

CRIMINAL LAW

Why Even a Presidential Pardon may not Wipe the Slate Clean

By Evan T. Barr

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A presidential pardon removes all legal punishment associated with a federal criminal offense. In many cases, particularly where a pardon has been issued post-conviction, clemency recipients will ask the district court to dismiss the underlying indictment, to remove any remaining stigma of criminality.

Until recently, such motions would have been approved with little fanfare. But as pardons have become increasingly controversial in the Trump era, some federal judges are insisting on having the final word by refusing to grant the requested relief. The debate on this issue reflects a longstanding philosophical divide on the ultimate purpose and intent of a pardon. But it also has real world consequences for pardoned defendants.

Supreme Court Precedents

The Pardon Clause authorizes the President “to grant Reprieves and Pardons for Offenses against the United States, except in cases of Impeachment.” U.S. Const. Art. II, sec. 2.

From the earliest days of the Republic the law has been clear that, as the Supreme Court held in *United States v. Wilson*, 32 U.S. (7 Pet.) 150 (1833), a pardon is an act of grace that “exempts the individual, on whom it is bestowed, from

the punishment the law inflicts for a crime he has committed.”

Subsequent case law has confirmed that a pardon ensures that the legal system may not use the conviction to further punish the recipient. But debate has continued as to whether a pardon also operates to remove other lingering collateral consequences associated with a criminal charge.

For example, in *Ex Parte Garland*, 71 U.S. (4 Wall) 333 (1866), the Supreme Court considered the constitutionality of an 1865 federal law requiring attorneys to take an oath that they had not supported the Rebellion. The law effectively blocked former Confederate officers who could not take the oath without perjuring themselves. Garland was an Arkansas attorney who served as a member of the Confederate congress and had received a full pardon for that activity from President Abraham Lincoln.

The court ruled that Garland’s pardon precluded Congress from requiring the oath because doing so would impose a continued punishment for



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the acts for which he was pardoned. In its ruling, the court focused on the nature of a pardon, noting in dicta that “[a] pardon reaches both the punishment prescribed for the offence and the guilt of the offender: and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence.”

But in *Burdick v. United States*, 236 U.S. 79 (1915) the court walked back the broad implications of that language, without overruling *Garland*. *Burdick*, a journalist, was called to testify before a grand jury investigating alleged corruption in the New York Customs House.

He asserted his fifth amendment rights. In response, President Wilson granted him a pardon for any crimes he may have committed either in the reporting on the story or in connection with the alleged corruption. *Burdick* refused to accept the pardon, again took the fifth, and was held in contempt.

On appeal, the Supreme Court, in finding that *Burdick* could decline a presidential pardon (and purge his contempt), focused on the fact that a pardon “carries an imputation of guilt; acceptance a confession of it.” Nearly six decades later, President Ford would cite *Burdick* to defend his pre-emptive pardon of Richard Nixon, saying that in accepting clemency Nixon had effectively admitted his role in Watergate-related crimes (a point Nixon later disputed).

Garland and *Burdick*, read together, created ambiguity around the question of the scope and impact of a pardon and whether a pardon recipient can ever be entitled to something more than just an end to the prosecution. That debate has now become even more animated in the wake of some recent controversial pardons.

The Expungement Issue

In 2006, the Pardon Attorney sought an opinion from the Department’s Office of Legal Counsel on the question of whether a presidential pardon had the effect of automatically expunging judi-

cial or executive branch records relating to the conviction or underlying offense.

The OLC opinion concluded that while a pardon “removes, either conditionally or unconditionally, the punitive legal consequences that would otherwise flow from conviction for the pardon offense” it did not “erase the conviction as a historical fact or justify the fiction that the pardoned individual did not engage in criminal conduct.” A pardon, the opinion concluded, did not by its own force expunge judicial or administrative records of the conviction.

But even with expungement off the table, pardoned defendants in recent years (particularly those receiving clemency from Trump) have been trying to obtain what might be the next best option: dismissal of the underlying indictment and/or related filings. The results of those efforts have been mixed, with some courts insisting on preserving the judicial record notwithstanding the pardon and others more willing to take steps to fully confer the benefits of clemency.

Courts Granting Dismissal

Numerous courts have sided with defendants in dismissing underlying charges post-pardon. In *United States v Kolfage et al.*, 2021 WL 2117211 (S.D.N.Y.), for example, Stephen Bannon, the former Trump White House strategist, and others were charged with fraud related to their alleged misuse of funds raised during the «We Build The Wall» campaign. On Jan. 19, 2021, in the waning days of his first term, President Donald Trump granted Bannon a full and unconditional pardon. Bannon accepted and in March 2021 moved to dismiss the indictment.

The U.S. Attorney did not dispute the fact that the pardon would end the litigation, however the office asked that, instead of dismissing the indictment, the court instead “direct the Clerk of Court to terminate Bannon as a defendant in this case and have the docket sheet reflect the Pardon as the disposition of his charges.”

Rejecting this approach, and granting Bannon’s motion to dismiss, Judge Analisa Torres held

that “it is not the practice of this district to remove a defendant from the docket without a resolution of the indictment.” But, in a parting shot perhaps designed to show her disapproval of the outcome forced upon her, the judge also noted that the pardon, standing alone, did not render Bannon innocent of the offense, citing *Burdick* and other related precedents.

In *United States v. Vaughn et al.*, 2025 WL 748309 (6th Cir. 2025), five pro-life activists were convicted after a jury trial of conspiring to obstruct an abortion clinic. They received non-custodial sentences but appealed their convictions. While the appeal was pending, in January 2025, Trump pardoned each of the defendants.

