

**U.S. House of Representatives**  
**Committee on the Judiciary**  
Washington, DC 20515–6216  
One Hundred Fifteenth Congress

August 30, 2017

Chairman Bob Goodlatte  
House Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, D.C. 20515

Chairman Goodlatte:

Late on Friday, August 25, 2017—as the nation turned its attention to a devastating hurricane about to make landfall in Texas—President Trump issued a pardon of former Arizona sheriff Joe Arpaio for criminal contempt of court.<sup>1</sup> On Monday, President Trump noted that the issuance of the pardon was timed so that “the ratings would be far higher” as it was made public in the midst of the Hurricane Harvey coverage. We ask that you convene an oversight hearing on this controversial pardon and surrounding events as soon as possible.

We ask for several reasons. The pardon sends an unequivocal signal that institutionalized racial profiling as practiced by Sheriff Arpaio is acceptable; the pardon is disrespectful to the rule of law in general and to the federal courts in particular; and the President issued the pardon in the complete absence of any advisory role by the Department of Justice and after the President had already asked Attorney General Sessions to drop the case completely. As you are well aware, although the President has wide constitutional authority to issue pardons, there is also ample precedent for our Committee to review pardons as controversial as this one.<sup>2</sup>

At least four aspects of the Arpaio pardon require our immediate attention.

First, this pardon represents a gross injustice. In case after case, Sheriff Arpaio and his subordinates were shown to have been intentionally violent and abusive.<sup>3</sup> He built a “tent city”

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<sup>1</sup> Devlin Barrett and Abby Phillip, *Trump pardons former Arizona sheriff Joe Arpaio*, WASH. POST, Aug. 25, 2017.

<sup>2</sup> See *Presidential Pardon Power*, before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 107<sup>th</sup> Cong., Feb. 28, 2001 [hereinafter *Presidential Pardon Power*].

<sup>3</sup> James Fallows, *Why the Arpaio Pardon Matters*, THE ATLANTIC, Aug. 27, 2017. See also Phoenix New Times (@phoenixnewtimes), Twitter, Aug. 25, 2017 10:01 (“We’ve been covering Joe Arpaio for more than 20 years. Here’s a couple of things you should know about him...”).

to house inmates—a facility where temperatures can reach 145 degrees in the summer, and which Arpaio himself once called a “concentration camp.”<sup>4</sup> In 2008, one federal judge found these practices to be flatly unconstitutional.<sup>5</sup> In 2011, another federal court ordered Arpaio to stop arresting individuals based solely on suspicion of their immigration status.<sup>6</sup> It was for his failure to obey this order, and for “lying to the judge’s face” in subsequent court appearances, that Arpaio was referred by the federal court to the Department of Justice—and ultimately convicted—for criminal contempt.<sup>7</sup>

We recognize that the Constitution grants the President the sweeping “power to grant reprieves and pardons for offenses against the United States.”<sup>8</sup> Still, that power can be abused. Based on a clear record of cruelty and open racism, Sheriff Arpaio is not worthy of reprieve. At a time when the nation is deeply divided on questions of race and justice—and the President has entangled his Administration in comments about neo-Nazis and Confederate statues—the decision to grant this particular pardon is both inappropriate and deeply disturbing.

Second, it is highly problematic for the President to simply dismiss a pending criminal matter that was referred to the Department of Justice by a federal court. Sheriff Arpaio was convicted for criminal contempt of court because he ignored orders from a federal judge to stop engaging in racial profiling. The pardon not only disregards the rule of law, it directly flouts the courts themselves by signaling that it is acceptable for parties to ignore court orders. President Trump regularly and needlessly criticizes both the judiciary in general and specific judges on a personal basis.<sup>9</sup> This pardon adds insult to injury.

Third, President Trump chose to issue this pardon directly—and not through the Office of the Pardon Attorney at the Department of Justice.<sup>10</sup> For 125 years, presidents have worked through the Pardon Attorney to ensure that the power of clemency is fairly applied. President Trump chose to work around this mechanism and ignore DOJ policy calling for a waiting period of five years or more before considering a pardon application and the expression of regret or remorse by the applicant. As you have argued, the Pardon Attorney is designed to “dissuade”

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<sup>4</sup> James Ridgeway and Jean Casella, *America’s 10 Worst Prisons: Tent City*, MOTHER JONES, May 3, 2013.

<sup>5</sup> *Graves v. Arpaio*, No. CV-77-00479-PHX-NVW (D. Ariz. Oct. 28, 2008).

<sup>6</sup> *Melendres v. Arpaio*, No. PHX-CV-07-02513-GMS (D. Ariz. Dec. 23, 2011).

<sup>7</sup> Fernanda Santos, *Judge Refers Arizona Sheriff Joe Arpaio for Criminal Prosecution*, N.Y. TIMES, Aug. 19, 2016; Matt Zapposky, *Former Sheriff Joe Arpaio convicted of criminal contempt*, WASH. POST, July 31, 2017.

<sup>8</sup> U.S. Const., Art. II, Sec. 2.

