IN JESSE BENTON CASE, DOJ SAYS A TRUMP PARDON DOES NOT BLOT OUT GUILT

In 2016, GOP fundraiser Jesse Benton was convicted and sentenced for effectively using a donation to an IA State Senator to win support for Ron Paul's 2012 Presidential campaign. In the very same period, according to an indictment obtained September, he was working to arrange for and cover-up a Russian donation to Trump's SuperPAC.

Trump gave Benton a pardon for the initial campaign finance crime on the same day he pardoned Roger Stone, Paul Manafort, and Charles Kushner (among others).

As part of pretrial motions in his case, he and the government are fighting about whether the government can use the prior conviction to show that Benton already knew about one of the campaign finance laws in question and had, in the past, covered up the true source of campaign donations. The government maintains that it should be able to use the prior crime to impeach him because the pardon does not "blot out" his prior crime.

> Although Defendant moves to preclude the government from using his prior conviction to impeach him under Federal Rule of Evidence 609, based on the fact that the conviction was pardoned, his brief is devoid of case law regarding the issue, and he makes no attempt to establish the requisite predicates under Federal Rule of Evidence 609(c). See ECF No. 35, at 7-8. As laid out in the government's motions in limine, under Federal Rule of Evidence 609(c), evidence of a conviction that has been pardoned is only inadmissible where the

pardon was based on a finding that the person has been rehabilitated or the pardon was based on a finding of innocence. The plain language of Defendant's pardon does not indicate that the pardon was based on either a finding of actual innocence or rehabilitation. See Zinman v. Black & Decker, 983 F.2d 431, 435 (2d Cir. 1993) ("We have construed Rule 609(c)(1) strictly, interpreting it to bar admission of a prior conviction only when there has been an express finding that the person convicted has been rehabilitated."); Watkins v. Thomas, 623 F.2d 387, 387 (5th Cir. 1980) (allowing impeachment by pardoned convictions where defendant's pardons "were not the consequence of subsequent proof of innocence" but rather defendant was pardoned "because he performed undercover activities in the service of the Federal Bureau of Narcotics and Dangerous Drugs."). The explanation for the pardon provided by the White House similarly does not indicate that the pardon was based on either a finding of actual innocence or rehabilitation. See Ex. F (Statement from the Press Secretary Regarding Executive Grants of Clemency). Moreover, while pardons mitigate the offender's punishment, "the granting of a pardon is in no sense an overturning of a judgment[.]" Nixon v. United States, 506 U.S. 224, 232 (1993). Courts have made clear that a pardon "does not 'blot out guilt' in any literal or uncritical sense[.]" Richards v. United States, 192 F.2d 602, 607 (D.C. Cir. 1951) (citation omitted); see also Bjerkan v. United States, 529 F.2d 125, 128 n.2 (7th Cir. 1975). As such, and for the reasons laid out in the government's motions in limine, the Court should deny Defendant's motion and permit the government to impeach

> Defendant with his prior conviction
> under Federal Rule of Evidence 609
> should he take the stand.

Given the sheer number of corrupt pardons Trump gave, it's an important argument — one that is also appearing in Philip Esformes' case, whom the government wants to retry on health care fraud charges on which the jury hung but for which Trump did not grant Esformes a commutation.

Here, the argument is even easier: There's no contest that Benton committed the prior acts, there's no contest he violated his probation by allegedly engaging in further campaign finance crime, there's no contest his past conviction would have made him well aware of the legal obligations the accurately record such donations.

But it may clarify the status of all the corrupt pardons Trump has granted.

Benton's case is being tried before Trump appointee Trevor McFadden.