

Presidential Transitions: Executive Clemency

November 24, 2020

In Section 2 of the Presidential Transition Act of 1963 (as amended; 3 U.S.C. 102 note), Congress declared that “[t]he national interest requires that [presidential] transitions ... be accomplished so as to assure continuity in the faithful execution of the laws and in the conduct of the affairs of the Federal Government, both foreign and domestic.” The crux of such a transition is the transfer of executive power from the incumbent to the President-elect. The executive’s power manifests in a variety of processes with application to a broad range of policy areas and issues. CRS has produced a set of products examining selected processes and policies that may be of particular interest during a presidential transition. This Insight discusses the use of executive clemency powers during a presidential transition. Other related products examine executive orders, government records, presidential appointments (executive branch), rulemaking, and presidential transitions generally.

Background

The President has few restrictions on how and when [executive clemency](#) may be exercised, other than it may apply only to offenses against the United States—thereby precluding state criminal or civil proceedings from its scope—and it may not be used to interfere with Congress’s power to impeach. Forms of clemency may be broad, such as pardons, which provide an individual with unqualified release from punishment and which the President may issue at any time following commission, even before charges have been filed. While not frequently done, a President may bestow [amnesty](#)—a pardon on groups—as President Abraham Lincoln did when [he granted amnesty](#) to all persons who participated in the “rebellion” against the United States (with a number of conditions and exceptions). Less expansive forms of clemency include [commutation](#), which substitutes a less severe punishment than the one given by a federal court; [reprieve](#), which delays the execution of a sentence; and the [remission](#) of fines and forfeitures.

The President’s use of this authority may come under increased scrutiny during a period of transition, in part because Presidents historically have granted petitions for clemency at a higher rate in the closing months of their Administrations than earlier in their terms. **Table 1** shows that since 1945, every President who completed his term of office, except President Lyndon B. Johnson, increased the rate at which he granted clemency in the final four months of his Administration, when compared with his previous months in office.

Congressional Research Service
<https://crsreports.congress.gov>

IN11543

Table I. Average Monthly Clemency Petitions Granted, Prior to and During the Final Four Months of Selected Administrations

President	Prior to Final Four Months of Administration	Final Four Months of Administration
Harry S. Truman	22 per month	25 per month
Dwight D. Eisenhower	10 per month	53 per month
Lyndon B. Johnson	21 per month	0 per month
Gerald R. Ford	11 per month	34 per month
Jimmy Carter	11 per month	20 per month
Ronald W. Reagan	4 per month	8 per month
George H.W. Bush	1 per month	10 per month
William J. Clinton	2 per month	65 per month
George W. Bush	2 per month	8 per month
Barack Obama	8 per month	300 per month

Source: U.S. Department of Justice, Office of the Pardon Attorney.

Note: Clemency statistics include pardons, commutations, and remissions of fines. Figures have been rounded to the nearest whole number.

Controversial acts of clemency may be among those granted in the final months of an Administration, such as President George H. W. Bush's pardon of key figures in the Iran-Contra affair on December 24, 1992—less than four weeks before the end of his term—and President William J. Clinton's [pardon of commodities trader Marc Rich](#), which was issued on President Clinton's last day in office.

Possible Congressional Concerns

Acts of Clemency Might Restrict Department of Justice Oversight of the Executive Branch

Ongoing investigations into the conduct of executive branch officials by the Department of Justice may be impeded or effectively ended by acts of clemency. As previously noted, President George H. W. Bush pardoned six former officials from President Reagan's Administration for their roles in the Iran-Contra affair, including two officials who had been indicted but had not yet been to trial. These pardons essentially ended the Independent Counsel's criminal investigation, which had begun six years earlier. Congress may choose to continue investigations of executive branch officials even though the individuals have been pardoned and no charges could occur.

Acts of Clemency Might Have Implications for U.S. Foreign Relations

In one of his last acts before leaving office, President George W. Bush [commuted the sentences](#) of two U.S. Border Patrol agents convicted of shooting a Mexican citizen who had crossed illegally into Texas. Mexico's Deputy Secretary for Foreign Relations, Carlos Rico, [protested the decision](#), calling it a "message of impunity" that is "difficult to understand." The President of Mexico previously had filed a diplomatic protest over an incident in which a U.S. Border Patrol agent [shot and killed](#) a Mexican national. Given Mexico's ongoing concerns about the treatment of immigrants in the U.S., some might deduce that President Bush's pardons may have harmed U.S.-Mexico relations.

Author Information

Garrett Hatch
Specialist in American National Government

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.