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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued November 20, 2023 Decided December 8, 2023

No. 23-3190

UNITED STATES OF AMERICA,
APPELLEE

v.

DONALD J. TRUMP,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:23-cr-00257-1)

D. John Sauer argued the cause for appellant. With him on the briefs were *John F. Lauro*, *Emil Bove*, *William O. Scharf*, and *Michael E. Talent*.

Brenna Bird, Attorney General, Office of the Attorney General for the State of Iowa, and *Eric H. Wessan*, Solicitor General, were on the brief for *amici curiae* Iowa, *et al.* in support of appellant.

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Gene P. Hamilton and *Judd E. Stone, II* were on the brief for *amicus curiae* America First Legal Foundation in support of appellant.

Dennis Grossman was on the brief for *amicus curiae* Christian Family Coalition in support of appellant.

Cecil W. VanDevender, Assistant Special Counsel, U.S. Department of Justice, argued the cause for appellee. With him on the brief were *J.P. Cooney*, Deputy Special Counsel, *Raymond N. Hulser*, Counselor to the Special Counsel, *James I. Pearce* and *John M. Pellettieri*, Assistant Special Counsels, and *Molly G. Gaston* and *Thomas P. Windom*, Senior Assistant Special Counsels.

Before: MILLETT, PILLARD, and GARCIA, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* MILLETT.

MILLETT, *Circuit Judge*:* A federal grand jury indicted former President Donald J. Trump for conspiring to overturn the 2020 presidential election through unlawful means and for obstructing the election’s certification. Soon thereafter, Mr. Trump posted multiple statements on his social media account attacking potential witnesses in the case, the judge, and the Special Counsel and his staff prosecuting the case. The district court subsequently issued an order restraining the parties and their counsel from making public statements that “target” the parties, counsel and their staffs, court personnel, and “any

* **NOTE:** Portions of this opinion contain **sealed** information, which has been redacted.

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reasonably foreseeable witness or the substance of their testimony.”

Mr. Trump appeals the district court’s order. His appeal involves the confluence of two paramount constitutional interests: the freedom of speech guaranteed by the First Amendment and the federal courts’ vital Article III duty to ensure the fair and orderly administration of justice in criminal cases. We agree with the district court that some aspects of Mr. Trump’s public statements pose a significant and imminent threat to the fair and orderly adjudication of the ongoing criminal proceeding, warranting a speech-constraining protective order. The district court’s order, however, sweeps in more protected speech than is necessary. For that reason, we affirm the district court’s order in part and vacate it in part.

Specifically, the Order is affirmed to the extent it prohibits all parties and their counsel from making or directing others to make public statements about known or reasonably foreseeable witnesses concerning their potential participation in the investigation or in this criminal proceeding. The Order is also affirmed to the extent it prohibits all parties and their counsel from making or directing others to make public statements about—(1) counsel in the case other than the Special Counsel, (2) members of the court’s staff and counsel’s staffs, or (3) the family members of any counsel or staff member—if those statements are made with the intent to materially interfere with, or to cause others to materially interfere with, counsel’s or staff’s work in this criminal case, or with the knowledge that such interference is highly likely to result. We vacate the Order to the extent it covers speech beyond those specified categories. *See* 28 U.S.C. § 2106.

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A

On August 1, 2023, a federal grand jury in Washington, D.C., indicted former President Donald J. Trump on four felony counts of conspiring to overturn the 2020 presidential election. *See* Indictment ¶¶ 1–4, 127–128. Specifically, the indictment alleges that then-President Trump and his co-conspirators “used knowingly false claims of election fraud to get state legislators and election officials to subvert the legitimate election results[,]” “attempted to use the power and authority of the Justice Department to conduct sham election crime investigations[,]” and “attempted to enlist the Vice President to use his ceremonial role at the January 6 certification proceeding to fraudulently alter the election results.” Indictment ¶ 10.

The conduct charged in the indictment arises out of then-President Trump’s refusal to concede his loss in the 2020 presidential election. Indictment ¶¶ 1–2. He claimed that there had been outcome-determinative fraud and that he had actually won. Indictment ¶ 2; *see also* President Donald J. Trump, Statement on 2020 Election Results at 0:34–0:46, 18:11–18:15, C-SPAN (Dec. 2, 2020) (claiming that the election was “rigged” and characterized by “tremendous voter fraud and irregularities”).¹

According to the indictment, then-President Trump waged a campaign to remain in power by publicly and privately

¹ <https://www.c-span.org/video/?506975-1/president-trump-statement-2020-election-results>.

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pressuring state and local officials to overturn the 2020 election results, even though he lacked any proof of relevant irregularities, voter fraud, or vote rigging. Indictment ¶ 10; *see, e.g., Donald J. Trump for President, Inc. v. Secretary of Pennsylvania*, 830 F. App'x 377, 381 (3d Cir. 2020) (“[C]alling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.”).

During the alleged efforts to overturn the 2020 election results, the then-President lambasted several state and local officials, often naming and blaming specific individuals on social media for not supporting his claims of election fraud. Special Counsel Mot. to Ensure that Extrajudicial Statements Do Not Prejudice These Proceedings 2–5, ECF 57 (Sept. 15, 2023) (“Special Counsel Mot.”); *see* Indictment ¶¶ 28, 32. Mr. Trump’s statements subjected those persons to threats and abuse from his supporters. Special Counsel Mot. 3–5. One official explained: “After the President tweeted at me by name, calling me out the way that he did, the threats became much more specific, much more graphic, and included not just me by name but included members of my family by name, their ages, our address, pictures of our home. Just every bit of detail that you could imagine. That was what changed with that tweet.” Special Counsel Mot. 3; Indictment ¶ 42. Another official explained that he needed additional police protection and avoided [REDACTED]

[REDACTED]. Special Counsel Mot. 3 [REDACTED]. And after then-President Trump criticized a governmental office for certifying the election, a member of that office had to [REDACTED] [REDACTED] when one of the then-President’s supporters posted

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