

## Top DC Court Declines to Rule on Trump's Defamation Immunity in Rape Denial Suit



The District of Columbia Court of Appeals declined to decide whether former U.S. President Donald Trump acted within the scope of his presidential employment when he denied rape allegations by writer E. Jean Carroll. The answer would determine whether Trump could be held personally liable in Carroll's defamation lawsuit. The court's decision leaves the question of Trump's immunity unresolved and could have implications for future cases involving sitting presidents and their potential liability for defamation.

Carroll has alleged that Trump defamed her by denying he raped her and implying she claimed to make money or advance a political agenda. Carroll claimed the rape happened in a Bergdorf Goodman dressing room in New York City in the 1990s.

Trump could be protected by the federal law known as the Westfall Act, which provides that the United States should be substituted as a defendant in tort suits against federal employees acting within the scope of their employment. Usually, recovery in such cases is allowed only against the United States, which has generally waived sovereign immunity under the Federal Tort Claims Act.

However, the United States has not waived sovereign immunity in defamation claims, which means that Carroll could not recover anything if the United States is substituted as a defendant. The 2nd U.S. Circuit Court of Appeals in New York ruled in September 2022 that Trump was a government employee when he denied the rape claim. But the 2nd Circuit asked the top D.C. court to decide whether Trump was acting within the scope of employment under the laws of the District of Columbia.

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The question "cannot be resolved as a matter of law in either party's favor on the record before us," the D.C. Court of Appeals said in its April 13 decision. The answer is "a fact-intensive question for the factfinder."

"It is not at all clear to us" that the Westfall Act "requires an answer to this scope-of-employment question as a matter of law at this preliminary stage," the D.C. Court of Appeals said. "To the extent that it does, we have no special expertise in answering that question."

The appeals court addressed the standard followed in Washington, D.C. The court said the district generally applies the scope of employment test in the Restatement (Second) of the Agency.

That test requires that the conduct at issue be "actuated, at least in part, by a purpose to serve" the employer.

According to Bloomberg Law, Carroll's attorneys have "embraced that test." Bloomberg Law also noted that the D.C. Court of Appeals "also declined to adopt a sweeping rule that elected officials always act within the scope of their employment when they talk to the press."

Chief Judge Anna Blackburne-Rigsby wrote the majority opinion. The court's decision not to rule on Trump's immunity leaves the case to be resolved by the factfinder.

A lawyer for Trump, Alina Habba, stated several publications. "Now that the D.C. Court of Appeals has clarified the certified question before it, we are confident that the 2nd Circuit will rule in President Trump's favor and dismiss Ms. Carroll's case in its entirety," Habba said.

Trump is also facing a second suit that Carroll filed in November 2022 under New York's Adult Survivors Act. The law gives adults alleging sexual assault a one-year window to sue. That suit alleged battery and additional instances of libel over Trump's statement in 2022. The trial date in the second suit is April 25.