



Could Trump pardon himself if convicted of Georgia charges? Experts weigh in

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Former President Trump was indicted earlier this week on 13 felony counts in Georgia in connection with an alleged attempt to overturn the results of the 2020 election. Legal experts told Fox News Digital that Trump cannot pardon himself in this case, but the process of actually incarcerating him is a complicated one.

"The president...shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment," Article II, Section 2, Clause 1 of the Constitution reads which John Malcolm, vice president for the Institute for Constitutional Government at the Heritage Foundation, told Fox News Digital likely prevents Trump from pardoning himself in Georgia.

"It seems to be pretty clear that he has plenary authority to pardon people for federal crimes, but not for state crimes," Malcolm explained.

Prominent legal scholars, including George Washington University's Jonathan Turley and former federal prosecutor Andy McCarthy have made similar arguments to Malcolm's and said that Trump cannot pardon himself in Georgia while others, including political commentator and attorney Mark Levin, have made the case that he can.

Levin argues that the Constitution is silent on whether a president can even be indicted and believes the Constitution's Supremacy Clause holds that Trump's federal authority takes precedence over state laws. Additionally, Levin says the Department of Justice's position that a sitting president cannot be indicted on federal crimes because it would "cripple the executive branch" would also hold true for state crimes and indictments from local DAs.

Clark Neily, senior vice president for legal studies at the Cato Institute, told Fox News Digital that he does not envision a scenario where Trump could pardon himself on state crimes.

"I could see a court delay a proceeding, perhaps even delaying the imposition of a sentence to avoid having a sitting president simultaneously involved in criminal litigation or serving a sentence," Neily told Fox News Digital. "I think that's conceivable. But I just don't really think it's plausible that a court would find that the president of the United States has some unwritten power to pardon himself from state crimes and just make those prosecutions go away entirely."

Ilya Shapiro, senior fellow and director of constitutional studies at the Manhattan Institute, also told Fox News Digital that Trump cannot pardon himself on state charges and could potentially self-pardon on federal charges in Washington, D.C., and Florida, but that "would be an abuse of power that's potentially impeachable."

In Georgia, the Republican governor does not have the power to grant clemency. Instead, the five-member board of pardons and paroles, made up of individuals appointed by the governor, holds that power.

Despite the belief that Trump cannot pardon himself from state charges, Malcolm said that if elected president, Trump would be unlikely to see a jail cell at least until he is out of office.

"A president has to be able to carry out the duties of being president of the United States so I think if a president were convicted and incarcerated, I think that a very strong argument can be made that the state could not interfere with his ability to serve as president, and you can't serve as president from a jail cell," Malcolm said.

"Similarly, I think that if there were a state court indictment pending against the president, that indictment would have to be held in abeyance for the entire time that the president served in office, and then it could be taken up again if anyone was so inclined to do it after he or she leaves office."

Neily, who made the point that the legal theories surrounding these arguments are uncharted waters, told Fox News Digital it is hard to envision a scenario where Trump sees any time in state prison for the charges either during his time in office or after and believes the sentence could be commuted by the state or made into a house arrest situation.

"I think there's a pretty good chance that a court would try to find some way to avoid a situation where a state was either actively prosecuting or incarcerating the president," Neily said.

"I don't see him being incarcerated for any of the charges that are currently pending against him," Neily added. "I feel like the judges in those cases will try to figure out a way to impose some form of punishment that's sort of sufficiently satisfying to the public or that portion of the public that thinks that the prosecutions were appropriate short of actually incarcerating him in an actual prison."

Neily continued, "I'm just not sure that I can really see a former president going to jail with his Secret Service detail."

Trump faces roughly 75 years in prison if convicted on all counts and given the maximum sentences in the Georgia indictment. Georgia judges are not required to dole out prison time for

the state RICO charges and can instead levy a fine. But, if they decide to issue a prison sentence the mandatory minimum is five years.