

Elon Musk's X loses battle over federal request for Trump's DMs

"Going forward, the government will never have to prove it could avoid seriously jeopardizing its investigation by disclosing a warrant to only a trusted representative—a common alternative to nondisclosure orders," X argued.

In a brief supporting X, attorneys for the nonprofit digital rights group the Electronic Frontier Foundation (EFF) wrote that the court was "unduly dismissive of the arguments" X raised and "failed to apply exacting scrutiny, relieving the government of its burden to actually demonstrate, with evidence, that these alternatives would be ineffective."

Further, X argued that none of the government's arguments for nondisclosure made sense. Not only was Smith's investigation announced publicly—allowing Trump ample time to delete his DMs already—but also "there was no risk of destruction of the requested records because Twitter had preserved them." On top of that, during the court battle, the government eventually admitted that one rationale for the nondisclosure order—that Trump posed a supposed "flight risk" if the search warrant was known—"was implausible because the former President already had announced his re-election run."

X unsuccessfully pushed SCOTUS to take on the Trump case as an "ideal" and rare opportunity to publicly decide when nondisclosure orders cross the line when seeking to seize potentially privileged information on social media.

In its petition for SCOTUS review, X pointed out that every

social media or communications platform is bombarded with government data requests that only the platforms can challenge. That leaves it up to platforms to figure out when data requests are problematic, which they frequently are, as “the government often agrees to modify or vacate them in informal negotiations,” X argued.

But when the government refuses to negotiate, as in the Trump case, platforms have to decide if litigation is worth it, risking sanctions if the court finds the platform in contempt, just as X was sanctioned \$350,000 in the Trump case. If a less restrictive alternative was determined appropriate by the courts, such as appointing a trusted representative, platforms would never have had to guess when data requests threaten to expose their users’ privileged information, X argued.

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