

# [***'Against The Law': Jack Smith's Staged Docs Photo Could Throw Major Wrench In Case Against Trump, Lawyers Say***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6C0H-7T21-DXXD-700V-00000-00&context=1516831)

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[*Author Image*](https://cdn01.dailycaller.com/wp-content/uploads/2023/09/IMG_4173-3.jpg)

**Body**

[*Link to Image*](https://cdn01.dailycaller.com/wp-content/uploads/2024/05/2023-08-01T224919Z_1071081113_RC2AF2A06922_RTRMADP_3_USA-TRUMP-INVESTIGATIONS-e1715278164739.jpg)

Though all eyes have been on former President Donald Trump in a Manhattan courtroom, some are turning their attention to  Trump's classified documents case as it hits a series of major snags.

In a recent court filing, Jay Bratt, the lead Department of Justice (DOJ) prosecutor now assigned to special counsel Jack Smith's team, [*admitted*](https://dailycaller.com/2024/05/07/fbi-mar-a-lago-crime-scene-photo-donald-trump-classified-documents/) that the FBI brought cover sheets reading “top secret” to its raid of Mar-a-Lago. The cover sheets, Bratt explained, were used as placeholders for the classified documents found at the scene. Now, both Trump's defense and the special counsel are admitting that the documents seized from the former president's residence are out of order, according to court documents first [*reported*](https://www.declassified.live/p/the-dojs-doctored-crime-scene-photo) by Declassified with Julie Kelly.

The latest development could affect the integrity of the case in the view of both the court and the public, lawyers told the Daily Caller.

“It could [complicate the case]. I don't know whether it will or not, but it certainly could,” John Malcolm, vice president for the Heritage Foundation's Institute for Constitutional Government and former deputy assistant attorney general in the DOJ's Criminal Division, told the Daily Caller.

“The allegation or the argument would be, they've tampered with the evidence they've affected its integrity in some material way. I mean, it would be as if they had messed with somebody else's DNA sample or had smudged the fingerprint,” Malcolm continued.

Malcolm added that if the prosecution chooses to argue Trump had to have known about the documents because they were near files he would have seen all the time, the disordering of the evidence could cause problems.

“I don't think anybody would believe that the President of the United States upon leaving office would personally be monitoring papers and effects. And it's not inconceivable that something could get inadvertently mixed in,” Philip A. Holloway, a criminal defense attorney and legal analyst, told the Daily Caller.

“And so if prosecutors and law enforcement are cherry-picking documents, and slapping these labels on it that says top secret where that label was not already there, it can be very misleading to the viewer,” Holloway added. “And if that viewer is a court, then that's misleading a court and that's against the law.”

In the weeks following the raid, a photo of the crime scene at Mar-a-Lago went viral. The photo, snapped by the FBI, showed documents sprawled out with several of the “top secret” place holders among the mix.

Critics of the former president seized on the image, wondering how Trump could have possibly unknowingly brought such clearly marked documents out of the White House.

[*Link to Image*](https://cdn01.dailycaller.com/wp-content/uploads/2024/05/TOP_SECRET_SCI__Top_Secret_Sensitive_Compartmented_Information_cover_sheets_-_from_Classified_intelligence_material_found_during_search_of_Mar-a-Lago_cropped-e1715104545301.jpg)

Crime scene photo showing classified documents found at Donald Trump's Mar-a-Lago. (U.S. National Archives)

“[Thirteen] boxes or containers contained documents with classification markings, and in all, over one hundred unique documents with classification markings...were seized. Certain of the documents had colored cover sheets indicating their classification status. See, e.g., Attachment F (redacted FBI photograph of certain documents and classified cover sheets recovered from a container in the '45 office'),” Bratt wrote in an August 2022 court filing.

But in a later filing, Bratt explained in more detail what those “colored cover sheets” were. They were the “top secret” sheets captured in the photo.

“[If] the investigative team found a document with classification markings, it removed the document, segregated it, and replaced it with a placeholder sheet. The investigative team used classified cover sheets for that purpose,” Bratt wrote in a recent filing.

In Kelly's report, she analyzes Bratt's language to describe the photo snapped at the Mar-a-Lago raid.

“In other words, in their zeal to stage a phony photo using official classified cover sheets, FBI agents might have failed to accurately match the placeholder sheet with the appropriate document. This is a potentially case-blowing mistake, particularly if the document in question is one of the 34 records that represents the basis of espionage charges against Trump,” Kelly writes.

This is how DOJ in August 2022 described the files in

a filing to Judge Cannon with accompanying photo that went viral to make it appear that this was the original form of the documents seized by FBI.

