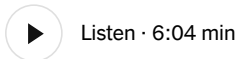


## GUEST ESSAY

# Trump Just Pardoned Himself and His Family Forever

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**By Jeffrey Toobin**

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For decades there have been disagreements among constitutional scholars about whether a president can pardon himself. But Todd Blanche, the acting attorney general, just gave President Trump something even better: pre-emptive exoneration from all potential criminal liability for certain financial crimes. He also guaranteed that the federal government would not be able to pursue tax claims against the president (or his family or his businesses).

Mr. Blanche wrote a new chapter in the history of the presidency, elevating the office to a point where Mr. Trump and his family are declared exempt from the rules that apply to his fellow citizens.

The details of this gift were posted on the Department of Justice website on Tuesday. The document is only a single page, and the language is (perhaps intentionally) convoluted, but the meaning turns out to be clear.

The United States agrees that it is “FOREVER BARRED and PRECLUDED from prosecuting or pursuing” President Trump, his eldest sons or any of their businesses. The agreement covers matters “whether presently known or unknown” and cases that “have been or could have been asserted” by the government.

This means that the longstanding Internal Revenue Service audit of Mr. Trump, which dates back to his days as a television star and real estate developer, will most likely end on terms favorable to him. An adverse ruling in that case could have cost him more than \$100 million.

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But that’s just the beginning. The document places off limits the investigation of any tax disputes (or tax crimes) regarding returns that were filed before this week.

If something comes to light in the future about misconduct or malfeasance relating to the Trump family's tax filings, as long as it took place before the agreement took effect, it cannot be the basis for a prosecution. Reinforcing the same point, the agreement states that the government is barred from pursuing "any matters that were raised or could have been raised" in the Trumps' dispute with the I.R.S.

There will be no cases against the Trumps before the I.R.S. "or other agencies or departments." Could Mr. Trump's immunity extend beyond taxes? The Justice Department, which brings federal criminal cases, may, as I interpret it, also be barred from charging the Trumps with other crimes.

By issuing a prohibition on federal investigations that might threaten Mr. Trump's finances, the department has placed the president and his family in a new category of citizenship, where the tax rules that apply to every other American do not apply to him or his family. By my reading, the document explicitly forbids the government to challenge the legality of any trusts, which can survive in perpetuity. In this way, Mr. Blanche's memo is a gift to subsequent generations of the Trump family.

Mr. Blanche's largess appeared in the aftermath of Mr. Trump's \$10 billion lawsuit against the I.R.S., which he and his two eldest sons filed in January to demand compensation for the leaking of his tax returns. Since Mr. Trump was both the plaintiff and in control of the defendant agency, the case from the beginning was fatally compromised by a conflict of interest. For that reason, it's hard to describe its conclusion as a settlement, which implies the end of a lawsuit that involves actually opposing parties.

Another part of the resolution of the case was the creation Monday of a \$1.776 billion federal "Anti-Weaponization Fund" to compensate supposed victims of unfair federal investigations. Decisions about who receives payment, and how much, are to be left to a five-member panel, whose members the attorney general will appoint and the president can remove at will.

The likely main claimants on these dollars are the nearly 1,600 rioters at the Capitol on Jan. 6, 2021, whom Mr. Trump pardoned on the first day of his second term. As Mr. Blanche testified Tuesday, all of the rioters are welcome to apply, including those who were convicted of assaulting police officers and others who have subsequently committed further crimes.

The creation of the fund set a theme of presidential exception that extended to Mr. Blanche's document the next day relieving Mr. Trump of significant financial liability. The fund's panel, which Mr. Trump will effectively control, will be able to dispense millions of dollars to his allies, unconstrained by checks and balances, especially those that direct that Congress, not the president, holds the power of the federal purse.

The Supreme Court's 2024 decision in *Trump v. United States* already foreclosed investigation or prosecution of the president for any "official" actions taken while in office. But the Blanche document excuses him from federal inquiry for civil enforcement like tax audits and lawsuits to recover back taxes.

It's this civil immunity that makes Mr. Blanche's offering better than a presidential pardon, which can offer protection only from criminal charges.

What can be done to overrule this action by the acting attorney general? Lawsuits will surely be fruitless; no plaintiff has standing to sue because it's hard to imagine that anyone could assert having been injured by the Blanche document. A new Congress could attempt somehow to overrule Mr. Blanche's decision, but the courts would very likely find that the acting attorney general's determination was within his discretion as the nation's chief law enforcement officer.

A future Justice Department could try to investigate or charge Mr. Trump in spite of the Blanche document, on the grounds that it was somehow corrupt and unenforceable. But such an action, years in the future, sounds like a law school hypothetical.

By establishing this precedent, the Blanche document could echo into the future, creating an expectation among future presidents that they and their families, like the Trumps, deserve to be elevated to this new caste.

Mr. Blanche has demonstrated his fealty to his boss and, he presumably hopes, won Mr. Trump's agreement to nominate him to be the confirmed attorney general. The Blanche document shelters the president and his family from significant legal liability, once more adapting the law to the man.

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