

# [***Why isn't the Supreme Court moving faster on Trump's immunity challenge?***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BDB-RHF1-JBSS-S3WV-00000-00&context=1516831)

CNN Wire

February 24, 2024 Saturday 11:00 AM GMT

Copyright 2024 Cable News Network All Rights Reserved

**Length:** 1168 words

**Byline:** By John Fritze, CNN

**Dateline:** (CNN)

**Body**

(CNN) &#8212; When special counsel [*Jack Smith asked the Supreme Court*](https://www.cnn.com/2024/02/14/politics/special-counsel-supreme-court-trump-response/index.html) to reject former President Donald Trump's immunity claims there was an unmistakable hue of urgency to the request.

At the time, Smith cautioned the court against further "delay" more than a dozen times in his brief.

Now, two weeks after [*Trump asked the court to step into*](https://www.cnn.com/2024/02/12/politics/trump-supreme-court-immunity-filing/index.html) the charged dispute over whether he may claim immunity from prosecution - and eight days since all the necessary briefs were filed with the justices - court watchers are engaged in a pastime almost as old as the Supreme Court itself: trying to glean meaning from the timing and silence.

"The entire population is getting a bit of exposure to one of the perils of watching the court carefully, which is that an awful lot of what it does happens behind the scenes and in ways that can't be easily predicted," said Steve Vladeck, CNN Supreme Court analyst and professor at the University of Texas School of Law.

The court could deny Trump's request to block a lower court ruling against his immunity claims, a move that would put Smith's case back on track for a trial. It could grant Trump's request and then hold arguments and decide the merits of the immunity issue - perhaps on an expedited basis. It might decide the issue without arguments. It could hand down an opinion explaining its decision, or not.

The Supreme Court can move quickly, at least by judicial branch standards. But most of its important cases take months to resolve. Even on the court's emergency docket, disputes can take weeks to sort out.

What is clear is that the stakes of the timing are enormously high. Smith is eager for the court to resolve Trump's immunity claim quickly so that US District Judge Tanya Chutkan can finish a trial on the former president's election subversion charges before the November election. Chutkan has already postponed a [*previous March 4 trial start*](https://www.cnn.com/2024/02/02/politics/trump-trial-date-postponed/index.html).

Perhaps anticipating this scenario, Smith had brought the issue to the Supreme Court once before, in December, asking the justices to leapfrog the DC Circuit Court of Appeals and provide "expeditious resolution" to the question of whether a former president can claim immunity from criminal prosecution.

"It is of imperative public importance," Smith said then, that Trump's claims of immunity be resolved and a trial take place "as promptly as possible" if those claims are rejected.

The Supreme Court denied that request, allowing the appeals court to review the case first.

Some experts believe that the longer the high court takes, the more likely it is to reject Trump's request to block the DC Circuit ruling. That theory rests on the idea that a conservative justice might be writing a lengthy dissent from the decision - and that can take some time.

Randall Eliason, a former federal prosecutor and George Washington University law professor, stressed that no one knows for certain what's happening behind the scenes. The justices have met at least three times - including on Friday - but it's not known if they discussed the immunity case at any of those conferences.

With those caveats, Eliason predicts that more time is probably a bad sign for the former president.

"I think that's the most likely reason," Eliason said. "Someone is writing a dissent."

As is almost always the case, there is little outward sign of internal strife. Justices Sonia Sotomayor and Amy Coney Barrett appeared at a National Governors Association meeting Friday focused on how to "disagree better." As is also common, there was no substantive discussion of either of the high-profile Trump cases confronting the court.

"The life tenure does insulate us from ***politics***, and so that it's not just that we're not Obama judges and Trump judges, but we're also not Democratic judges or Republican judges,"Barrett, a Trump appointee, said. "We don't sit on opposite sides of an aisle. We all wear the same color black robe. We don't have red robes and blue robes."

Sotomayor,an appointee of Barack Obama, said that lifetime appointments give the justices the "freedom to grow as we grow in the job."

"And remember, thankfully, for us, presidents don't last that long, right? There's eight years," she said. "So for us to be beholden to one of them is a little crazy."

If the Supreme Court wanted to extract itself from the Trump controversy quickly, the easiest path would be to reject his request to freeze the lower court's ruling.

That would let stand a unanimous 57-page from the DC Circuit earlier this month that rejected Trump's claims of immunity, allowing him to face charges for actions he took while in office. Such a decision could potentially draw a conservativedissent.

"The longer it takes the court to act on former President Trump's application, the less likely it seems that the court's ruling will be a precursor to some additional process," such as an argument in the case, Vladeck said. "Instead, delay will increasingly augur in favor of some kind of conclusive resolution."

The court decides hundreds of matters each year on its emergency docket - many of them technical. Those issues, such as requests to extend a deadline, are often handled within a matter of days.

But the more complicated and often politically fraught cases can take longer, especially if one or more justices is writing an opinion. A recent emergency case involving a bankruptcy settlement for the Boy Scouts of America took about 11 days for the [*court to address preliminarily*](https://www.cnn.com/2024/02/22/politics/boy-scouts-bankruptcy-settlement-supreme-court/index.html). The court took 20 days - between the initial filing and its order- to deal with the legal battle that erupted last month over [*razor wire Texas was installing on the US-Mexico*](https://www.cnn.com/2024/01/22/politics/supreme-court-texas-razor-wire/index.html) border.

In the Boy Scouts case, the court declined to halt a $2.46 billion bankruptcy settlement for the Boy Scouts of America. In the border dispute, it sided with the Biden administration, permitting the Department of Homeland Security to [*remove the wire that Texas*](https://www.cnn.com/2024/01/22/politics/supreme-court-texas-razor-wire/index.html) had installed.

But the Supreme Court moves at its own pace. The justices are also simultaneously working to craft an opinion in another explosive case dealing with whether Trump can be removed from the ballot for his role in the January 6, 2021, attack on the US Capitol via the 14th Amendment's "insurrectionist clause."

The justices signaled during more than two hours of oral argument on February 8 that they are [*likely to side with Trump in that dispute*](https://www.cnn.com/2024/02/08/politics/takeaways-supreme-court-trump-ballot/index.html), but landing on the reasoning may prove tricky and involve considerable negotiation.

Despite Smith's desire to move quickly on the immunity question, it's unlikely that a couple of days or even weeks would make a significant difference in the timing of a trial for Trump.

"I don't think a few more days or even a couple of weeks makes much difference right now," Eliason said of the Supreme Court's timing. "I think the best case scenario for DC at this point is already a June trial, whether the Supreme Court acts today or next week."

By John Fritze, CNN

TM & © 2024 Cable News Network, Inc., a Time Warner Company. All rights reserved.

**Load-Date:** February 24, 2024

**End of Document**