**July 17, 2024 / Trump just avoided 40 felony counts**

**[HALF SECOND OF SILENCE]**

**[BILLBOARD]**

NOEL: Two years ago, we brought you: Raid-a-Lago.

SCORING IN <Tremendous Sideburns Beet (Loop)>

*<CLIP> CNBC Television: there’s breaking news out of Palm Beach, Florida. Former President Trump says his Mar-a-Lago home there is being raided by the FBI right now… He describes it as a “siege”, calling the raid unannounced.*

*<CLIP> CBS Mornings: Agents spent much of yesterday at the club in Palm Beach. And CBS News has learned that the search was in regards to missing White House records.*

NOEL KING (host, Today, Explained): On leaving the White House, President Trump took classified documents with him. This was not legal, said a special counsel. Trump was indicted and faced forty felony counts.

NOEL: Trump’s defense team threw EVERYTHING at the wall to see what might stick. And something unexpected did stick. This week a federal judge in Florida tossed the case out.

NOEL: Candidate Trump’s latest legal win, and how! Coming up on Today, Explained.

**[THEME]**

RYAN BARBER (Reporter, Wall Street Journal): Well, my name is Ryan Barber, and I cover the Justice Department and legal affairs for the Wall Street Journal in DC.

NOEL: What were the charges against former President Trump in this classified documents case?

RYAN: Trump himself faced 40 charges, all related to allegations that he hoarded sensitive government documents at his Mar A Lago private residence and club down in south Florida,

*<CLIP> MSNBC:*

*Special Counsel Jack Smith: Today, an indictment was unsealed, charging Donald J. Trump with felony violations of our national security laws as well as participating in a conspiracy to obstruct justice.*

RYAN: And that when the federal government tried repeatedly over a period of months to retrieve them, that he, working with two aides, essentially obstructed those efforts.

NOEL: Can you remind us what the government trying looked like?

RYAN: Yea, what that trying looked like was initially the National Archives sending a letter saying~~,~~ hey, we believe you have records in your possession. We’d like to pick them up. The situation, though, escalated to the point where the Justice Department became involved, issued a subpoena, and then two Justice Department officials, went down, this is in the summer of ‘22, picked up some records and then developed the belief that there were still more records, at Mar-A-Lago after that.

*<CLIP> NBC: 48 folders with classified markings inside the former President’s office and storage area were empty when the FBI searched. Where are the government secrets that might have been inside? Unknown.*

RYAN: and that culminated in the August 2022 search of Mar-A-Lago. where FBI agents found many, many documents, remaining at that property.

NOEL: So Trump is charged and then just tell us where we go from there.

RYAN: Trump was charged along initially, with his personal aide, Walt Nauta. Then, months later, prosecutors filed what's called a superseding indictment, essentially taking the place of the initial indictment that added a third defendant to the case, Carlos de Oliveira, who is a Mar A Lago property manager.

*<CLIP> CBS NEWS: According to the indictment, De Olivera spoke with the former president the day after investigators subpoenaed security camera video and told a Mar A Lago employee “the boss wanted security video deleted.”*

His two co-defendants, Nauta and De Oliveira, they were charged with essentially joining him in this plot to prevent the federal government from retrieving them as they try to do over a period of months.

NOEL: And so what was Donald Trump's team arguing on his behalf? What was his legal defense?

RYAN: So they made a number of arguments.

SCORING IN <NEUTRAL IRENE>

RYAN: The indictment was brought vindictively. In legal parlance, the motion is styled as a motion to dismiss for selective and vindictive prosecution. And they made all the arguments you, you frequently hear Trump make, even on the campaign trail-

*<CLIP> FOX NEWS: President Donald Trump: I have tapes of the raid, and the raid is terrible. And the way they treated people is terrible. And the way they treat people now is unbelievable. They ask innocent people, please go in and .. bop bop bop…*

*Sean Hannity: But this is getting to the heart of…*

*Trump: But Sean, Sean… they treat people like they’re a foreign country enemy!*

RYAN: But that was just a piece of the overall attack that Trump's legal team made, on this indictment, the legal challenge to Special Counsel Jack Smith's appointment itself, along with kind of a tangential challenge related to his funding. And, essentially what Trump's lawyers argued was that Jack Smith wields just such incredible power, such incredible prosecutorial authority, that it isn't sufficient for Attorney General Merrick Garland to have just appointed him that the appointment of Jack Smith should be more akin almost to that of a U.S. attorney.

