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# Why Trump's Arpaio pardon is different

Presidential pardons are controversial. But the pardon for Joe Arpaio resurfaces a longstanding theme for President Trump: an antagonistic attitude toward the judiciary.



Brian Snyder/Reuters

US Republican presidential candidate Donald Trump is joined onstage by Maricopa County Sheriff Joe Arpaio at a campaign rally in Marshalltown, Iowa January 26, 2016, after Arpaio endorsed Trump's candidacy.

August 29, 2017

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NEW YORK AND BOSTON

**W**hen President Trump defended his pardon of former Maricopa County Sheriff Joe Arpaio on Monday, he was quick to put his use of this unique presidential power into historical context.




President Clinton pardoned Marc Rich, the hedge fund manager who fled the country to evade prosecution for tax evasion and doing business with Iran during the hostage crisis. (Mr. Rich's wife had donated hundreds of thousands of dollars to the Democratic party.) President Obama commuted the sentences of Chelsea Manning, who leaked troves of military and diplomatic secrets, and Oscar López Rivera, a Puerto Rican militant found guilty

of planning acts of sedition.

The list goes on. Teamsters' boss Jimmy Hoffa, Iran-contra defendants, Vietnam War draft-dodgers, and even President Nixon himself have received presidential pardons. The power of presidential pardon is "something quite extraordinary," says Brent Wible, a former senior member of the Office of the White House Counsel in the Obama administration.



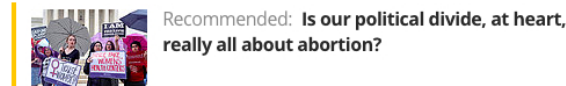
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Yet Mr. Trump's exercise of mercy towards Mr. Arpaio last week was even more extraordinary, many legal experts say.

First, Arpaio was convicted of contempt of court, meaning that his crime was ignoring a judge's order. In offering a pardon for that crime, Trump risks undermining the authority of judges and integrity of rule of law. Moreover, in America's separation of powers, the executive branch is tasked with enforcing the rulings of the judiciary. The Arpaio pardon raises questions about whether the Trump administration is willing to do this.



"What's different here is, this prosecution came from the judiciary as a way of maintaining its authority in compelling an individual to comply with their orders," says Paul Charlton, a former United States attorney in Arizona. "A willful disregard of the judiciary's orders has to have ramifications, they have to have some kind of deterrent effect so others will know, if they choose to violate the federal court, there's a risk."

"So what the president has done is diminish and trivialize the authority of the judiciary," adds Mr. Charlton, now a partner at the law firm Steptoe & Johnson in Phoenix. "The judiciary as a branch of governance does not have its own police force, it doesn't have an army, it has no way of enforcing its order without relying on the executive branch."

The charges against Arpaio came from federal judges appointed by President George W. Bush. In 2008, one found that Arpaio's jails were unconstitutionally abusive. For example, Arpaio once publicly paraded undocumented inmates into a segregated area of his "Tent City" jail, which Arpaio once called his "concentration camp."

Another Bush appointee ordered Arpaio to cease-and-desist his department's racial profiling practices, and then referred him for criminal prosecution when he refused to obey. The sheriff was defiant, saying he would "never give in to control by the federal government."

To supporters, Arpaio was a man who stood up to the left. "The President

brought justice to a situation where the Obama administration had attempted to destroy a political opponent,” wrote Rep. Andy Biggs (R) of Arizona in a [statement](#). “Sheriff Joe Arpaio made many enemies in the judicial system, the media, and the left because he enforced laws that the federal government ignored. He did right by the law – even as the political consequences continued to mount. America owes Sheriff Arpaio a debt of gratitude and not the injustice of a political witch hunt.”

Trump's pardon, however, also fits into a pattern of the president denigrating the judiciary in ways unprecedented in recent history.

During the campaign, Trump [questioned the impartiality of US district Judge Gonzalo Curiel](#), an American citizen born in Indiana, who ruled against him in lawsuits brought against Trump University. “We are building a wall. He’s a Mexican,” then-candidate Trump said.

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After a Seattle-based judge blocked his temporary travel ban on travelers from seven Muslim-majority countries in February, Trump called him a “[so-called judge](#)” and portrayed him as a national security threat: “Just cannot believe a judge would put our country in such peril,” he [tweeted](#). “If something happens blame him and court system.”

“The president has been trying since the beginning of his administration to delegitimize the judiciary,” says Chiraag Bains, senior fellow at the Criminal Justice Policy Program at Harvard Law School in Cambridge, Mass., and a former federal prosecutor in the Justice Department’s Civil Rights Division. “He tries to make them seem like mere political actors as well, and even tries to blame judges preemptively for setting any limits to his authority.”

Trump's pardon, coming so early in his administration and for a clear ally, raises questions about how he might handle similar situations during the next few years.

“I have no reasons to think he wouldn’t choose a similar path with the Russia investigation” by special counsel Robert Mueller, says Josh Blackman, professor at the South Texas College of Law in Houston.

Moreover, it sends a message to law enforcement.

“I worry ... that a pardon for this kind of action really says to law enforcement officials that they don’t have to worry about being prosecuted for violating the Constitution, or even a judge’s order not to violate the Constitution, so long as they’re doing President Trump’s bidding,” says Steven Schwinn, professor at The John Marshall Law School in Chicago.



Essentially, Trump is endorsing an officer who ignored the limits put on him by the judiciary.

“A contempt from someone who is charged through their oath of office with upholding the rule of law – in this case a sheriff who’s got his own obligations to uphold the law – for him to defy a federal judge’s order, I think that’s really discriminatory policing have been particularly explosive.

Recent events, such as the protests in Charlottesville, Va., “highlighted racial tensions in a way not seen in recent memory,” says [James](#) Goodnow, an attorney with Fennemore Craig in Phoenix, by email. “That political context thus makes the pardoning of someone who is known for racially-charged political controversy particularly ‘in your face’ and especially divisive in the eyes of many.”

Harold Krent, dean of the [Chicago-Kent College of Law](#) at the Illinois Institute of Technology, says that Trump’s motives may be hard to understand in this case, but “it’s clear that the president is insensitive to the impact he makes, and to the need to heal the country.”

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“I don’t think it’s a plan, or that the president is trying to undermine racial healing in the country,” says Professor Krent, author of the recent study “Presidential Powers.” “But this pardon can signal a lack of protection to the country’s most vulnerable groups.”

“The judiciary plays a very important counterweight in our society,” he continues. “It’s what we do to ensure that we have a rule of law and not men.”

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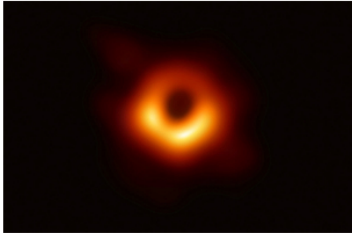


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