


2022

The Pardon Paradigm: The Presidential Pardons of Donald J. Trump

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THE PARDON PARADIGM:
THE PRESIDENTIAL PARDONS OF DONALD J. TRUMP

by

HLYNUR SAEMUNDSSON

A thesis submitted in partial fulfillment of the requirements
for the Honors in the Political Science Program
in the College of the Sciences
and in the Burnett Honors College
at the University of Central Florida
Orlando, Florida

Spring Term
2022

ABSTRACT

The presidential pardon power is an oft-overlooked political institution that seems to be perceived as being innocuous and irrelevant to larger political concerns. This research examines the pardons issued by President Donald J. Trump in an effort to evaluate whether they align with constitutional expectations regarding the use of this unrestricted presidential power. Dr. Jeffrey Crouch, a leading scholar on the subject, has demonstrated that the pardon power was intended to be used as a disinterested act of grace or an act in the public interest. A close survey of President Trump's use of this power shows that many of his pardons do not meet these standards. Instead, President Trump often used pardons to protect political allies or favor personal friends. In doing so, Mr. Trump derogated from the Constitution and elevated allies and friends above the rule of law. The implications of this usage for American democracy are spelled out.

ACKNOWLEDGEMENTS

First and foremost, I would like to thank Dr. Daniel Marien for his continued support throughout the writing of this thesis and the dedication of his time to this research. I have had the pleasure of being under his tutelage for the duration of my time at the University of Central Florida, and the two of us developed a real *bonhomie* during our weekly meetings over the past year. Coupling with this period of my life saw me marrying the love of my life, as well as the birth of my firstborn son. Special thanks go to my dearest Hanna Mia and baby Leó. From the outset, the advice from Dr. Barbara Kinsey and Dr. Paul Vasquez was greatly appreciated, as well as the continued commitment of Dr. Barry Edwards as a committee member. Lastly, I would like to thank my parents for their life-long support, but my dream of graduating from an American university would not have been possible without their support. I shall always be indebted to their devotion.

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CHAPTER 1: INTRODUCTION

To begin, then, at the end. On January 20, 2021, President Donald J. Trump issued his final presidential pardon. Within an hour before his successor took the oath of office for president of the United States, Mr. Trump pardoned Albert J. Pirro, Jr., a former Republican power broker and ex-husband of Jeanine F. Pirro of Fox News.¹ Mr. Pirro was sentenced to 29 months in federal prison for conspiracy and tax evasion charges back in 2000, but Ms. Pirro had lobbied the president to issue the pardon.² Perhaps his “last official act as president,” commented *The Washington Post*, “[the pardon] encapsulated so many facets of Trump’s presidency, from the translation of personal relationships into manifestations of power to his ... broad disinterest in how things were normally done.”³

On August 25, 2017, Mr. Trump issued his first presidential pardon.⁴ The recipient was the controversial former sheriff of Maricopa County, Arizona, Joseph M. Arpaio. “Sheriff Joe” had been convicted a month earlier of criminal contempt of court for defying a court’s order “to stop detaining people based solely on suspicion of their immigration status.”⁵ The two men, both

¹ “All the People President Trump Pardoned on His Way out of Office,” *The Washington Post*, January 20, 2021, <https://www.washingtonpost.com/politics/2020/12/23/trump-pardons-list>; “Here Are Some of the People Trump Pardoned,” *The New York Times*, January 26, 2021, <https://www.nytimes.com/article/who-did-trump-pardon.html>.

² David W. Chen, “Pirro Sentenced to 29 Months in U.S. Prison,” *The New York Times*, November 2, 2000, <https://www.nytimes.com/2000/11/02/nyregion/pirro-sentenced-to-29-months-in-us-prison.html>; Maggie Haberman, “Trump Departs Vowing, ‘We Will Be Back in Some Form,’” *The New York Times*, January 20, 2021, <https://www.nytimes.com/2021/01/20/us/politics/trump-presidency.html>.

³ Philip Bump, “Even Trump’s Last-Minute Pardon of a Fox News Host’s Ex-Husband Will Stand,” *The Washington Post*, January 20, 2021, <https://www.washingtonpost.com/politics/2021/01/20/even-trumps-last-minute-pardon-fox-news-anchors-ex-husband-will-stand>.

⁴ “Pardons Granted by President Donald J. Trump (2017-2021),” Clemency Recipients (U.S. Department of Justice, April 28, 2021), <https://www.justice.gov/pardon/pardons-granted-president-donald-j-trump-2017-2021>.

born on June 14, shared the same hardline views on immigration, but the pardon “was the culmination of a five-year political friendship with roots in the “birther” movement to undermine President Barack Obama.”⁶ Without consulting the Justice Department, Mr. Trump took it upon himself to preemptively pardon Mr. Arpaio before his sentencing. The 85-year-old former sheriff could have “faced up to six months in prison,” but the president “was fond of Mr. Arpaio, and was sold on the pardon as a way of pleasing his political base.”⁷ Former Arizona Senator John McCain stated that “[t]he President has the authority to make this pardon, but doing so at this time undermines his claim for the respect of rule of law as Mr. Arpaio has shown no remorse for his actions.”⁸

Article II, Section 2 of the Constitution of the United States states that the president has the authority to “grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.”⁹ The Framers drew their inspiration for the pardon power from their English heritage, or from the concentrated power of the English monarch to grant pardons. Moreover, the American system of government was distinctly influenced by earlier political

⁵ Julie Hirschfeld Davis and Maggie Haberman, “Trump Pardons Joe Arpaio, Who Became Face of Crackdown on Illegal Immigration,” *The New York Times*, August 25, 2017, <https://www.nytimes.com/2017/08/25/us/politics/joe-arpaio-trump-pardon-sheriff-arizona.html>.

⁶ Philip Rucker and Ellen Nakashima, “Trump Asked Sessions About Closing Case against Arpaio, an Ally since ‘Birtherism,’” *The Washington Post*, August 26, 2017, https://www.washingtonpost.com/politics/trump-asked-sessions-about-closing-case-against-arpaio-an-ally-since-birtherism/2017/08/26/15e5d7b2-8a7f-11e7-a94f-3139abce39f5_story.html.

⁷ Ibid.

⁸ John J. Pitney, Jr., *Un-American: The Fake Patriotism of Donald J. Trump* (Lanham, Maryland: Rowman & Littlefield, 2020), 93.

⁹ “The Constitution of the United States: A Transcription,” America’s Founding Documents (The U.S. National Archives and Records Administration, May 4, 2020), <https://www.archives.gov/founding-docs/constitution-transcript>.

thinkers, such as John Locke and Baron de Montesquieu.¹⁰ In his *Second Treatise of Government*, Locke stated that “the ruler should have a power, in many cases, to mitigate the severity of the law, and pardon some offenders.”¹¹ Although some debate took place between Federalists and Anti-Federalists during the Constitutional Convention in Philadelphia in 1787 on this issue, the power to pardon was vested in the executive branch of government in simplified terms. The legislative branch was given means of checking the president’s power, but only by the extraordinary measure of impeaching the president or by amending the Constitution. The Federalists favored a strong executive, and from their ranks, Alexander Hamilton strongly defended this framework of the pardon power:¹²

Humanity and good policy conspire to dictate, that the benign prerogative of pardoning should be as little as possible fettered or embarrassed. The criminal code of every country partakes so much of necessary severity, that without an easy access to exceptions in favor of unfortunate guilt, justice would wear a countenance too sanguinary and cruel. . . . It is not to be doubted, that a single man of prudence and good sense is better fitted, in delicate conjunctures, to balance the motives which may plead for and against the remission of the punishment, than any numerous body whatever. . . . But the principal argument for reposing the power of pardoning in this case to the Chief Magistrate is this: in seasons of insurrection or rebellion, there are often critical moments, when a welltimed offer of pardon to the insurgents or rebels may restore the tranquillity of the

¹⁰ Jeffrey Crouch, *The Presidential Pardon Power* (Lawrence, Kansas: University Press of Kansas, 2009), 12-13.

¹¹ John Locke, *Second Treatise of Government* (Wheeling, Illinois: Harlan Davidson, 1982), 99.

¹² Jeffrey Crouch, *The Presidential Pardon Power*, 15, 18, 25.

commonwealth; and which, if suffered to pass unimproved, it may never be possible afterwards to recall.¹³

Given the imprecise language of the Constitution regarding this authority, the judiciary is charged with interpreting the pardon power.¹⁴ In 1833, Chief Justice Marshall defined a *pardon* as

an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It is the private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended, and not communicated officially to the Court.¹⁵

In 1855, Justice Wayne articulated that a pardon was “a work of mercy [which can be] conditional, as [the president] may extend his mercy upon what terms he pleases, and annex to his bounty a condition precedent or subsequent, on the performance of which the validity of the pardon will depend.”¹⁶ Finally, in 1927, Justice Holmes opined that a

pardon in our days is not a private act of grace from an individual happening to possess power. It is a part of the Constitutional scheme. When granted, it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed. . . . Just as the original punishment would be imposed without

¹³ Alexander Hamilton, “Federalist Nos. 71-80,” Federalist No. 74 (Library of Congress, 2019), <https://guides.loc.gov/federalist-papers/text-71-80>.

¹⁴ William F. Duker, “The President’s Power to Pardon: A Constitutional History,” *William & Mary Law Review* 18, no. 3 (1977): 506.

¹⁵ *United States v. Wilson*, 32 U.S. 150 (1833).

¹⁶ *Ex Parte Wells*, 59 U.S. 307 (1855).

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."¹⁷

When comparing the opinions of Chief Justice Marshall and Justice Holmes, legal scholars have disagreed over whether or not the "act of grace" rationale was abandoned in favor of the "public welfare" one:

Are both approaches still valid today? One sign that the more recent rationale had been accepted was offered by President Taft himself, who noted that the duty to exercise the pardon power "is a most difficult one to perform. . . . The only rule he can follow is that he shall not exercise it against the public interest." And yet, the original rationale had not gone away. In a recent article, former pardon attorney Roger Adams referred to pardon decision-making as "all a matter of grace."¹⁸

A *pardon* can therefore be defined as "an act of grace," "a work of mercy," or "[serving] the public welfare."

The president's authority to issue pardons is but one form of executive clemency. In 1974, Chief Justice Burger delivered the opinion of the Court, stating that "[t]he plain purpose of the broad power conferred by [Article II, Section 2 of the Constitution], was to allow plenary authority in the President to "forgive" the convicted person in part or entirely, to reduce a penalty in terms of a specified number of years, or to alter it with conditions which are in themselves constitutionally unobjectionable."¹⁹ Accordingly, the president can issue full or conditional pardons, amnesties (pardons to groups of people), commutations (reductions of sentences),

¹⁷ *Biddle v. Perovich*, 274 U.S. 480 (1927).

¹⁸ Jeffrey Crouch, *The Presidential Pardon Power*, 31.

¹⁹ *Schick v. Reed*, 419 U.S. 256 (1974).

remissions of fines and forfeitures, and reprieves (delaying of sentences).²⁰ For the purposes of this research, I will only discuss the presidential pardons of Donald J. Trump and omit the other forms of executive clemency he exercised during his term in office. This is done not only to simplify the research, but because a pardon has been called “the greatest gift you can get from a sitting president,”²¹ where the legal ramifications imply that an offender who receives a pardon “is as innocent as if he had never committed the offence.”²²

Perhaps the greatest authority on this subject today is Dr. Jeffrey Crouch, who wrote the definitive book covering this area, *The Presidential Pardon Power*. Dr. Crouch presents the pardon power in historical terms and its development before and after Watergate, but the “main argument of [his] book is that the clemency power is being abused by modern presidents to protect themselves or their subordinates or to reward supporters.”²³ His book has been well received and noted as being “the fullest historical account and legal analysis of the presidential pardon power published in two decades.” The pardon of Richard Nixon by his successor marked “the crucial turning point in the presidential pardon power’s history,” which has led to “a series of reprehensible political pardons that [have] bypassed normal procedures [and] mocked the traditional reasons for granting clemency, [mostly being granted] at the very end of presidential terms when chief executives [are] no longer accountable to the voters.”²⁴ This is evident with

²⁰ Michael A. Foster, “Presidential Pardons: Overview and Selected Legal Issues” (Washington, D.C.: The Congressional Research Service, January 14, 2020), <https://crsreports.congress.gov/product/pdf/R/R46179>.

²¹ “Trump’s Last-Minute Pardons Include Steve Bannon, Lil Wayne and Scores of Others,” YouTube (CNN, January 20, 2021), https://youtu.be/SRc_-V_LsQw?t=217.

²² *Ex Parte Garland*, 71 U.S. 333 (1866).

²³ Jeffrey Crouch, *The Presidential Pardon Power*, 9.

²⁴ Donald Rogers, “The Presidential Pardon—Now a Dangerous Power?,” H-Law, August 2010, <https://networks.h-net.org/node/16794/reviews/17195/rogers-crouch-presidential-pardon-power>.

George H. W. Bush’s pardon of Reagan administration officials involved in the Iran-Contra scandal and Bill Clinton’s pardon of Marc Rich, “whose ex-wife had participated in a wide-ranging clemency campaign and had herself contributed almost a half-million dollars to Clinton’s presidential library.”²⁵

A president *must not* offend the Constitution with his pardons and *should not* offend the institutional traditions that have persevered for over 200 years. George Washington pardoned leaders of the Whiskey Rebellion in 1795, Thomas Jefferson pardoned those who bore the brunt of the Alien and Sedition Acts enacted by his predecessor, and Abraham Lincoln gave “general amnesty to those who rebelled against the Union” during the Civil War.²⁶ Dr. Crouch argues that “[a]lthough presidents have broad authority to pardon, the proper motives for pardon (an “act of grace” or for “the public welfare”) are well established both in law and practice.”²⁷ He goes on to argue that the pardon power has taken on a “self-interested political use” in recent decades.²⁸ However, given that his book was released over a decade ago, Dr. Crouch’s book does not cover the Trump presidency. Therefore, this research will utilize his conclusions on the pardon power and investigate them in relation to President Trump.

