

# Pardon's / Commutations



## Constitutional foundations

- The power to grant a pardon or a reprieve is granted to the president by **Article II, Section 2, Clause 1 of the Constitution**.
- ↪ The only limits mentioned in the Constitution are that pardons are limited to federal offenses, and that they cannot affect an impeachment process: *"The president shall ... have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment"*.
- ↪ Though pardons have been challenged in the courts, and the power to grant them challenged by Congress, the courts have consistently declined to put limits on the president's discretion.

## Pardon

- The president can issue a full pardon, reversing a criminal conviction (along with its legal effects) as if it never happened.
- ↪ A pardon can be issued from the time an offense is committed, and can even be issued after the full sentence has been served.
- ↪ Additionally, the president can make a pardon conditional, or vacate a conviction while leaving parts of the sentence in place, like the payment of fines or restitution

## Commutation

- The president can issue a reprieve to a criminal sentence, lessening its severity, its duration, or both while leaving a record of the conviction in place.

## A president may pardon an entire class of lawbreakers (Amnesty)

- Andrew Johnson pardoned thousands of ex-Confederates. Ulysses Grant did similar
- Jimmy Carter pardoned 200,000+ for Vietnam draft evasion
- Joe Biden pardoned thousands for simple possession of marijuana
- John Kennedy pardoned all first-time offenders convicted under the Narcotics Control Act of 1956 (pardoning all, in effect overturning much of the law passed by Congress)
- Gerald Ford offered conditional amnesty to over 50,000 draft resisters; Jimmy Carter then did a general pardon

## Must a grant of clemency be accepted?

- Jackson tried to pardon George Wilson (convicted of robbing US mail; Wilson refused to accept the pardon; rather than serve a sentence of 20 years, he was executed by hanging)

↳ *United States v. Wilson* the court stated: "A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance. It may then be rejected by the person to whom it is tendered; and if it is rejected, we have discovered no power in this court to force it upon him."

## Typical Process:

- An individual seeking a pardon submits a formal application to the Office of the Pardon Attorney
- The final decision resides solely with the President

## Tough on crime?

### DEMOCRATS SINCE 1901

<u>Term</u>	<u>President</u>	<u>Pardons / Commutations</u>	
2021-	Biden	...	...
2009-2017	Obama	72 (2.1%)	672 (3%)
1993-2001	Clinton	396 (19.8%)	63 (1.1%)
1977-1981	Carter	536 (33.8%)	32 (3.1%)
1963-1969	Johnson	960 & 227 (26.2% approval)	
1961-1963	Kennedy	472 & 103 (32.9% approval)	
1945-1953	Truman	1913 & 131 (40.6% approval)	
1933-1945	FDR	2819 & 500 (24.5% approval)	
1913-1921	Wilson	1087 & 1740 (37.9% approval)	

### REPUBLICANS SINCE 1901

<u>Term</u>	<u>President</u>	<u>Pardons / Commutations</u>	
2017-2021	Trump	143 (7.7%)	94 (1%)
2001-2009	Bush Jr	189 (7.6%)	11 (0.1%)
1989-1993	Bush Sr	74 (10.1%)	3 (0.4%)
1981-1989	Reagan	393 (18.7%)	13 (3.3%)
1974-1977	Ford	382 (39.1%)	27 (4.9%)
1969-1974	Nixon	863 (50.8%)	63 (7.1%)
1953-1961	Eisenhower	1110 & 47 (28.2% approval)	
1029-1933	Hoover	672 & 406 (22.6% approval)	
1923-1929	Coolidge	773 & 792 (19.5% approval)	
1921-1923	Harding	300 & 473 (31.4% approval)	
1909-1913	Taft	383 & 376 (36.0% approval)	
1901-1909	T.Roosevelt	668 & 372 (23.0% approval)	

Most days in office to start a presidency without issuing a Pardon (top five, through January 2022)

- 700 Bush Jr
- 682 Obama
- 672 Clinton
- 669 Washington
- 536 John Adams
- 🏠 133 Average for all Presidents

## Controversial grants of clemency

- James Buchanan pardoned **Brigham Young** (had been convicted for his role in the Utah War between Mormon's and federal troops in the 1850s)
- Andrew Johnson pardoned three people who had been charged with conspiring to murder Lincoln
- Gerald Ford pardoned Richard Nixon and Robert E Lee (posthumously)
- Jimmy Carter pardoned **Patty Hearst**
- Barack Obama pardoned Chelsea Manning (born Bradley Manning), a US Army whistleblower convicted of providing classified documents to Wikileaks
- Donald Trump pardoned Joe Arpaio, a former sheriff in Arizona who was convicted of contempt of court for refusing to end the 'immigration round ups'
- Donald Trump for pardoning Clint Lorance, who in Afghanistan ordered his men to fire on civilians
- Donald Trump for pardoning Dinesh D'Souza, for campaign finance violations