*<CLIP> CNN: Judge Cannon is now saying that prosecutor doesn’t have the ability to bring this case in court and thus it must be dismissed. She says this Special Counsel just doesn’t have the power in the way that she reads the Constitution.*

SCORING OUT

NOEL: Earlier this week we finally got a ruling. What did the ruling say?

RYAN: In a 93 page opinion, Judge Cannon, she's a 2020 appointee of Donald Trump's to the federal district court in South Florida. She really fully embraced Trump's arguments that Jack Smith was unlawfully appointed, given the, just the scale of his authority and his prosecutorial power.

*<CLIP> MSNBC: Judge Ailleen Cannon in Florida has dismissed, DISMISSED, the indictment against Donald Trump in this classified documents case, and his co defendants, on the grounds that the appointment of the Special Counsel violated the appointments clause of the constitution.*

RYAN: She asked, “is there a statute in the United States Code that authorizes the appointment of Special Counsel Smith to conduct this prosecution? After careful study of the seminal issue, the answer is no.” She goes on to essentially say that that the office has a level of authority that really requires that check and balance of a Senate confirmation review, similar to what is done for U.S. attorneys. And we immediately saw it reverberate across the legal and political sphere.

*<CLIP> WHDH NEWS 7 BOSTON:*

*Republican Delegate: I don’t think it was as big of an issue as the other side was making it out to be and I think the judge ruled appropriately…*

RYAN: House Speaker Mike Johnson immediately praised it. Senate Majority Leader Chuck Schumer called it “breathtakingly, off the mark.” <<chortles>> so it's not every day that you get congressional leadership weighing in, in the moment on a on a, on a, on a legal opinion that that may strike many as, as somewhat technical, even with its immense consequences.

NOEL: What was at stake for Donald Trump if he'd been found guilty of those 40 felony counts? What…what was he looking at?

RYAN: He was looking at potentially, a significant prison term. You know, these charges carry maximum sentences. Now, it's always important to note if you're convicted and you face these maximum sentences, it's often the case that you, you wind up facing a fraction of of what that maximum is. But at the end of the day, these were several charges. They were felonies. They were they were serious. But a lot of legal experts really kind of viewed this Mar-A-Lago case, as one of the strongest and on some of the firmest footing against him.

*<CLIP> MSNBC, FACE THE NATION:*

*Former US Attorney General Bill Barr: Well it’s very strong because a lot of the evidence comes from his own lawyers. And furthermore, there’s evidence of him saying things that are completely incompatible with any idea that this was an innocent document dispute.*

RYAN: We all remember these images of documents being found in all parts of Mar-A-Lago. <<chortles>>

*<CLIP> NBC NEWS:*

*Now you’re looking at these newly released photos, they allege Trump stored boxes with classified documents all over the place in Mar A Lago, frankly.. The ballroom, his bedroom, even a bathroom and a shower.*

RYAN: Photographs together kind of showed this haphazard arrangement of keeping on these documents is keeping them around as keepsakes. And just given the weight of that evidence and given given that the allegations of obstruction of, of of preventing the government's retrieval of the records happened in his post-presidency, a lot of the allegations were also considered relatively safe, even from what turned out to be a successful challenge he made in the January 6th case concerning his immunity from actions taken in office. So so this is just an incredible setback, really, for Special Counsel Jack Smith's team.

*<CLIP> CNBC: Now we have this new statement from the office of the Special Counsel…”The dismissal of the case deviates from the uniform conclusion of all previous courts to have considered the issue that the Attorney General is statutorily authorized to appoint a Special Counsel.*

NOEL: And what did this ruling do? Did it, did it overturn any precedent to establish a new precedent? Like what does it mean, legally?

RYAN: Yes. What it means legally is it's an interesting question.