The breadth and scope of President Trump’s pardons seem to have gone above and beyond the original intent and the long-established custom of how this power should be utilized. Given the inexplicit language of the Constitution regarding executive clemency, what purposes

²⁵ Jeffrey Crouch, “The Law: Presidential Misuse of the Pardon Power,” *Presidential Studies Quarterly* 38, no. 4 (December 2008): 728-31, <https://doi.org/10.1111/j.1741-5705.2008.02674.x>.

²⁶ Zachary J. Broughton, “I Beg Your Pardon: Ex Parte Garland Overruled; the Presidential Pardon Is No Longer Unlimited,” *Western New England Law Review* 41, no. 1 (February 19, 2019): 193-196.

²⁷ Jeffrey Crouch, “The Law: Presidential Misuse of the Pardon Power”: 732.

²⁸ Donald Rogers, “The Presidential Pardon—Now a Dangerous Power?”

do President Trump’s pardons pursue? Do they deviate from the legitimate standards of constituting a disinterested act of grace or an act in the public interest?

The Office of the Pardon Attorney in the Justice Department “assists the President in the exercise of executive clemency,” but the regulations governing the Office of the Pardon Attorney “do not limit the President’s constitutionally based power to grant pardons or commutations as he sees fit.”²⁹ Therefore, circumventing these regulations in and of themselves does not constitute an abuse of power by a president. Nevertheless, did President Trump violate the institutional traditions and procedures and the underlying understanding of how the pardon power should be performed? If this last question is answered in the affirmative, the broader implications illustrate a drift towards authoritarianism and the decline of American democracy.

Overall, President Trump granted 144 pardons during his term in office. That number is comparatively low compared to other presidents, but the vast majority came after he lost his re-election bid, as, on his final full day in office, Mr. Trump granted 52 pardons.³⁰ Historically, presidents have used their final weeks in office to grant acts of executive clemency, but the pardons issued by Mr. Trump in his last few weeks in office remain controversial.³¹ This cascade of controversial pardons began on November 25, 2020, when the president granted a full and unconditional pardon to his former national security adviser, Michael T. Flynn. Former White House press secretary Kayleigh McEnany stated that the pardon brought “to an end the

²⁹ Albert W. Alschuler, “Bill Clinton’s Parting Pardon Party,” *Journal of Criminal Law and Criminology* 100, no. 3 (2010): 1132.

³⁰ “Pardons Granted by President Donald J. Trump (2017-2021);” “Commutations Granted by President Donald J. Trump (2017-2021),” Clemency Recipients (U.S. Department of Justice, April 28, 2021), <https://www.justice.gov/pardon/commutations-granted-president-donald-j-trump-2017-2021>.

³¹ Jim Sergent and George Petras, “Trump’s Final Pardons Included Controversial Allies, but Not Himself or His Family,” *USA Today*, January 22, 2021, <https://eu.usatoday.com/in-depth/news/2020/12/30/trump-pardons-controversial-patterns/4038315001>.

relentless, partisan pursuit of an innocent man,” despite the fact that Flynn “had twice pleaded guilty to lying to the F.B.I. about his conversations with a Russian diplomat.” Representative Adam B. Schiff of California remarked that the “pardon by Trump does not erase [the] truth, no matter how Trump and his allies try to suggest otherwise,” but several Democratic legislators described the pardon as “an abuse of power.”³² Around Christmas time, other known associates received presidential pardons, including George Papadopoulos, Charles Kushner, Paul Manafort, and Roger Stone.³³ In the end, Mr. Trump did not pardon himself or close family members as had been suggested, but the pardons of Steve Bannon (his former top political strategist) and Elliott Broidy (former deputy finance chair for the Republican National Committee) on January 19, 2021, represent an eleventh-hour favor to high-profile political allies.³⁴ Were these particular pardons an anomaly, or did they follow a recurring pattern of how President Trump exercised his use of the presidential pardon power? To answer this question, we must categorize the theme of each pardon, which this thesis will do in chronological order. Such categorization is done by using Dr. Crouch’s standard for the proper usage of the presidential pardon power. Chapter 2 will discuss the methodology used for this research; chapter 3 will discuss each of President Trump’s pardons; chapter 4 will discuss the democratic norms related to presidential pardons; and chapter 5 will summarize the results of this thesis.

³² Charlie Savage, “Trump Pardons Michael Flynn, Ending Case His Justice Dept. Sought to Shut Down,” *The New York Times*, November 25, 2020, <https://www.nytimes.com/2020/11/25/us/politics/michael-flynn-pardon.html>.

³³ Jim Sergent and George Petras, “Trump’s Final Pardons Included Controversial Allies.”

³⁴ Ibid; Lachlan Markay, “Trump Pardons Former GOP Fundraiser Elliott Broidy,” *Axios*, January 20, 2021, <https://www.axios.com/trump-elliott-broidy-pardon-474b53d4-81b1-48ae-9ead-1b6ebcb17733.html>.

CHAPTER 2: METHODOLOGY

The president's power to pardon has not been exhaustively researched or greatly challenged despite its unilateral framework, unchecked by the other branches of government.³⁵ To propose amendments to this power is the subject of another thesis, and one that this research will not cover. Moreover, the goal of this research is to categorize each of President Trump's pardons. To do this, I have devised a comparative rating scale, which considers the proper motives for pardon. The approach I take is normative in nature, as I consider the original intent of the clemency clause in the United States Constitution.

In accordance with Dr. Jeffrey Crouch, it is my opinion that a legitimate pardon should either be a disinterested act of grace or serve the public welfare. A pardon, therefore, can "conform" to this standard of presidential pardons. Likewise, a pardon can "deviate" from this very standard if it was issued for a self-interested political use or to protect an associate. Some pardons might be "ambiguous" or "indeterminate" in this regard, which in turn creates two alternative categorizations. If a pardon is deemed ambiguous to the standard, it will receive the benefit of the doubt by being characterized as conforming to the standard, while indeterminate pardons are characterized as such only because not enough information was found to determine whether a pardon meets the standard or not. In some cases, a pardon might be construed as being political in nature, while still conforming to the standard of presidential pardons. This is done because the merits of a pardon must take precedent over apparent political connotations. In other words, one must consider the crime that a pardon recipient committed. As such, my theoretical intuition would lead me to believe that the posthumous pardon of Susan B. Anthony belongs in

³⁵ William W. Smithers, "Nature and Limits of the Pardoning Power," *Journal of the American Institute of Criminal Law and Criminology* 1, no. 4 (November 1910): 549 and 554, <https://doi.org/10.2307/1133197>.

the “conform” category, while the pardon of Roger Stone belongs in the “deviate” category.

The U.S. Justice Department’s website on clemency recipients will provide the primary source for this research. At the same time, the constitutional adequacy of each pardon will be corroborated with reporting from media outlets, such as *The New York Times* and *The Washington Post*. The purpose of this research is to showcase the unprecedented magnitude of favoritism exercised by President Trump with his constitutionally-based power to grant pardons, and how he violated the unwritten traditions of his office and the rule of law with his use of the presidential pardon power.

The following chart considers the criteria when rating a presidential pardon:

FIGURE 2.1: STANDARD OF PRESIDENTIAL PARDONS

Is the pardon an act of grace?	Yes, and is issued without serving any discernible interests (personal or political) of the president.	Conforms to the standard.
	Yes, but also serves discernible personal or political interests of the president.	Ambiguous to the standard (coded as conform).
	No, but serves discernible personal or political interests of the president.	Deviates from the standard.
	Insufficient information.	Indeterminate.
Does the pardon advance the public welfare?	Yes, and is issued without serving any discernible interests (personal or political) of the president.	Conforms to the standard.
	Yes, but also serves discernible personal or political interests of the president.	Ambiguous to the standard (coded as conform).
	No, but serves discernible personal or political interests of the president.	Deviates from the standard.
	Insufficient information.	Indeterminate.

CHAPTER 3: THE PRESIDENTIAL PARDONS OF DONALD J. TRUMP

President Donald J. Trump issued his first presidential pardon on August 25, 2017.³⁶ As stated above, the recipient was the controversial former sheriff of Maricopa County, Arizona, Joseph M. Arpaio. In 2011, the two men developed a political friendship when both men propagated the baseless claim that President Barack Obama was not born in the United States and, therefore, not eligible to serve as president of the United States. This “birther” movement arguably propelled Mr. Trump to the presidency, as he

recognized an opportunity to connect with the electorate over an issue many considered taboo: the discomfort, in some quarters of American society, with the election of the nation’s first black president. He harnessed it for political gain, beginning his connection with the largely white Republican base that, in his 2016 campaign, helped clinch his party’s nomination.³⁷

In July of 2015, then-candidate Trump invited Arpaio on stage in Phoenix, Arizona, in one of the first rallies of his campaign. As an early supporter of Mr. Trump, Mr. Arpaio invoked the Richard Nixon adage of “the silent majority” as he spoke in the auditorium filled with Trump supporters.³⁸ Dubbing himself as “America’s toughest sheriff,” the 85-year-old would ultimately receive a criminal contempt conviction for racially profiling Latinos, but illegal immigration had

³⁶ “Pardons Granted by President Donald J. Trump (2017-2021).”

³⁷ Ashley Parker and Steve Eder, “Inside the Six Weeks Donald Trump Was a Nonstop ‘Birther,’” *The New York Times*, July 2, 2016, <https://www.nytimes.com/2016/07/03/us/politics/donald-trump-birther-obama.html>.

³⁸ Philip Rucker and Ellen Nakashima, “Trump Asked Sessions About Closing Case against Arpaio, an Ally since ‘Birtherism,’” *The Washington Post*, August 26, 2017, https://www.washingtonpost.com/politics/trump-asked-sessions-about-closing-case-against-arpaio-an-ally-since-birtherism/2017/08/26/15e5d7b2-8a7f-11e7-a94f-3139abce39f5_story.html; “Silent Majority Transcript,” Richard Nixon Museum and Library, accessed July 7, 2021, <https://www.nixonlibrary.gov/index.php/media/33421>.

been a signature focal point in Mr. Trump’s presidential campaign.³⁹ In issuing the pardon, the Trump White House made no mention of his conviction, only that “[t]hroughout his time as Sheriff, Arpaio continued his life’s work of protecting the public from the scourges of crime and illegal immigration.”⁴⁰ The pardon of Joseph M. Arpaio **deviates** from the standard of presidential pardons, as it advanced a political agenda and as the two men had a personal relationship. All pardons can theoretically be characterized as an act of grace, but the pardon of Mr. Arpaio was not disinterested nor in the public interest, especially since it was issued before his sentencing. Matthew Axelrod, a former Justice Department official from the Obama administration, stated that the pardon of a man who was “convicted of failing to enforce the law consistent with the Constitution, [set] a dangerous precedent, [as] the granting of this pardon exhibits disrespect [for the federal judiciary].”⁴¹

President Trump’s second pardon came a few months later when, in March of 2018, he issued a pardon to Kristian Mark Saucier.⁴² The recipient, a former Navy sailor, had pleaded guilty to taking photos on his cellphone of classified areas on a nuclear submarine. The Justice Department stated that Saucier “knew that the photos depicted classified material and that he was not authorized to take them.”⁴³ When he was sentenced to a year in prison, the story drew

³⁹ Julie Hirschfeld Davis and Maggie Haberman, “Trump Pardons Joe Arpaio, Who Became Face of Crackdown on Illegal Immigration,” *The New York Times*, August 25, 2017, <https://www.nytimes.com/2017/08/25/us/politics/joe-arpaio-trump-pardon-sheriff-arizona.html>.

⁴⁰ “President Trump Pardons Sheriff Joe Arpaio,” Statements and Releases (The White House, August 25, 2017), <https://trumpwhitehouse.archives.gov/briefings-statements/president-trump-pardons-sheriff-joe-arpaio>.

⁴¹ Carrie Johnson, “After Arpaio, 4 Answers to Questions about How Pardons Are Supposed to Work,” *NPR*, August 28, 2017, <https://www.npr.org/2017/08/28/546729186/after-arpaio-4-answers-to-questions-about-how-pardons-are-supposed-to-work>.

⁴² “Pardons Granted by President Donald J. Trump (2017-2021).”

⁴³ Matt Zapposky, “Trump Pardons Former Navy Sailor Convicted of Retaining Submarine Pictures in Case That Drew Comparisons to Clinton,” *The Washington Post*, March 9, 2018,

national attention, as well as commentary from Mr. Trump. Comparing his case to Hillary Clinton's handling of a private email server, Mr. Trump stated that Saucier, and others like him, had done "nothing by comparison to what she's done."⁴⁴ Upon release, Mr. Saucier appeared on Fox News' *Fox & Friends* and stated that "there's two different sets of laws in this country, for the politically elite and for those lower-level individuals, Americans like myself. ... I accepted responsibility [and] pleaded guilty ... [w]hereas Hillary Clinton not only was not punished, but was allowed to run for the highest office in the country, and that should be very upsetting to the American people."⁴⁵ A lawyer working on behalf of Mr. Saucier said that his team had been hoping for a "political" pardon, as the Justice Department had dismissed their case. A key part of their strategy was to figure in Fox News coverage to get the attention of the president.⁴⁶ Simply by appearing on "one of the president's favorite TV shows," Mr. Saucier had only to wait less than a week before he received his presidential pardon.⁴⁷ The pardon of Kristian Mark Saucier **deviates** from the standard of presidential pardons, as the president took his cue from Fox News and as both men used Hillary Clinton's private email scandal to further their respective agendas. Both as candidate and president, Mr. Trump used the example of Mr. Saucier to sow seeds of

https://www.washingtonpost.com/world/national-security/trump-pardons-former-navy-sailor-convicted-of-retaining-submarine-pictures-in-case-that-drew-comparisons-to-clinton/2018/03/09/401eae26-23e2-11e8-86f6-54bfff693d2b_story.html.

⁴⁴ Michelle Ye Hee Lee and Glenn Kessler, "Fact-Checking the 'Final Arguments' of Trump and Clinton," *The Washington Post*, November 7, 2016, <https://www.washingtonpost.com/news/fact-checker/wp/2016/11/07/fact-checking-the-final-arguments-of-trump-and-clinton>.

⁴⁵ Cleve R. Wootson Jr., "A Felon Pleaded His Case on 'Fox & Friends.' Days Later, Trump Pardoned Him," *The Washington Post*, March 10, 2018, <https://www.washingtonpost.com/news/the-fix/wp/2018/03/10/a-felon-pleaded-his-case-on-fox-friends-days-later-trump-pardoned-him>.

