

THE TRUMP CASES

## Why Trump's vow to appeal his D.C. trial date probably won't work

Trial dates generally are not subject to appeal. And defendants can't challenge most other pretrial actions until a trial is done.



By [Devlin Barrett](#)

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When former president [Donald Trump](#) declared last week that he would appeal a federal judge's [decision to schedule his D.C. election-obstruction trial for March](#), legal experts quickly shot down the idea.

That's because the date a trial is scheduled is generally not an appealable issue. In addition, the court system is generally loath to scrutinize a judge's decisions in a criminal case before the trial is completed.

Federal courts have long held — and state courts usually agree — that criminal defendants should not be able to appeal most pretrial decisions until after a trial is over. If they could, their cases would probably drag on much longer before getting to a jury.

Appeals courts tend to dislike such appeals, and consider them only in rare instances where a trial judge's decision might cause harm that cannot be undone by a post-conviction appeal.

"Most people think a person can appeal anything they don't like in a case along the way, and that's just not how the system works," said Linda Julin McNamara, a former deputy appellate chief at the U.S. Attorney's Office in Tampa. "There's very little he can do at this point to slow things down via the appeal process."

Trump, the [Republican front-runner for the 2024 presidential nomination](#), faces four criminal cases — federal charges in D.C. and [state charges in Georgia](#) over efforts to block Joe Biden's 2020 presidential election victory, federal charges of [mishandling classified documents in Florida](#), and a state business-fraud case in New York. He has pleaded not guilty to all 91 charges against him.

Lawyers for the former president have argued, unsuccessfully so far, that his trials should take place after the 2024 election, sometimes citing the [presidential campaign calendar](#) or the complexity of the charges against him.

Trump's Georgia trial date has not yet been set. And once dates are put on the calendar, they often slide back as courts deal with conflicts and pretrial motions. But judges in his other cases have scheduled his trials to begin March 4 in Washington; March 25 in New York; and during the two-week period that begins May 20 in Florida.

In the Washington case, Trump had [sought a trial date in early 2026](#), which [U.S. District Judge Tanya S. Chutkan](#) rejected as far too long to wait. Prosecutors had suggested a January trial date.

After Chutkan settled on March 4 at a hearing last week, Trump posted on social media that "a biased, Trump Hating Judge gave me only a two month extension, just what our corrupt government wanted." He also noted that Super Tuesday, one of the most important primary days of the 2024 presidential race, comes just one day after the proposed start of the trial. "I will APPEAL!" Trump wrote.

Kirsten Small, an appellate lawyer at Maynard Nexsen, said courts severely limit what appeals can be filed before trial, particularly in criminal cases, but do allow them "where the defendant is going to lose rights that cannot be regained."

So, for example, if a defendant faced double jeopardy — being tried twice for the same alleged crime — an appeals court might intervene.

"It's sort of like an instant video replay for a court case, because it halts the play and puts it to a higher authority," Small said. "But for that reason, it's pretty limited."

Defendants may file pretrial motions, however, and those also take time for a judge to consider. Trump's lawyer, John Lauro, told Chutkan at the Aug. 28 hearing that the former president's legal team is preparing a slew of them.

Trump was indicted in D.C. on four charges: conspiracy to defraud the United States; conspiracy to obstruct an official proceeding; obstruction of an official proceeding; and conspiracy against voting rights. Lauro said he will attack the indictment on several fronts, arguing the former president's actions were protected by the First Amendment — that he had a right to speak and act on what he claimed was voter fraud in 2020 — and saying that Trump is a victim of selective prosecution motivated by politics.

Lauro also told the judge that Trump's lawyers are “going to have a very, very unique and extensive motion that deals with executive immunity” — arguing that in 2020 and early 2021 Trump was acting in his capacity as president and therefore immune from prosecution. Such a motion could be filed in the first half of this month, he suggested.

Of all the legal issues Lauro has raised since his client was indicted in the case in early August, it's the executive immunity claim that, once decided by Chutkan, probably has the best chance of reaching a higher court before trial — what lawyers call an interlocutory appeal.

“There's a very small class of matters that can be taken up on an interlocutory basis, and in this case, immunity is something that may merit an interlocutory appeal, because immunity is immunity from prosecution altogether,” McNamara said. In other words, if someone has immunity, they have immunity not just from being convicted of a crime, but from being prosecuted and put on trial.

Case law on executive immunity is also sparse, so it is an issue that, conceivably, an appeals court and potentially the Supreme Court might want to wrestle with before a former president goes on trial.

It's at least theoretically possible that Trump's legal team could try another form of pretrial appeal, called seeking a writ of mandamus, but that is even more of a long shot than other types of interlocutory appeals.

A writ of mandamus is meant to be used only in cases where a trial judge has made a ruling so egregiously against judicial practice that lawyers on the case and higher courts think it has to be fixed immediately.

“It's very rarely used and even more rarely successful,” said McNamara, who added that while a defendant can file notices of appeal, that doesn't mean they have a right to appeal.

“There are rules, there are laws, and there are procedures, and every litigant has to comply with those,” she said.

The rules on pretrial appeals can apply differently to prosecutors than to defense attorneys. For example, prosecutors are generally allowed to file a pretrial appeal if a judge rules they cannot use key evidence, but defense lawyers cannot appeal evidentiary rulings that go against them until the trial is over. And in cases involving classified information — such as the D.C. case and the Florida classified documents case — prosecutors have more leeway to appeal a trial judge's decision before trial.

Chutkan has given lawyers a deadline of Oct. 9 to file any pretrial motions in the D.C. case.