SCORING IN - Temperature Changes  
  
RYAN: Because the idea of a Special Counsel or really a special prosecutor has been litigated, you know, at least since the Nixon Watergate time frame. But a lot of that litigation has centered in DC and been ruled on by the DC circuit, specifically. Judge Cannon, by sitting in Florida, sits in a different appellate court. It's called the 11th Circuit, and it generally covers the southeast United States. And what she said was this was really – she was operating from a blank slate down in the 11th circuit. There's, really no precedent down there, for this. And why would there be? Right. But the, you know, the combination of this case and Trump having a residence in Florida brought it there. And what her opinion does in the immediate term is it does toss this indictment before this even goes to trial. This happened when a trial date had been indefinitely postponed and there was none in sight. But it's not the end of the story. What what happens now is the Special Counsel team said yesterday that they'd received authorization to appeal. And they will go now to the 11th circuit.

*<CLIP> CNN: We know Jack Smith will appeal, but that process takes some time, and of course if Trump wins the Presidency, then all of these federal cases… he will just order the Justice Department to dismiss them.*

RYAN: And the 11th Circuit is now the operating table, if you will, where the Special Counsel is going to take out the paddles and try to revive it. They'll try to convince this three judge appellate panel that Judge Cannon improperly tossed these charges, and that the case should be revived.

SCORING OUT

RYAN: Judge Cannon has drawn criticism from legal experts, over a lot of rulings and her entertainment of, some, some unusual legal arguments that have struck many people as kind of unduly deferential to Trump. There have been open frustrations between prosecutors and the judge. You know, the judges at some points had to tell prosecutors to calm down.

*<CLIP> CNN: She did chastise federal prosecutor David Harbach saying “I don’t appreciate your tone.” But she would appreciate decorum at all times but, “if you aren’t able to do that, I’m sure one of your colleagues can take up arguing this motion.”*

So what the what some legal experts are saying is that now that they're going to the 11th circuit, in this appeal posture, they may actually have an opportunity now to actually get her removed from the case.

SCORING IN <Corporate - The Drum Up>

So that's going to be something to watch, in addition to just the arguments on the merits, of whether this case should have been dismissed or not.

SCORING BUMP

NOEL: That’s Ryan Barber Wall Street Journal. Coming up: who is this judge who shot her unexpected shot and will this ruling be reversed?

**[BREAK]**

**[BUMPER]**

NOEL: I’m Noel King with Ryan Barber of the Wall Street Journal. Ryan, what do we know about the judge in this case, who is Aileen Cannon.

RYAN: Yeah. Aileen Cannon is one of the many Trump appointed judges.

*<*[*CLIP*](https://www.youtube.com/watch?v=wi8oHolekR8)*> SCRIPPS NEWS: 42 year old Cannon was born in Cali, Colombia and grew up in Miami. She credits her mother, who fled Cuba as a young girl, as her inspiration to get involved in the U.S. legal system.*

RYAN: but she was actually one of the last to be confirmed, during his four year presidency.

*<*[*CLIP*](https://www.judiciary.senate.gov/committee-activity/hearings/07/29/2020/nominations)*> JUDGE AILEEN CANNON: I'd like to start by expressing my deep gratitude. I'm humbled to appear before you.*

RYAN: She was nominated in 2020, and she was actually confirmed after Trump had been voted out of office.

*<*[*CLIP*](https://www.judiciary.senate.gov/committee-activity/hearings/07/29/2020/nominations)*> JUDGE AILEEN CANNON: My sincere thanks to the President for the honor of this nomination.*

*SENATOR BEN SASSE: Ma'am, can we ask you to speak up just a tiny bit for us?*

*JUDGE AILEEN CANNON: Yes. Yes, ma'am.   
 SENATOR BEN SASSE: Perfect.*  Much better. Thank you.

RYAN: She came from, actually, the federal prosecutor's office down in South Florida.

