

Executive Clemency and Judicial Power: Legal Overview and Recent Caselaw

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On the first day of his second term in office, President Donald Trump [granted](#) a “full, complete and unconditional pardon” to almost all “individuals convicted of offenses related to events that occurred at or near the United States Capitol on January 6, 2021.” [Fourteen](#) named individuals convicted of such offenses instead received commutations of their sentences to “time served.” President Trump [stated](#) that some individuals received commutations rather than pardons pending “further research.”

As of this writing, it [appears](#) that one of the fourteen individuals whose sentence was commuted has since received a pardon. Twelve of the thirteen remaining individuals whose sentences were commuted had been sentenced to terms of imprisonment and subsequent [terms](#) of [supervised release](#). The impact of the commutations on some of these individuals’ sentences, including whether and how their terms of supervised release should be implemented and served, generated [dialogue](#) between the Department of Justice and the sentencing court that illustrates the sometimes-complicated relationship between executive clemency, judicial power, and criminal punishment. This relationship may be of interest to Congress as it considers [legislation](#) that would [seek](#) to regulate the exercise of executive clemency.

This Legal Sidebar examines the President’s authority to grant clemency and the difference between pardons and commutations. It then analyzes court decisions that turn in part on this difference, including a 2025 case involving the effect of a presidential commutation on supervised release conditions. The Sidebar concludes with considerations for Congress and other constitutional issues that may arise in legislation regarding executive clemency.

Background: Clemency

The [Constitution](#) confers on the President the “Power to grant Reprieves and Pardons for Offences against the United States, except in cases of impeachment.” Rooted in [early English law](#), this authority is [recognized](#) by the Supreme Court as “plenary” and a “broad power” to “forgive a convicted person in part or entirely, to reduce a penalty in terms of a specified number of years, or to alter it.” Presidential clemency is [reserved](#) for federal criminal offenses, not state crimes or civil claims.

Thus, a President’s exercise of clemency can take several forms, including an unconditional pardon or a commutation that lessens the severity or length of a convicted individual’s punishment. As one [court](#) put

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it, this difference can be characterized as “a complete and total cancellation of punishment” (pardon) versus “a substitution of a lesser or partial punishment” (commutation). This section discusses the implications of this distinction. Other recognized forms of clemency, including [reprieves](#), [remissions](#), and [amnesties](#), are not specifically addressed in this Sidebar.

Pardons

The Supreme Court has [described](#) a pardon as “blot[ting] out the offense . . . and remov[ing] all its penal consequences.” Courts [understand](#) a pardon to “generally negate the effects of the underlying conviction,” such that the underlying judgment of conviction “is [satisfied](#) and ceases to have operation.”

A President’s pardon may be subject to conditions that the President stipulates, [provided](#) that the conditions do not violate other provisions of the Constitution. Notwithstanding such conditions, a pardon is generally [understood](#) to remove any legal disabilities stemming from the offender’s conviction and to restore the offender’s civil rights. A pardon must be [accepted](#) by the person to whom it is granted.

Commutations

In contrast with a pardon, a commutation acts as a [substitution](#) of the punishment imposed by a federal court for a less severe one of the [same kind](#), for example, by reducing a sentence of imprisonment. Put another way, a commutation “[leaves](#) the conviction in place and lessens the sentence in some way.” Like a pardon, a commutation may carry with it [conditions](#) imposed by the President, so long as those conditions do not “[offend](#)” the Constitution.

Unlike pardons, commutations [do not](#) need to be accepted by the offender, [unless](#) the President conditions the commutation on acceptance. Further, “a prisoner who receives a presidential commutation [continues](#) to be bound by a judicial sentence.” The commutation [renders](#) the judgment “satisfied in part”; it “remains operative in part, and it requires the exercise of the function of the court in order that the commuted judgment may be executed.” Thus, “the [judgment](#) remains, but in modified form.”