⁴⁶ Ryan J. Reilly, "Trump's Latest Pardon Shows the Best Way to Get One: Go on Fox News," *HuffPost*, March 9, 2018, https://www.huffpost.com/entry/trump-pardon-kristian-saucier_n_5aa2e103e4b07047bec662d1.

⁴⁷ Matt Zapposky, "Trump Pardons Former Navy Sailor."

doubt about his political rival, which ultimately culminated in a presidential pardon.

President Trump issued his third pardon about a month later, or in April of 2018, to former Vice President Dick Cheney’s chief of staff I. Lewis “Scooter” Libby. Before becoming president, Mr. Trump stated that it would not be fitting to pardon Mr. Libby,⁴⁸ who had been convicted of “perjury and obstruction of justice in connection with the disclosure of the identity of a C.I.A. officer, Valerie Plame [but] President George W. Bush commuted his 30-month prison sentence while refusing to give a full pardon.”⁴⁹ On the very same day that Mr. Trump issued a pardon to a man who was convicted in a case involving the leaking of classified information, the president called former F.B.I. director James Comey a leaker, liar, and an “untruthful slime ball.”⁵⁰ It had been Comey, then serving as deputy attorney general, who appointed the special counsel that prosecuted Libby. With his decision to fire Comey as director of the F.B.I., Mr. Trump found himself snared in a “witch hunt” led by Robert Mueller, a special counsel who was charged with investigating Russian interference in the 2016 United States presidential election. Then-House Minority Leader Nancy Pelosi stated that “[t]he suggestion that those who lie under oath may be rewarded with pardons poses a threat to the integrity of the Special Counsel investigation, and to our democracy,” while Representative Adam B. Schiff remarked that “[t]his is the President’s way of sending a message to those implicated in the Russia investigation: You have my back and I’ll have yours.”⁵¹ The pardon of I. Lewis “Scooter”

⁴⁸ James Hohmann, “Trump ‘Scooter’ Libby Pardon Sends a Message to Witnesses in Mueller Probe,” *The Washington Post*, April 13, 2018, <https://www.washingtonpost.com/news/powerpost/paloma/daily-202/2018/04/13/daily-202-trump-s-plan-to-pardon-scooter-libby-sends-a-message-to-witnesses-in-mueller-probe/5ad01f9530fb046acf7bcc37>.

⁴⁹ Peter Baker, “Trump Pardons Scooter Libby in a Case That Mirrors His Own,” *The New York Times*, April 13, 2018, <https://www.nytimes.com/2018/04/13/us/politics/trump-pardon-scooter-libby.html>.

⁵⁰ James Hohmann, “Trump ‘Scooter’ Libby Pardon Sends a Message to Witnesses in Mueller Probe.”

Libby **deviates** from the standard of presidential pardons, as it implicitly sent a signal to Trump associates implicated in Mueller’s Russia probe. The fact that Mr. Trump believed, in 2015, that a pardon to Mr. Libby was “not pertinent” leads one to believe that the act served to undermine the work of James Comey, Robert Mueller, and special counsels.⁵²

President Trump issued his fourth presidential pardon to boxer John Arthur “Jack” Johnson on May 24, 2018.⁵³ As the first Black Heavyweight Champion of the World, Johnson was convicted and sentenced to 10 months in prison for having an affair with a white woman in 1913. The posthumous pardon served to exonerate the “racially motivated injustice” inflicted upon Johnson and his family, but Congressional leaders, as well as Sylvester Stallone, had encouraged the president to issue the pardon.⁵⁴ The Democratic political consultant Stefanie Brown James called the pardon “a good gesture to right a miscarriage of justice,” while a Johnson family member said that her family can now “go forward knowing the pain and the shame has been replaced.”⁵⁵ In the Oval Office, Mr. Trump commented on the fact that his predecessor had refused to issue the pardon while stating that Johnson had been “a truly great fighter.” He went on to state that his conviction occurred during a “period of tremendous racial

⁵¹ Nina Totenberg, “President Trump Pardons ‘Scooter’ Libby, Former Cheney Chief of Staff,” *NPR*, April 13, 2018, <https://www.npr.org/2018/04/13/602209933/president-trump-pardons-scooter-libby-former-cheney-chief-of-staff>.

⁵² James Hohmann, “Trump ‘Scooter’ Libby Pardon.”

⁵³ “Statement from the Press Secretary Regarding the Pardon of John Arthur ‘Jack’ Johnson,” Statements and Releases (The White House, May 24, 2018), <https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-pardon-john-arthur-jack-johnson>.

⁵⁴ Jacob Bogage, “Boxer Jack Johnson Is Posthumously Pardoned by President Trump,” *The Washington Post*, May 24, 2018, <https://www.washingtonpost.com/news/early-lead/wp/2018/05/24/boxer-jack-johnson-is-posthumously-pardoned-by-president-trump>.

⁵⁵ John Eligon and Michael D. Shear, “Trump Pardons Jack Johnson, Heavyweight Boxing Champion,” *The New York Times*, May 24, 2018, <https://www.nytimes.com/2018/05/24/sports/jack-johnson-pardon-trump.html>.

tension in the United States,” but just hours before the issuance, Mr. Trump told Fox News that N.F.L players that protested racism and police brutality by kneeling during the national anthem maybe “shouldn’t be in the country.”⁵⁶ Despite this glaring discrepancy of views on civil rights, Mr. Trump heeded the call from Senator John McCain, among others, who stated that

[f]or years, Congress has overwhelmingly supported legislation calling on multiple U.S. presidents to right this historical wrong and restore this great athlete’s legacy. ...

President Trump’s action today finally closes a shameful chapter in our nation’s history and marks a milestone that the American people can and should be proud of.⁵⁷

The pardon of John Arthur “Jack” Johnson **conforms** to the standard of presidential pardons, as it ultimately tried to restore the legacy of the famed boxing champion while addressing the injustice of the Jim Crow era, which is certainly in the public interest.

President Trump’s fifth pardon came a week later, on May 31, 2018.⁵⁸ The recipient was Dinesh D’Souza, a conservative commentator and filmmaker who pleaded guilty to violating campaign finance laws back in 2014. During the 2012 Senate race in New York state, D’Souza “illegally reimbursed associates whom he asked to make donations valued at \$20,000, [but at] the time, primary and general election campaign contributions to federal candidates were limited to \$2,500 each from any individual to any single candidate.”⁵⁹ Senator Ted Cruz had championed

⁵⁶ Ibid.

⁵⁷ Jacqueline Thomsen, “McCain: Trump Pardoning Jack Johnson ‘Closes a Shameful Chapter in Our Nation’s History,’” *The Hill*, May 24, 2018, <https://thehill.com/homenews/senate/389266-mccain-trump-pardoning-jack-johnson-closes-a-shameful-chapter-in-our-nations>.

⁵⁸ “Statement from the Press Secretary Regarding the Pardon of Dinesh D’Souza,” Statements and Releases (The White House, May 31, 2018), <https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-pardon-dinesh-dsouza>.

⁵⁹ Tom Hamburger and Alice Crites, “Conservative Author and Pundit Dinesh D’Souza Charged in Campaign Finance Case,” *The Washington Post*, January 23, 2014,

the pardon, but D’Souza had been a prominent conspiracy theorist who believed that the Obama administration ordered the F.B.I. to spy on the Trump campaign.⁶⁰ D’Souza went so far as to call Mr. Obama a “boy out of the ghetto” and a “grown up Trayvon [Martin]” while mocking Parkland shooting survivors, belittling Rosa Parks, and using the n-word on social media.⁶¹ In a statement released by the White House, D’Souza was characterized as “a victim of selective prosecution,” but Roger Stone, the former political strategist for Mr. Trump (who would later receive a presidential pardon), stated that the pardon quite clearly sent a message.⁶² Aaron Blake of *The Washington Post* elaborated on this theme when he described President Trump’s first pardons as being political in nature:

He’s pardoning his allies, maybe to send a signal to other people who are his allies that they can be pardoned if they stay loyal to him. ... If you look at his rhetoric in the aftermath of all these pardons almost, he will generally say [that] these people have been treated unfairly by the legal system. I think a lot of this is him seeing himself in these situations. ... To some extent, pardoning these people, saying the process has been unfair

https://www.washingtonpost.com/politics/conservative-author-and-pundit-dinesh-dsouza-charged-in-campaign-finance-case/2014/01/23/69c67ee4-848a-11e3-bbe5-6a2a3141e3a9_story.html.

⁶⁰ Peter Baker, “Trump Wields Pardon Pen to Confront Justice System,” *The New York Times*, May 31, 2018, <https://www.nytimes.com/2018/05/31/us/politics/dsouza-pardon.html>.

⁶¹ Eugene Scott, “Here’s a Reminder of Some of Dinesh D’Souza’s Inflammatory Comments,” *The Washington Post*, May 31, 2018, <https://www.washingtonpost.com/news/the-fix/wp/2018/05/31/heres-a-reminder-of-some-of-dinesh-dsouzas-inflammatory-comments>.

⁶² “Statement from the Press Secretary Regarding the Pardon of Dinesh D’Souza”; Philip Rucker, Josh Dawsey, and John Wagner, “Trump Pardons Conservative Pundit Dinesh D’Souza, Suggests Others Also Could Receive Clemency,” *The Washington Post*, May 31, 2018, https://www.washingtonpost.com/politics/trump-offers-pardon-to-conservative-pundit-dinesh-dsouza-for-campaign-finance-violations/2018/05/31/b4939a08-64d5-11e8-a768-ed043e33f1dc_story.html.

for them, is something that totally feeds his own narrative in the Russia investigation.⁶³ The pardon of Dinesh D’Souza **deviates** from the standard of presidential pardons, as it sent a message to Trump associates under investigation by federal prosecutors. By pardoning D’Souza, Mr. Trump is fighting a “culture war” against “those who believe in the rule of law,” but “[t]he most effective way for an authoritarian leader to abuse the law is not by prosecuting the innocent, but by protecting the guilty.”⁶⁴

On July 10, 2018, President Trump pardoned Dwight Lincoln Hammond and Steven Dwight Hammond.⁶⁵ The father and son cattle ranchers from Oregon were convicted of arson on federal property under the Antiterrorism and Effective Death Penalty Act of 1996 and sentenced to five years in prison, respectively. Their sentence led to a 41-day occupation of the Malheur National Wildlife Refuge, led in part by Ammon Bundy and other right-wing extremists. The Hammonds had long fought the federal government over environmental and land regulations, but by pardoning these men, Mr. Trump effectively took a stand on “how federal officials enforce rules on grazing and other activities on tens of millions of acres owned by taxpayers.”⁶⁶ Moreover, the president legitimized the justifications of anti-government militias with these pardons, as they were prescribed “in the service of a cause célèbre for extreme segments of the

⁶³ James Hohmann, “The Daily 202: Floating Clemency for Blagojevich, Trump Diminishes the Gravity of Political Corruption,” *The Washington Post*, June 1, 2018, <https://www.washingtonpost.com/news/powerpost/paloma/daily-202/2018/06/01/daily-202-floating-clemency-for-blagojevich-trump-diminishes-the-gravity-of-political-corruption/5b1099c630fb04164210c191>.

⁶⁴ Anthony Zurcher, “Dinesh D’Souza: Why Did Trump Pardon the Provocateur?,” *BBC News*, May 31, 2018, <https://www.bbc.com/news/world-us-canada-44321650>.

⁶⁵ “Pardons Granted by President Donald J. Trump (2017-2021).”

⁶⁶ John Wagner, Juliet Eilperin, and Mark Berman, “Trump Pardons Oregon Cattle Ranchers in Case That Sparked 41-Day Occupation of National Wildlife Refuge,” *The Washington Post*, July 10, 2018, https://www.washingtonpost.com/politics/trump-pardons-oregon-cattle-ranchers-in-case-that-sparked-41-day-occupation-of-national-wildlife-refuge/2018/07/10/8f7aefa0-844c-11e8-8553-a3ce89036c78_story.html.

right.”⁶⁷ The pardons of Dwight Lincoln Hammond and Steven Dwight Hammond **deviate** from the standard of presidential pardons, as they were ideologically motivated to the benefit of right-wing figures.

President Trump waited almost a year before issuing his next pardon when he issued a full and unconditional pardon to Michael Chase Behenna on May 6, 2019.⁶⁸ Behenna was convicted of the unpremeditated murder of an al-Qaeda detainee in 2008 and sentenced to 25 years in prison. The former Army lieutenant had stripped a man by the name of Ali Mansur naked and interrogated him for a few minutes before shooting him twice. Mansur had been suspected of perpetrating a roadside bombing that killed two American soldiers, but Behenna claimed to be acting in self-defense.⁶⁹ Again, it seems that Mr. Trump took his cue from Fox News’ *Fox & Friends*, as “Behenna’s case ... received favorable coverage” from the morning news show.⁷⁰ Hina Shamsi, the director of ACLU’s National Security Project, said that the “pardon is a presidential endorsement of a murder that violated the military’s own code of justice” and that the Commander-in-Chief should not endorse war crimes.⁷¹ Michael Breen, the president and CEO of Human Rights First, stated that “President Trump’s pardon of a

⁶⁷ Libby Nelson, “Trump Pardons Ranchers Whose Case Inspired the 2016 Oregon Militia Standoff,” *Vox*, July 10, 2018, <https://www.vox.com/2018/7/10/17553348/trump-pardon-stein-dwight-hammond>.

⁶⁸ “Pardons Granted by President Donald J. Trump (2017-2021).”

⁶⁹ Mihir Zaveri, “Trump Pardons Ex-Army Soldier Convicted of Killing Iraqi Man,” *The New York Times*, May 6, 2019, <https://www.nytimes.com/2019/05/06/us/trump-pardon-michael-behenna.html?searchResultPosition=1>.

⁷⁰ Matt Ford, “The Fox & Friends Pardon for War Crimes,” *The New Republic*, May 8, 2019, <https://newrepublic.com/article/153849/fox-and-friends-pardon-war-crimes>.

