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12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF ARIZONA

15 United States of America,
16 Plaintiff,

17 v.

18 Joseph M. Arpaio,
19 Defendant.

No. CR-16-01012-PHX-SRB

**GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTION FOR VACATUR AND
DISMISSAL WITH PREJUDICE**

20
21 The President issued a "Full and Unconditional Pardon" to defendant Joseph M.
22 Arpaio ("Defendant"), whom this Court found guilty of criminal contempt for willfully
23 disobeying a preliminary injunction issued in a civil case. Having accepted the presidential
24 pardon, Defendant now moves to vacate the verdict and all other orders and to dismiss this
25 case with prejudice. ECF 220. A pardon issued before entry of final judgment moots a
26 criminal case because the defendant will face no consequences that result from the guilty
27 verdict. Accordingly, the government agrees that the Court should vacate all orders and
28 dismiss the case as moot.

THE PROCEEDINGS

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2 From 1993 until 2016, Defendant was the sheriff of the Maricopa County Sheriff's
3 Office ("MCSO"). In December 2007, a group of private plaintiffs filed a class-action
4 lawsuit alleging that Defendant and the MCSO engaged in "illegal, discriminatory, and
5 unauthorized enforcement of federal immigration laws against Hispanic persons."
6 *Melendres v. Arpaio*, No. 2:07-cv-02513, (D. Ariz. Dec. 12, 2007), ECF No. 1. Following
7 years of litigation, the district court (Snow, J.) entered a preliminary injunction in
8 December 2011 enjoining "MCSO and all of its officers . . . from detaining any person
9 based on knowledge, without more, that the person is unlawfully present within the United
10 States." *Id.*, ECF No. 494 at 38. More litigation followed, and in May 2016, following
11 twenty-one days of evidentiary hearings, the court held Defendant and others in civil
12 contempt for "intentionally fail[ing] to implement" the preliminary injunction. *Id.*, ECF
13 No. 1677 at 1.

14 In August 2016, the *Melendres* court entered an order under 18 U.S.C. § 401 and
15 Federal Rule of Criminal Procedure 42 referring Defendant to another judge for a
16 determination of whether he should be held in criminal contempt of court for his failure to
17 implement the preliminary injunction. ECF No. 1 at 1. After the government informed the
18 newly assigned district court judge that it agreed to prosecute Defendant, on October 2,
19 2016, this Court issued an Order to Show Cause under 18 U.S.C. § 401(3) as to whether
20 Defendant should be held in criminal contempt for willfully disobeying the *Melendres*
21 preliminary injunction. ECF No. 36.

22 The Court heard evidence during a five-day bench trial that concluded on July 6,
23 2017. On July 31, 2017, the Court found Defendant guilty. ECF No. 210.

24 On August 25, 2017, the President granted Defendant a full and unconditional
25 pardon. ECF No. 221. The pardon applied to Defendant's "conviction" under Section
26 401(3). *Id.* The pardon also encompassed "any other offenses" under Chapter 21 in Title
27 18 of the U.S. Code, which covers criminal contempt, that "might arise, or be charged, in
28 connection with" the *Melendres* litigation. *Id.* Defendant accepted the pardon and now

1 moves the Court to vacate all orders and dismiss his case with prejudice. ECF No. 220 at
2 1–4.

3 DISCUSSION

4 The Constitution authorizes the President to “grant Reprieves and Pardons” for
5 federal offenses “except in Cases of Impeachment.” U.S. Const. art. II, § 2. Chief Justice
6 Marshall described the presidential pardon as “an act of grace” that “exempts the
7 individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has
8 committed.” *United States v. Wilson*, 32 U.S. (7 Pet.) 150, 160 (1833); *see also United*
9 *States v. Schaffer*, 240 F.3d 35, 38 (D.C. Cir. 2001). A pardon is a “private, though official
10 act of the executive magistrate, delivered to the individual for whose benefit it is intended,
11 and not communicated officially to the court.” *Wilson*, 32 U.S. at 160–61.

12 The President’s decision to grant Defendant a “[f]ull and [u]nconditional [p]ardon
13 [f]or [h]is [c]onviction”—and Defendant’s decision to accept it—ends this prosecution.
14 ECF No. 221. The presidential pardon removes any punitive consequences that would
15 otherwise flow from Defendant’s non-final conviction and therefore renders the case moot.
16 *See Schaffer*, 240 F.3d at 38; *cf. United States v. Surratt*, 855 F.3d 218, 219 (4th Cir. 2017)
17 (en banc) (Wilkinson, J., concurring) (explaining, in case where commutation by the
18 President mooted defendant’s appeal, that “[a]bsent some constitutional infirmity,” an
19 exercise of the President’s pardon power “simply closes the judicial door”). The pardon
20 moots the case because Defendant faces no punishment or legal disabilities as a result of
21 the Court’s finding of guilt.* Because the presidential pardon moots Defendant’s case,

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23 * This Court need not determine whether any potential “collateral consequences”
24 flowing from the guilty verdict defeat mootness in light of the case’s unique procedural
25 posture. *Compare Bjerkan v. United States*, 529 F.2d 125, 126–29 (7th Cir. 1975)
26 (presidential pardon moots further appeal because it “do[es] away” with all “collateral
27 consequences” of the conviction (internal quotation marks omitted)), *with Robson v. United*
28 *States*, 526 F.2d 1145, 1147 (1st Cir. 1975) (presidential pardon did not moot further appeal
because, notwithstanding the pardon, the defendant’s conviction “may be considered at
sentencing in any subsequent criminal proceeding”) (citing *Carlesi v. New York*, 233 U.S.
51 (1914)); *see also Sibron v. New York*, 392 U.S. 40, 57 (1968) (defendant’s appeal of
criminal convictions moot where “there is no possibility that any collateral legal
consequences will be imposed on the basis of the challenged conviction”). Unlike in
Bjerkan and *Robson*, there is no final conviction here because this Court never entered

1 vacatur of the relevant orders is appropriate. *See Schaffer*, 240 F.3d at 38; *see also Camreta*
2 *v. Greene*, 563 U.S. 692, 712 (2011) (noting the “established” practice in cases that have
3 become moot “to vacate the judgment below”) (citing *United States v. Munsingwear, Inc.*,
4 340 U.S. 36, 39 (1950)). Where, as here, mootness results “not from any voluntary acts of
5 settlement or withdrawal” by Defendant, “but from the unpredictable grace of a presidential
6 pardon,” vacatur is “just and appropriate.” *Schaffer*, 240 F.3d at 38.

7 **CONCLUSION**

8 For the foregoing reasons, the government agrees that the Court should vacate all
9 orders and dismiss the case as moot.

10
11 Respectfully Submitted,

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13 Acting Chief, Public Integrity Section

14 By: /s/ John D. Keller

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judgment, and no appellate review has occurred. The timing of Defendant’s presidential
pardon means that “the efficacy of the [Court’s] verdict against [him] remains only an
unanswered question lost to . . . mootness.” *Schaffer*, 240 F.3d at 38

CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that I electronically filed the foregoing via the CM/ECF system on today's date which will provide notice to counsel of record for the defendant.

/s/ John D. Keller
John D. Keller
Deputy Chief