SOME THOUGHTS ON THE ARPAIO PARDON



As you probably already know, Trump has pardoned Joe Arpaio. It is an abominable act by a lawless jackass. One lawless jackass pardoning another lawless jackass. Trump and Arpaio are really two peas in the same racist bigot pod; both supreme narcissists, ignorant and contemptuous of the rule of law down to their deepest bone.

And Marcy Wheeler is right that the nation as a whole is not the audience Trump is signaling, and while "Trump's base" may be part of his audience in making this pardon move, it is likely even more intended for law enforcement. Police unions were almost across the board for Trump, and they do speak for their rank and file. Not to mention that all cops are fine with a pro law enforcement approach of Trump and his DOJ, not just the racist bigot ones.

The ACLU statement on the pardon is good:

> ACLU Deputy Legal Director Cecillia Wang said:
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> "With his pardon of Arpaio, Trump has chosen lawlessness over justice, division over unity, hurt over healing. Once again, the president has acted in support of illegal, failed immigration enforcement practices that target people of color and have been struck down by the courts. His pardon of Arpaio is a presidential endorsement of racism."

For more from the ACLU, see the Twitter feed of

Cecilia Wang, the litigation lead for ACLU on the Melendres and Arpaio litigation (she is seriously great).

But the ACLU doesn't really go far enough. A couple of weeks ago I tweeted:

> Because there is no point to which @realDonaldTrump will not shit on the rule of law and sanctity of federal courts. What a piece of shit.

That was a little flippant, but there is simply no question but that the pardon of Joe Arpaio is Donald Trump is degrading the Constitution and undermining the very fabric of the sanctity of courts and Rule of Law itself. If the Presidential pardon was not so unbound, this pardon would not stand up. It violates every iota of the American rule of law. It also is heinously invasive to the separation of powers in that it infringes on the power of the federal courts. But, again, don't buy any nut telling you this pardon is unconstitutional or won't stand up. That is silly, it is Constitutional, and it will stand up.

That said, Noah Feldman did a good piece explaining just what a Constitutional affront this act is, and should be considered:

> To see why pardoning Arpaio would be so exceptional — and so bad — you have to start with the sheriff's crime. Arpaio wasn't convicted by a jury after a trial for violating some specific federal statute. Rather, he was convicted by a federal judge on the rather unusual charge of criminal contempt of court.
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> Specifically, Arpaio was convicted this July by Judge Susan Bolton of willfully and intentionally violating an order issued to him in 2011 by a different federal judge, G. Murray Snow.
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> …
> Judge Bolton convicted Arpaio of criminal contempt. She found he had

> “willfully violated” the federal court’s order “by failing to do anything to ensure his subordinates’ compliance and by directing them to continue to detain persons for whom no criminal charges could be filed.” And she held that Arpaio had “announced to the world and to his subordinates that he was going to continue business as usual no matter who said otherwise.”
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> This is the crime that Trump is suggesting he might pardon: willful defiance of a federal judge’s lawful order to enforce the Constitution.
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> It’s one thing to pardon a criminal out of a sense of mercy or on the belief that he has paid his debt to society.
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> It’s trickier when the president pardons someone who violated the law in pursuit of governmental policy, the way George H.W. Bush pardoned the Iran-Contra participants, including Oliver North.
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> But it would be an altogether different matter if Trump pardoned Arpaio for willfully refusing to follow the Constitution and violating the rights of people inside the U.S.
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> Such a pardon would reflect outright contempt for the judiciary, which convicted Arpaio for his resistance to its authority. Trump has questioned judges’ motives and decisions, but this would be a further, more radical step in his attack on the independent constitutional authority of Article III judges.
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> An Arpaio pardon would express presidential contempt for the Constitution. Arpaio didn’t just violate a law passed by Congress. His actions defied the Constitution itself, the bedrock of the entire system of government. For Trump to say that this

> violation is excusable would threaten the very structure on which is right to pardon is based.

