

Appeals Court panel hears Trump claim of absolute immunity

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A three-judge panel of the D.C. Circuit Court of Appeals heard arguments Tuesday on the claim by ex-president Donald Trump that he has “absolute immunity” from prosecution for any action that he took during his four-year term of office.

Trump is appealing the decision of federal district court Judge Tanya Chutkan, who rejected his immunity claim and set a trial date of March 4 for criminal charges against Trump in connection with the violent attack on the US Capitol on January 6, 2021.

Department of Justice Special Counsel Jack Smith secured grand jury indictments last year on four counts related to Trump’s efforts to overturn the 2020 election: obstruction of an official proceeding, conspiracy to obstruct an official proceeding, conspiracy to defraud the United States, and conspiracy against rights provided by the Civil Rights Act of 1870.

Any decision by the appeals court panel is certain to be appealed to the full circuit court and then to the Supreme Court, as part of Trump’s strategy of delaying the trial in district court as long as possible, certainly until after the contest for the Republican presidential nomination ends, and even after the general election in November.

The Supreme Court has already agreed to hear another high-profile case related to Trump’s election campaign, the decision by the Colorado Supreme Court that Trump is ineligible for the presidency because of his actions on January 6, and therefore should not appear on the ballot.

While there is undoubtedly a short-term political purpose in the appeal, the legal arguments made by Trump’s attorneys have extraordinary implications.

This emerged most clearly in the course of an exchange between Trump’s lead attorney in the case, John Sauer, and the three judges hearing it, Karen

Henderson, appointed by George H. W. Bush, and Florence Pan and Michelle Childs, both appointed by the current president, Joe Biden.

Judge Henderson challenged the claim that Trump could not be prosecuted for January 6 because his actions were part of his official duties. “I think it is paradoxical to say that his constitutional duty to take care of the laws be faithfully executed allows him to violate criminal law,” she said. This was one of several observations to which Sauer did not directly respond.

More explosive were the questions posed by Judge Pan. She asked whether a president could be prosecuted criminally for ordering Seal Team 6, the US Navy death squad, to assassinate a political rival.

Sauer hemmed and hawed, but finally declared that the remedy was for Congress to impeach and convict such a president through the process provided by the Constitution. Only then could the president be prosecuted criminally. In the case of the January 6 attack, the House of Representatives voted to impeach Trump, but the Senate failed to convict, falling short of the required two-thirds majority.

Many Republican senators, including Republican Leader Mitch McConnell, claimed that their votes against conviction were based on Trump’s being out of office, making impeachment and removal from office moot.

Judge Pan then outlined the apparent legal Catch-22: Trump’s lawyers in 2021 claimed he should not be convicted by the Senate because he was now an ex-president and the proper recourse was via the criminal court system.

“In fact, the argument was there’s no need to vote for impeachment because we have this backstop, which is criminal prosecution,” Pan said, “and it seems that many senators relied on that in voting to acquit.”

But Trump's lawyers now were claiming that he could not be prosecuted under the criminal law because he had not been convicted by the Senate. In effect, he could never be prosecuted for anything he did as president, no matter how heinous the crime.

Even more significant politically was Sauer's closing argument. Trump's attorney told the three-judge panel, "To authorize the prosecution of a president for his official acts would open up a Pandora's box from which this nation may never recover." Similar prosecutions could be brought against other presidents.

He continued: "Could George W. Bush be prosecuted for obstruction of an official proceeding for allegedly giving false information to Congress, to induce the nation to go to war in Iraq under false pretenses? ... Could President Obama be potentially charged for murder for allegedly authorizing drone strikes targeting US citizens located abroad?"

The correct answer to such hypotheticals is that both presidents are war criminals who *should* be prosecuted, along with all the top officials who were responsible for these crimes: vice presidents, secretaries of state, defense secretaries, commanding generals and leaders of the CIA and FBI.

But neither the corporate media nor the federal judiciary would entertain such a suggestion. Trump's attorney raised the possibility in order to warn the judges of the dangers of indicting Trump for one of the best known crimes of his presidency.

At the beginning of the hearing, the judges asked the attorneys for both sides whether they felt the appeals court had the power to review Judge Chutkan's ruling on immunity even before the trial had begun, in violation of the normal procedure in which appeals take place after the trial is held. The attorneys for both Trump and the special counsel agreed that the appeals court did have that power, although the special counsel had previously asked the Supreme Court to hear the immunity question and issue an immediate ruling, skipping the appeals court review, in order to expedite the trial.

Posing that question at the beginning of the hearing suggests that the judges are considering issuing a procedural ruling to avoid having to decide the immunity issue at this time. That would contribute to further delay, since Trump would simply appeal that ruling to the Supreme Court as well.

Trump attended the hearing but did not speak or disrupt the proceedings in any way. No cameras were permitted in the courtroom, but reporters who were present said that Trump paid attention throughout and occasionally wrote notes with a Sharpie and passed them to his lawyers.

Afterwards, Trump addressed reporters, claiming that he was being prosecuted because he was ahead of Biden in opinion polls for the upcoming presidential election. Referring to the Democrats, he said, "I think they feel this is the way they're going to try and win, and that's not the way it goes."

After declaring, "It'll be bedlam in the country" if he is brought to trial and convicted, he refused to respond to questions, including one about whether he would publicly oppose violence by his supporters in response to any conviction.

In a posting later Tuesday on his Truth Social site, Trump appears on video giving a direct warning to Biden. "Joe would be ripe for indictment," he said. "He has to be careful because that can happen to him also."



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