



Written by [Steve Byas](#) on February 21, 2023

Former Attorney General Accuses Biden of Abuse of Power

In an interview with Newsmax on Tuesday, former Acting U.S. Attorney General Matthew Whitaker accused the Biden administration with “abuse of power” for its attempt to retry Philip Esformes after Esformes was pardoned by former President Donald Trump.

“This administration appears to not really be grounded by the Constitution,” Whitker said during the Newsmax program *Wake Up America*. Whitaker added, “The president’s ability to pardon folks is absolute under the Constitution. In this case, President Trump issued a pardon, commuted Mr. Esformes’ sentence, and now this administration wants to go back and re-prosecute the same case and put him back in jail, if they can, and it’s an outrageous abuse of power.”

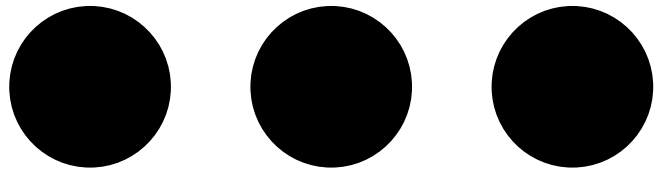
Whitaker argued that the Biden administration wants the pardon overturned just because Trump issued it.

During Esformes’ trial, after he was indicted on 32 counts of alleged Medicare fraud related to his healthcare business, a magistrate judge strongly criticized the unethical moves by the prosecutors to use information clearly covered by the attorney-client privilege. “Shockingly,” Fox News reported, “the magistrates’ findings were ignored by the trial judge.” Esformes was convicted on 20 counts, while the jury “hung” on six. In American courts, if a jury cannot unanimously agree on a verdict — either guilty or not guilty — the jury is said to be “hung,” and a mistrial is declared. Prosecutors can retry defendants on counts that a jury has “hung” on, but often they do not.

In this case, it is clear that the Trump pardon and commutation was intended to end the prosecution of Esformes. No federal prosecutor has ever attempted to reverse a presidential commutation — a power that is found in Article II of the U.S. Constitution, which clearly states that the president “shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.” A reprieve is a delay in the execution of a sentence, while a commutation is part of the pardon power, under which a president can reduce the sentence or forgive it completely. This power was given to the president in the Constitution as a check on possible abuses by prosecutors and travesties of justice, and would seem to apply well in this case.

Three former attorneys general of the United States — Edwin Meese, Alberto Gonzales, and Michael Mukasey — all joined in asking President Trump to grant clemency to Esformes.

Whitaker said, “Once the president has pardoned somebody for certain types of behavior, that’s usually what it should end in. I can’t find an example where an administration has gone back and prosecuted someone for the same crime. This is an extraordinary case. Obviously, it is personal for the prosecutors,



AP Images
Matthew Whitaker



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which it should never be.”

Esformes’ lawyers have argued that another trial would not only ignore Trump’s clemency action, but it would violate the Fourth Amendment’s ban on trying someone a second time for the same offense, in what is known as double jeopardy.

While the 11th Circuit Court of Appeals did not dismiss the conviction (on the six counts that the jury hung on), on grounds of prosecutorial misconduct, Esformes’ lawyer, Kim Watterson, told CNBC that the appellate court “did not decide the question of whether President Trump’s grant of clemency to Philip Esformes bars further prosecution on any counts.”

One precedent that might be cited was the pardon that President Gerald Ford granted to former President Richard Nixon in the aftermath of the Watergate Scandal that forced Nixon’s resignation from office. Ford pardoned Nixon for any crimes he may have committed while president.

In many ways, this case is illustrative of the disregard for the Constitution held not only by the Biden administration, but by the Deep State generally. For example, Andrew Weissman, who was the lead prosecutor in the Robert Mueller Special Counsel probe into the allegations that Trump and Russian President Vladimir Putin conspired to swing the 2016 presidential election in Trump’s favor, wrote an article in *Just Security* last month advocating the reversing of Trump pardons in this and other cases in which Trump used the pardon power given him by the Constitution.

Weissman cited cases in which he alleged that Trump had somehow abused his pardon powers, such as those involving General Michael Flynn, Paul Manafort, and Roger Stone. “But there is good news,” Weissman wrote, arguing there are ways “to rectify some of Trump’s abuse of the pardon power.” He specifically mentioned retrying these individuals in cases where the jury could not reach a verdict and was “hung.”

There can be little doubt that the intent of Trump’s pardon of Esformes on the 20 counts for which he was convicted, when the jury returned a guilty verdict, would further extend to the six charges upon which the jury “hung.”

It has often been said that this or that action of the Biden administration makes us look like a banana republic. This effort looks more like something Adolf Hitler would have done. Early in Hitler’s tenure in power, some defendants were charged with treason but were found not guilty. Hitler fumed that that would never happen again, and after that, the courts were molded to his will. Apparently, there are some on the Left who would follow this attitude today.

Certainly U.S. presidents have used the pardon power in ways that have raised eyebrows, such as when President Bill Clinton pardoned his own brother, Roger. However, this check was intentionally put into the Constitution to protect all of us from the terrors of a judicial system that can be manipulated in this very type of case.

Hopefully, the Biden administration’s brazen attempt to use the criminal justice system to go after its *political* opponents will be thwarted.



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