SCORING IN <8 BIT Adventure Time\_BMC>

So in the U.S. Attorney's office, she really started off prosecuting drug, gun and immigration offenses. Tried four cases, according to her, her questionnaire that she submitted, to the Senate Judiciary Committee as part of her confirmation process. After that stage of her career there, she moved on to appellate work, where her role was defending oftentimes the convictions that her office secured. So in part because of that experience, she actually came out of the prosecutor's office with relatively little trial experience. And that was striking to a number of people who saw her, poised to take the bench, preside over trials. They just didn't see many trials in her record to look to, which was notable for, you know, for somebody who's a former federal prosecutor.

*SFX TV Channels*

*<*[*CLIP*](https://www.msnbc.com/the-weekend/watch/-she-s-green-how-judge-cannon-s-inexperience-is-affecting-trump-s-classified-documents-case-207556677539)*> MSNBC HOST SYMONE SANDERS: Do you think she’s green? FORMER US ATTORNEY CHUCK ROSENBERG: Well, she's certainly green. She hasn't had a lot of trials as a judge. I think the number is four and they've all been relatively simple. And by the way, Simone. That's not her fault. She's new at this. Maybe one day she'll be really good at this. There's not a lot of evidence to support that right now. But I think she's struggling.*

Ryan: In addition to that, at the time of her confirmation, she was in her late 30s, which makes her pretty young on the spectrum of federal judges.

NOEL: What’s her record been like as a federal judge?   
  
RYAN: From speaking with a a number of people in legal circles in Florida. She's really developed a reputation pretty quickly down there. She's known actually, for, handing down pretty stiff sentences, especially in cases of illegal reentry into the United States, which South Florida has many of. In addition to that, she's she's known as being, somewhat prickly, not just with prosecutors, but also defense lawyers, sort of equal opportunity there. And, you know, a lot of what a lot of lawyers have taken note of with her is that she likes to really pounce on procedural missteps, miscues that violate some of the technical court rules. And it struck a lot of lawyers down there as almost like she kind of wants to buy herself time or avoid having to make rulings on the merits. You know, the word that you hear a lot from a lot of people is that. Yes, she's young. Yes, she's inexperienced, but from her, from her conduct and approach from the bench, some lawyers see some insecurity there.

SCORING OUT

NOEL: Does anyone else see insecurity? I'm imagining you talked to a lot of people who know her record, and I wonder if you can just give us a sense of the spectrum of thoughts about this judge.

RYAN: So the spectrum of thoughts range from she's young, relatively inexperienced, and here she is saddled with this case involving a former president that has this potent trifecta of an unprecedented prosecution.

*SFX Gavel*

RYAN: The glare of media scrutiny-

*SFX Gavel*

RYAN: and tons of just complex legal issues involving the idea of prosecuting a former president and really sensitive evidence.

SFX Gavel

That's just a just sort of a breathtakingly heavy weight, for any judge.

*<*[*CLIP*](https://www.youtube.com/watch?v=nAGjxVHDDEg&t=1s)*> NBC NEWS: This was not a motion filed by his legal team. It was not one, frankly, that they expected to win. Anybody else who had looked at this had said, the special counsel, Jack Smith, was rightly appointed.*

RYAN: In her handling of this case, some people see that she's being deliberate and properly careful. Others see her as being a judge whose inexperience is really showing. And the the less charitable opinions are that as a Trump appointee, she's throwing the case to Trump and whatnot.

*<*[*CLIP*](https://abcnews.go.com/WNT/video/florida-judge-aileen-cannon-throws-trumps-classified-documents-111970701)*> ABC NEWS: The Special Counsel made clear there will be an appeal in this case, and he noted that every other court that has considered the issue of Special Counsel appointments have ruled that they are constitutional. Right now, Judge Cannon is the outlier.*

NOEL: What happens to the judge if her ruling is overturned? What happens to her if her ruling is not overturned? What does the future look like?

RYAN: It's so interesting. If her ruling is overturned, there's a real chance that she's removed from the case. Now, there's a there's another chance that if it overturns her, the proceedings resume in her trial court and that she holds onto the case. And if the 11th Circuit, you know, if it upholds her decision, you could expect the Special Counsel to then seek further review of that decision. Or it could just then go immediately to the Supreme Court.