The Justice Department then moved the Court of Appeals to vacate the convictions and remand with instructions to the district court to dismiss the indictment with prejudice.

In granting that motion, the Sixth Circuit found that dismissal was especially appropriate under the circumstances where the pardon had effectively mooted the pending appeal of the convictions, rendering them invalid as a matter of law, regardless of whether the pardon addressed defendants’ guilt or innocence.

Courts Declining Relief

On the other hand, a number of judges have balked at dismissal. In *United States v. Arpaio*, 2017 U.S. Dist. LEXIS 182254 (D. Ariz.), *aff’d*, 2020 U.S. App. LEXIS 6278 (9th Cir. Feb. 27, 2020) for instance, the controversial sheriff of Maricopa County, Arizona, was found guilty after a bench trial before Judge Susan Bolton (a Clinton appointee) on criminal contempt charges after failing to comply with an injunction ordering him to stop racial profiling practices.

On Aug. 25, 2017, two months before sentencing (at which time the conviction would be made final), the president granted Arpaio an unconditional pardon. Arpaio subsequently moved to dismiss the charges with prejudice and vacate all prior orders entered in the case.

The district judge agreed to dismiss the ongoing contempt action, but declined the other requested relief, noting that “the power to pardon is an executive prerogative of mercy, not of judicial recordkeeping.” Vacating the underlying rulings in the case, she held, would run afoul of this distinction. The pardon spared Arpaio from any punishment but it did not “revise the historical facts of this case.”

The Ninth Circuit upheld her decision, although focusing primarily on the fact that given the unusual procedural status of the case at the time of the pardon (post-verdict but pre-sentence), any findings by the district court would not have preclusive effect in subsequent proceedings.

In *United States v. Grimm*, 14 Cr. 248 (E.D.N.Y) a former Staten Island Republican Congressman pled guilty to tax evasion crimes and was sentenced by Judge Pamela Chen (an Obama appointee) in 2015 to eight months in prison. Then in May 2025, long after Grimm had served his sentence, he was pardoned by President Trump.

Grimm moved to vacate his conviction and dismiss the indictment claiming the pardon had “removed all legal consequences of the conviction.” Grimm also noted that he had suffered an accident that had left him paraplegic and presented substantial challenges to his ability to earn a living.

Grimm asserted that granting the motion “would materially assist [him] in pursuing gainful employment and rebuilding [his] life.” Neither party responded to the court’s invitation to provide additional details.

In an opinion issued in June 2026, Judge Chen denied Grimm’s motion, holding that to do so would allow for the pardon to “[interfere] with the judicial management of otherwise closed cases.” The judge cited numerous decisions (consistent with *Burdick*) for the proposition that a pardon did not justify expungement or operate to remove the stigma of guilt.

The pardons issued in December 2024 by outgoing President Joe Biden on behalf of his son,

Hunter, who was charged criminally by Special Counsel David Weiss in both the District of Delaware and the Central District of California, created an unusual scenario in which two different federal judges had to grapple with the same question of post-pardon relief.

In the Delaware case, Hunter was charged with felony firearm charges arising from knowingly making false statements about his drug use on an ATF form when buying a gun and convicted by a jury on all counts in June 2024. Meanwhile in the Central District of California case, Hunter was indicted on multiple counts of tax evasion. He pled guilty to those charges in September 2024.

Prior to sentencing in both cases, and following the pardons by his father, Hunter moved each court to dismiss the indictments with prejudice, citing among other things the ruling in the Steve Bannon case (politics and law make strange bedfellows). The Special Counsel opposed the motions, depicting them as an impermissible attempt at expungement, and vigorously defending the righteousness and validity of the underlying prosecutions.

In both cases, Trump-appointed judges denied Hunter's motion, but in different ways. Judge Maryellen Noreika entered a brief oral order terminating all proceedings in the Delaware case without further comment.

Judge Mark Scarsi, in Los Angeles, closed the case but took the opportunity to cast doubt about the broad prospective scope of the pardon (covering as yet uncharged potential offenses), reprimand defense counsel for failing to provide a signed copy of the clemency warrant, and pointedly reject the notion that the Special Counsel's case had been politically motivated in the first place.

Practical and Policy Considerations

Issuance of a pardon, and the automatic termination of any ongoing criminal proceedings,

obviously goes a long way in removing the burden and anxiety of federal prosecution. Normally a pardoned defendant also would get a refund of any fines, forfeiture or restitution, full restoration of voting rights and the ability to serve on a jury, for example.

Nevertheless, pardoned defendants may still face adverse collateral consequences involving professional licensing, immigration status, owning a firearm, and engaging in banking and commercial relationships with financial institutions. The mere listing of an indictment on PACER, even post-pardon, could complicate a background check or the ability to travel internationally.

For defendants like Joe Arpaio, Hunter Biden, and Steve Bannon who participated in high-profile and politicized cases, the main impetus for seeking a post-pardon dismissal of the charging document would appear to be a quest for total exoneration and rehabilitation in the public sphere. To these defendants, a pardon connotes innocence. For the prosecutors, a pardon ends their case but does not change history.

Ultimately the inconsistent rulings by judges in recent cases may reflect their own political biases, or (less cynically) the unresolved tension between Garland's view of the pardon blotting out the existence of guilt on the one hand and Burdick's interpretation of clemency as necessarily carrying an imputation of culpability on the other.

Should the Supreme Court have occasion to revisit this issue, the outcome may turn on whether dismissal of the underlying charges is the only way fully to ensure that a pardon ends all aspects of punishment (including lingering consequences) associated with a criminal prosecution.

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