⁷¹ Reis Thebault, “Trump Pardons Former Soldier Who Was Convicted of Murdering an Iraqi Prisoner,” *The Washington Post*, May 6, 2019, https://www.washingtonpost.com/politics/trump-pardons-the-former-soldier-who-was-convicted-of-murdering-an-iraqi-prisoner/2019/05/06/158765f8-705e-11e9-9f06-5fc2ee80027a_story.html.

servicemember convicted of murder by the U.S. military undermines the morale of our armed forces, erodes our allies' trust of the armed services overseas and—by showing that we won't hold our forces to the same standards we demand of others—places our servicemembers in greater danger in combat zones and beyond.”⁷² The pardon of Michael Chase Behenna **deviates** from the standard of presidential pardons, as it set a dangerous precedent for the integrity of the rule of law, as well as the government's accountability and commitment to human rights.

On May 15, 2019, President Trump pardoned Patrick James Nolan and Conrad Moffat Black.⁷³ The former was the former Republican leader of the California state assembly who served 26 months in prison on corruption charges, while the latter was a media mogul and a close friend of the president who served over three years in prison on fraud and obstruction of justice charges.⁷⁴ Upon his release from prison, Nolan became an advocate for criminal justice reform. His work would see him collaborating with the president's son-in-law on legislation that the president ultimately signed into law, but the former assemblyman had been a harsh critic of Mueller's Russia probe. Similarly, Black said things that resonated with the president, perhaps none more so than when he wrote a glowing biography titled *Donald J. Trump: A President Like No Other*. The pardons of Patrick James Nolan and Conrad Moffat Black **deviate** from the standard of presidential pardons, as both men had a personal relationship with the president. “That these pardons went to two Trump allies who said things he [liked], and whose pardons

⁷² Michael Breen, “Trump Pardon of Michael Behenna Undermines National Security, Places Troops in Greater Danger,” Press Release (Human Rights First, May 7, 2019), <https://www.humanrightsfirst.org/press-release/trump-pardon-michael-behenna-undermines-national-security-places-troops-greater-danger>.

⁷³ “Pardons Granted by President Donald J. Trump (2017-2021).”

⁷⁴ “The President and His Power to Pardon,” *The New York Times*, May 19, 2019, <https://www.nytimes.com/2019/05/19/opinion/trump-pardon-conrad-black-patrick-nolan.html>.

could send signals to other Trump allies, doesn't seem like a coincidence."⁷⁵ These pardons do not serve the public interest, as the fact remains that Nolan "[pleaded] guilty in what would become one of Sacramento's most notorious political corruption cases," while Black was convicted "in a scheme to bilk stockholders out of millions of dollars."⁷⁶

On July 29, 2019, President Trump pardoned five individuals: Michael Anthony Tedesco, Roy Wayne McKeever, John Richard Bubala, Chalmer Lee Williams, and Rodney M. Takumi.⁷⁷ Their pardons **conform** to the standard of presidential pardons, as "the White House release suggested they were the result of the traditional Justice Department pardon process, rather than high-profile lobbying efforts or connections to Trump political allies that have defined many of Trump's previous grants of clemency."⁷⁸ The regulations governing the Justice Department pardon process must be characterized as serving the public interest, even though, as stated in the introduction, that circumventing these regulations does not necessarily constitute an abuse of power by a president. The offenses these recipients were charged with include non-violent drug crimes, theft, and illegal gambling from the 1980s and 1990s, but upon release from prison, all five individuals have been active members of their communities. Mr. Tedesco had previously been pardoned by President Obama in 2017, but on account of a clerical error, "his fraud conviction was not encompassed within that grant of Executive Clemency," which President

⁷⁵ Aaron Blake, "The Very Political Pattern of Trump's Pardons," *The Washington Post*, May 16, 2019, <https://www.washingtonpost.com/politics/2019/05/16/very-political-pattern-trumps-pardons/>.

⁷⁶ Christine Mai-Duc, "Trump Pardons Pat Nolan, Former GOP Lawmaker Taken down in FBI's 'Shrimpscam' Probe," *The Los Angeles Times*, May 16, 2019, <https://www.latimes.com/politics/la-pol-ca-trump-pardons-pat-nolan-20190515-story.html>.

⁷⁷ "Pardons Granted by President Donald J. Trump (2017-2021)."

⁷⁸ Jeremy Diamond, "Trump Pardons, Commutes Sentences for 7 People," *CNN*, July 29, 2019, <https://edition.cnn.com/2019/07/29/politics/trump-pardons-commutes-sentences-7-people/index.html>.

Trump amended.⁷⁹

President Trump issued his sixteenth pardon on October 10, 2019, to Zay Jeffries.⁸⁰ The posthumous pardon had been advocated by Senator Lindsey Graham, among others, but the recipient was “a metallurgist and mining engineer who contributed to the Manhattan Project,” and was convicted in 1948 for violating the Sherman Act.⁸¹ Initially indicted in 1941, his case was postponed until after the war when the Department of Justice “grounded its legal theory on a Supreme Court precedent that did not exist when Dr. Jeffries was originally indicted.” He received a \$2,500 fine for his involvement, but that same year, he was awarded the Presidential Medal for Merit from President Truman for being instrumental in the war effort.⁸² The pardon of Zay Jeffries **conforms** to the standard of presidential pardons as an act of grace, as his conviction paled in comparison to the role he played in securing an Allied victory during World War II.

On November 15, 2019, President Trump pardoned Army First Lieutenant Clint Lorance and Army Major Mathew Golsteyn for war crimes perpetrated during the war in Afghanistan. In a statement released by the White House, President Trump is remarked as being “ultimately responsible for ensuring that the law is enforced and when appropriate, that mercy is granted.”⁸³

⁷⁹ “Statement from the Press Secretary Regarding Executive Grants of Clemency,” Statement and Releases (The White House, July 29, 2019), <https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-executive-grants-clemency>.

⁸⁰ “Pardons Granted by President Donald J. Trump (2017-2021).”

⁸¹ John Bowden, “Trump Grants Posthumous Pardon to Manhattan Project Contributor,” *The Hill*, October 10, 2019, <https://thehill.com/homenews/administration/465290-trump-grants-posthumous-pardon-to-manhattan-project-contributor>.

⁸² “Statement from the Press Secretary Regarding the Pardon of Zay Jeffries,” Statements and Releases (The White House, October 10, 2019), <https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-pardon-zay-jeffries>.

⁸³ “Statement from the Press Secretary,” Statements and Releases (The White House, November 15, 2019), <https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-97>.

Such reasoning is questionable, as Golsteyn had yet to face trial for the murder of an unarmed man, while Lorance was serving a 19-year prison sentence for ordering his unit “to open fire on three Afghan men riding motorcycles even though their intent was not clear.”⁸⁴ Pentagon officials had objected to the pardons, but Mr. Trump nonetheless heeded the call “from several Republican congressmen and a Fox News host” in order to become “the ultimate arbiter of military justice.”⁸⁵ The pardons of Clint Lorance and Mathew Golsteyn **deviate** from the standard of presidential pardons, as they ultimately undermine military justice. Instead of supporting that very same justice system, Mr. Trump showcased a total disregard for the accountability of military rules. Much like with the pardon of Army lieutenant Michael Chase Behenna, these pardons “[mark] another troubling intervention by the president in the military’s efforts to punish war crimes allegedly committed by American soldiers.”⁸⁶

President Trump issued pardons to the following individuals on February 18, 2020: Angela Ronae Stanton, Ariel Manuel Friedler, David Hossein Safavian, Michael Robert Milken, Paul Harvey Pogue, Bernard Bailey Kerik, and Edward J. DeBartolo, Jr.⁸⁷ These seven individuals all had direct or indirect ties to the president, as the various conservative commentators or politicians had lobbied on their behalf.⁸⁸ Stanton, an author and a Trump

⁸⁴ Dan Lamothe, “Trump Issues Pardons in War Crimes Cases, despite Pentagon Opposition to the Move,” *The Washington Post*, November 16, 2019, <https://www.washingtonpost.com/national-security/2019/11/15/trump-issues-pardons-war-crimes-cases-despite-pentagon-opposition-move>.

⁸⁵ Beth Reinhard and Anne Gearan, “Most Trump Clemency Grants Bypass Justice Dept. And Go to Well-Connected Offenders,” *The Washington Post*, February 3, 2020, https://www.washingtonpost.com/investigations/most-clemency-grants-bypass-doj-and-go-to-well-connected-offenders/2020/02/03/4e8f3eb2-21ce-11ea-9c2b-060477c13959_story.html; Dave Philipps, “Trump Clears Three Service Members in War Crimes Cases,” *The New York Times*, November 15, 2019, <https://www.nytimes.com/2019/11/15/us/trump-pardons.html>.

⁸⁶ Matt Ford, “The Fox & Friends Pardon for War Crimes.”

⁸⁷ “Pardons Granted by President Donald J. Trump (2017-2021).”

supporter who once was involved in a stolen car ring, had the backing of Fox News personalities.⁸⁹ Friedler, a “former executive of a software development company who pleaded guilty to conspiring to hack a competitor,” was represented by former New Jersey governor Chris Christie.⁹⁰ Safavian, a lobbyist who was convicted and sent to prison for his ties to Jack Abramoff, became a vocal supporter of Mr. Trump, and his wife had been the White House strategic communications director and a Trump campaign staffer. Milken, who served two years in prison on various fraud charges, had the support of Rupert Murdoch, Sheldon Adelson, Rudy Giuliani, among others.⁹¹ Pogue, a businessman who was convicted on tax charges, donated over \$200,000 to the Trump re-election campaign and had friendly ties to Donald Trump, Jr. and his girlfriend Kimberly Guilfoyle. Kerik, who likewise was convicted on tax charges, was the former New York City police commissioner whose pardon the aforementioned Safavian had actually lobbied for. “As he pushed for Mr. Kerik’s pardon, Mr. Safavian said he did not realize that he would receive one himself.”⁹² DeBartolo, Jr., the former owner of the San Francisco 49ers, received a million dollar fine for his role in an extortion plot, but New England Patriots owner Robert Kraft and Dallas Cowboys owner Jerry Jones advocated for the pardon, but both these

⁸⁸ Peter Baker et al., “The 11 Criminals Granted Clemency by Trump Had One Thing in Common: Connections,” *The New York Times*, February 20, 2020, <https://www.nytimes.com/2020/02/19/us/politics/trump-pardons.html>.

⁸⁹ Peter Weber, “The Family of 1 New Trump Pardon Recipient Donated \$200,000 to Trump’s Re-Election Effort Last Fall,” *Yahoo*, February 19, 2020, <https://www.yahoo.com/now/family-1-trump-pardon-recipient-053255647.html>.

⁹⁰ Peter Baker et al., “The 11 Criminals Granted Clemency by Trump.”

⁹¹ James Hohmann, “The Daily 202: Trump’s Clemency Spree Shows White-Collar Felons It’s More about Who You Know than What You Did,” *The Washington Post*, February 19, 2020, <https://www.washingtonpost.com/news/powerpost/paloma/daily-202/2020/02/19/daily-202-trump-s-clemency-spree-shows-white-collar-felons-it-s-more-about-who-you-know-than-what-you-did/5e4cc09188e0fa254862f333>.

⁹² Peter Baker et al., “The 11 Criminals Granted Clemency by Trump.”

individuals had donated a million dollars to Trump’s inaugural committee.⁹³ The pardons of Angela Ronae Stanton, Ariel Manuel Friedler, David Hossein Safavian, Michael Robert Milken, Paul Harvey Pogue, Bernard Bailey Kerik, and Edward J. DeBartolo, Jr. **deviate** from the standard of presidential pardons, as they were driven by “friendship, fame, personal empathy and a shared sense of persecution.”⁹⁴ President Trump perhaps said it best when asked about these particular pardons, that “[y]ou know, oftentimes—pretty much all the time—I really rely on the recommendations of people that know [the pardon recipients]”⁹⁵

President Trump issued his twenty-sixth pardon on August 18, 2020, to the famed suffragette Susan B. Anthony. Much like with the pardons of John Arthur “Jack” Johnson and Zay Jeffries, the Anthony pardon was posthumous in nature, but the pardon coincided with the 100th anniversary of the 19th Amendment, which gave women the right to vote.⁹⁶ Mr. Trump, who repeatedly criticized mail-in voting during his re-election campaign, issued the pardon on the heels of the Democratic National Convention and a week after Joe Biden chose Kamala Harris as his vice-presidential running mate.⁹⁷ Ms. Anthony had been arrested and fined \$100 for illegally voting in 1872, but she had been “proud of her arrest [as it drew] attention to the cause for women’s rights, and never paid her fine.”⁹⁸ It could be argued that Ms. Anthony would not

⁹³ James Hohmann, “The Daily 202: Trump’s Clemency Spree Shows White-Collar Felons.”

⁹⁴ Peter Baker et al., “The 11 Criminals Granted Clemency by Trump.”

⁹⁵ James Hohmann, “The Daily 202: Trump’s Clemency Spree Shows White-Collar Felons.”

⁹⁶ Maggie Haberman and Katie Rogers, “On Centennial of 19th Amendment, Trump Pardons Susan B. Anthony and Targets 2020 Election,” *The New York Times*, August 18, 2020, <https://www.nytimes.com/2020/08/18/us/politics/trump-susan-b-anthony-pardon.html>.

⁹⁷ Ibid; Anthony Zurcher, “Joe Biden Picks Kamala Harris as Running Mate,” *BBC News*, August 12, 2020, <https://www.bbc.com/news/world-us-canada-53739323>.

⁹⁸ Maggie Haberman and Katie Rogers, “On Centennial of 19th Amendment.”

have accepted a presidential pardon for her crimes, but the Supreme Court has argued that “[a] pardon is a deed to the validity of which delivery is essential, and delivery is not complete without acceptance.”⁹⁹ Furthermore, the Department of Justice does not recommend or advocate for posthumous pardons, but Mr. Trump felt inclined to issue the pardon, perhaps in order “to create a news story during the Democrats’ convention, [or to garner the] support from a key group of female voters—suburban women.”¹⁰⁰ The pardon of Susan B. Anthony **conforms** to the standard of presidential pardons, despite any speculations that it simply furthered a political agenda for the president. Previous office-holders “have pardoned persons known to be deceased at the time clemency was granted,” and the pardon of Ms. Anthony could certainly be described as “benefiting a woman whose actions helped lead to women’s right to vote.”¹⁰¹ Furthermore, it is my judgment that pardoning her crime addresses a historical injustice, which outweighs any notions of self-interested political uses.