NOEL: You've said throughout that Judge Cannon did not rule on whether Donald Trump did crimes or not. She ruled on the ins and outs of how the Special Counsel in this case was appointed. Now, the Office of Special Counsel is interesting. It came to prominence during the Watergate era, and then there were several during the Trump administration. Can you remind us what those Special Counsel appointments were about?

RYAN: What we've seen in recent years, with the Special Counsel is it's an appointment that has been used frequently. Some would say too frequently. In the Trump administration, we saw the Deputy Attorney General, Rod Rosenstein, have to become the Acting Attorney General for the purposes of the Russia investigation. And it was under the Special Counsel regulation that he appointed Robert Mueller to lead the investigation into Russian interference in the 2016 election. Later in the Trump administration, then Attorney General Bill Barr made John Durham a Special Counsel. And then in the Biden administration, we've seen Attorney General Merrick Garland appoint three Special Counsels, in addition to Jack Smith.

*<*[*CLIP*](https://www.youtube.com/watch?v=oBPN5xlwkqw&t=155s)*> House Judiciary hearing:*

*(REP. THOMAS MASSE) Jack Smith nominated by President Biden.*

*(ATTORNEY GENERAL MERRICK GARLAND) No, he was not.*

*(REP. MASSIE) Was he confirmed by the Senate?*

*(GARLAND) No, he was not.*

*(REP. MASSIE) When was the special counsel statute passed?*

*(GARLAND) There is no special counsel statute. There was an independent counsel statute that was expired.*

*(REP. MASSIE) So it expired. So what gives you the authority to appoint a special counsel? To create you've created an office in the, in the U S government that does not exist. And without authorization from Congress.*

*(GARLAND) There are regulations…*

And it just speaks to how Special Counsels have become this tool that the Justice Department uses when it wants to avoid the appearance of bias or when it wants to really project independence for investigations.

NOEL: During the Trump administration, the Federalist Society and some other conservative legal groups argued that Special Counsel appointments, that these appointments are unconstitutional. That sounds a lot like what Judge Aileen Cannon said. What was their argument? What were they saying?

RYAN: A lot of that criticism tracked the arguments that Trump wound up making in this case, that these that these prosecutors are, for all intents and purposes, U.S. Attorneys with a starting mission, such as investigating Russian interference or investigating efforts to overturn the election, akin to how a U.S. Attorney has a job to enforce the federal law in whatever district of the United States is under his charge.

So one of the arguments all along has been, hey, U.S. attorneys are confirmed by the Senate. Why don't we have Special Counsels confirmed by the Senate? And what the Justice Department has argued is that these are inferior officers, whom the Attorney General is more than within his rights to appoint, to carry out his mission to enforce the laws of the United States. But here we see Donald Trump gaining traction, with an argument that has not succeeded elsewhere. It could really rock the Special Counsel framework as we know it.

NOEL: All right. So I want to take us back to the question at the heart of this episode, which is, is Donald Trump in any legal peril as a result of this particular case? For the moment, no, but there will be an appeal. Judge Cannon cited Justice Clarence Thomas’ opinions three times in her ruling, we are told. So does that tell us anything? Does that indicate anything about what might happen if this does end up before the Supreme Court?

RYAN: It does. I mean, I think it signals that Justice Clarence Thomas may come into this case inclined to view these issues as Judge Cannon did. You know, but there are eight other justices, we saw even just in the term that just ended, that there can often be strange bedfellows in the modern-day Supreme Court.

SCORING IN <Galactic\_BMC>

So it's unpredictable. It still remains unpredictable how this might play at the Supreme Court. But I can't stress enough that we're not terribly close there, to that point. You know, the the wheels of justice turn slowly, and the Special Counsel has previewed an appeal to the 11th Circuit. It hasn't filed it. And, that is a process that we can expect to take many months.

Ryan Barber of the Wall Street Journal. This episode was produced by Victoria Chamberlin and Denise Guerra. It was edited by Miranda Kennedy and Matt Collette, fact-checked by Hady Mawajdeh, Patrick Boyd and Andrea Kristinsdottir are our engineers. Im Noel King and this is Today, Explained.

**[10 SECONDS OF SILENCE]**