

# Rutgers Constitutional scholar: In Russia probe, a Trump pardon won't be enough | Opinion

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By [Star-Ledger Guest Columnist](#)

**By Frank Askin**

When President Trump pardoned the heinous ex-sheriff Joe Arpaio, the message to his coterie from his campaign and administration was loud and clear: as long as you've got my back, I've got yours.

The Arpaio pardon was exceptionally cynical and unique. Although he had been held in contempt of court for ignoring a court order to cease illegally stopping Latino drivers and abusing them, he had not yet been sentenced, had never applied for a pardon and had never expressed remorse for his unconstitutional conduct. Nor did Trump request input from the Pardon Office at the Department of Justice. He was informing his minions that no crime or constitutional violations by Trumpkins were beyond the pale.

Coming from a man with practically unlimited power over the federal criminal justice system, that message was powerful indeed. Any federal crimes they committed in the course of the election campaign or as part of the Trump administration would be forgiven with a presidential pardon.



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Would the severe political consequences matter to the president given he's been able to shake off every other long-standing norms? Here's what experts had to say:

However, there is one slight hitch in the plan. Once someone has been pardoned, she or he can no longer be prosecuted for the underlying crime and, therefore, cannot claim the protection of the Fifth Amendment. Thus if called to testify about such conduct before a grand jury, they can no longer refuse to testify against their fellow miscreants on grounds of self-incrimination; and can be held in contempt of court if they do so.

Which raises a novel legal question: can the president cancel the contempt citation with a second pardon?

The easy answer is yes. It is hard to argue he does not have that power under the Constitution. Yes, there are a few constitutional scholars who argue that the Due Process Clause proscribes pardons that would deny justice to persons deprived of protection for constitutional wrongdoing such as Latinos illegally profiled and abused by Sheriff Arpaio. But I am highly skeptical that the courts would intervene.

The harder question is whether or not the pardoner (the president) puts himself in jeopardy if he does so. Although I have never served as a prosecutor and have limited experience with criminal law, it sure sounds like obstruction of justice to me since the obvious intent of the second pardon is to prevent inquiry into criminal conduct. And as the law assumes -- *res ipsa loquitur* -- the act speaks for itself.

That raises another question currently being debated by legal scholars: can a president be prosecuted for his executive actions?

The English notion was that the king could do no wrong. But the American response to that is no person is above the law.

And that seems to be spelled out clearly in our Declaration of Independence. As part of the Declaration's indictment of the British monarch, Our Founders proclaimed: "He has made judges dependent on his will alone." That sounds like a clear signal that our chief executive may not usurp the powers of the judiciary.

More poignantly, and with clearer relevance to our own times, the Declaration declared: A prince whose character is thus marked by every act which may define tyrant, is unfit to be the ruler of a free people.



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In our view, Congress should be evaluating at least three areas of possible impeachable offenses.

Can a president who subverts the rule of law by preventing his subordinates from revealing the administration's wrongdoing be any less of a tyrant than the one described in the Declaration?

Which raises a final question: can the President pardon himself? Again, there is no definitive answer. But Richard Nixon thought not. He left that choice to his successor, Gerald Ford.

One last thought. Even if a President Pence would pardon Donald Trump for any federal crimes he committed, he would be powerless to excuse prosecutions under state laws. Many of the Trumpkins' money-laundering schemes under investigation also violate such laws.

Stay tuned.

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