President Trump pardoned Jon Donyae Ponder a week later, or on August 25, 2020.¹⁰² The former reality TV star, again, broke precedent by becoming the first president to issue a pardon amid his own party’s political convention. The televised issuance could certainly be construed as political in nature, much like the pardon of Ms. Anthony.¹⁰³ Mr. Ponder’s pardon

⁹⁹ *United States v. Wilson*, 32 U.S. 150 (1833)

¹⁰⁰ Michael A. Foster, “Presidential Pardons: Overview and Selected Legal Issues”; Maggie Haberman and Katie Rogers, “On Centennial of 19th Amendment.”

¹⁰¹ “Policy on Posthumous Pardon Applications,” Policies (U.S. Department of Justice, December 23, 2020), <https://www.justice.gov/pardon/policies>; Maggie Haberman and Katie Rogers, “On Centennial of 19th Amendment.”

¹⁰² “Pardons Granted by President Donald J. Trump (2017-2021).”

¹⁰³ James Hohmann, “The Daily 202: Trump Granting a Pardon during Republican Convention Typifies a Norm-Busting Presidency,” *The Washington Post*, August 26, 2020, <https://www.washingtonpost.com/politics/2020/08/26/daily-202-trump-granting-pardon-during-republican-convention-typifies-norm-busting-presidency>.

was issued on a political stage to highlight the president’s criminal justice initiatives, but the merits of the pardon must take precedent over overt blatant political associations.¹⁰⁴ As stated in Chapter 2, **ambiguous** pardons are to be characterized as **conforming** to the standard of presidential pardons, which this particular pardon must follow. Mr. Ponder was convicted of bank robbery and served 63 months in prison. Upon release in 2009, Mr. Ponder founded a nonprofit organization titled “Hope for Prisoners,” which “provides job training, mentorship and counseling to individuals leaving jail.”¹⁰⁵ With the help of the F.B.I. agent who arrested him, Mr. Ponder founded an organization which has “served thousands of formerly incarcerated persons.”¹⁰⁶ Having already been granted a pardon by the State of Nevada, Mr. Ponder’s “contributions to improve the Las Vegas community, including his exemplary commitment to provide others with a better second chance,” seem to merit a presidential pardon, despite being issued on live television during the Republican National Convention.¹⁰⁷

President Trump’s twenty-eighth pardon was issued to Alice Marie Johnson on August 28, 2020. The Republican National Convention had concluded the day before, where Ms. Johnson appeared in a message praising the president as a “compassionate leader.”¹⁰⁸ The

¹⁰⁴ Pranshu Verma and Stephanie Saul, “Trump Pardons Jon Ponder, a Convicted Bank Robber,” *The New York Times*, August 26, 2020, <https://www.nytimes.com/2020/08/25/us/politics/trump-jon-ponder-pardon.html>.

¹⁰⁵ *Ibid.*

¹⁰⁶ Anne Gearan et al., “Trump Uses Powers of Government in Service of Reelection, with Pardoning and Naturalization Ceremonies,” *The Washington Post*, August 26, 2020, <https://www.washingtonpost.com/elections/2020/08/25/republican-national-convention-live-updates/>; “Statement from the Press Secretary Regarding the Pardon of Jon Ponder,” Statements and Releases (The White House, August 25, 2020), <https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-pardon-jon-ponder>.

¹⁰⁷ “Statement from the Press Secretary Regarding the Pardon of Jon Ponder.”

¹⁰⁸ Kevin Freking, “Trump Pardons Alice Johnson, Who Praised Him in RNC Speech,” *The Washington Post*, August 28, 2020, https://www.washingtonpost.com/politics/trump-pardons-alice-johnson-who-praised-him-in-rnc-speech/2020/08/28/0935dda4-e95f-11ea-bf44-0d31c85838a5_story.html.

president had already commuted her life sentence back in 2018 at the behest of Kim Kardashian, but Ms. Johnson had served 22 years in prison for a non-violent drug offense.¹⁰⁹ The previous administration had championed leniency for non-violent drug crimes, while still denying Ms. Johnson of her clemency petition. Despite issuing a commutation and a pardon, respectively, to Ms. Johnson, the Trump Justice Department reversed President Obama’s guidelines, as “Attorney General Jeff Sessions ... ordered federal prosecutors to pursue the toughest possible charges and sentences against criminal defendants.”¹¹⁰ This discrepancy of positions can be explained if “the Trump team thought that clemency for regular people could be a winning campaign issue, particularly among Black voters.”¹¹¹ As noted earlier, Ms. Johnson spoke at the RNC a day before her pardon, and a few months before, she appeared in a multimillion-dollar Super Bowl ad for the Trump campaign. Whether this highlights Mr. Trump’s “[mastery] of elevating a heartwarming story that affects just one person as evidence of the larger good his administration [did] for working people’s lives ... [or] a political play aimed at papering over [his] record on race” is up for debate.¹¹² As with his two previous pardons, the pardon of Alice Marie Johnson **conforms** to the standard of presidential pardons, despite any furtherance of a political agenda. That her story has been stringently linked to Mr. Trump’s re-election efforts

¹⁰⁹ Peter Baker, “Trump Extends Pardon to Alice Johnson after She Praises Him at Convention,” *The New York Times*, August 28, 2020, <https://www.nytimes.com/2020/08/28/us/politics/trump-alice-johnson-pardon.html>.

¹¹⁰ Peter Baker, “Alice Marie Johnson Is Granted Clemency by Trump after Push by Kim Kardashian West,” *The New York Times*, June 6, 2018, <https://www.nytimes.com/2018/06/06/us/politics/trump-alice-johnson-sentence-commuted-kim-kardashian-west.html>.

¹¹¹ Rachel E. Barkow and Mark Osler, “Opinion: Trump Abused the Clemency Power. Will Biden Reform It?,” *The Washington Post*, November 16, 2020, https://www.washingtonpost.com/opinions/trump-abused-the-clemency-power-will-biden-reform-it/2020/11/16/6c9a58c2-2832-11eb-8fa2-06e7cbb145c0_story.html.

¹¹² Annie Karni, “What It’s like to Be the Face of Trump’s Super Bowl Ad,” *The New York Times*, February 6, 2020, <https://www.nytimes.com/2020/02/06/us/politics/alice-johnson-trump-super-bowl-ad.html>.

pales in comparison to the merits of her pardon. As a 65-year-old great-grandmother who served over two decades in prison “for a first-time, non-violent criminal offense,” Ms. Johnson “completed numerous training and education courses, volunteered in a hospice, contributed her talents to art and theater programs, [and provided] mentorship to her fellow inmates” while in prison.¹¹³ As a criminal justice reform advocate upon her release, Ms. Johnson is well-deserving of having some of her civil rights restored with a presidential pardon.¹¹⁴

THE PARDON OF MICHAEL T. FLYNN

On November 25, 2020, President Trump pardoned his former national security advisor, Michael T. Flynn.¹¹⁵ Having effectively entered the lame-duck period of his presidency, Mr. Trump’s twenty-ninth pardon signaled a harbinger of what was to come.¹¹⁶ The day before, the president “pardoned” Corn the Turkey at a ceremonial gathering at the White House. The tradition of pardoning turkeys was born when President Ronald Reagan deflected a question regarding whether he would pardon individuals involved in the Iran-Contra scandal during a turkey presentation at the White House. His successor “formalized the event, [but the] goofy tradition of pardoning a turkey [was] made official [in] 1989.”¹¹⁷ At the end of his presidency,

¹¹³ “Statement from the Press Secretary Regarding the Pardon of Alice Marie Johnson,” Statements and Releases (The White House, August 28, 2020), <https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-pardon-alice-marie-johnson>.

¹¹⁴ Ibid; Kevin Freking, “Trump Pardons Alice Johnson.”

¹¹⁵ Charlie Savage, “Trump Pardons Michael Flynn.”

¹¹⁶ “Pardons Granted by President Donald J. Trump (2017-2021).”

¹¹⁷ Domenico Montanaro, “Trump Pardons Corn the Turkey, Trying to Show Normalcy amid the Abnormal,” *NPR*, November 24, 2020, <https://www.npr.org/2020/11/24/937997025/trump-to-pardon-turkey-again-trying-to-show-normalcy-amid-the-abnormal>.

President George H. W. Bush harkened back to the question his predecessor was asked, when he pardoned six former Reagan administration officials involved in the Iran-Contra scandal:

The Iran-Contra pardons may represent the start of a new trend whereby presidents pardon not for traditional reasons of mercy or the public interest, but to protect their own personal interests. Bush's pardon announcement attempted to place the Iran-Contra pardons into a well-established, post-war, "forgive and forget" context. Yet 49% of respondents to a Gallup Poll taken the week after the pardons decided that the main reason Mr. Bush pardoned the six was "to protect himself from legal difficulties or embarrassment resulting from his own role in Iran-Contra." ... Bush argued that he was not informed of Iran-Contra, but his own notes belie that contention. ... Indeed, the timing of the Iran-Contra pardons was fortuitous: Bush had lost his reelection bid to Bill Clinton, and Caspar Weinberger [Reagan's secretary of defense] had been reindicted (four days before the presidential election, no less). A recently discovered Bush diary may have included evidence that Weinberger may have wanted Bush himself to present at trial. ... By pardoning Weinberger, Bush essentially ensured that he himself would not have to testify.¹¹⁸

President George H. W. Bush arguably used his pardon power in a "self-interested political use" when he pardoned Casper Weinberger.¹¹⁹ A similar narrative is found with the pardon of Michael T. Flynn, whose loyalty to the president ultimately earned him a presidential pardon. By becoming an early Trump supporter, the former lieutenant general secured the position of national security advisor for the new administration, despite the fact that the Obama

¹¹⁸ Jeffrey Crouch, "The Law: Presidential Misuse of the Pardon Power": 730.

¹¹⁹ Donald Rogers, "The Presidential Pardon—Now a Dangerous Power?"

administration had warned the incoming administration of his management skills. When President Obama imposed sanctions on Russia for interfering in the 2016 United States presidential election, Mr. Flynn spoke to the Russian ambassador, Sergey I. Kislyak, and “urged Moscow not to escalate ... [as] the incoming Trump administration would work more closely with Russia.”¹²⁰ Such a request was highly unusual, as Mr. Flynn did not represent the United States government at the time, but the following day, the Kremlin announced that they would not retaliate.¹²¹ After the story broke, Vice President-elect Mike Pence, among others, were “assured by Flynn that he had not discussed the topic [of sanctions] with the Russian ambassador,” and when questioned by the F.B.I, “he told the agents that he did not remember doing so.”¹²² This baffled the Justice Department who knew otherwise, but DOJ officials “feared [that] Flynn’s lies gave Russia leverage over him [and] could make Flynn a target of blackmail by the Russians.”¹²³ A week into his presidency, Mr. Trump asked James B. Comey to end the investigation of Mr. Flynn, but the F.B.I. Director did not heed the call. His refusal arguably led to his firing, which “helped prompt Mr. Mueller’s appointment as special counsel [of the Russia investigation].”¹²⁴ Mr. Flynn was then forced out of the job after 22 days, and by the end of the year, he pleaded guilty of lying to the F.B.I.¹²⁵ The special counsel probe ultimately convicted Mr. Flynn of this

¹²⁰ Charlie Savage, “Trump Pardons Michael Flynn.”

¹²¹ “The Mueller Report Illustrated: The Obstruction Investigation,” *The Washington Post*, accessed September 8, 2021, <https://www.washingtonpost.com/graphics/2019/politics/mueller-report-illustrated/chapter-one>.

¹²² Rosalind S. Helderman and Josh Dawsey, “Trump Pardons Former National Security Adviser Michael Flynn, Who Pleaded Guilty to Lying to the FBI,” *The Washington Post*, November 25, 2020, https://www.washingtonpost.com/politics/michael-flynn-trump-pardon/2020/11/25/3cd79198-2e65-11eb-bae0-50bb17126614_story.html.

¹²³ *Ibid.*

¹²⁴ Charlie Savage, “Trump Pardons Michael Flynn.”

charge, but the Trump administration repeatedly called the inquiry a “hoax” and a “witch hunt.”

¹²⁶ In a statement released by the White House regarding the pardon of Michael T. Flynn, some clear similarities are to be found with their assertions and how Mr. Trump’s rhetoric was on display for all to see at the end of his presidency:

The prosecution of General Flynn is yet another reminder of something that has long been clear: After the 2016 election, individuals within the outgoing administration refused to accept the choice the American people had made at the ballot box and worked to undermine the peaceful transition of power. These efforts were enabled by a complicit media that willingly published falsehoods and hid inconvenient facts from public view, including with respect to General Flynn. They amounted to a brazen assault on our democracy and a direct attack on our fundamental political values.¹²⁷

Mention has already been made regarding the fact that President Trump pardoned a turkey the day before he pardoned Mr. Flynn. The lucky gobbler received his presidential pardon at a ceremony at the White House two days before Thanksgiving, where Mr. Trump “[continued] to level baseless allegations of widespread voter fraud” in the 2020 United States presidential election.¹²⁸ Mr. Flynn, who has dabbled in QAnon conspiracy theories since leaving the White

¹²⁵ Rosalind S. Helderman and Josh Dawsey, “Trump Pardons Former National Security”; Carol D. Leonnig et al., “Michael Flynn Pleads Guilty to Lying to FBI on Contacts with Russian Ambassador,” *The Washington Post*, December 1, 2017, https://www.washingtonpost.com/politics/michael-flynn-charged-with-making-false-statement-to-the-fbi/2017/12/01/e03a6c48-d6a2-11e7-9461-ba77d604373d_story.html?itid=lk_inline_manual_7.

¹²⁶ Charlie Savage, “Trump Pardons Michael Flynn.”

¹²⁷ “Statement from the Press Secretary Regarding Executive Grant of Clemency for General Michael T. Flynn,” Statements and Releases (The White House, November 25, 2020), <https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-executive-grant-clemency-general-michael-t-flynn>.

¹²⁸ Domenico Montanaro, “Trump Pardons Corn the Turkey.”

