



Written by [Jerome R. Corsi](#) on September 19, 2017

## Federal Judge in Arpaio Case Prepares to Rule Trump Pardon Unconstitutional

WASHINGTON, D.C. — In a case that has dragged on for seven years, U.S. District Judge Susan Bolton in Phoenix, Arizona, has refused to cancel the sentencing hearing scheduled October 4, 2017, for former Maricopa County Sheriff Joe Arpaio (shown), even after President Trump [issued](#) an unconditional presidential pardon to Arpaio.



On Sept. 11, 2017, the Public Integrity Section, Criminal Division of the U. S. Department of Justice [filed a petition](#) with Judge Bolton asking the U.S. District Court to vacate the verdict issued by Bolton in which she [found](#) Arpaio guilty of a criminal misdemeanor for disobeying a preliminary injunction issued in a civil case involving a Maricopa County traffic stop.

“A pardon issued before entry of final judgment moots a criminal case because the defendant will face no consequences that result from the guilty verdict,” the Justice Department argued in their brief urging Judge Bolton to vacate the conviction. “Accordingly, the government agrees the Court should vacate all orders and dismiss the case as moot.”

The complication in the case is that Judge Bolton allowed public advocacy groups opposing Trump’s pardon to file amicus briefs with the federal district court arguing that she should not vacate the conviction, but instead should proceed with the sentencing hearing, as originally scheduled.

Reuters [reported](#) on September 12 that Protect Democracy Project, an advocacy group that includes former Obama administration lawyers, filed a separate brief urging Bolton to first decide whether the pardon was constitutional before dismissing the case.

On September 17, Judge Bolton [ordered](#) the Justice Department to file a supplemental response presenting arguments why the district court should vacate Arpaio’s conviction before sentencing, responding to her interpretation of U.S. Supreme Court and Ninth Circuit Court of Appeals decisions that “suggest a presidential pardon leaves intact the recipient’s record of conviction.”

An argument that runs through the various amicus briefs filed with Judge Bolton is that the court order Arpaio allegedly violated was imposed to protect the constitutional rights of Hispanics, and that the power of the president to pardon does not extend to impairing the court’s authority and ability to protect those constitutional rights.

Conceivably, Judge Bolton could refuse to vacate her guilty conviction and proceed to issue a jail sentence at the hearing on October 4 that would require the U.S. marshall to arrest Arpaio and incarcerate him in complete defiance of the unconditional pardon issued by President Trump.



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## **“A Rogue Judge”**

Arpaio’s attorney, Mark Goldman of Goldman & Zwillinger PLLC in Scottsdale, Arizona, characterized Susan Bolton as a “rogue, liberal judge” who pursued the Arpaio criminal misdemeanor trial with a predetermined conclusion to find him guilty.

On September 12, Goldman [filed](#) with the court a motion petitioning Judge Bolton to dismiss the amicus briefs on argument that the rule in American criminal law jurisprudence is that private citizens “lack a judicially cognizable interest in the prosecution” of another private citizen.

“These filings by third parties in a criminal trial matter should have been immediately rejected or stricken by the court,” Goldman insisted in an e-mail sent exclusively to the author.

“The fact that these filings were not immediately rejected and/or stricken by the court is shocking,” Goldman’s e-mail continued. “The rule of law should apply to Sheriff Arpaio as well as anyone else. The fact that he’s now been forced to reply to these filings places an inappropriate and unconstitutional burden on Sheriff Arpaio.”

Goldman explained why the filing of an amicus brief is considered inappropriate in American jurisprudence.

“Can you imagine if non-prosecutors were able to file motions and briefs in criminal trial matters in courts in America?” Goldman asked rhetorically.

“There would be utter chaos and a complete breakdown of the criminal justice system along with placing unconstitutional burdens on defendants,” he explained.

“Criminal defendants would not only have to brief, argue and defend against the government prosecutors, but also be forced to brief, argue and defend against perhaps thousands of other parties in defending their criminal cases,” he continued. “The very idea of a court accepting these filings is outrageous.”

Goldman was dismayed that Judge Bolton did not dismiss these two amicus briefs immediately.

“The failure of this court to immediately reject these filings and sanction the parties and attorneys submitting these filings is now encouraging more of these filings,” Goldman stressed.

“The irony is that this court found Sheriff Arpaio in contempt of court, a finding that was so baseless and lacking in merit that the President of the United States had to step in and correct this injustice, yet this court appears to sanction these unprecedented third-party filings,” he said.

## **“A Revenge Prosecution”**

The case against Arpaio began with the 2007 traffic stop that resulted in the arrest of Ortega Melendres, a Mexican tourist who was a passenger in an automobile stopped in Cave Creek, Maricopa County.

Melendres [charged](#) the Maricopa County sheriff’s officers were “fundamentally stopping brown-skinned people with the pretext of looking for criminals.”

The case developed into a class-action lawsuit that caught the attention of Tom Perez, then in the Civil Rights division of the Obama Justice Department.

Arpaio, a target of the Obama administration for years because of his determination to strictly enforce



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existing immigration laws, was seen by Perez as implementing in the Maricopa County Sheriff's Office (MCSO) a "systematic policy" that set law-enforcement rules and procedures to be intentionally discriminatory to the rights of Hispanics.

Perez began his legal career as a La Raza attorney in Maryland. He currently is Chair of the Democratic National Committee, a major force in moving the Democratic Party in a hard-left direction.

Now at 85 years old, after a distinguished career that includes service in the U.S. Army from 1950-1953, service as a police officer in Washington, D.C., and Las Vegas, Nevada, as well as working as a federal narcotics agent and the head of the U.S. Drug Enforcement Administration (DEA) for Arizona, Arpaio faces criminal charges that could see him convicted to six months in jail if found guilty.