Conditions

Courts at times have alluded to a limitation on the President’s ability to attach conditions to grants of clemency—specifically, that such conditions cannot run afoul of other constitutional provisions. In [Hoffa v. Saxbe](#), the U.S. District Court for the District of Columbia articulated what is perhaps the clearest framework for evaluating this limitation. *Hoffa* involved a presidential commutation conditioned on the recipient of the commutation forgoing participation in labor union management for a period of years, which the recipient challenged as a violation of his rights to free speech and association under the [First Amendment](#). Confronting the issue as one involving the relationship between the President’s power of clemency and “the rights and liberties of the individual,” the court took the [view](#) that “there are obvious limits beyond which the President may not go in imposing and subsequently enforcing” clemency conditions. It established “a [two-pronged test](#) of reasonableness in determining the lawfulness of a condition.” First, the condition must be “directly related to the public interest,” [meaning](#) that it “must relate to the reason for the initial judgment of conviction” in a way that reflects regard for protection of the public. Second, the condition [must](#) “not unreasonably infringe on the individual [clemency recipient’s] constitutional freedoms.” Applying this test, the court ultimately concluded that the condition was permissible. This two-pronged test has not been addressed by the Supreme Court, nor does there appear to have been extensive discussion of it or development of alternative frameworks in reported judicial decisions.

Effect of Commutation on Judicial Sentence and Authority

Because commutations only satisfy a judgment “in part,” courts sometimes wrestle with which components of a defendant’s sentence—if any—remain in effect upon their release from custody. The Supreme Court has addressed this relationship, [making clear](#) that a commutation does not overturn a conviction but rather mitigates or sets aside a court’s existing sentence for the conviction. Moreover, the Court has understood that a commutation may impact only part of a sentence. For example, the Court [stated](#) that “[n]o one doubts that a reduction of the term of an imprisonment or the amount of a fine would limit the sentence effectively, on the one side, and, on the other, would leave the reduced term or fine valid and to be enforced.”

Still, while it may be true, “[p]ractically speaking,” that a commutation is effectively a “[substituted punishment](#),” one court has [cautioned](#) that it is merely a softening of the *execution* of the sentence. The recipient of a commutation [remains](#) subject to his “original judicial sentence,” which “remains intact.” It thus remains the province of the courts to administer the components of a defendant’s original judicial sentence following his release from custody by virtue of a commutation. In this regard, courts sometimes entertain legal challenges to sentences that have been modified by commutation, while recognizing that they lack the power to modify the commutation’s own terms. For example, despite ultimately rejecting the petitioner’s challenge on the merits, the U.S. Court of Appeals for the Sixth Circuit (Sixth Circuit), in [Dennis v. Terris](#), explained that it had the authority to “entertain a collateral attack” on a sentence that was commuted to grant relief beyond that which was granted by the commutation (seeking a term of imprisonment less than the 30-year term to which the President commuted a life sentence). However, in another [case](#), President Eisenhower commuted a death sentence to life in prison and attached to the commutation a condition that the petitioner not be eligible for parole. After the Supreme Court years later declared the death penalty unconstitutional (a decision that [would have](#) entitled the offender to a new sentence of life with the possibility of parole), the petitioner sought resentencing. The Supreme Court [concluded](#) that it was powerless to grant such relief, because doing so would violate the condition of the President’s commutation—a condition the court considered constitutional.

In determining the scope of a commutation for these purposes, courts often look to the text of the clemency proclamation. In one case, for instance, the U.S. Court of Appeals for the Eleventh Circuit (Eleventh Circuit) [held](#) that a commutation of an inmate’s “total sentence of imprisonment” that he was “now serving” applied only to the term of imprisonment imposed for offenses he had committed while out of prison and on supervised release for a prior conviction, but it did not extend to the initial term of imprisonment that preceded his supervised release period (a [distinction](#) that affected the defendant’s eventual release date). Recognizing that the text of the commutation governed its review, the court determined that the inmate was “now”—at the time of the commutation—only serving the sentence for the offenses he committed on supervised release; he “[was not](#) serving *any* part of his original sentence when [the] President . . . issued the commutation order.” The court also looked to the inmate’s application for clemency for guidance; it [identified](#) as “offense(s) for which commutation is sought” only the offenses he committed while on supervised release.

