

In The
Supreme Court of the United States

IN RE: JOSEPH M. ARPAIO,
Petitioner,

On Petition for Writ of Mandamus
to the Arizona District Court

**SECOND SUPPLEMENTAL BRIEF
IN SUPPORT OF
PETITION FOR WRIT OF MANDAMUS**

MARK GOLDMAN
GOLDMAN &
ZWILLINGER, PLLC
17851 North 85th St.,
Suite 175
Scottsdale, AZ 85255
docket@gzlawoffice.com

DENNIS I. WILENCHIK
JOHN D. WILENCHIK
WILENCHIK &
BARTNESS, P.C.
2810 N. Third St.
Phoenix, AZ 85004
(602) 606-2810
diw@wb-law.com
jackw@wb-law.com
admin@wb-law.com
Counsel for Petitioner

September 20, 2017

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**SECOND SUPPLEMENTAL BRIEF
FOR PETITIONER**

Petitioner hereby files this second supplemental brief calling attention to another intervening matter not available at the time of his last filing.

On Friday, August 25th, 2017, the President of the United States issued a “full and unconditional” pardon of Defendant. The pardon states that it is for Defendant’s “conviction of Section 401(3), Title 18, United States Code (Docket No. 2:16-CR-01012-SRB) in the United States District Court for the District of Arizona, of which he was convicted on July 31, 2017, and for which sentencing is currently set for October 5, 2017.” (The sentencing hearing has since been vacated.) The pardon is also “for any other offenses under Chapter 21 of Title 18, United States Code that might arise, or be charged, in connection with *Melendres v. Arpaio* (Docket No. 2:07-CV-02513-GMS) in the United States District Court for the District of Arizona.”

On Monday, August 28th, 2017, Defendant filed a motion asking the lower court to dismiss the matter with prejudice, in light of the full and unconditional pardon. Defendant also requested that the lower court vacate its verdict and conviction for contempt of court, on the ground that the presidential pardon mooted the matter; and that where mootness prevents final appellate review (whether caused by e.g. the defendant’s death, or by a presidential pardon), then constitutional principles of lenity and due process—as well as the equity—

require that the court vacate a nonfinal conviction, rather than allow it to stand, while also barring the Defendant from any appeal. *See e.g. U.S. v. Schaffer*, 240 F.3d 35 (D.C. Cir. 2001)(vacating guilty verdict where pardon was issued before end of appeals).

The lower court has requested additional briefing on the issue of whether it must vacate the Defendant's conviction, through at least Thursday, September 21st (and possibly through Sep. 22nd or 28th);¹ and so it is unlikely to rule on this last issue in the case by the Court's Monday, September 25th conference. (Defendant will notify the Court if the matter is resolved before then.)

Finally, Defendant's position is that the Petition is moot if the lower court grants his request to vacate the conviction and dismisses this matter with prejudice. But if the lower court declines to vacate his conviction, then the issues that this Petition raises remain "live" issues. The lower court's conviction should be vacated not only because of the pardon, but also because the conviction was wrongful in the first instance, since the Court of Appeals was obligated to hear and grant the Defendant's pre-trial petition for a jury. The case presents an intriguing vehicle for the Court to address not only whether

¹ The lower Court requested a brief from the Government by Sep. 21st, and allowed Defendant to file a Reply. Defendant's Reply is presumably due by September 28th (pursuant to Arizona district LRCrim 12.1(a), LRCiv 7.2(d)), although Defendant may file it even sooner, as early as Sep. 22nd.

mandamus should issue to correct the wrongful deprivation of a jury trial, but also whether a pardon issued before final judgment completely moots out a criminal conviction; killing two cert-worthy “birds,” so to speak, with one stone.

In light of all the foregoing, Defendant suggests that the Court hold this matter (and “re-list” it) until at least its October conferences, pending a final decision from the lower court on whether it will vacate the Defendant’s conviction.

Respectfully submitted,

MARK GOLDMAN
Goldman & Zwillinger, PLLC
17851 North 85th St.,
Suite. 175
Scottsdale, AZ 85255
docket@gzlawoffice.com

DENNIS I. WILENCHIK
JOHN D. WILENCHIK
WILENCHIK &
BARTNESS, P.C.
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Phoenix, AZ 85004
diw@wb-law.com
jackw@wb-law.com
Counsel for Petitioner