

Federal Legal Implications of Former President Donald Trump's Conviction in New York State Court: Frequently Asked Questions

June 5, 2024

On May 30, 2024, former President Trump was [convicted](#) in New York state court of 34 counts of falsifying business records in the first degree in violation of New York Penal Law § 175.10. The conviction stems from a grand jury's indictment [charging](#) that former President Trump [authorized](#) payment to conceal damaging information about himself in advance of the 2016 presidential election and, in 2017, approved false entries in New York business records to disguise the purpose of reimbursement. The offenses, which are [felonies under New York law](#), could (but might not) subject the former President to a term of imprisonment. Sentencing is currently scheduled for July 11, 2024. The former President can appeal through the New York court system and could, under certain [circumstances](#), eventually seek Supreme Court review of the state court conviction. In specific circumstances, he also might be able to seek [habeas corpus](#) relief in state court or federal court.

Although state criminal cases are typically and primarily matters of state concern, Mr. Trump's status as a former President and candidate for the presidency in the 2024 election may raise questions about possible federal legal implications of the New York state conviction. This Sidebar addresses select questions regarding those implications.

Can former President Trump be a candidate for President as a convicted felon?

Article II, Section 1, clause 5 of the U.S. [Constitution](#) sets forth three qualifications for serving as President, which are the individual must be a natural born citizen, at least 35 years old, and a U.S. resident for at least 14 years. The constitutional qualifications for the presidency do not address felony conviction status.

Can former President Trump serve as President if he is incarcerated as of Inauguration Day?

If the sentence imposed by the judge in the New York case includes incarceration or detention in any form for former President Trump, and he is elected President and is serving that sentence come Inauguration

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Day, it is possible the Department of Justice (DOJ) would seek his release. The DOJ Office of Legal Counsel (OLC) has previously [asserted](#) that, because the “physical confinement of the chief executive following a valid conviction would indisputably preclude the executive branch from performing its constitutionally assigned functions . . . it is clear that a sitting President may not be constitutionally imprisoned.” As for confinement by a state, OLC’s position is based in Article II, the Supremacy Clause, and the principle that states cannot “[retard, impede, \[or\] burden](#)” the functioning of the federal government. While a President-elect Trump would not assume the constitutional duties and powers of office until January 20, 2025 (Inauguration Day), given the importance of the [presidential transition](#) and the statutory powers and responsibilities vested in a President-elect, either he or the DOJ may seek release from any confinement at some point after becoming the President-elect but before the inauguration.

The process by which such a release would occur, however, is uncertain. Typically, individuals who believe they are being unconstitutionally imprisoned can seek their release through a writ of habeas corpus. Federal law [severely limits](#) the availability of this option when an applicant is asking a *federal* court to release him from *state* detention. As a result, former President Trump might need to bring his habeas petition in state court and convince a state judge that his continued detention by the State of New York violates the U.S. Constitution. Any decision by the New York state courts would likely be subject to discretionary review by the U.S. Supreme Court, given the federal constitutional issues involved. In lieu of judicial proceedings, the DOJ could also urge the governor of New York to exercise the governor’s clemency powers to effectuate the release if former President Trump becomes the President-elect.

If, following Inauguration Day, a newly sworn in President Trump could not obtain his own release, the [Twenty-Fifth Amendment](#) establishes a process by which the powers of the presidency could be temporarily transferred to the Vice President during the pendency of the detention.

Could the Supreme Court’s pending decision on presidential immunity in *Trump v. United States* impact the New York conviction?

In [Trump v. United States](#), the Supreme Court is considering whether former President Trump is entitled to immunity from federal criminal prosecution for allegedly attempting to overturn the results of the 2020 election. A decision in that case—which would likely have a substantial impact on the extent to which Presidents (both sitting and former) enjoy immunity from criminal prosecution for actions taken while President—may be released in the weeks to come, well before the resolution of Mr. Trump’s appeal of his recent conviction in New York.

Whether the Supreme Court’s decision in *Trump* will impact the former President’s conviction in New York depends on the scope and reasoning of the opinion. Although much of the factual narrative underlying the New York case occurred during the 2016 presidential campaign, the fraudulent entries that [formed the basis for the 34 counts](#) of falsifying business records occurred in 2017 while Mr. Trump was President. When the State of New York made it clear that it intended to introduce evidence of Mr. Trump’s actions and statements while President, including possible evidence of an Oval Office meeting between President Trump and his then-personal attorney Michael Cohen, the [defense](#) sought to preclude that evidence based on presidential immunity and asked the New York judge to delay the trial and “await further guidance from the Supreme Court” in *Trump*. The judge [rejected](#) those requests as untimely.