This does not appear to be the truth-at all. It instead appears that the... [*pic.twitter.com/yGAgYJMZEt*](https://t.co/yGAgYJMZEt)

- Julie Kelly (@julie\_kelly2) [*May 4, 2024*](https://twitter.com/julie_kelly2/status/1786765775262421450?ref_src=twsrc%5Etfw)

Waltine Nauta, Trump's defense attorney, wrote in a May filing that those “top secret” placeholders used by the FBI to mark classified documents in stacks were [*out of place*](https://dailycaller.com/2022/09/19/fbi-mar-a-lago-ransacked/).

Bratt admitted in a recent file that yes, the documents were rearranged in some capacity and not all of the files had been appropriately matched with a cover sheet. In many cases, Bratt said the FBI's ordering was accurate.

“Special counsel Jack Smith and his counselor Jay Bratt could face severe consequences if it is proven true that they doctored evidence and presented it to the court and the public knowing it was doctored. They could face discipline from the Justice Department's Office of Professional Responsibility. They could face sanctions from Judge Cannon and they could face criminal prosecution for obstruction of justice,” Mike Davis, former law clerk for Supreme Court Justice Neil Gorsuch and founder of the Article III Project, told the Daily Caller. [***(RELATED: EXCLUSIVE: One Of Trump-World's Favorite Lawyers Hatched Playbook With House GOP On Ending Biden Lawfare Against Trump)***](https://dailycaller.com/2024/05/09/donald-trump-mike-davis-conservative-opportunity-society-ralph-norman-lawfare-joe-biden/)

Legal experts and political observers [*have often argued*](https://www.cnn.com/videos/politics/2023/04/14/barr-trump-mar-a-lago-classified-documents-probe-collins-intv-pt-vpx.cnn) that the classified documents case was the most threatening to Trump of the several he faces, because the underlying crime was the most straightforward and had the most evidence. But now, the case is on hold until further notice.

Following the report, Judge Aileen Cannon [*moved*](https://dailycaller.com/2024/05/07/judge-trump-classified-docs-case-indefinitely-postpones-trial/) to delay the former president's classified documents case indefinitely. The trial, once scheduled to begin May 20, is now on hold so Cannon can continue to work through several pre-trial issues.

Democrats overplayed their lawfare, and now their bogus political prosecution of President Trump continues to crumble.

Fani Willis' case in Georgia is more than likely going to be reassigned and likely dismissed.

Judge Aileen Cannon correctly and indefinitely postponed Jack... [*pic.twitter.com/mBsF8tZUI2*](https://t.co/mBsF8tZUI2)

- Mike Davis (@mrddmia) [*May 9, 2024*](https://twitter.com/mrddmia/status/1788567798588837952?ref_src=twsrc%5Etfw)

Though Cannon didn't directly point to the out-of-order evidence as part of the reason for her delaying the case, the lawyers the Daily Caller spoke to felt it could have been a part of her reasoning.

“I suspect it was at least partially related to these issues. I suspect that this makes Judge Cannon less inclined to trust the credibility of what government lawyers tell her,” Holloway told the Daily Caller.

“It's becoming more clear to the public that Judge Cannon has serious concerns with how Biden special counsel Jack Smith and his counselor, Jay Bratt are running this criminal prosecution against President Trump,” Davis told the Daily Caller.

“Judge Cannon seems to have serious concerns with potential grand jury abuse by Jack Smith and Jay Bratt in D.C. before this unprecedented indictment and Judge Cannon seems very concerned about issues around issues with tampered evidence, spoliation of evidence and chain of custody issues that are serious potential constitutional and ethical violations that could lead to the dismissal of this case,” Davis added.

With Trump still facing 91 criminal charges across four states, his legal team has had success in trying to delay the cases until after the 2024 election. In Georgia, an appeals court agreed to reconsider whether Fulton County district attorney Fani Willis should be [*disqualified*](https://dailycaller.com/2024/05/08/appeals-court-agrees-to-consider-bid-to-disqualify-fani-willis/) from the state's RICO case against Trump, pushing that trial back further.

While Cannon's timeline for the case remains in limbo, some lawyers were confident that the document's reshuffling wasn't a favorable look for the prosecutor.

“It was certainly very foolish by the Special Counsel. I assume it was done negligently but it was very, very sloppy. When you have a documents case and part of it is going to be somebody's knowledge that they had those documents in their possession, it would be very important to maintain it as close as possible in the original state in which they found them,” Malcolm told the Daily Caller.

Henry Rodgers contributed to this report.

**Graphic**

U.S. Special Counsel Jack Smith looks on as he makes a statement to reporters after a grand jury returned an indictment of former U.S. President Donald Trump in the special counsel's investigation of efforts to overturn his 2020 election defeat, at Smith's offices in Washington, U.S., August 1, 2023. REUTERS/Kevin Wurm

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