### **Arpaio's Plea to Attorney General Jeff Sessions Ignored**

Goldman sent U.S. Attorney General Jeff Sessions a [letter](#) dated June 22 requesting the Department of Justice to consider various pleas before the start of the bench trial then scheduled for June 26 before Judge Bolton.

Several efforts were made to contact Attorney General Sessions directly and through trusted intermediaries in an effort to get Justice Department attention to Goldman's letter.

The author can confirm Attorney General Sessions was insulated within the Justice Department so that all attempts to communicate with him directly concerning Sheriff Arpaio's case failed.

Ultimately, Goldman's letter was ignored, and with the Justice Department's failure to intervene in the case, Judge Bolton began the bench trial against Arpaio as originally scheduled.

"The criminal contempt allegations stem from an alleged failure of the Maricopa County Sheriff's Offices (MCSO) to comply with an Order of the Court (preliminary injunction) dated December 23, 2011," Goldman's letter read.

"This charge relates back to the prior Obama administration and a time when the Sheriff's practices were in direct opposition to the Obama administration in regards to immigration policy," Goldman's letter continued. "The Sheriff was enforcing the law. The Obama administration appears to have been interested in doing the opposite for apparent political reasons."

In the letter, Goldman argued the Obama Justice Department allowed Arpaio to be charged with criminal contempt misdemeanor charges under the wrong statute, precisely because the statute of limitations on the correct statute had run out, and the incorrect statute allowed Judge Bolton to deny Arpaio the right to a jury trial.

Here is what Goldman wrote:

In regard to other aspects of the prosecution, we request that you reconsider the DOJ's prosecution of this matter because it was incorrectly brought under 18 U.S.C. Section 401. Section 401 relates to a simple criminal contempt of a lawful order. The matter should have been brought under 18 U.S.C. Section 402. Section 402 applies to contumacious conduct that is also a separate crime as more particularly described in the attached Petition. The allegations in this matter compel it to be prosecuted under 18 U.S.C. Section 402 that entitles the offender to a jury trial in accordance with 18 U.S.C. Section 3691. Additionally, Section 402 offenses come with a one year statute of limitations.

Given that the matter was not charged under the correct statute, and consequently the Department



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of Justice has deprived Sheriff Arpaio of his jury trial right and the applicable statute of limitations, in the interest of justice we request that you move the Court to dismiss the criminal contempt proceedings or, at the very least, move the Court to stay the trial pending a full review of this matter by your office.

Time is of the essence for the reason that this matter

Goldman also argued that the Obama Justice Department had timed various announcements to coincide with Arizona voting deadlines in 2016 so as to influence voters to defeat Arpaio's bid for reelection — an effort Goldman claimed was successful.

"The announcements had an undeniable effect upon Sheriff Arpaio's campaign to be elected to a seventh term in office," Goldman wrote. "The impact on Sheriff Arpaio's re-election campaign is clear. He is no longer Sheriff."

### **Obama and Perez Planned to Oust Arpaio From Office**

Largely as a result of the adverse publicity from facing criminal contempt charges, on November 8, 2016, Arpaio lost his seventh bid to be elected Maricopa County Sheriff.

The challenger, Paul Penzone, a Democrat and a former Phoenix police sergeant who lost to Arpaio in 2012, [won](#) the sheriff's election, 54.9 percent to 45.1 percent, running on a campaign designed to be sympathetic to Arizona's growing Hispanic voter base.

Throughout the entire case, Perez pursued Arpaio with a vengeance.

On January 5, 2012, when the Department of Justice dropped the initial criminal case against Arpaio in favor of pursuing the civil case, the Department of Justice [sent](#) the author an e-mail, explaining, "If MCSO wants to debate the facts rather than fixing the problems stated in our findings, we will do so by way of litigation."

In agreeing to meet with Arpaio, Perez made it clear the DOJ had no intent of showing or debating any of its alleged evidence that led to the court order mandating procedures under which the Maricopa County Sheriff's Office could conduct car stops, appointing a federal monitor to operate within Arpaio's office to make sure the court-ordered procedures were followed.

"The nature and extent of the document request suggests that your real goal is not 'transparency' and 'cooperation,' but rather further delay," Perez insisted.

Arpaio was not amused.

"I'll be happy to meet with DOJ anytime," Arpaio told Perez. "But I believe we have a right to see the evidence DOJ says they have against us and to defend ourselves against the charges."

Arpaio bristled that Perez presumed the charges were valid, simply because the DOJ investigated his office.

"What about our right to see the evidence and confront our accusers?" Arpaio asked.

According to information provided the author by a credible whistleblower, while the Department of Justice was prosecuting Arpaio from 2008 to 2010, the National Security Agency conducted electronic surveillance of the various Arizona-based federal judges on the case, as well as on Arpaio, and on the Maricopa County Sheriff's Office.

At the same time, Department of Justice attorneys under the direction of Attorney General Eric Holder



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[maintained](#) an ongoing telephone back-channel discussion with the federal judge assigned to handle the case.

That the Department of Justice conspired to defeat Arpaio is suggested by the timing of his criminal indictment.

In mid-October 2016, with the election approximately three weeks away, the Justice Department [announced](#) that lawyers were preparing to file criminal contempt of court charges against Arpaio for his alleged violation of Judge Stone's orders in the Melendres case.

Then, on November 4, 2016, four days before the election, Politico [reported](#) that far-left billionaire George Soros had contributed \$2 million to a Soros-funded PAC, Maricopa Strong, to defeat Arpaio.

*Photo: AP Images*

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