granting emergency motion)").
- **For the broader research project** on legal cases in recent news, this case connects to several adjacent topics: the constitutionality of special counsel appointments (post-*United States v. Nixon*), the First Amendment right of access to judicial records, DOJ policy on prosecuting sitting presidents, and the broader pattern of Trump-era judicial conflicts.