Similarly, one district court [determined](#) (in a case currently on appeal in the U.S. Court of Appeals for the Ninth Circuit) that a commutation of a defendant’s prison sentence that left “intact and in effect [his] three-year term of supervised release with all its conditions, and all other components of the sentence” preserved the defendant’s obligation to pay restitution that was previously ordered by the court but that had not yet been calculated at the time he was granted clemency. The court [reasoned](#) that the President had the power to “affirmatively discharge[] [the defendant’s] restitution obligation” but did not do so; instead, the commutation warrant expressly preserved the terms of supervised release, which included as a

condition an obligation to pay restitution. The court [noted](#) as well that the defendant had not requested that the President commute the portion of the judgment ordering an undetermined amount of restitution.

United States v. Rhodes

A January 2025 [decision](#) from the D.C. district court illustrates the sometimes-complicated relationship between the President’s clemency power and the courts’ role in the administration of justice.

The Sentencing Reform Act (SRA) of 1984 [authorizes](#), and in some instances requires, federal courts to impose supervised release on an individual convicted of a federal crime. In general, [supervised release](#) comprises a set of conditions that a federal defendant must comply with following his release from prison. Supervised release is distinct from probation and parole. While all three may involve the imposition of behavioral conditions, [probation](#) may be imposed with *no* attendant term of imprisonment, [parole](#) may replace *some* (i.e., the unexpired part) of a term of imprisonment, and supervised release begins only after a defendant *fully* serves a term of imprisonment (minus any good time credits, or clemency). Of the three, federal judges may impose probation and supervised release; the SRA prospectively [abolished](#) parole for federal crimes to promote certainty, or “truth,” of punishment in sentencing.

Federal law requires supervised release if a defendant is convicted of specific crimes, such as certain [drug](#) or [sex](#) offenses. When supervised release is not mandated by statute, a court has discretion as to whether to impose a term of supervised release. In practice, federal courts impose supervised release in [virtually all](#) cases. The SRA identifies conditions of supervised release that are mandatory and discretionary. [Mandatory](#) conditions include requirements that the defendant not commit another offense; submit to drug testing unless excepted; and comply with federal sex offender registration conditions, if applicable. A court may also impose “[standard](#)” or “[special](#)” discretionary conditions, such as reporting to a probation officer; not leaving the jurisdiction without approval; prohibiting travel to a designated geographic area or contact with a specific individual; allowing home visits by the probation officer; obtaining full-time employment; not possessing firearms; and receiving substance use or mental health treatment.

The nine defendants in *United States v. Rhodes* were released from prison following President Trump’s [commutation](#) of their sentences for crimes connected to the events of January 6, 2021. Eight of the nine defendants were originally [sentenced](#) to a term of supervised release following their incarceration. At the time of sentencing for at least some of these individuals, the terms of the eventual supervised release had not included any location restrictions because, as the court later [explained](#), “at that time it was not the practice of the local Probation Office to recommend [location restrictions] as special conditions of release.” That “[later changed](#),” and as a result, following the release of some of these individuals from incarceration, the court [amended](#) the conditions to require they stay away from Washington, D.C., and the U.S. Capitol and its surrounding grounds, “absent permission from the court.” The Department of Justice [moved](#) to vacate the order amending those conditions and sought to dismiss the terms of supervised release altogether, reasoning that the presidential commutation of a “sentence” applies both to the custodial and non-custodial portions of the defendants’ sentences. As supervised release is part of the defendants’ sentences, the department maintained, the commutation nullifies entirely the terms of supervised release.

The [court](#), in granting the department’s motion in part and denying it in part, cited a Sixth Circuit [decision](#) for the general proposition that a judicial sentence, including its custodial and non-custodial parts, remains valid post-commutation. The court [observed](#) that a commutation affects the execution of a sentence—that is, commutation impacts *how* a judicial sentence is to be administered, not *whether* that judicially imposed sentence has continued validity. Precisely how a commutation affects a sentence turns on the text of the President’s proclamation of clemency, the court [added](#). The court [agreed](#) with the Eleventh Circuit’s [determination](#) that an executive agency, such as the Department of Justice, is accorded discretion in interpreting the commutation order.

