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CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS

JUDICIARY COMMITTEE HEARING
EXAMINING THE CONSTITUTIONAL ROLE OF THE
PARDON POWER



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- Thank you, Mr. Chairman, for convening this important hearing today.
- The purpose of this hearing is to examine the potential constitutional limits on the president's power to grant clemency.
- Just two years into his term, President Donald Trump has issued a number of controversial pardons, including pardons for Sheriff Joe Arpaio and former White House official Lewis "Scooter" Libby.
- Although the Special Counsel's investigation has concluded, several current and former close associates of President Trump pled guilty or were convicted of criminal wrongdoing over the course of the investigation and some remain the subject of ongoing criminal investigations by the United States Attorney's Office for the Southern District of New York (SDNY).
- These circumstances, coupled with President Trump's public statements about his ability to pardon himself, raise several legal and constitutional questions, including whether the President's exercise of the pardon power

or other forms of clemency can constitute obstruction of justice under the relevant criminal statute.

- President Trump's exercise of the pardon power also raises questions regarding shortcomings in the clemency process.

- In the 115th Congress I introduced a resolution which expressed my opposition to the "granting of pardons to any person for offenses against the United States arising out of Russia's activities to bring about the election of Donald J. Trump as President of the United States and deems any such pardon granted to constitute an abuse of the Pardon Power conferred in Article II, Section 2 warranting a proportionate congressional response."

- My resolution states that:

- "the strength of the American constitutional system designed in 1787 in Philadelphia is the national government's separated powers in which the legislative, executive, and judicial branches serve as checks and counterbalances on each other, and fidelity to the rule of law is the highest value and responsibility."
- And the resolution continues, "on July 21, 2017, the Washington Post reported that some of President Trump's lawyers are exploring ways to limit or undercut Special Counsel Mueller's Russia investigation and discussing President Trump's authority to grant pardons; according to the Washington Post article, 'Trump has asked his advisers about his power to pardon aides, family members and even himself in connection with the probe.'
- "And in the United States, it is an article of faith that, as President Theodore Roosevelt stated in his Third Annual Message to Congress on December 7, 1903, 'No man is above the law and no man is below it: nor do we ask any man's permission when we ask him to obey it.'"

- A longstanding criticism of the presidential clemency process is that clemency is viewed singularly as an act of mercy rather than treated as a routine feature of the federal criminal justice system.
- This approach results in numerous meritorious applications being ignored, while favoring well-connected petitioners with access to the president.
- For example, in June 2016, President Trump commuted the sentence of Alice Marie Johnson, a 63 year-old woman serving life in prison for a nonviolent drug offense, after reality television celebrity Kim Kardashian lobbied on her behalf.
- While the commutation of Ms. Johnson's sentence was appropriate, President Trump appears to have only considered the merits of her application because she attracted the attention of a celebrity patron.
- The framers of the Constitution's original intent when evaluating the constitutional pardon power was so that others may lay down arms against the U.S.; to serve the national interest, not be handed out like candy like this president has done.

Executive Clemency Background

- Article II, section 2 of the Constitution outlines the powers and responsibilities of the Executive Branch and states that the president "shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment."
- The Constitution indeed places a few textual constraints on the exercise of the pardon power.
- In other words, article II, section 2, states that Presidential pardons are limited to federal crimes, or "Offenses against the United States," and may not be granted in cases of impeachment.

- Pardons also only absolve criminal sanctions and cannot be used to absolve “civil sanctions or liability directly.”
- Although derived from the same constitutional authority, pardons and commutations are two distinct forms of executive clemency.
- A pardon is “a complete absolution of guilt which removes all attendant penalties,” but it may not necessarily remove all civil disabilities stemming from the underlying offense.
- A commutation is a reduction of criminal punishment, typically in the form of a reduced sentence, and is not considered a full absolution of the recipient’s guilt.
- A pardon must be issued by the president and accepted by the recipient to be valid.
- The fact that these are the only two historically-understood requirements for a valid pardon raises the prospect that a president may issue “secret pardons.”
- A pardon recipient, however, would have to present the pardon “in order to reap its benefits,” likely revealing its existence to the greater public.
- The president also appears able to issue pardons prospectively, meaning that the president can issue a pardon after a crime has been committed, and before the initiation of any criminal proceeding against the recipient.
- The president, however, cannot pardon an offense before it has been committed.

President Trump’s Exercise of the Pardon Power

- In August 2017, President Trump pardoned Sheriff Joe Arpaio a political supporter convicted of criminal contempt for defying a federal court order.

- The following April, President Trump pardoned Lewis “Scooter” Libby, former Vice President Dick Cheney’s chief of staff, who had been convicted of perjury and obstruction of justice in relation to the FBI’s probe into the leaking of CIA Officer Valerie Plame’s identity.
- President George W. Bush previously commuted Mr. Libby’s 30-month prison sentence in July 2007.
- In June 2018, President Trump pardoned conservative author and filmmaker Dinesh D’Souza, who in 2014 pled guilty to a felony campaign finance violation.
- Mr. D’Souza has characterized his case as a “political prosecution by the administration of President Barrack Obama,” claiming that the Department of Justice (DoJ) prosecuted him because of “Obama’s anger over my movie that I made about him.”
- None of these pardons appear to have been issued pursuant to the usual vetting process conducted through the Office of the Pardon Attorney.
- The circumstances of these pardons raise questions regarding President Trump’s apparent willingness to use the powers of his office to protect himself and his political allies from the consequences of Special Counsel Robert Mueller’s investigation and the ongoing SDNY investigations.
- Although Special Counsel Mueller has concluded his investigation, there is still an open question as to whether President Trump obstructed justice, and specifically, whether there is any evidence that President Trump may have offered or implied an offer of a pardon in order to discourage individuals from cooperating with investigators.
- Attorney General William Barr’s recent letter characterizing the principal findings of the Special Counsel Mueller’s report stated that the Special Counsel did not “draw a conclusion – one way or the other – as to whether the examined conduct constituted obstruction.”

- The letter directly acknowledged, however, that the Special Counsel report pointedly states that “while this report does not conclude the president committed a crime, it also does not exonerate him.”
- Instead, Attorney General Barr and Deputy Attorney General Rod Rosenstein arrived at the conclusion that the evidence was not sufficient to establish that the president committed obstruction.
- Chairman Nadler, in conjunction with the chairs of other relevant committees, has written a letter demanding that Attorney General Barr release the full Mueller Report to Congress by April 2nd and to begin transmitting the underlying evidence the same day.
- The end of Special Counsel Mueller’s investigation has also created media speculation over whether President Trump will pardon individuals who plead guilty or were convicted of charges stemming from the probe.
- Beyond the context of Special Counsel and SDNY investigations, President Trump’s exercise of the pardon power also highlights potential shortcomings in the federal clemency process.
- For example, President Trump’s posthumous pardon of boxer Jack Johnson (brought to his attention by actor Sylvester Stallone) and his pardon of Navy sailor Kristian Saucier, whose conviction for unauthorized retention of national defense information “became a rallying cry for conservatives who felt it showed Hillary Clinton was treated too leniently” by the FBI, appear to demonstrate that access and political considerations weigh heavily in President Trump’s clemency decision-making process.
- The power of a presidential pardon should be used as a tool of redemption to remedy unfortunate circumstances not as a self-serving tool to subvert the consequences of his actions.
- Thank you.