House, supported the president in his “attempt to overthrow the electoral vote.”¹²⁹ With his pardon, Mr. Trump secured the allegiance of Mr. Flynn, while undermining the conclusions of the Russia probe which can be summarized as follows:

The special counsel probe ultimately did not establish [that] the Trump campaign had entered into a criminal conspiracy with the Kremlin. But the investigation documented how Russia interfered in the 2016 race to benefit Trump, and how Trump’s campaign welcomed the assistance.¹³⁰

The pardon of Michael T. Flynn **deviates** from the standard of presidential pardons, as it undermined the rule of law for the benefit of an individual who undermined U.S. foreign policy.¹³¹ Mr. Flynn pleaded guilty of lying to the F.B.I. and received his presidential pardon before his sentencing, but the former lieutenant general could have faced up to five years in prison. Perhaps the most brazen use of the pardon power since President Gerald Ford pardoned President Richard Nixon in 1974, Mr. Flynn received his pardon for staying true to the president. When he considered seeking immunity for cooperating with congressional investigators, the president sent him a message.¹³² Soon thereafter, Mr. Flynn withdrew his guilty plea, for he “just got a message from the president to stay strong.”¹³³ In the end, loyalty would be rewarded.

¹²⁹ Katelyn Polantz, “Judge Formally Dismisses Michael Flynn Case after Trump Pardon,” *CNN*, December 8, 2020, <https://www.cnn.com/2020/12/08/politics/michael-flynn/index.html>.

¹³⁰ Rosalind S. Helderman and Josh Dawsey, “Trump Pardons Former National Security.”

¹³¹ *Ibid*; Charlie Savage, “Trump Pardons Michael Flynn.”

¹³² Carol D. Leonnig et al., “Michael Flynn Pleads Guilty to Lying to FBI”; Josh Gerstein and Kyle Cheney, “Any and All Possible Offenses’: Trump Pardon Grants Flynn a Sweeping Reprieve,” *Politico*, November 30, 2020, <https://www.politico.com/news/2020/11/30/trump-flynn-pardon-reprieve-441527>; “The Mueller Report Illustrated: The Obstruction Investigation.”

¹³³ Michael Isikoff, “As Investigators Circled Flynn, He Got a Message from Trump: Stay Strong,” *Yahoo News*, May 18, 2017, <https://www.yahoo.com/news/investigators-circled-flynn-got-message-trump-stay-strong-145442727.html>.

THE 2020 CHRISTMAS PARDONS

President Trump pardoned fifteen individuals on December 22, 2020. Their offenses include murder in the first degree, voluntary manslaughter, assault with a dangerous weapon, drug trafficking, health care fraud, as well as making false statements.¹³⁴ The vast majority of these pardons had been lobbied by Trump allies, including those that **conform** to the standard of presidential pardons. Three of his pardons that day are limited to such categorization or those issued to Otis Gordon, Weldon Hal Angelos, and Alfred Lee Crum. Senator Tim Scott advocated for the pardon of Mr. Gordon, who was convicted of “possession with intent to distribute” but later became a pastor and “a model citizen.”¹³⁵ Senators Mike Lee and Rand Paul, as well as the pardon-recipient Alice Marie Johnson, advocated for the pardon of Mr. Angelos, who received a “[55 years] imprisonment [sentence] for selling marijuana and carrying a handgun in the course of dealing.”¹³⁶ Finally, Brian Kuester, the U.S. Attorney for the Eastern District of Oklahoma at the time, and former Deputy Attorney General Rod Rosenstein advocated for the pardon of Mr. Crum, who “[helped] his wife’s uncle [to] illegally distill moonshine,” back in 1952, but Mr. Crum, now 89 years old, “served three years of probation, and paid a \$250 fine.”¹³⁷

The remaining twelve pardons **deviate** from the standard of presidential pardons, as the pardon recipients committed offenses that came to align with the president’s political agenda or were issued as political favors. Paul Alvin Slough, Nicholas Abram Slatten, Evan Shawn

¹³⁴ “Pardons Granted by President Donald J. Trump (2017-2021).”

¹³⁵ Ibid; “Statement from the Press Secretary Regarding Executive Grants of Clemency,” Statements and Releases (The White House, December 22, 2020), <https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-executive-grants-clemency-122220>.

¹³⁶ “Statement from the Press Secretary,” (The White House, December 22, 2020).

¹³⁷ Ibid.

Liberty, and Dustin Laurent Heard were all convicted of killing unarmed civilians in Iraq, but these Blackwater mercenaries committed a massacre that left 14 people dead while injuring 17 others.¹³⁸ The foursome became known as the “Biden Four” in conservative media when then-Vice President Joe Biden “announced that the Obama administration would retry them ... [after] a federal judge dismissed the initial charges against the men in 2009.”¹³⁹ Five years later, Mr. Slatten received a life sentence, while the other three were sentenced to over a decade in prison.¹⁴⁰ Mr. Trump had previously intervened when American soldiers had been charged with war crimes, as when he pardoned Michael Chase Behenna, Clint Lorance, and Mathew Golsteyn earlier on in his presidency. Again, these interventions by the president showcased his “contempt for the rule of law,” as these pardon recipients “displayed a blatant disregard for the core values of the United States Constitution ... and the respect for human life.”¹⁴¹ The president, likewise, pardoned two Border Patrol agents, Jose Alonso Compean and Ignacio Ramos, who had been charged with shooting a suspected smuggler on the U.S.-Mexico border.¹⁴² Advancing his anti-immigration stance, the president pardoned these two men who had “tried to cover up the

¹³⁸ Vanessa Romo et al., “Trump Grants Slew of Pardons, Including to George Papadopoulos and Duncan Hunter,” *NPR*, December 22, 2020, <https://www.npr.org/2020/12/22/947972044/trump-grants-slew-of-pardons-including-george-papadopoulos-and-duncan-hunter>.

¹³⁹ Karen DeYoung, “Trump’s Pardon of Blackwater ‘Four’ Highlights Deep Divisions over Iraq War,” *The Washington Post*, December 23, 2020, https://www.washingtonpost.com/national-security/trump-pardons-blackwater-iraq-war/2020/12/23/3f6bd0d8-454c-11eb-a277-49a6d1f9dff1_story.html.

¹⁴⁰ Rosalind S. Helderman, Matt Zapposky, and Josh Dawsey, “Trump Grants Clemency to 20 People, Including Three Former GOP Members of Congress and Two Men Convicted in the Russia Probe,” *The Washington Post*, December 22, 2020, https://www.washingtonpost.com/politics/george-papadopoulos-trump-pardon/2020/12/22/822f038e-30f4-11eb-96c2-aac3f162215d_story.html.

¹⁴¹ Karen DeYoung, “Trump’s Pardon of Blackwater ‘Four’ Highlights Deep Divisions over Iraq War.”

¹⁴² “Pardons Granted by President Donald J. Trump (2017-2021)”; Rosalind S. Helderman, Matt Zapposky, and Josh Dawsey, “Trump Grants Clemency to 20 People.”

incident [while failing] to report the shooting.”¹⁴³ The remaining pardons were all political in nature, as Alfonso Antonio Costa had the benefit of being a “friend of Housing and Urban Development Secretary Ben Carson,” but the former dentist had “pleaded guilty to one count of health care fraud related to false billing over exaggerated oral surgery claims.”¹⁴⁴ Former Republican Congressmen Christopher Carl Collins and Duncan D. Hunter also received their pardons, but these early Trump supporters were convicted of insider trading and misusing campaign funds, respectively.¹⁴⁵ Another Republican politician, Phillip Kay Lyman, was also pardoned for his role in

[leading] a protest of about 50 ATV riders in a southeastern Utah canyon home to Native American cliff dwellings that officials closed to motorized traffic. The ride occurred amid a movement in the West pushing back against federal control of large swaths of land and came in the wake of an armed confrontation Nevada rancher Cliven Bundy had with Bureau of Land Management over grazing fees.¹⁴⁶

In a statement, the White House said that Mr. Lyman “was subjected to selective prosecution,” but such an argument does little else than criticize the perceived overreach of federal prosecutors.¹⁴⁷ The same might be said with Mr. Trump’s remaining two pardons, which were

¹⁴³ Vanessa Romo et al., “Trump Grants Slew of Pardons.”

¹⁴⁴ “Pardons Granted by President Donald J. Trump (2017-2021);” Vanessa Romo et al., “Trump Grants Slew of Pardons.”

¹⁴⁵ Vanessa Romo et al., “Trump Grants Slew of Pardons”; Nick Gass, “Trump Lands His First Congressional Endorsements,” *Politico*, February 24, 2016, <https://www.politico.com/blogs/2016-gop-primary-live-updates-and-results/2016/02/duncan-hunter-endorses-donald-trump-219725>.

¹⁴⁶ Kyle Dunphey, “Utah Rep. Phil Lyman Receives Presidential Pardon for ATV Ride on Protected Land,” *Deseret News*, December 22, 2020, <https://www.deseret.com/utah/2020/12/22/22196520/pardon-state-rep-phil-lyman-trump-weldon-angelos-white-house-mike-lee-blm-recapture-canyon>.

¹⁴⁷ “Statement from the Press Secretary,” (The White House, December 22, 2020).

issued to Alex Van Der Zwaan and George Papadopoulos. The former lied to investigators about his work with Paul Manafort, while the latter lied about “his contacts with Russian operatives” during the presidential campaign of 2016.¹⁴⁸ Both men “pleaded guilty to lying to investigators,” and their admission led to their conviction under Robert Mueller’s Russia investigation.¹⁴⁹ The White House remarked that these were “process-related [crimes],” but there is little doubt that the “president [used] the power of his office to undo the work of the Russia probe that shadowed much of his term” in office when he pardoned Mr. Zwaan and Mr. Papadopoulos.¹⁵⁰

The very next day, on December 23, 2020, President Trump issued twenty-six pardons.¹⁵¹ Among the recipients were Roger Joseph Stone, Jr. (the president’s long-time friend and advisor), Paul J. Manafort (the president’s 2016 campaign chairman), and Charles Kushner (the father-in-law of Ivanka Trump, the president’s daughter).¹⁵² These three pardons deserve special attention, as they perhaps best exemplify the favoritism and nepotism Mr. Trump employed with his use of the pardon power. This section concludes with a review of the remaining twenty-three pardons, but on the whole, the president “aggressively employed his power to override courts, juries and prosecutors to apply his own standard of justice for his allies [when he pardoned this] new group of loyalists.”¹⁵³

¹⁴⁸ Vanessa Romo et al., “Trump Grants Slew of Pardons”

¹⁴⁹ Ibid.

¹⁵⁰ “Statement from the Press Secretary,” (The White House, December 22, 2020); Rosalind S. Helderman, Matt Zapotosky, and Josh Dawsey, “Trump Grants Clemency to 20 People.

¹⁵¹ “Pardons Granted by President Donald J. Trump (2017-2021).”

¹⁵² Ibid; Maggie Haberman and Michael S. Schmidt, “Trump Gives Clemency to More Allies, Including Manafort, Stone and Charles Kushner,” *The New York Times*, December 23, 2020, <https://www.nytimes.com/2020/12/23/us/politics/trump-pardon-manafort-stone.html>.

¹⁵³ Maggie Haberman and Michael S. Schmidt, “Trump Gives Clemency to More Allies.”

Roger Joseph Stone, Jr. has long been active in Republican politics, working for, among others, Richard Nixon, Ronald Reagan, Bob Dole, and Donald Trump.¹⁵⁴ As a result of Mueller’s Russia probe, the political rouge “was convicted in federal court of seven felonies for obstructing the congressional inquiry, lying to investigators under oath and trying to block the testimony of a witness whose account would have exposed his lies.”¹⁵⁵ His pardon nullified this conviction, but his 40-month prison sentence had already been commuted by the president back in July. Mr. Trump, who had criticized the Russia probe from its inception, stated that these were “process-based charges” pursued by “overzealous prosecutors” involved in “witch hunts.”¹⁵⁶ Mr. Muller felt obliged to respond to these charges in a rare opinion piece in *The Washington Post* when he stated that

Stone was prosecuted and convicted because he committed federal crimes. ... By late 2016, the FBI had evidence that the Russians had signaled to a Trump campaign adviser that they could assist the campaign through the anonymous release of information damaging to the Democratic candidate. ... Stone became a central figure in our investigation for two key reasons: He communicated in 2016 with individuals known to us to be Russian intelligence officers, and he claimed advance knowledge of WikiLeaks’ release of emails stolen by those Russian intelligence officers. ... When a subject lies to investigators, it strikes at the core of the government’s efforts to find the truth and hold

¹⁵⁴ Peter Baker, Maggie Haberman, and Sharon LaFraniere, “Trump Commutes Sentence of Roger Stone in Case He Long Denounced,” *The New York Times*, July 10, 2020, <https://www.nytimes.com/2020/07/10/us/politics/trump-roger-stone-clemency.html>.

¹⁵⁵ Sharon LaFraniere and Zach Montague, “Roger Stone Is Convicted of Impeding Investigators in a Bid to Protect Trump,” *The New York Times*, November 15, 2019, <https://www.nytimes.com/2019/11/15/us/politics/roger-stone-trial-guilty.html>.

¹⁵⁶ Peter Baker, Maggie Haberman, and Sharon LaFraniere, “Trump Commutes Sentence of Roger Stone.”

wrongdoers accountable. It may ultimately impede those efforts. We made every decision in Stone's case, as in all our cases, based solely on the facts and the law and in accordance with the rule of law. ... Claims to the contrary are false.

The pardon of Roger Joseph Stone, Jr. **deviates** from the standard of presidential pardons, as both his commutation and pardon highlight the corruptive nature of the pardon power as used by President Trump. The Russia probe was arguably set in motion to protect the public welfare, but the president actively stonewalled its conclusions by pardoning Mr. Stone. Far from being a disinterested act of grace, his pardon represents how Mr. Trump used the pardon power at his disposal to protect, in the words of Senator Mitt Romney, "a person convicted by a jury of lying to shield that very president."¹⁵⁷

Paul J. Manafort served as the campaign chairman for Trump's 2016 campaign during the summer of that election year. During his tenure, the political consultant "had increasingly come under fire over his past lobbying work for pro-Russian Ukrainian oligarchs," which forced him to resign from his post.¹⁵⁸ Two years later, Mueller's Russia probe charged him with tax and bank fraud relating to his lobbying efforts, but Mr. Manafort cooperated with Mueller and pleaded guilty to these charges. His plea deal fell apart as he was charged with lying to federal prosecutors about his connections with Konstantin Kilimnik (who has been described as a Russian intelligence officer), but Mr. Manafort ultimately received a seven-and-a-half-year

¹⁵⁷ Romney, Mitt. Twitter Post. July 11, 2020, 01:06 PM. <https://twitter.com/MittRomney/status/1281937795616067586>.

