

## **Biden's Record-Setting Pardons**

*By Ava Garderet, UT Austin Journalism student*

During the final week of his presidency, Joe Biden offered a combination of shortened sentences and full pardons to over 2,500 people, a majority of whom were incarcerated for nonviolent drug-related offenses.

This unprecedented action gave Biden the presidential record for most individual commutations and pardons issued during the end of a term. In a statement to CBS News, the Democrat said this was “an important step toward righting historic wrongs, correcting sentencing disparities and providing deserving individuals the opportunity to return to their families and communities after spending far too much time behind bars.”

Many advocacy organizations applauded Biden's action, appreciating the historical significance of this mass pardoning for those affected by disproportionate sentences assigned to nonviolent drug offenders. Daniel Landsman, the vice president of policy of Families Against Mandatory Minimums, explained that in 1986, Congress passed a law that created a sentencing disparity between the powder form of cocaine (largely used by white people) and the crack form (largely used by people of color), assigning the same mandatory minimum sentence to 1 gram of the powder as 100 grams of the crack.

“Over the next two decades, we watched this ‘War on Drugs’ have a very disparate impact on Black communities around the country,” Landsman said, “making them the majority of people who are still now serving these long sentences for crack offenses.”

He said that many of Biden's end-of-term clemencies included people who would have been sentenced differently had they been evaluated under a one-to-one crack and powder sentencing law.

“We are extremely grateful to the former president for that awareness and decision,” Landsman said.

Advocates like Stephen Post, campaign manager and communication strategist of the Last Prisoner Project pointed out that presidential pardons are an expedited version of the typical clemency process.

“It's very much at the whim of the executive branch,” Post said. “The selection process is done through the Office of the Pardon Attorney, which is an appointed position from the president.”

Post explained that the behavior and background of each individual are considered in the selection process, and then sent for final review by the President.

While this may appear relatively straightforward, Sadie Groberg, mitigation investigator at the Lone Star Justice Alliance said that the process of clemency and data its success is inaccessible and convoluted for anyone outside of the executive branch.

“We have no idea what the standards of a successful application look like,” Groberg said. “And while anyone can write their own application, collecting the records to justify their statement is nearly impossible for a person to do from behind bars.”

Groberg said that transparency would make this legal process far more effective, allowing it to be less limited to presidential access.

“None of us know how many are being submitted, approved or denied,” Grober said, “the whole process just feels extremely arbitrary.”

Chris Haskins, founder of Jail to Jobs, said he was wary of sweeping pardons like Biden’s because they imply a lack of consideration of what is best for both the individual and the community.

“It almost just feels like a final political move,” Haskins said. “I truly do believe in forgiveness, but those second chances have to be given within the context of the individual. Maybe it’s less about why they are there and more about what kind of person they are now - how have they changed and grown during incarceration, and are they prepared to reenter society?”

Haskins said that he imagines that the Biden Administration did not dive into each of the 2,500 formerly incarcerated individuals’ stories to understand these important details.

“It will be very interesting to see the recidivism and public safety statistics that come out of this,” Haskins said.

Kristen Roth, senior policy associate of the NAACP Legal Defense Fund, described the context of Biden’s pardons as a mark of transformation from his more conservative stance on criminal justice as a senator, when he supported policies pushing acts of criminalization like the death penalty.

“I think that this change in mindset is an example of a combination of a lot of public pressure and a lot of education going on behind the scenes,” Roth said. “I think in recent years it has become difficult to disregard evidence that points to the sentencing disparities being based on prejudice, rather than science.”

Biden’s act of mass pardons raises the question: Will this set a precedent that encourages a more accepting legal climate toward future sentencing reconsideration?

Groberg said that while she hopes the example will be considered by future administrations, she believes that the attitude toward clemency will largely depend on the political context.

“I think that maybe the word pardons has become more of a hot-button issue in the media right now, particularly with Republican lawmakers who might fear what it represents,” Groberg said. “However, non-violent drug offenses have become a “safer” mainstream topic due to the progress made with legalization, so we may expect to see more normalization of the release of non-violent drug offenders.”

Post concurred, adding that the returning Trump Administration is likely to treat pardons as a personal choice, rather than a consideration of righting historical wrongs.

“While his campaign has become slightly more receptive to cannabis justice, we may see Trump choose to make pardons on a whim,” Post said. “And while there is always momentum with clemency at the end of each presidential term, we are always aiming to work with administrations (regardless of their political affiliation) to try to get folks out sooner.”

Roth said that she hopes state and local governments will appreciate Biden’s action as an example to advocate for their own families and communities behind bars.

“It shouldn’t be the case that receiving executive clemency is like being struck by lightning,” Roth said. “I hope that people begin to recognize the egregiousness of some of the laws that incarcerate people in our country and that they are willing to speak up and make some changes.”