



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

February 25, 2021

BY ECF

The Honorable Analisa Torres
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Stephen Bannon*, 20 Cr. 412 (AT)

Dear Judge Torres:

The Government writes in response to Stephen Bannon's letter, submitted by email to the Court on February 18, 2021, requesting that the Court dismiss the Indictment against him and exonerate his bail because he was granted a pardon by President Donald J. Trump. The pardon in question was docketed by the Court on February 11, 2021. (Dkt. No. 79). For the reasons set forth below, while the Government does not object to administratively terminating Bannon from the case or exonerating his bail, the Government does oppose Bannon's request that the Indictment itself be dismissed as to him.

As an initial matter, to the extent Bannon's motion is premised on the fact that he has not been terminated from the docket, the Government has no objection to the Clerk of the Court administratively terminating him from the case on the basis of the docketing of the pardon. Similarly, the Government has no objection to the Court entering an order exonerating Bannon's bail.

However, the Government respectfully submits that the pardon granted to Bannon is not a basis to dismiss the Indictment against him. A pardon "is 'an executive action that mitigates or sets aside *punishment* for a crime.'" *Nixon v. United States*, 506 U.S. 224, 232 (1993) (quoting Black's Law Dictionary 1113 (6th ed. 1990)) (emphasis in original). "But the granting of a pardon," in cases where a defendant has been convicted, "is in no sense an overturning of a judgment of conviction by some other tribunal." *Id.* And for the same reason, "[b]ecause a pardon does not blot out guilt or expunge a judgment of conviction, . . . a pardon does not blot out probable cause of guilt or expunge an indictment." *In re North*, 62 F.3d 1434, 1437 (D.C. Cir. 1994) (holding that a pardon does not remove the defendant's disabilities caused by an indictment); *cf. United States v. Noonan*, 906 F.2d 952, 960 (3d Cir. 1990) (a presidential pardon is not a basis for expungement). In other words, a pardon "involves forgiveness, not forgetfulness," *United States v. Swift*, 186 F. 1002, 1017 (N.D. Ill. 1911). The fact that Bannon was pardoned does not extinguish the fact that a grand jury found probable cause to believe that he committed the offenses set forth in the Indictment, nor does it undercut the evidence of his involvement therein which the Government expects to elicit as part of its presentation at trial. Were the Court to dismiss the

Cc: Robert J. Costello, Esq. (by ECF)