Applying these principles to the President's proclamation concerning the defendants, the court **found** that the department's theory—that the “sentences” referred to in the proclamation capture the defendants' terms of supervised release—accords with the established meaning of “sentence” and, thus, the department's interpretation was reasonable. Moreover, the court **observed** that the commutations were unconditional, that is, they were not limited by their words to only part of the defendants' sentences. The court therefore accepted the department's position that the proclamation may be read to “**extinguish**” enforcement of the defendants' terms of supervised release and that the defendants were “**no longer bound**” by the court's conditions. Although the court vacated the terms of supervised release, it denied the department's request to outright dismiss the convictions, **reasoning** that the commutations do not “alter the court's (and the juries') judgments,” thereby maintaining the continued existence, if not the enforcement, of the judicially imposed convictions and sentences.

Considerations for Congress

The President's power to grant clemency “**flows** from the Constitution alone,” and it “**cannot** be modified, abridged, or diminished by the Congress.” Still, Congress has at times played a role in the *exercise* of the power. Congress **appropriates** funds for positions in the Department of Justice to assist the President in considering clemency petitions, and the Supreme Court has **upheld** a statute vesting in an officer subordinate to the President the authority to remit fines or penalties following clemency. Congress may invoke its constitutional powers of **oversight** as an indirect restraint on the President's clemency power.

Given the President's plenary power in this area, Congress may attempt to enact legislation affecting the legal status of or imposing legal consequences on individuals who receive clemency. Any such efforts may face constitutional limits. **Article I, Section 9, clause 3** of the Constitution prohibits Congress from enacting bills of attainder and ex post facto laws. A **bill of attainder** is legislation that imposes punishment on an identifiable person or group without a judicial trial, while an **ex post facto law** is a law that imposes or increases criminal punishment retroactively. In the Reconstruction-era case *Ex parte Garland*, the Supreme Court held unconstitutional a federal statute that required attorneys practicing in federal court to swear an oath that they had never been involved with or supported the Confederacy. The challenger in *Garland* had served in the Confederate government but later received a presidential pardon, so he could not take the oath. The Court **held** that the statute violated the prohibitions on bills of attainder and ex post facto laws. It further **held** that the oath requirement was an attempt to “avoid” the presidential pardon and “accomplish[] indirectly [that] which cannot be reached by direct legislation.” Such an attempt was invalid **because** “[i]t is not within the constitutional power of Congress thus to inflict punishment beyond the reach of executive clemency.”

Attempts to legislate further punishment on individuals who have been granted clemency may also raise separation-of-powers questions with respect to congressional control over the judiciary. Another Reconstruction-era case, *United States v. Klein*, involved a law that allowed persons whose property had been confiscated during the Civil War to obtain compensation if they had not “given any aid and comfort” to the rebellion. In response to a Supreme Court ruling allowing individuals who had supported the Confederacy and then received a pardon to receive compensation, Congress enacted legislation intended to make a presidential pardon ineffective in establishing a right to the proceeds of seized property and deprive the Supreme Court of jurisdiction over cases where a claimant had prevailed based on the existence of a pardon. The Supreme Court struck down the legislation, holding that it intruded on the powers of both the judicial and executive branches. With respect to the **judicial branch**, the Court held that the law overreached by purporting to remove jurisdiction only when certain evidence was furnished—that a pardon was granted—and by requiring dismissal without allowing the court to rule on the meaning of the pardon. In so doing, Congress **had** “prescribe[d] a rule for the decision of a cause in a particular way” and **thus** “passed the limit which separates the legislative from the judicial power.” With respect to the

[executive branch](#), the Court held that the law was an impermissible attempt to change the effect of pardons by requiring courts to “disregard pardons . . . and to deny them their legal effect.”

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