<sup>9</sup> See, e.g., Brent Kendall, *Trump Says Judge’s Mexican Heritage Presents ‘Absolute Conflict,’* WALL ST. JOURNAL, June 3, 2016; President Donald J. Trump (@realDonaldTrump), Twitter, Feb. 4, 2017, 9:12 AM (“The opinion of this so-called judge, which essentially takes law-enforcement away from our country, is ridiculous and will be overturned!”).

<sup>10</sup> Gregory Korte, *Trump’s bold Joe Arpaio pardon breaks with presidential tradition*, USA TODAY, Aug. 25, 2017.

presidents from simply making pardons at will.<sup>11</sup> President Trump may soon be tempted to issue pardons that stem from matters under investigation by Special Counsel Bob Mueller. We should be certain that the right structures are in place to temper those decisions well before they reach the President's desk.

Fourth, before resorting to a full pardon, President Trump asked Attorney General Jeff Sessions to simply drop the criminal case against Sheriff Arpaio.<sup>12</sup> Although Department leadership is to be commended for advising the President that his request was inappropriate, the conversation fits into a larger pattern of improper contact between the Trump White House and the Department of Justice.<sup>13</sup> Our Committee has long defended the view that presidents should avoid involvement in specific criminal cases in order to avoid even the perception of politicizing the administration of justice. President Trump regularly ignores that standard. If our Committee is unwilling to even debate the matter, what is to stop this president—or any other president—from doing so again?

We are not alone in raising these concerns. Speaker Paul Ryan (R-WI) disagrees with the decision, noting that “law enforcement officials have a special responsibility to respect the rights of everyone in the United States.”<sup>14</sup> Senator John McCain (R-AZ) argues that the pardon “undermines [the President’s] claim for the respect of rule of law, as Mr. Arpaio has shown no remorse for his actions.”<sup>15</sup> Senator Jeff Flake would have “preferred that the President honor the judicial process and let it take its course.”<sup>16</sup>

You were similarly critical of a pardon our Committee examined in 2001: “Many executives have this power for the purpose of accomplishing justice or mercy as a last resort, where fairness simply has not taken hold in other aspects of our judicial process.”<sup>17</sup> You argued that President Clinton had “abused this power” and “not used it” for the purposes you described.<sup>18</sup> These statements are directly on point with respect to President Trump’s decision

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<sup>11</sup> *Presidential Pardon Power*, *supra* note 2 (statement of Rep. Bob Goodlatte).

<sup>12</sup> Philip Rucker and Ellen Nakashima, *Trump asked Sessions about closing case against Arpaio, an ally since 'birtherism,'* WASH. POST, Aug. 26, 2017.

<sup>13</sup> See, e.g., Jim Sciutto, et al., *FBI refused White House request to knock down recent Trump-Russia stories*, CNN, Feb. 24, 2017; Adam Entous and Ellen Nakashima, *Trump asked intelligence chiefs to push back against FBI collusion probe after Comey revealed its existence*, WASH. POST, May 22, 2017; Maggie Haberman, et al., *Trump Returns to Crisis Over Kushner as White House Tries to Contain It*, N.Y. TIMES, May 27, 2017.

<sup>14</sup> Peter Nicholas, *House Speaker Paul Ryan Criticizes Donald Trump’s Pardon for Joe Arpaio*, WALL ST. JOURNAL, Aug. 26, 2017.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Presidential Pardon Power* (statement of Rep. Bob Goodlatte).

<sup>18</sup> *Id.*






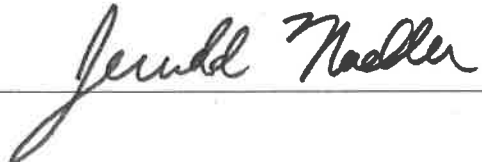
and demonstrate why the Arpaio pardon is worthy, at the very least, of further discussion by our Committee.

We note that this letter represents the fifth time we have written to ask you to conduct oversight of the Trump Administration. Eight months after President Trump's inauguration, our Committee has yet to hold a single oversight hearing involving the Attorney General, the Deputy Attorney General, the Secretary or Acting Secretary of Homeland Security, the Director or Acting Director of the FBI, or the Director of the Secret Service. Given that our Committee created an entire task force to examine "executive overreach" last Congress during President Obama's term, it is somewhat disturbing that we have not engaged in any comparable oversight of the Trump Administration.

It is also our Committee's unique and pressing responsibility to conduct oversight of the President's use of executive power—particularly when that power is expressed as a pardon that only serves to endorse the transgressions committed by the offender. If we do not examine this use of pardon power, we fear that the Committee will be seen by our constituents—and by future generations—as also having endorsed the Sheriff's conduct.

We urge you to schedule oversight hearings on the Arpaio pardon and other pressing matters as soon as possible.

Sincerely,

Pamela Jupp

Fred W. Lee

J. F. J.

Mark J.

Jim Swabell

David N. Ciilline

Aed Wenter

Steve Cohen

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Bobby K. Schneider

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