¹⁵⁸ Nolan D. McCaskill, Alex Isenstadt, and Shane Goldmacher, "Paul Manafort Resigns from Trump Campaign," *Politico*, August 19, 2016, <https://www.politico.com/story/2016/08/paul-manafort-resigns-from-trump-campaign-227197>.

prison sentence.¹⁵⁹ A Senate Intelligence Committee investigation stated that

Manafort's true motive in deciding to face more severe criminal penalties rather than provide complete answers about his interactions with Kilimnik is unknown [but his] obfuscation of the truth ... effectively foreclosed direct insight into a series of interactions and communications which represent the single most direct tie between senior Trump Campaign officials and the Russian intelligence services. ... Manafort's presence on the Campaign and proximity to Trump created opportunities for Russian intelligence services to exert influence over, and acquire confidential information on, the Trump Campaign. ... Taken as a whole, Manafort's high-level access and willingness to share information with individuals closely affiliated with the Russian intelligence services, particularly Kilimnik and associates of [Putin-linked Russian oligarch] Oleg Deripaska, represented a grave counterintelligence threat.¹⁶⁰

The White House said in a statement that “[a]s a result of blatant prosecutorial overreach, Mr. Manafort has endured years of unfair treatment and is one of the most prominent victims of what has been revealed to be perhaps the greatest witch hunt in American history.”¹⁶¹ The facts remain that Mr. Manafort pleaded guilty to tax and bank fraud charges, and was found to have “shared

¹⁵⁹ Amber Phillips, “Trump’s Pardon of Paul Manafort Brings Full Circle the Undermining of the Russia Investigation,” *The Washington Post*, December 24, 2020, <https://www.washingtonpost.com/politics/2020/12/24/trumps-pardon-paul-manafort-brings-full-circle-undermining-russia-investigation/>; Sharon LaFraniere, “Paul Manafort, Trump’s Former Campaign Chairman, Guilty of 8 Counts,” *The New York Times*, August 21, 2018, <https://www.nytimes.com/2018/08/21/us/politics/paul-manafort-trial-verdict.html>.

¹⁶⁰ Aaron Blake, “The Senate’s ‘Grave’ Russia Report: What We Learned, and What It Means,” *The Washington Post*, August 18, 2020, <https://www.washingtonpost.com/politics/2020/08/18/senates-big-russia-report-what-we-learned-what-it-means/>.

¹⁶¹ “Statement from the Press Secretary Regarding Executive Grants of Clemency,” Statements and Releases (The White House, December 23, 2020), <https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-executive-grants-clemency-122320>.

Trump campaign polling data with [a Russian intelligence officer].”¹⁶² The reason why he lied and covered up this truth remains unknown, but Manafort himself told his deputy, Rick Gates, back in 2018, that “[we’ll] get through it” and that “we’ll be taken care of.”¹⁶³ Whether this meant a presidential pardon is up for debate, but the president had publicly applauded his former campaign chairman for his refusal “to break.”¹⁶⁴ The pardon of Paul J. Manafort **deviates** from the standard of presidential pardons, as it was ultimately designed to discredit the Russia probe. Taken together, the pardons of Stone and Manafort “serve neither justice nor mercy,” according to House Judiciary Committee Chairman Jerrold Nadler, who went on to say that “President Trump is handing out rewards to his co-conspirators and shielding his own conduct from scrutiny.”¹⁶⁵

Charles Kushner is the father of Jared Kushner, Donald J. Trump’s son-in-law.¹⁶⁶ Indulge me if you will, as I make the case why this particular pardon goes against every notion of how a presidential pardon should be employed, but without further ado, the pardon of Charles Kushner **deviates** from the standard of presidential pardons. In an almost unashamed manner, the White House stated that Mr. Kushner’s “record of reform and charity overshadows [his] conviction and 2 year sentence for preparing false tax returns, witness retaliation, and making false statements to

¹⁶² Amber Phillips, “Trump’s Pardon of Paul Manafort.”

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Matt Zapposky et al., “Trump Pardons Charles Kushner, Paul Manafort, Roger Stone in Latest Wave of Clemency Grants,” *The Washington Post*, December 23, 2020, https://www.washingtonpost.com/national-security/charles-kushner-paul-manafort-roger-stone-trump-pardons/2020/12/23/05cf013a-456d-11eb-975c-d17b8815a66d_story.html.

¹⁶⁶ Maggie Haberman and Michael S. Schmidt, “Trump Gives Clemency to More Allies.”

the FEC.”¹⁶⁷ Chris Christie, the former governor of New Jersey, served as the United States Attorney for the District of New Jersey who prosecuted Mr. Kushner back in 2004.¹⁶⁸ In an interview with Margaret Hoover, Mr. Christie stated that Mr. Kushner pleaded guilty to “one of the most loathsome, disgusting crimes that [he] prosecuted when [he] was U.S. Attorney.”

He admitted the crimes. And so, what am I supposed to do as a prosecutor? I mean, if a guy hires a prostitute to seduce his brother-in-law and videotapes it, and then sends the videotape to his sister to attempt to intimidate her from testifying before a grand jury, do I really need any more justification than that?¹⁶⁹

The pardon of Mr. Kushner is perhaps the most striking example of nepotism employed by Mr. Trump with his use of the pardon power, as the recipient is the father-in-law of the president’s eldest daughter. The younger Mr. Kushner, who secured the position of Senior White House advisor, had staunchly defended his father while vilifying the man who prosecuted him.¹⁷⁰ His justifications are egregiously blinded by family ties, as when he remarked that

[h]is [father’s] siblings stole every piece of paper from his office, and they took it to the government. Siblings that he literally made wealthy for doing nothing. He gave them interests in the business for nothing. All he did was put the tape together and send it. Was

¹⁶⁷ “Statement from the Press Secretary.” (The White House, December 23, 2020).

¹⁶⁸ “Office History,” The United States Attorney’s Office District of New Jersey (U.S. Department of Justice, March 18, 2015), <https://www.justice.gov/usao-nj/about/office-history>; Daniel Victor, “Chris Christie Says Jared Kushner’s Father Committed a ‘Loathsome’ Crime,” *The New York Times*, January 30, 2019, <https://www.nytimes.com/2019/01/30/us/politics/chris-christie-charles-kushner.html>.

¹⁶⁹ Firing Line with Margaret Hoover. Twitter Post. January 29, 2019, 07:01 PM. <https://twitter.com/FiringLineShow/status/1090324102731182085>

¹⁷⁰ Azmi Haroun, “Trump Pardoned Jared Kushner’s Dad Charles, Who Was Convicted of Tax Crimes, Witness Tampering, and Illegal Campaign Contributions,” *Business Insider*, December 24, 2020, <https://www.businessinsider.com/trump-pardoned-charles-kushner-jared-father-crimes-2020-12?r=US&IR=T>; Daniel Victor, “Chris Christie Says Jared Kushner’s Father Committed a ‘Loathsome’ Crime.”

it the right thing to do? At the end of the day, it was a function of saying, ‘You’re trying to make my life miserable? Well, I’m doing the same.’”¹⁷¹

Moreover, the president’s son-in-law “[had] been an integral part of the administration’s clemency efforts,” which arguably included the case of Charles Kushner.¹⁷² His pardon was not disinterested, nor did it serve the public welfare.

The remaining twenty-three pardons President Trump issued on the day before Christmas Eve, 2020, represent an amalgam of individuals whose pardons were lobbied by Trump affiliates. As before, the president disregarded the conventional Justice Department process, telling “aides, advisers, allies, lawmakers and others to bring him names for consideration.”¹⁷³ In my judgment, five of these pardons **conform** to the standard of presidential pardons, or those issued to Rebekah Kay Charleston, Topeka Kimberly Sam, Christopher II X, Cesar Augusto Lozada, and Russell Paul Plaisance.¹⁷⁴ The last-mentioned individual had conspired to import cocaine back in 1987, but his posthumous pardon seemed to correct this inconsistent event in his life. Ms. Charleston was convicted on tax evasion charges, but as a woman forced into prostitution, her pardon was supported by the agent who arrested her.¹⁷⁵ Ms. Sam pleaded guilty to possessing and distributing cocaine and served three years in prison but has since become a criminal justice reform advocate. Christopher II X faced similar charges but turned his life around and has

¹⁷¹ Gabriel Sherman, “The Legacy,” *New York Magazine*, July 10, 2009, <https://nymag.com/news/features/57891>.

¹⁷² Jill Colvin and Colleen Long, “Kushner Pardon Revives ‘Loathsome’ Tale of Tax Evasion, Sex,” *ABC News*, December 25, 2020, <https://abcnews.go.com/Politics/wireStory/kushner-pardon-revives-loathsome-tale-tax-evasion-sex-74891757>.

¹⁷³ Matt Zaptosky et al., “Trump Pardons Charles Kushner, Paul Manafort, Roger Stone.”

¹⁷⁴ “Pardons Granted by President Donald J. Trump (2017-2021).”

¹⁷⁵ “Statement from the Press Secretary.” (The White House, December 23, 2020).

become an active voice in community affairs of his hometown of Louisville, Kentucky. Lastly, Mr. Lozada served fourteen months in prison and paid a \$10,000 fine for conspiring to distribute marijuana back in 2004, but this immigrant from Cuba now owns a pool equipment company while volunteering on weekends for the poor.¹⁷⁶

Now on to those that **deviate**. Margaret E. Hunter received a presidential pardon seemingly for being the wife of Duncan D. Hunter, who had previously been pardoned by the president. Charged with misusing campaign funds,¹⁷⁷ the couple pleaded guilty to “stealing about \$150,000 from [Mr. Hunter’s] campaign funds to pay for a lavish lifestyle, from vacations to outings with friends, private school tuition and [their] daughter’s birthday party.”¹⁷⁸ Also pardoned, Stephanie Christine Mohr was charged with depriving the rights of an individual and sentenced to ten years in prison.¹⁷⁹ Her case sparked a nationwide discussion on police misconduct and reform, as when the former police officer “[released] her dog on an unarmed homeless man in 1995.”¹⁸⁰ A lawyer involved in prosecuting Ms. Mohr called her case a “willful and deliberate act of police brutality,” as she “set her dog to attack ... an undocumented

¹⁷⁶ Ibid.

¹⁷⁷ Maggie Haberman and Michael S. Schmidt, “Trump Gives Clemency to More Allies.”

¹⁷⁸ “A Look at the 29 People Trump Pardoned or Gave Commutations,” *Spectrum Local News*, December 23, 2020, <https://spectrumlocalnews.com/ap-top-news/2020/12/24/a-look-at-the-29-people-trump-pardoned-or-gave-commutations>.

¹⁷⁹ “Pardons Granted by President Donald J. Trump (2017-2021).”

¹⁸⁰ Katie Mettler, Emily Davies, and Clarence Williams, “Trump Pardons Former Prince George’s Officer Whose Conviction Was ‘Watershed’ Moment for Police Reform in County,” *The Washington Post*, December 24, 2020, https://www.washingtonpost.com/local/public-safety/trump-pardons-former-prince-georges-police-officer/2020/12/23/041eb13e-4589-11eb-a277-49a6d1f9dff1_story.html.

immigrant whose only crime was seeking a safe place to eat and sleep.”¹⁸¹ President Trump has long touted a “law and order” narrative, standing steadfast behind “Blue Lives Matter,” but instead of upholding the law, his rhetoric is designed to ask who “the law was designed to order.”¹⁸² Much like the pardon of Mr. Arpaio, the pardon of Ms. Mohr highlights Mr. Trump’s support for law enforcement, while “[sending the] message that police violence is less serious than other kinds of violence.”¹⁸³ Similarly, the president pardoned Gary Mark Brugman and Joseph Occhipinti, who were convicted of depriving the rights under the color of law.¹⁸⁴ Mr. Brugman, a former Border Patrol agent, spent over two years in prison for “striking and violating the civil rights of a man who had crossed the U.S. border illegally,” while Mr. Occhipinti, a former agent with the U.S. Immigration and Naturalization Service, “illegally detained and searched Hispanic store owners in New York City and then made false statements to cover-up those activities.”¹⁸⁵ The pardons of John A. Boulton and Peter Y. Atkinson also deviate from the standard of presidential pardons.¹⁸⁶ The two men were associates of Conrad Black, a newspaper mogul charged with “[bilking] stockholders out of millions of dollars.”¹⁸⁷ As co-defendants in his case, Messrs. Boulton and Atkinson “were found guilty of three counts of mail fraud and

¹⁸¹ Alex Busansky, “Opinion: Trump’s Worst Pardon Is One You Haven’t Heard About,” *The Washington Post*, December 29, 2020, <https://www.washingtonpost.com/opinions/2020/12/29/trump-pardons-stephanie-mohr-prince-georges>.

¹⁸² Elaina Plott, “Trump’s ‘Law and Order’: One More Deceptive Tactic Is Exposed,” *The New York Times*, January 16, 2021, <https://www.nytimes.com/2021/01/16/us/politics/trump-law-order.html>.

¹⁸³ Katie Mettler, Emily Davies, and Clarence Williams, “Trump Pardons Former Prince George’s Officer.”

¹⁸⁴ “Pardons Granted by President Donald J. Trump (2017-2021).”

¹⁸⁵ “A Look at the 29 People Trump Pardoned or Gave Commutations.”

¹⁸⁶ “Pardons Granted by President Donald J. Trump (2017-2021).”

