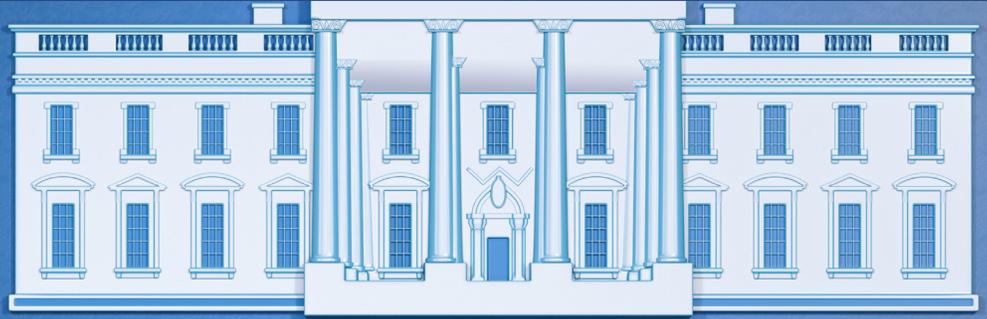


Presidential Pardons

Prepared by:
James L. Bell, Esq.
The Bell Law Firm, P.A.



THE WHITE HOUSE
WASHINGTON

THE WHITE HOUSE

WASHINGTON

LORMAN[®]

Published on www.lorman.com - November 2021

Presidential Pardons, ©2021 Lorman Education Services. All Rights Reserved.

LORMAN[®]

Lorman Education Services is a leading provider of online professional learning, serving individuals and teams seeking training and CE credits. Whether you're looking for professional continuing education or an enterprise-wide learning and development solution, you will find what you need in Lorman's growing library of resources.

Lorman helps professionals meet their needs with more than 100 live training sessions each month and a growing collection of over 13,000 ondemand courses and resources developed by noted industry experts and professionals.

Learn more about Lorman's individual programs, economical All-Access Pass, and Enterprise Packages:

www.lorman.com

Presidential Pardons

A federal pardon in the United States is the action of the President of the United States that completely sets aside the punishment for a federal crime. The authority to take such action is granted to the president by Article II, Section 2, Clause 1 of the U.S. Constitution. A pardon is one form of the clemency power of the president, the others being commutation of sentence, remission of fine or restitution, and reprieve.[1] A person may decide not to accept a pardon, in which case it does not take effect;[2] according to a Supreme Court majority opinion in *Burdick v. United States* a pardon "carries an imputation of guilt; acceptance a confession of it".

Under the Constitution, the president's clemency power extends to all federal criminal offenses, except in cases of impeachment.[3] All requests for executive clemency for federal offenses are normally directed to the Office of the Pardon Attorney in the U.S. Department of Justice for investigation and review,[4] but the president is free to bypass that office.[5]

The president's pardon power is limited to federal offenses; the constitution only grants the president the power to pardon "[o]ffenses against the United States.[Supra, 4] An offense that violates state law, but not federal law, is an offense against that state rather than an offense against the United States.[6]

The full extent of a president's power to pardon has not been fully resolved. Pardons have been used for presumptive cases, such as when President Gerald Ford pardoned Richard Nixon, who had not been charged with anything, over any possible crimes connected with the Watergate scandal, but the Supreme Court has never considered the legal effectiveness of such pardons.[7] There is disagreement about how the pardon power applies to cases involving obstructions of an impeachment.[8] Also, the ability of a president to pardon themselves (self-pardon) has never been tested in the courts, because, to date, no president has ever taken that action.[9] There has also been speculation as to whether secret pardons are possible.[10]

1. U.S. Constitutional provision:

The pardon power of the President is based on Article Two of the United States Constitution (Section 2, Clause 1), which provides:

The President ... shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of impeachment.

The U.S. Supreme Court has interpreted the provision to include the power to grant pardons, conditional pardons, commutations of sentence, conditional commutations of sentence, remissions of fines and forfeitures, respites and amnesties.[11]

2. Definitions:

A pardon is an executive order granting clemency for a conviction. It may be granted "at any time" after the commission of the crime.[12] As per Justice Department regulations, convicted persons may only apply five or more years after their sentence has been completed.[3] However, the President's power to pardon is not restricted by any temporal constraints except that the crime must have been committed. A pardon is an expression of the President's forgiveness and ordinarily is granted in recognition of the applicant's acceptance of responsibility for the crime and established good conduct for a significant period of time after conviction or completion of sentence. It does not signify innocence.[3] Its practical effect is the restoration of civil rights and statutory disabilities (e.g., firearm rights, occupational licensing) associated with a past criminal conviction.[3] In rarer cases, such as the pardon of Richard Nixon, a pardon can also halt criminal proceedings and prevent an indictment, though this has not been tested in court.

A reprieve is a temporary postponement of a punishment (refer to pardon/related concepts).

A commutation is the mitigation of the sentence of someone currently serving a sentence for a crime pursuant to a conviction, without cancelling the conviction itself.

