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ACCOUNTING & AUDIT

Justice Department Assigns Special Counsel to Take Over Investigations into Trump

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U.S. Attorney General Merrick Garland speaks to reporters at the Justice Department in Washington, D.C., on Feb. 22, 2022. (Nicholas Kamm/Pool/AFP via Getty Images/TNS)

By Zoe Tillman and Erik Larson, Bloomberg News (via TNS).

The U.S. Justice Department has appointed an independent special counsel to oversee criminal investigations related to former President Donald Trump and decide whether to bring any charges now that he's making a third run for the White House in 2024.

Attorney General Merrick Garland said Friday he determined it was in the public interest to appoint a special counsel given “recent developments,” including Trump’s announcement that he planned to run for president again and President Joe Biden’s stated intention to run for re-election.

“The Department of Justice has long recognized that in certain extraordinary cases it is in the public interest to appoint a special prosecutor to independently manage an investigation and prosecution,” Garland told reporters in Washington.

Allowing a special counsel to handle the probes may protect the government from potential conflicts of interest and avoid allegations of bias, because the investigator would operate largely independently from Justice Department leadership.

Garland named John L. “Jack” Smith as the special counsel under an order signed Friday. Since 2018, Smith has served as the chief prosecutor for the special court in The Hague charged with investigating and adjudicating war crimes in Kosovo. He is a former acting U.S. attorney.

Smith will take on oversight of the investigations into the Jan. 6, 2021, insurrection at the U.S. Capitol — including any role that Trump may have played — as well as the former president’s handling of classified White House records after he left office, according to Garland’s order.

Garland said a special counsel will allow prosecutors and FBI agents to continue their work “expeditiously.” But he said that Smith’s authority would not include the hundreds of prosecutions against people charged with participating in the attack on the Capitol on Jan. 6.

Smith has “built a reputation as a determined and impartial prosecutor” who can “follow the facts wherever they lead,” Garland said. “Mr. Smith is the right choice to complete these matters in an evenhanded and urgent manner.”

Smith, who is registered as a political independent, has accepted the appointment, but wasn’t in attendance for the announcement because he had a recent injury while biking in the Netherlands and underwent knee surgery, according to a senior Justice Department official. He is still in the Hague but will return soon, the official said.

“The special counsel is authorized to conduct the ongoing investigation into whether any person or entity violated the law in connection with efforts to interfere with the lawful transfer of power following the 2020 presidential election or the certification of the Electoral College vote,” according to Garland’s order, which he signed Friday.

“The Special Counsel is further authorized to conduct the ongoing investigation referenced and described in the United States’ Response to Motion for Judicial Oversight and Additional Relief,” which is Donald J Trump v. United States, according to Garland’s order.

Former federal prosecutor Jennifer Rodgers said the special counsel is unnecessary and will slow the investigations down as he and the staff he must hire get up to speed on the probes.

“Already DOJ is on a tight time schedule if they intend to get a criminal case litigated before the 2024 election — they would have to charge Trump very soon to have any

shot at getting to trial before the election happens,” Rodgers said.

This is the first special counsel appointed under Garland’s tenure. Under the Trump administration, successive attorneys general tapped lawyers to oversee several politically explosive investigations, most notably the appointment of Robert Mueller to manage the probe into Russian interference in the 2016 election.

While the Mueller probe ensnared members of his inner circle, Trump was never personally charged.

Trump’s legal exposure appeared to heighten once he lost re-election. The deadly attack on the U.S. Capitol by a mob of Trump’s supporters prompted a federal probe into efforts by Trump and his allies to overturn the 2020 election and stop the certification of Joe Biden’s win by Congress. A parallel criminal probe unfolded before a state grand jury in Fulton County, Georgia.

Meanwhile, the Justice Department under Biden began investigating whether Trump mishandled documents bearing the nation’s highest classification markings after he left the White House.

Efforts to retrieve government records from Trump have been under way since 2021, driven by the National Archives and Records Administration. After one batch of records Trump returned to the archives was found to contain highly classified material, the Justice Department issued a grand jury subpoena in May for more records. In August, the Federal Bureau of Investigation conducted a court-approved search of Trump’s Florida home and office, during which an estimated 11,000 records were retrieved, including some with top-secret classification markings.

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