



The Generals' Trump Brief Actually Makes a Compelling Case

Description

USA : With the Supreme Court set to begin arguments on Donald Trump's immunity claims this Thursday and the landmark decision likely to be handed down no later than the end of June, the Deep State weighed in. That itself is a scary thing, but even more frightening is this: What if they are right this time?

Fourteen retired four-star generals, admirals, and other military leaders (including the former NSA head Michael Hayden, who certainly knows a thing or two about illegal orders) filed an amicus brief with the Supreme Court, arguing against former President Trump's claims of immunity in his criminal cases, particularly those dealing with J6.

Trump argues the charges against him related to J6 should be thrown out because he was acting as president at the time. Prosecutors denounced the idea, with the generals taking a side with their brief. *Amicus curiae* is a Latin term translating to "friend of the court." It refers to a person or organization that is not a party to a case but offers information or expertise to assist the court in making a decision, although they do not [have the same](#) legal standing as briefs submitted by the parties directly involved in the case. They can be, as in this case, an argument by a third party for deciding the case one way or another. The generals et al. are decidedly against Trump having immunity, as any good Deep Stater would be.

They argue Trump should not be granted immunity by the Court for three reasons: The claimed immunity would undermine the national commitment to civilian control of the military; Trump's immunity would undermine the military's adherence to the rule of [law, its orderly](#) functioning, and public trust; and Trump's claimed immunity, by implicating the peaceful transition of power in particular, threatens national security.

The arguments for the first point are largely what you'd expect them to be, spraying out everything from George Washington's address to Youngstown Sheet and Tube, centering on the idea that a president, immune from prosecution for anything he does while in office whether related to his official duties or not, could indeed order the military to do anything.

One argument you can expect to hear more of is that the president could order the armed forces to murder a political opponent live on TV. The president would be untouchable, and the soldiers who faced such an order would be flummoxed as the Constitution subjects the armed forces of the United States to both civilian control *and* the rule of law. (In the United States, murder is still illegal—for now.) “Such a President would be able to break faith with the members of the armed forces by placing himself above the very law they are both sworn to uphold,” the brief says. It would allow “the Commander-in-Chief to weaponize the powers of the U.S. military to criminal ends.”

It is important to step back and understand the president is already considered immune from criminal prosecution while in office, and that he serves under the ultimate check and balance of impeachment. He currently can be prosecuted for acts done while president after he leaves office, the current situation with the two ongoing J6 prosecutions, the as yet unstarted Jack Smith case in Washington and the Fani Willis case in Georgia, which is lurching into motion soon.

Trump argues that he is immune from prosecution for the things he said on the morning of January 6, 2021, words that in the eyes of the law could add up to inciting the mob to attack the Capitol. (Note, however, that Trump is not charged with incitement, a specific legal term. It can get confusing.)

Nonetheless, there is little confusion in the generals’ brief. They argue that, if the

President is absolutely immune from criminal prosecution [this] has the potential to severely undermine the Commander-in-Chief’s legal and moral authority to lead the military forces, as it would signal that they but not he must obey the rule of law. Under this theory, the President could...direct members of the military to execute plainly unlawful orders, placing those in the chain of command in an untenable position and irreparably harming the trust fundamental to civil-military relations.

The generals’ second argument is compelling. Service members have a long-standing duty to disobey unlawful orders. This requires service members, who are required to obey all lawful orders, to disregard patently unlawful orders from their superiors and prohibits service members from using such orders as a defense to criminal prosecution. Immunizing the Commander-in-Chief from criminal prosecution would put service members in the impossible position of having to choose between following their Commander-in-Chief or obeying the laws enacted by Congress. Again, see the example of the president ordering the murder of a political opponent, the *argumentum ad absurdum* of this case.

The generals cite something almost as clear, the My Lai massacre in Vietnam where the officer in charge on the ground was not successful in using “but I was only following orders” as a defense. Interestingly, Trump’s Supreme Court filing also cites My Lai, drawing a different lesson: The My Lai massacre serves as evidence the military would resist carrying out the President’s hypothetical order to murder a political rival because someone blew the whistle, albeit after the killings.

That is wrong, say the generals’ in their brief:

[T]he very fact that officer in charge on the ground felt emboldened to kill civilians on the

basis of ‘superior orders’—in that case, from a captain—demonstrates that our system remains vulnerable to the risk that servicemen or women may commit crimes when ordered to do so. That risk is all the graver if the person giving the orders is the president, particularly one protected by absolute immunity.

The generals make their argument conclusively, stating,

Receiving an unlawful order thus places service members—already pushed to extremes by virtue of their vocation—in a nearly impossible position. On the one hand, disobeying a lawful order is punishable by court-martial and contrary to everything service members have been trained to do. On the other hand, the duty to disobey imposes on them the obligation not to rationalize obedience of an unlawful order simply out of deference to one’s superiors—including the Commander-in-Chief.

The third argument in the brief is not as compelling—basically a variation of “Orange Man Bad/Dictator,” in that the cases at hand, dealing with J6, concern specifically the peaceful transition of power at the White House. The generals argue that it is a bad case to set any kind of precedent, and our adversaries will be taking note of what they consider a breakdown of democracy. Constitutional crises are bad for the defense business when the bad guys are watching.

The case puts a lot on the line. In Washington alone, Trump is facing four J6 felony counts accusing him of defrauding the United States. Prosecutors allege he stood at the center of a conspiracy to block the certification of votes for Joe Biden. Granting Trump sweeping immunity would not only end this prosecution and the one in Georgia; it would set a precedent for all future presidents.

Besides, Trump already has a decent defense in saying his remarks on the morning of J6 were covered by the First Amendment, with or without immunity. Of course, in the end, none of this may matter. The real purpose of the request for immunity may prove to be simply delaying Trump’s trial until after the November election, in which case he wins no matter what the Court says.

By Peter Van Buren

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