

Trump returns to office as the first criminal president—but for how long?

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EXPERT ANALYSIS

[Will Thomas](#), assistant professor of business law at the University of Michigan's Ross School of Business, has been keenly and carefully following the legal twists and turns surrounding Donald Trump.

Thomas explores where things stand now that Trump is back in the White House:

"Unprecedented legal entanglements continue to cast a shadow. A New York trial court recently sentenced Trump over 34 felony counts of falsifying business records—crimes stemming from efforts to illegally influence the 2016 presidential election.

"The trial court granted Trump an 'unconditional discharge,' instead of imprisonment, probation or a fine. In essence, New York convicted Trump of multiple crimes but decided not to punish him.



Will Thomas

“Some commentators have pointed out the conviction is still symbolically significant: Trump is now the first—and only—criminal elected to the presidency.

“But wait, not so fast.

“While Trump now wears the label of ‘felon,’ this may be surprisingly short-lived. His best path to exoneration traces to [Trump v. United States](#), a landmark U.S. Supreme Court decision from last summer, which promises to reshape the constitutional framework for constraining the behavior of U.S. presidents. The high court’s decision, decided after Trump’s New York trial, not only complicates the legal process in his criminal case going forward but may ultimately lead to its reversal.

“The case arose out of a federal indictment against Trump—one concerning his role in causing or contributing to the Jan. 6 insurrection—but the opinion reached far beyond the facts at hand, creating sweeping new protections likely to reshape his ongoing state prosecutions in New York and Georgia. Writing for the majority, Chief Justice John Roberts announced a new constitutional rule: Evidence related to a president’s ‘official acts’ cannot be admitted in subsequent criminal cases unless prosecutors first clear a very high (although still somewhat fuzzy) legal threshold.

“Why does this matter for Trump—his crimes started before he was president. As jurors learned at trial, some of Trump’s criminal behavior continued into his first term—and even into the Oval Office, where he took calls with co-conspirators and signed personal checks as part of the underlying scheme. Now, these actions might ultimately count as private, ‘unofficial’ acts, which means they could feature in his criminal trial.

“The problem for New York is that, according to the Supreme Court, any parsing of ‘official’ from ‘unofficial’ must happen before trial. Courts can’t rely on traditional mechanisms of evidentiary rulings or jury instruction to decide these issues in a piecemeal fashion during trial itself.

“Yet that traditional, evidentiary approach seems to be precisely what happened at Trump’s trial. In fairness, how could the trial court have been expected to follow the Supreme Court’s new procedures—Trump v. United States wouldn’t be published until months after Trump’s trial ended. Regardless, this new framework has placed Trump’s New York conviction in the crosshairs, and his legal team has taken aim. Pointing to language in the case, Trump has sought multiple times to have his conviction overturned.

“The trial court rejected those requests, finding that any potential errors at trial were harmless to the ultimate outcome. But with sentencing now completed, the case heads to the New York Court of Appeals, which might be inclined to agree with Trump’s team that the Supreme Court’s decisions require the conviction be erased. After all, even if the trial court’s errors really were minor and didn’t impact the jury’s ultimate decision, the Supreme Court strongly suggests failing to follow its new framework can never be ‘harmless.’

“Regardless of the state appellate courts’ decision, Trump v. United States guarantees the Supreme Court will have the last word. Historically, state criminal convictions have been largely insulated from federal judicial oversight, with the Supreme Court intervening only in rare cases involving clear violations of constitutional rights.

“By constitutionalizing issues of evidentiary procedure and requiring pretrial determinations of immunity, the case transforms Trump’s New York case into a federal matter—making it all but inevitable the Supreme Court will eventually weigh in.

“Indeed, Trump has tried to skip to the end, asking the Supreme Court this month to shortcut New York’s appeals courts and take his case now. That would have been extraordinary (and extraordinarily controversial); the high court declined his request.

“Signaling what might be coming, four conservative justices publicly noted their disagreement with this decision. Justices Alito, Gorsuch, Kavanaugh and Thomas—all of whom signed onto the majority opinion in Trump v. United States—all seem ready to take up the issue of Trump’s conviction sooner rather than later.

“Taken together, the Supreme Court has set the stage for Trump to challenge his New York conviction. While the opinion was couched in terms of protecting the presidency as an institution, its immediate effect has been to grant Trump a powerful legal lifeline. If things go his way, Trump not only will have avoided punishment for his crimes. But he may well stop being a criminal, too.”