

Reparations for Trump and Slavery?

di Darin R. Bartram

There are plenty of reasons to be wary of President Trump's so-called Anti-Weaponization Fund, which will compensate claimants who say federal law-enforcement or regulatory agencies targeted them for political reasons. These include the cost, nearly \$2 billion in public funds, and the wrongful actions of many of the prospective recipients, including rioters who assaulted police officers on Jan. 6, 2021. Here's another reason: It will set a precedent that a future president could use to bypass Congress and the courts to implement wide-reaching policies without congressional support—including race-based reparations.

On May 18, Mr. Trump dropped a lawsuit, which he brought in his personal capacity against the Internal Revenue Service, for damages arising from the disclosure of his tax returns by an employee of an IRS subcontractor. Mr. Trump and the Justice Department—which operates under his presidential authority—agreed on the establishment of a compensation program for individuals and entities targeted for political reasons.

The Anti-Weaponization Fund is to be funded by the department's Judgment Fund, which Congress created to avoid having to approve payment of every monetary claim against the government. Although the enabling legislation has periodically been amended to increase caps on payouts and expand reporting of expenditures, it has largely become a self-perpetuating pot of money that exists beyond legislative control. The administration of the Judgment Fund has relied on Justice Department attorneys to weigh carefully and fairly the litigation risk of suits against the government and using funds when settlement was prudent.

Guardrails against the use of public funds to settle perceived wrongs have been eroded before. Mr. Trump has pointed to a compensation program

President Obama established to redress harm to Native American farmers, known as the Keepseagle program, which settled a case brought against the U.S. Department of Agriculture involving farm loans and benefits. Keepseagle provided that a claimant could receive up to \$50,000 on the presentation of basic evidence and \$250,000 with supporting evidence that the USDA could dispute. Importantly, this settlement program was established despite fundamental weaknesses in the underlying claims by the farmers, including a decision by the court to deny them class certification.

In 2015, legal scholar Paul Figley warned that Mr. Obama's expanded use of the Judgment Fund for compensation programs created opportunities for abuse, and predicted that similar claims programs would be created in the future. He noted that in 2009, scholar Todd Peterson had raised the specter that Justice Department officials "may wish to compensate plaintiffs for political reasons or because the administration favors the plaintiff's cause, even though the plaintiff's legal claim is weak." Eleven years later, their concerns are coming to fruition with the Anti-Weaponization Fund—which could lead to even more outlandish compensation funds.

Remedying perceived harm to Mr. Trump's supporters stemming from the Russia-collusion investigations or the events following Jan. 6 could seamlessly morph into a future president's deciding to implement an even broader remedial program—providing reparations to black Americans for slavery and "systemic racism." The Trump fund would give legitimacy to administrative compensation for a politically defined class of government victims—even if neither Congress nor any court has authorized such compensation.

Justice should be administered impartially and shouldn't be weaponized against political rivals. That happened with Mr. Obama's Russia-collusion investigation, which continued through Mr. Trump's first term. It continued through the Biden administration. But the Anti-Weaponization Fund is the wrong remedy, and one that risks making the government even more lawless.

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