

IN THE SUPREME COURT OF THE UNITED STATES

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No. 23-

UNITED STATES OF AMERICA, PETITIONER

v.

DONALD J. TRUMP

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ON PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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MOTION OF THE UNITED STATES TO EXPEDITE BRIEFING ON THE PETITION  
FOR A WRIT OF CERTIORARI BEFORE JUDGMENT AND FOR EXPEDITED  
MERITS BRIEFING IF THE COURT GRANTS THE PETITION

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The Special Counsel, on behalf of the United States, respectfully moves, pursuant to Supreme Court Rule 21, for expedited consideration of the petition for a writ of certiorari before judgment, filed today, in this case.\* The Special Counsel further moves for expedited merits briefing if the Court grants the petition. This case involves issues of exceptional national

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\* Pursuant to 28 U.S.C. 518(a), and in accordance with 28 C.F.R. 600.4(a), 28 C.F.R. 600.7(a), and Department of Justice Order No. 5559-2022 (Nov. 18, 2022), the Special Counsel has been authorized to conduct litigation before this Court on behalf of the United States in this matter.

importance. Respondent's criminal trial is now scheduled to begin on March 4, 2024, but it cannot proceed while respondent's appeal is pending. As explained in the government's petition for a writ of certiorari before judgment, expedited proceedings in this Court are warranted to resolve respondent's claims of immunity and allow the charges in the indictment to be fairly and speedily tried if the Court rejects respondent's claims of immunity. This motion seeks to expedite the Court's consideration of the petition and any ensuing review on the merits.

#### STATEMENT

Respondent, a former President of the United States, was charged in a four-count indictment alleging that he engaged in systematic and deliberate efforts to overturn the results of the 2020 presidential election and prevent the lawful transfer of power to his successor. See Pet. 3-4. Recognizing the public's "right to a prompt and efficient resolution of this matter," D. Ct. Doc. No. 38, at 53 (Aug. 28, 2023), the district court scheduled the trial to begin on March 4, 2024. Respondent moved to dismiss the indictment on the grounds, inter alia, that he enjoys absolute immunity from criminal prosecution for acts within the "outer perimeter" of his official responsibilities and that the indictment's allegations all fall within that scope; he also argued that double-jeopardy principles and the

Impeachment Judgment Clause, U.S. Const. Art. I, § 3, Cl. 7, barred his prosecution.

The district court denied respondent's presidential-immunity and related double-jeopardy claims. The court concluded that the Constitution's text, structure, and history support the conclusion that respondent "may be subject to federal investigation, indictment, prosecution, conviction, and punishment for any criminal acts undertaken while in office." Pet. App. 6a. It also rejected respondent's claim that his acquittal in impeachment proceedings gave him protection under double-jeopardy principles or the Impeachment Judgment Clause against his criminal prosecution after leaving office. Id. at 46a-53a. Respondent filed a notice of appeal and moved for a stay of all proceedings in the district court. See D. Ct. Doc. Nos. 177, 178 (Dec. 7, 2023).

#### ARGUMENT

Expedited consideration of the government's petition for a writ of certiorari before judgment, and briefing on the merits if certiorari is granted, is warranted.

1. This case involves an issue of exceptional national importance: the amenability to federal prosecution of a former President of the United States for conduct undertaken during his presidency and the effect, if any, that his acquittal in impeachment proceedings has on this federal prosecution. The

district court has scheduled trial to commence on March 4, 2024, but the trial cannot proceed pending respondent's appeal. See Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982) (per curiam).

This case should therefore be resolved expeditiously, so that trial proceedings may resume if and when respondent's claim of immunity is ultimately rejected. And given the weighty and consequential character of the constitutional questions at stake, only this Court can provide the definitive and final resolution of respondent's immunity claims that this case demands. Those considerations counsel in favor of immediate and expedited review in this Court, under the established criteria both for certiorari and for certiorari before judgment. Sup. Ct. R. 10 and 11; see Pet. 10-12.

Precedent supports expedition of the certiorari proceedings and, if certiorari is granted, merits briefing. In United States v. Nixon, 418 U.S. 683 (1974), the Court faced comparably significant issues involving the presidency. In light of the scheduled Watergate conspiracy trial, and the need for resolution of presidential claims of executive privilege for potentially relevant evidence, the government sought certiorari before judgment. The Court granted the government's petition one week after the government filed it. The Court also set an expedited briefing schedule; heard argument one week after briefing was

concluded; and issued its decision 16 days later -- two months after the petition was filed. Id. at 683, 690. The expedited proceedings reflected "the public importance of the issues presented and the need for their prompt resolution." Id. at 687.

As in Nixon, the circumstances warrant expedited proceedings at the certiorari stage and, if the Court grants review, on the merits. The public importance of the issues, the imminence of the scheduled trial date, and the need for a prompt and final resolution of respondent's immunity claims counsel in favor of this Court's expedited review at this time.

2. To ensure timely consideration of the petition, the government requests that respondent be directed to file a response to the petition on or before December 18, 2023. The government would waive the 14-day waiting period for reply briefs under this Court's Rule 15.5, so that the petition and response could be distributed immediately. The Court would then be able to consider the petition, response, and any reply at the earliest time convenient to the Court.

If the Court grants the petition, the government requests that the Court establish a briefing schedule consistent with the framework that the Court ordered in United States v. Nixon, 417 U.S. 927 (1974). Under that framework and consistent with the circumstances of this case, the parties would exchange and file opening briefs 14 days after the grant of certiorari and any

responsive brief would be due 7 days thereafter, with oral argument to be held as soon as practicable. The Court may wish to order that amicus briefs supporting the parties be due on the date the parties' briefs are due. The government is also prepared to comply with any more expedited schedule that the Court finds appropriate under the circumstances.

#### CONCLUSION

For the reasons stated, the government respectfully requests that the Court expedite consideration of the petition for a writ of certiorari before judgment and, if the Court grants the petition, that the Court expedite briefing and oral argument.

Respectfully submitted.

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Counsel of Record

DECEMBER 2023