Considering this background, if the Supreme Court were to release a sweeping opinion in *Trump*—for example, one that accords Presidents absolute immunity for *all* acts taken while in office—that decision might raise questions about the New York conviction. However, both the [question presented](#) and the oral argument in *Trump*, as well as previous [caselaw](#) addressing presidential immunity from civil claims, all suggest that *if* the Court recognizes presidential immunity in the criminal context, a narrower decision, perhaps distinguishing between official and unofficial acts, may be more likely. In that scenario, the *Trump* opinion’s possible effect on the New York conviction would depend on what sorts of actions the

Supreme Court views as giving rise to immunity. While approving or authorizing private business records may not be the type of official or presidential act that ultimately triggers immunity, a decision that broadly defines the class of presidential actions to which presidential immunity attaches would have the potential to inject uncertainty into former President Trump's potential appeal of his New York conviction.

Could former President Trump be pardoned, or pardon himself if reelected, for the state conviction?

Article II, Section 2 of the [U.S. Constitution](#) authorizes the President to pardon "Offences against the United States," excepting impeachment. This limitation means that the President's power to pardon, though broad, is limited to [federal](#) criminal offenses. The power does not encompass state offenses like those of which former President Trump was convicted. Accordingly, although the extent to which a President may pardon himself for a *federal* crime is [unsettled](#), a President has no authority to issue a pardon (either to himself or to another) for a state crime. Clemency, if available, would be pursuant to state law and process.

Is former President Trump still entitled to Secret Service protection as a convicted felon?

The federal statute covering the duties of the United States Secret Service, 18 U.S.C. § 3056, provides that the Secret Service is "[authorized](#)" to protect, among others, "The President," "Former Presidents ... for their lifetimes" and "Major Presidential . . . candidates." Former Presidents and Major Presidential candidates may [decline](#) this protection; a current President does not have this choice. While the statute couches the duty to protect in terms of authorization to protect, courts have understood that the Secret Service's duty to protect is [mandatory](#), unless declined by those individuals permitted by statute to exercise this option. The statute does not contain language indicating that an individual who may otherwise receive Secret Service protection may be disqualified from such protection.

Can former President Trump, as a convicted felon, vote in the 2024 federal elections?

[State laws](#) determine whether a citizen is disenfranchised from voting in federal (and state) elections because of a felony conviction. [Media reports indicate](#) that former President Trump is registered to vote in Florida and therefore, Florida law applies. The [Florida constitution](#) and [state law](#) disqualifies any person convicted of a felony from voting until all terms of a sentence, including parole and probation, are completed. Florida [state law](#) further provides, for convictions of murder and felony sexual offense or if a convicted person has not completed all terms of a sentence, that the voting disqualification does not terminate unless a person's civil rights are restored pursuant to a provision of the Florida constitution providing that the governor may grant [clemency](#).

However, a Florida Department of State, Florida Division of Elections [website](#) states: "A felony conviction in another state makes a person ineligible to vote in Florida only if the conviction would make the person ineligible to vote in the state where the person was convicted." In New York, the state where former President Trump was convicted, [the law bars felons](#) from voting only during incarceration. Therefore, if the policy stated by the Florida Division of Elections website is followed, it appears that former President Trump would be barred from voting *only* during any period of incarceration that the New York state court may impose. There is a [dispute](#) as to whether the Florida Divisions of Elections website [correctly interprets](#) the Florida constitution and relevant state law, neither of which specifically addresses felony disenfranchisement for out-of-state convictions. In addition, the governor of Florida has [stated](#) that if former President Trump is disenfranchised from voting, he would "qualify for restoration of rights per the Florida [Clemency Board](#)."

Are there any other criminal cases pending against former President Trump?

At present, former President Trump is a defendant in three other criminal cases. First, he has been charged in Georgia for allegedly violating a state racketeering law by participating in an enterprise to overturn the results of the 2020 presidential election. Second, and relatedly, former President Trump has been [charged](#) in the District of Columbia with violating several federal statutes for allegedly obstructing or interfering with the 2020 presidential election. A third case generally involves the unlawful removal and retention of certain [government records](#), including classified information, found in former President Trump's Mar-a-Lago property in Palm Beach, FL. The Attorney General [appointed](#) Jack Smith as special counsel to oversee the investigation and prosecution of this case against the former President. The special counsel subsequently filed a [superseding indictment](#), adding additional charges related to obstructing the investigation.

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