

# [***Fact check: Trump falsely claims Justice Department rules say candidates can't be prosecuted in the middle of a campaign***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BF8-J6T1-JBSS-S4YN-00000-00&context=1516831)

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**Body**

(CNN) &#8212; Former President Donald Trump is facing [*two prosecutions brought by a federal special counsel and two prosecutions brought by local district attorneys*](https://www.cnn.com/interactive/2023/07/politics/trump-indictments-criminal-cases/). Trump claimed on social media on Monday that all four prosecutions violate strict Justice Department rules, since he is a candidate for president, and therefore must be stopped "IMMEDIATELY."

"The Very Strict Rules and Regulations of the Department of Injustice STATE CLEARLY that you can't prosecute a Political Opponent, or anyone, RIGHT IN THE MIDDLE OF HIS/HER CAMPAIGN," Trump [*wrote*](https://truthsocial.com/@realDonaldTrump/posts/111997577400178095). He added a claim that these supposed Justice Department rules also apply to the offices of local district attorneys and state attorneys general, which he said are both "DOJ subservient 'subsidiaries.'"

**Facts First:** Trump's claims are false. There is no Justice Department rule or regulation that says a candidate can't be prosecuted during their election campaign, as three former federal prosecutors confirmed to CNN. And even if such a federal policy did exist, Trump would be wrong to say that it applied to local district attorneys or state attorneys general. Those officials are not federal employees and not subject to the Justice Department's policies for federal prosecutors.

No such Justice Department policy exists

There are both written and unwritten Justice Department rules that apply to federal investigations involving political candidates. None of them say anything like what Trump claimed.

"There is no rule that prohibits the Department of Justice from prosecuting a case - particularly a case that has already been indicted - during an election season," said [*Mary McCord*](https://www.law.georgetown.edu/faculty/mary-mccord/), a former federal prosecutor who served as a senior Justice Department official under President Barack Obama and during the first months of the Trump administration.

The Justice Department has a [*written policy*](https://www.justice.gov/jm/jm-9-85000-protection-government-integrity) that says "federal prosecutors and agents may never select the timing of any action, including investigative steps, criminal charges, or statements, for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party." Despite Trump's repeated claims, including one in the Monday social media post, there is no evidence that the department has deliberately timed any of its actions to harm his campaign.

For years, the Justice Department has also had an unwritten policy against federal prosecutors indicting a candidate or federal law enforcement taking "overt" investigative steps regarding the candidate - such as executing a search warrant or conducting an interview - in close proximity to an Election Day in a party primary or a general election. (It's often called "the 60-day rule," though the precise number of days away from an election [*is not universally agreed upon*](https://www.justice.gov/file/1071991/download).) But here's the key with regard to Trump: The Justice Department has no policy, written or unwritten, forbidding an already-indicted candidate from being put on trial close to an Election Day.

While the Justice Department controls the timing of its investigative efforts, it does not control when a trial occurs once someone is indicted. Federal judges, who are not employees of the Justice Department or even the executive branch, set trial schedules.

"Trial dates are in the control of judges, not prosecutors, and there's no blanket prohibition on carrying through with an ongoing case during an election," Elie Honig, a CNN senior legal analyst and former federal prosecutor, said in an email.

Former federal prosecutor [*Jessica Roth*](https://cardozo.yu.edu/directory/jessica-roth) said in an email that while informal Justice Department policies "urge particular caution before filing charges in the 60-90 days immediately before an election," Trump was federally indicted "well outside this window, long before any presidential primary election" - each of the [*two*](https://www.cnn.com/politics/live-news/mar-a-lago-documents-probe-latest/index.html)[*indictments*](https://www.cnn.com/politics/live-news/trump-2020-election-probe-08-01-23/index.html) came more than 165 days before the Republicans' Iowa caucuses - and "there is no automatic pause simply because a defendant is engaged in a political campaign."

"In fact, once charges have been filed, the federal Speedy Trial Act requires that the case be tried within a specified period of time, pursuant to a schedule supervised by the district court, in recognition of the interests that the defendant and the public have in a speedy trial," said Roth, who is now a professor and co-director of the Jacob Burns Center for Ethics in the Practice of Law at Cardozo Law School.

There is a modern precedent for a candidate facing a federal criminal trial during their election campaign. In 2008, Republican Sen. Ted Stevens of Alaska had a trial [*starting in late September*](https://www.cnn.com/2008/POLITICS/09/24/stevens.trial/index.html) of a year in which he was up for re-election in November, after he [*pushed for a speedy trial*](https://www.nytimes.com/2008/08/01/us/01alaska.html) to try to quickly clear his name. He was convicted of felonies the week before Election Day, then narrowly lost his race. (Stevens' convictions were [*tossed out in 2009*](https://www.cnn.com/2009/POLITICS/04/07/ted.stevens/) because of [*misconduct by prosecutors*](https://www.cnn.com/2011/11/21/politics/stevens-concealment/index.html).)