3. Presidential Pardon:

All federal pardon petitions are addressed to the President, who grants or denies the request. Typically, applications for pardons are referred for review and non-binding recommendation by the Office of the Pardon Attorney, an official of the United States Department of Justice. The number of pardons and reprieves granted has varied from administration to administration. Fewer pardons have been granted since World War II.[13]

A federal pardon can be issued prior to the start of a legal case or inquiry, prior to any indictments being issued, for unspecified offenses, and prior to or after a conviction for a federal crime. Ford's broad federal pardon of former president Richard M. Nixon in 1974 for "all offenses against the United States which he, Richard Nixon, has committed or may have committed or taken part in during the period from January 20, 1969 through August 9, 1974" is a notable example of a fixed-period federal pardon that came prior to any indictments being issued and that covered unspecified federal offenses that may or may not have been committed [14]

The Justice Department normally requires that anyone filing a petition for a pardon wait five years after conviction or release prior to receiving a pardon.[15] The constitutionality of open pardons, such as Ford's pardon of Nixon, has never been judicially tested in the Supreme Court and is open to question.

While clemency may be granted without the filing of a formal request, in most cases the Office of the Pardon Attorney will consider only petitions from persons who have completed their sentences and, in addition, have demonstrated their ability to lead a responsible and productive life for a significant period after conviction or release from confinement.

The Supreme Court ruled in *United States v. Wilson* (1833) that a pardon could be rejected by the convict. In *Burdick v. United States* (1915), the court specifically said: "Circumstances may be made to bring innocence under the penalties of the law. If so brought, escape by confession of guilt implied in the acceptance of a pardon may be rejected, preferring to be the victim of the law rather than its acknowledged transgressor, preferring death even to

such certain infamy." Commutations (reduction in prison sentence), unlike pardons (restoration of civil rights after prison sentence had been served) may not be refused. In *Biddle v. Perovich* 274 U.S. 480 (1927), the subject of the commutation did not want to accept life in prison but wanted the death penalty restored. The Supreme Court said, "Just as the original punishment would be imposed without regard to the prisoner's consent and in the teeth of his will, whether he liked it or not, the public welfare, not his consent, determines what shall be done." [15]

4. Limitations of Pardons:

Federal pardons issued by the president apply only to federal law; they do not apply to civil, state, or local offenses. Federal pardons also do not apply to cases of impeachment. Pardons for state crimes are handled by governors or a state pardon board.

One limitation to the president's power to grant pardons is "in cases of impeachment." This means that the president cannot use a pardon to stop an officeholder from being impeached, or to undo the effects of an impeachment and conviction. [16]

5. Pardon Must be Affirmatively Accepted:

In *United States v. Wilson* (1833), the United States Supreme Court held that a pardon can be rejected by the intended recipient and must be affirmatively accepted to be officially recognized by the courts. In that case, George Wilson who was convicted of robbing the US Mail and was sentenced to death. Due to his friends' influence, Wilson was pardoned by President Andrew Jackson, but Wilson refused the pardon and the Supreme Court held that his rejection was valid and the court could not force a pardon upon him; and consequently the pardon must be introduced to the court by "plea, motion, or otherwise" to be considered as a point of fact and evidence.

According to Associate Justice Joseph McKenna, writing the majority opinion in the U.S. Supreme Court case *Burdick v. United States*, a pardon "carries an imputation of guilt; acceptance a confession of it." [17] The

federal courts have yet to make it clear how this logic applies to persons who are deceased (such as Henry Ossian Flipper, who was pardoned by Bill Clinton), those who are relieved from penalties as a result of general amnesties, and those whose punishments are relieved via a commutation of sentence (which cannot be rejected in any sense of the language).[18] Brian Kalt, a law professor at Michigan State University, states that presidents sometimes (albeit rarely) grant pardons on the basis of innocence, and argues that if a president issues a pardon because they think an individual is innocent, then accepting that pardon would not be an admission of guilt.[19]

Residual effects of convictions

6. Pardon Restores Various Rights:

A presidential pardon restores various rights lost as a result of the pardoned offense and may lessen to some extent the stigma arising from a conviction, but does not erase or expunge the record of the conviction itself. Therefore, a person who is granted a pardon must still disclose their conviction(s) on any form where such information is required, although the person may also disclose the fact that they received a pardon. Also, as most civil disabilities arising from a criminal conviction, such as loss of the right to vote and hold state public office, are imposed by state rather than federal law, they may be removed only by state action.[20]



LORMAN[®]

📍 2510 Alpine Road Eau Claire, WI 54703

💻 www.lorman.com ☎️ 866-352-9539 ✉️ customerservice@lorman.com



The material appearing in this website is for informational purposes only and is not legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. The information provided herein is intended only as general information which may or may not reflect the most current developments. Although these materials may be prepared by professionals, they should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

The opinions or viewpoints expressed herein do not necessarily reflect those of Lorman Education Services. All materials and content were prepared by persons and/or entities other than Lorman Education Services, and said other persons and/or entities are solely responsible for their content.

Any links to other websites are not intended to be referrals or endorsements of these sites. The links provided are maintained by the respective organizations, and they are solely responsible for the content of their own sites.