Go read Noah's entire piece at Bloomberg, you should. It perfectly captures everything I have thought ever since Arpaio was convicted by Judge Susan Bolton in July, and pardon talk started up. And, make no mistake, Arpaio started carping about getting a Trump pardon almost immediately, even if behind the scenes. It started long before the last 10 days.

To add insult to injury, Trump had the gall to issue this announcement after glibly leaving for the personal golf driving range at Camp David with a message to the victims in Texas and the Gulf Coast, who are currently being hammered by a Category Four hurricane and face imminent disaster. Trump's message was "good luck". What a complete cad.

And after callously signing his order implementing his patently discriminatory transgender ban for the military. Chris Geidner has a good report on that.

Just for the record, this is Trump's first pardon issued, and for that he chose the most craven one imaginable. For comparison, both Obama and Bush waited nearly two years, and applied the power only to subjects properly vetted by the DOJ traditional pardon process, a copy of which is here for reference. Arpaio was not even eligible for consideration at this point, much less deserving under the guidelines. Those guidelines can be found here, pay particular attention to §1-2.112. To be clear, Arpaio had not even been sentenced yet, and was almost certainly not going to be sentenced to incarceration by Sue Bolton. I have known Judge Bolton for nearly 30 years, and I just cannot fathom that she was going to do more than give a nominal fine to Arpaio.

Craven jackass Arapio has already started crowing about his ill begotten good fortune

through, what else, Twitter:

> Thank you @realdonaldtrump for seeing my conviction for what it is: a political witch hunt by holdovers in the Obama justice department!

What a racist bigot ass. Joe Arapio came into office on the wings of lies he told his initial backers. Before we close, a little story I wrote here a few years ago:

> Joe Arpaio did not magically come to be Sheriff of Maricopa County. It happened because the two previous occupants of the Sheriff's Office were, shall we say, problematic on their own. There was Dick Godbehere, who was, prior to being Sheriff of the fourth largest county in the United States, literally a lawn mower repairman. No, I kid you not. And he served with the same level of sophistication you would expect of a lawn mower repairman.
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> Then came Tom Agnos, who was supposed to return "professionalism" to the Maricopa County Sheriff's Office (MCSO). But Agnos was a subservient Sun City resident who led the MCSO into not just the biggest cock-up in Maricopa county law enforcement history, but one of national and international proportion. The Buddhist Temple Murder Case where nine buddhist monks and acolytes were lined up and shot in the back of the head, execution style, at the Wat Promkunaram Buddhist Temple on the west side of Phoenix.
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> It was out of the Buddhist Temple Murders Joe Arpaio came to be. A group of prominent Phoenix trial attorneys, both criminal and civil, wanted an alternative to Tom Agnos and the whitewashing coverup he was conducting on one of the greatest coerced false

confession cases in world history. The group of trial lawyers coalesced around the upstart primary candidacy of a local travel agent with a colorful background. Yep, one Joseph Arpaio.

Joseph Arpaio promised that initial group of trial lawyers he would clean up the MCSO, release the damning internal report of the gross misconduct that had occurred in the Temple Murder Case under Tom Agnos, which lead to at least four false and heinously coerced confessions, and that he would refuse, under all circumstances, to serve more than one term in office. It was a promise made and, obviously, a promise long ago broken.



To be fair, Arpaio did release the internal report on the Temple Murder Case, which led to five plus million dollar settlement for some of the most wrongfully arrested souls in American history. But with that promise kept within a short time of taking office, Joe Arpaio breached the solid promise he made to the people who gave him the seed funding carrying him into office. And Arpaio has made a mockery of his word, as a man, ever since by repeatedly running for office and sinking Maricopa County into depths of depravity and fiscal distress beyond comprehension, from the vantage of the MCSO.

So, now you know just exactly how Joe Arpaio came into office on the wings of lies. He leaves today on the wings of a Constitutional fraud and spittle in the face of the Rule of Law.

As a parting shot, the picture at the head of this article is of Arpaio at a cocktail party getting a surprise visit from Michael Manning, the local civil rights attorney who has fleeced Maricopa County for over $50 million because of Joe Arpaio’s craven and illegal actions. Arpaio was not thrilled to get his photo taken.