

Who Actually Benefits From the Trump Pardon Spree?

By Joel Cohen and Douglas Nadjari

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In the estimation of some, President Donald Trump is doling out pardons like Mar-a-Lago party favors for those able to pony up the cost. But what does it buy and is a pardon worth the cost? Darryl Strawberry's pardon, for example, may have pleased a particular population (of baseball fans) but what does it really do? It doesn't change the box score for Strawberry, nor for Rudy Giuliani nor any other recipients of the president's largess.

It presumably appears to the public that the recipient of a presidential pardon gets something extremely valuable. After all, he will essentially be given the opportunity to communicate to the world that *"the President of the United States has pardoned me—'exonerating' me from any alleged wrongdoing on my part."* Pretty good, right? No. No presidential pardon actually exonerates the pardoned individual. Yes, a pardon is loosely interpreted by the public as a communication that pardon's recipient should not have been charged in the first place—indeed, that's certainly what the pardoned individuals or their publicists will put out there.

The misunderstanding likely dates back to an 1886 case (*Ex Parte Garland*) where the Supreme



Court held that a full pardon both 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 that has not been the law since 1915 when the Supreme Court decided *Burdick v. U.S.* where President Woodrow Wilson issued a pardon to George Burden, then editor of the New York Tribune. Wilson issued the pardon to Burdick in an attempt to "trump" his Fifth Amendment right and compel Burdick to testify before a federal grand jury in New York. Burdick rejected the pardon and the court refused to compel his

grand jury testimony since the pardon “carries an imputation of guilt,” an acceptance of a confession to it and merely “remit[s] punishment.”

To be sure, a pardon is no longer the political equivalent of papal absolution. Nor does it create alternative facts that convert guilt to innocence by the stroke of pen. Given Trump’s recent tranche of pardons (coming months after his virtually automatic Day One pardons to the January 6 crowd, including the violent among them) the President’s pardons have lately become far more individualized. Still, what value do they hold?

Perhaps the most valuable Trump pardon (in his first term) was accorded to Charles Kushner, Ivanka Trump’s father-in-law and now U.S. Ambassador to France. It would have been difficult indeed for a convicted felon, as is Kushner who had also actually served federal jail time, to become an ambassador without the benefit of a presidential pardon, even if the pardon actually communicates no innocence or indication of an injustice that had previously befallen the recipient.

To be clear: a pardon doesn’t mean that the individual was or is now determined to be innocent. The Supreme Court made that abundantly clear in *Burdick* as did President Ford directly to the public when he pardoned Richard Nixon in 1974 in the most controversial pardon in American history. Indeed, how could any president who has not sat on the case possibly know or have determined that the individual he intends to pardon was an innocent warranting exoneration?

And let’s look at some of Trump’s most recent political pardons—for example, Rudy Giuliani, Mark Meadows, Sidney Powell and Kenneth Cheseboro. Each was implicated in post-election fraudulent behavior on behalf of

the Trump effort to hold onto the White House in 2021. None were indicted by the federal government, only by states—Georgia or Arizona. In fact, the president lacks any authority whatsoever to pardon anyone for a state offense; so, despite President Trump’s ostensible largesse in extending pardons, these four individuals were clearly not pardoned for their state offenses. And because Powell and Cheseboro actually pleaded guilty—Giuliani and Meadows didn’t—their state convictions stand (unless the respective governors of Georgia and Arizona act to pardon them).

As for Giuliani, Meadows, Powell and Cheseboro, they obviously won’t be indicted federally while Trump/Bondi remain in office. That said, the statute of limitations will surely bar any federal prosecution of them by the time the Trump Administration ends. So they were pardoned for federal crimes for which, realistically, they will never be prosecuted anyway. In short, their pardons may not amount to anything for them – that is, other than a “suggestion” that their state cases should be thrown out for some intangible reason.

Also, this past week Chesbro’s disbarment in New York was upheld and the Trump pardon will not save his law license. By the same token because a pardon still “carries an imputation of guilt”, it will not stave off disbarment proceedings against Powell in Texas either.

The same is true for former Rep. George Santos (who was granted clemency, not pardon, and released from prison) and the myriad public employees who resigned or were fired (but were pardoned) for their January 6 misconduct. The president’s largess neither sets aside guilt nor restores the jobs lost.

So, at bottom, does anyone really benefit from these pardons? Yes: Donald Trump. How? Simple. When Trump pardons (1) the January 6 crowd, (2) the political figures mentioned above or (3) literally anyone, the public will readily and understandably conclude that if you “go to bat” for Trump, he’ll go to bat for you—as he did with them. And there’s a lot to that.

We don’t suggest that Giuliani’s receipt of a pardon will encourage him, for example, to again engage in election fraud on behalf of Trump. Rather, Trump having given pardons to those who stood up for him the last time around, communicates to the next would-be Trump supporter that he can be counted on to be grateful for the supporter’s earlier assistance—that a *quid pro quo* of sorts in the nature of a pardon, if necessary, *may* fall in his direction if needed. Stated differently: Trump will pay his debts—as he did to those he previously pardoned. That is so even though the pardon itself may have yielded no tangible benefit to its recipient.

The result? The President will expect potential Trump supporters to remain at the ready, notwithstanding the extreme cost of obtaining a potential pardon. And Trump knows that. So, to

directly answer the question posed by the above title: “*Who really benefits from a presidential pardon nowadays?*” Sure; the recipient, at least to some marginal extent. But, more to the point here, the President benefits, too, for sure!

And, finally, the Trump pardons are of a different stock than others. While previous presidents extended some pardons that were seriously questionable—e.g., Bush I (a cabinet member), Clinton (both family members and significant financial contributors) and Biden (family members)—Trump has taken the biscuit. For unlike the others, Trump’s appear to not only benefit the recipients but seemingly also to *always* benefit himself.

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