Trump, unlike Stevens, has [*consistently tried to delay his trials*](https://www.cnn.com/2023/10/06/politics/trump-seeks-delays-federal-cases/index.html) even as special counsel Jack Smith [*has pushed for them to start quickly*](https://www.cnn.com/2024/02/14/politics/special-counsel-supreme-court-trump-response/index.html). Though Trump's delay efforts could succeed in pushing one or more of his trials after November's general Election Day, it's also possible they could result in the trials beginning closer to Election Day than they otherwise would have.

In January, [*CNN's Evan Perez asked Attorney General Merrick Garland in an interview*](https://transcripts.cnn.com/show/ctmo/date/2024-01-19/segment/02) whether, given department policies about steering clear of elections, there was a date he thought would be too late to begin Trump's trials. Garland responded that "the cases were brought last year." Garland said he agreed with the special counsel's calls for speedy trials and added, in a reference to how it is judges who control the trial calendar, "And it's now in the hands of the judicial system, not in our hands."

Memos from attorneys general have been silent on trials during a campaign

A succession of [*US attorneys general*](https://www.lawfaremedia.org/article/justice-departments-policy-against-election-interference-open-abuse), including [*Garland*](https://www.justsecurity.org/wp-content/uploads/2022/07/january-6-clearinghouse-attorney-general-garland-memorandum-election-year-sensitivities-may-25-2022.pdf), have written internal memos about the Justice Department's standards of conduct during election years. But nothing in these memos prohibited the prosecution of a candidate during their campaign. In fact, none of the memos - including two memos in 2020 from Trump-appointed Attorney General William Barr - said anything at all about holding trials during a campaign.

A [*Barr memo in February 2020*](https://www.congress.gov/116/meeting/house/110836/documents/HHRG-116-JU00-20200624-SD009-U19.pdf) laid out rules for opening federal investigations of candidates for president and other federal offices, but it was silent on the question of any resulting trials. Another [*Barr memo in May 2020*](https://www.documentcloud.org/documents/7221422-Barr-memo-Election-Year-Sensitivities), echoing the language of the department's policy manual and the memos [*from his predecessors*](https://s3.documentcloud.org/documents/4439553/Election-Year-Sensitivities-2016.pdf), said that partisan ***politics*** cannot play any role in the decisions of prosecutors and investigators and that they must never choose the timing of their actions, such as taking investigative steps and bringing criminal charges, "for the purpose of affecting any election."

Nothing in there supports Trump's claims in the Monday post. Nor does anything in [*Garland's 2022 memo*](https://www.justsecurity.org/wp-content/uploads/2022/07/january-6-clearinghouse-attorney-general-garland-memorandum-election-year-sensitivities-may-25-2022.pdf).

Trump's baseless claim about 'subsidiaries'

Trump's assertion that the offices of state attorneys general and local district attorneys are "subservient 'subsidiaries'" of the Justice Department, and therefore subject to the department's policies, is pure fiction. These officials are not federal employees and are not governed by the Justice Department's internal regulations.

This Trump claim is in line with [*his*](https://www.cnn.com/politics/live-news/trump-civil-fraud-trial-decision-02-16-24/h_add04dc3f26979218e43862dfe46ffec) repeated [*false claims*](https://www.cnn.com/politics/live-news/trump-fraud-trial-new-york-10-02-23/h_79667606ae04fe2bb45b311c74471ba5) that the Justice Department is responsible for bringing all of his cases - including a [*civil fraud case*](https://www.cnn.com/2024/02/28/politics/donald-trump-appeals-court-new-york/index.html) that was actually brought by New York's state attorney general and the criminal prosecutions that were actually brought under state law by elected Democratic district attorneys [*in Manhattan, New York*](https://www.cnn.com/2023/04/04/politics/read-trump-indictment-file/index.html) and [*Fulton County, Georgia*](https://www.cnn.com/interactive/2023/08/politics/annotated-trump-indictment-georgia-election-dg/).

Trump has pointed to the fact that a former senior Justice Department official went to work for the Manhattan district attorney in 2022. There is [*no evidence*](https://www.cnn.com/2024/02/15/politics/fact-check-trump-new-york-hush-money/index.html) the Justice Department itself had anything to do with this employment decision or that the department itself is orchestrating that case - let alone the separate cases being run by the New York attorney general and the Fulton County district attorney.

CNN's Marshall Cohen and Katelyn Polantz contributed to this article.

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