¹⁸⁷ Christine Mai-Duc, “Trump Pardons Pat Nolan, Former GOP Lawmaker.”

each served a year in prison.”¹⁸⁸ Lastly, former Republican congressman Mark Siljander was sentenced to a year in prison on “charges of obstruction of justice and acting as a foreign agent on behalf of an Islamic charity that hired [him] to lobby Congress to have its name removed from a list of alleged terrorist-supporting organizations.”¹⁸⁹

The remaining eleven pardons are **ambiguous** in nature and will therefore be characterized as **conforming** to the standard of presidential pardons. John Frederick Tate and Jesse R. Benton were staffers on Ron Paul’s 2012 presidential campaign, but the two men were convicted of trying to buy an endorsement for the libertarian’s presidential bid.¹⁹⁰ Lee Goodman, the former chairman of the Federal Election Commission, supported these pardons, as the law at the time “was unclear and not well established.”¹⁹¹ William Plemons received a presidential pardon for the “various financial crimes [he committed] in the late 1990s and early 2000s,” but the former U.S. Air Force service member “[took] responsibility for his conduct, served a sentence of 27 months in prison, and paid \$400,000 in restitution.”¹⁹² Andrew Barron Worden received a presidential pardon for his wire fraud conviction from 1995, but the White House stated that he “made mistakes in running an investment firm he founded ... just [after he] graduated from college [and that he] voluntarily stopped his wrongful conduct and began to repay his victims before any criminal charges were filed.”¹⁹³ James Harutun Batmasian received

¹⁸⁸ “A Look at the 29 People Trump Pardoned or Gave Commutation.”

¹⁸⁹ “All the People President Trump Pardoned on His Way out of Office.”

¹⁹⁰ “A Look at the 29 People Trump Pardoned or Gave Commutations.”

¹⁹¹ “Statement from the Press Secretary.” The White House, December 23, 2020.

¹⁹² Ibid.

¹⁹³ Ibid.

an eight months' imprisonment sentence back in 2008 for his "willful failure to pay over tax,"¹⁹⁴ but his pardon was supported by the former pardon-recipient Alice Marie Johnson.¹⁹⁵ Mary Ballard McCarty received a forty-two months' imprisonment sentence for "[conspiring] to commit honest services fraud,"¹⁹⁶ but her pardon takes note from a subsequent Supreme Court interpretation, which questions whether her conduct should have been be criminally prosecuted.¹⁹⁷

The remaining pardon recipients include Robert Edward Coughlin II, James J. Kassouf, Christopher Michael Wade, Joseph Martin Stephens, and Rickey Ivan Kanter.¹⁹⁸ Mr. Coughlin was charged with conflict of interest while working at the Justice Department, seemingly for doing favors "in exchange for sports and concert tickets."¹⁹⁹ Mr. Kassouf pleaded guilty to a tax offense back in 1989 but has since devoted much of his time to charitable organizations. Mr. Wade was convicted on various cyber offenses and has since shown remorse, while Mr. Stephens "pleaded guilty in 2008 to being a felon in possession a firearm."²⁰⁰ Lastly, Mr. Kanter was the owner and CEO of Dr. Comfort, a company that produced shoe inserts that ultimately didn't comply with Medicare regulations. After settling claims in civil court, Mr. Kanter was convicted of mail fraud and served a year and one day in prison. According to the White House, "[s]ince

¹⁹⁴ "Pardons Granted by President Donald J. Trump (2017-2021)."

¹⁹⁵ "Statement from the Press Secretary." (The White House, December 23, 2020).

¹⁹⁶ "Pardons Granted by President Donald J. Trump (2017-2021)."

¹⁹⁷ "Statement from the Press Secretary." (The White House, December 23, 2020).

¹⁹⁸ "Pardons Granted by President Donald J. Trump (2017-2021)."

¹⁹⁹ "Statement from the Press Secretary." (The White House, December 23, 2020).

²⁰⁰ "All the People President Trump Pardoned on His Way out of Office."

his period of incarceration, Mr. Kanter has been a model member of his community.”²⁰¹

THE CONCLUSION OF A PRESIDENCY

Up to this point, I have categorized each pardon as either conforming or deviating to and from the standard of presidential pardons (and those that have been deemed “ambiguous” have been marked as conforming). I’ve relied on reporting from *The New York Times* and *The Washington Post*, in particular, to determine where to place each pardon on this rating scale. In this final section of this chapter, my modus operandi will stay the same, despite the fact that Mr. Trump’s final pardons did not receive as comprehensive coverage as those that came before. This lack of coverage is understandable, as news organizations were preoccupied with other matters, such as how the president incited an insurrection on January 6, 2021, and how the president, as a result, got impeached by the House of Representatives for a second time a week later (not to mention the presidential transition of Joe Biden that would occur a week after the House vote).²⁰²

In his last week as president of the United States, President Trump issued 74 pardons (which is more than half of all the pardons he issued during his time in office). Of those, 21 were issued the same day the House voted to impeach the president, or on January 13, 2021; 52 were issued on President Trump’s last full day in office, or on January 19, 2021; and a single pardon was issued the very next day, or just hours before Joe Biden was sworn in as president of the United States on January 20, 2021.²⁰³

²⁰¹ “Statement from the Press Secretary.” (The White House, December 23, 2020).

²⁰² Nicholas Fandos, “Trump Impeached for Inciting Insurrection,” *The New York Times*, January 13, 2021, <https://www.nytimes.com/2021/01/13/us/politics/trump-impeached.html>; “Biden Signs Executive Orders as Democrats Take Control of Senate,” *The Washington Post*, January 20, 2021, <https://www.washingtonpost.com/politics/2021/01/20/biden-inauguration-day-live-updates>.

This final flurry of pardons represents perhaps the last-ditch effort by Trump associates to get their desired pardons through. It has been reported that Alan Dershowitz, the president’s lawyer for his first impeachment trial, was instrumental for many of his clients in their quest for clemency. In fact, “[t]he overwhelming majority of Mr. Trump’s pardons and commutations [were] awarded through an ad hoc system run by a handful of White House aides, with assistance from outside advisers.”²⁰⁴ These advisors include Jarden Kushner, the president’s son-in-law, Nick Muzin, a Republican operative, and Brett Tolman, the former U.S. attorney for Utah.²⁰⁵ To determine the legitimacy of these final pardons is, therefore, further complicated, as little has been written about them and as their cases have seemingly been lobbied by those close to the president. Having said that, a pardon does not necessarily deviate from the standard of presidential pardons if that very pardon was simply lobbied by someone. Moreover, it is a testament to the governing style of Mr. Trump, who favored handing out favors to allies or friends of allies rather than following the official process. Ultimately, his “clemency actions underscored his animosity toward a justice system seeking to punish corruption and betrayals of public trust.”²⁰⁶ Regardless, the vast majority of these final pardons will be characterized as being indeterminate to the standard of presidential pardons, unless I can unequivocally prove otherwise.

President Trump, as stated above, pardoned twenty-one individuals on January 13, 2021.

²⁰³ Ibid; “Pardons Granted by President Donald J. Trump (2017-2021).”

²⁰⁴ Kenneth P. Vogel and Nicholas Confessore, “Access, Influence and Pardons: How a Set of Allies Shaped Trump’s Choices,” *The New York Times*, March 21, 2021, <https://www.nytimes.com/2021/03/21/us/politics/trump-pardons.html>.

²⁰⁵ Ibid.

²⁰⁶ Eric Lipton and Kenneth P. Vogel, “In Trump’s Pardons, Disdain for Accountability,” *The New York Times*, January 20, 2021, <https://www.nytimes.com/2021/01/20/us/politics/trump-pardons-accountability.html>.

Two of those pardons **deviate** from the standard of presidential pardons or those issued to Randall Harold Cunningham and Paul Erickson. Mr. Cunningham conspired to commit crimes against the United States and was sentenced to over 8 years in prison.²⁰⁷ During his time as a Republican congressman, Mr. Cunningham “maintained a “bribe menu” on his congressional office stationery that featured different levels of payments he required from military contractors if they wanted his help to win corresponding levels of federal contracts.”²⁰⁸ Mr. Erickson, a GOP political operative, got embroiled in the Russia investigation and was sentenced to 84 months in prison on charges of wire fraud and money laundering. His pardon continued the trend by Mr. Trump to undo the investigation by Mr. Mueller, despite the fact that Mr. Erickson had pleaded guilty.²⁰⁹ The remaining nineteen pardons must be characterized as being **indeterminate** to the standard of presidential pardons, as not enough information was found during the course of this research.*

On January 19, 2021, President Trump pardoned fifty-two individuals. Six of those pardons **deviate** from the standard of presidential pardons or those issued to Stephen Bannon, Elliott Broidy, Tommaso Buti, Douglas Jemal, Kenneth Kurson, and Hillel “Helly” Nahmad.²¹⁰

Mr. Bannon arguably spurred on the candidacy of Mr. Trump, first by espousing

²⁰⁷ “Pardons Granted by President Donald J. Trump (2017-2021).”

²⁰⁸ Eric Lipton and Kenneth P. Vogel, “In Trump’s Pardons, Disdain for Accountability.”

²⁰⁹ “All the People President Trump Pardoned on His Way out of Office”; Maggie Haberman et al., “With Hours Left in Office, Trump Grants Clemency to Bannon and Other Allies,” *The New York Times*, January 20, 2021, <https://www.nytimes.com/2021/01/20/us/politics/trump-pardons.html>.

* These individuals include Lynn Wade Barney, Paul L. Behrens, Thaddeus M. S. Bereday, Peter E. Clay, Scott Conor Crosby, Todd S. Farha, Thomas K. Ford, Jessica Jean Frease, Robert Cannon Hayes, Deborah L. Jorgensen, Gregory L. Jorgensen, Martin Frederick Jorgensen, William L. Kale, Frederick J. Nahas, John Michael Nystrom, Amy Ralston Povah, David Francis Rowland, Joshua James Smith, and David Tamman (see “Pardons Granted by President Donald J. Trump”).

²¹⁰ “Pardons Granted by President Donald J. Trump (2017-2021).”

controversial ideas on the conservative news site *Breitbart* which the candidate picked up, then by becoming the candidate-turned-president's chief political strategist. After a falling out with Jared Kushner, the Republican rouge left the White House to host a pro-Trump podcast, as well as to work for "a private fundraising effort for construction of a wall on the U.S.-Mexico border."²¹¹ Named "We Build the Wall," this effort resulted in Mr. Bannon being charged with defrauding donors of more than \$1 million, but the provocateur was pardoned before he had the chance to stand trial.²¹² His pardon does not serve the public welfare, nor is it a disinterested act of grace. Rather, it "encapsulates the most repugnant aspects of Mr. Trump's misuse of the pardon power: cronyism, criminality and cultivation of his far-right base."²¹³ Much like the pardons of Messrs. Stone, Manafort, and Flynn, the "pardon of Mr. Bannon is both corrupt and a possible obstruction of justice, as he might otherwise have turned against the former president in a potential criminal, civil or impeachment proceeding."²¹⁴ A similar narrative has been theorized about the pardon of Mr. Broidy, who was once the national deputy finance chair for the Republican National Committee and a Trump campaign fundraiser.²¹⁵ The megadonor "pleaded guilty in October [of 2020] to acting as an unregistered foreign agent and lobbying the Trump

²¹¹ Josh Dawsey and Matt Zapotosky, "Trump Pardons Steve Bannon after Ugly Falling out Early in His Presidency," *The Washington Post*, January 20, 2021, https://www.washingtonpost.com/national-security/stephen-bannon-trump-pardon/2021/01/20/04dc7132-30db-11eb-860d-f7999599cbc2_story.html.

²¹² Ibid; Maggie Haberman and Michael S. Schmidt, "With Hours Left in Office, Trump Pardons Bannon and Other Allies," *The New York Times*, January 19, 2021, <https://www.nytimes.com/2021/01/19/us/politics/trump-pardons-bannon.html>.

²¹³ Steven G. Calabresi and Norman L. Eisen, "The Problem with Trump's Odious Pardon of Steve Bannon," *The New York Times*, January 20, 2021, <https://www.nytimes.com/2021/01/20/opinion/trump-bannon-pardon.html>.

²¹⁴ Ibid.

²¹⁵ Ibid; "All the People President Trump Pardoned on His Way out of Office."

administration on behalf of Malaysian and Chinese interests.”²¹⁶

Mr. Buti is an Italian restaurateur who was indicted for wire fraud back in 2000, but these “charges remained pending until he was pardoned [by President Trump].”²¹⁷ Having socialized with New York’s rich and famous in the 1990s, Mr. Buti developed a relationship with Mr. Trump that extended beyond the catering of Wall Street elites. The same year his “Fashion Cafe” closed its doors, Mr. Buti was hired by Mr. Trump to run his newly formed modeling agency, but in an interview with *New York* magazine, the real-estate mogul stated that

I’ve made \$5 billion because I bank on the right people. ... And I think he’s a terrific, unjustly accused guy. Restaurants, with all the unions and hamburgers you got to deal with, are not for him. But Tommaso loves women and women love him back. He’s a natural to run a modeling agency.²¹⁸

His pardon is not political in nature, as it’s purely based on a personal relationship between the president and a former business associate. As such, it does not serve the public welfare, nor is it in any shape or form disinterested. The same could be said of the pardons of Mr. Jemal and Mr. Kurson, who were charged with wire fraud and cyberstalking, respectively. The former, who has a home next to, and is friends with, Charles Kushner, introduced Mr. Trump “to real estate contacts in Washington [once he] won the rights to develop the Old Post Office Pavilion on Pennsylvania Avenue into a hotel.”²¹⁹ The latter had yet to go to trial before his pardon, but

²¹⁶ “All the People President Trump Pardoned on His Way out of Office.”

²¹⁷ Ibid.

²¹⁸ Samantha Lock, “Donald Trump Pardons Tommaso Buti, Italian Businessman Charged with Fraud,” *Newsweek*, January 20, 2021, <https://www.newsweek.com/tommaso-buti-italian-businessman-pardoned-president-donald-trump-1562970>.

²¹⁹ “All the People President Trump Pardoned on His Way out of Office.”

“[t]he political consultant was editor in chief of the New York Observer while it was owned by Jared Kushner.”²²⁰

Lastly, in a statement released by the White House, the pardon of Mr. Nahmad is said to be “supported by members of his community. Mr. Nahmad was convicted of a sports gambling offense. Since his conviction, he has lived an exemplary life and has been dedicated to the well-being of his community.” His “community” either refers to his “wealthy, influential family of art collectors that has been a fixture in auction houses for decades,” or simply art dealers in general, and “a sports gambling offense” fails to mention the ties it had “to Russian-American organized crime figures.”²²¹ Another omitted titbit is the fact that Mr. Nahmad amassed the entire 51st floor of Trump Tower in Manhattan, paying over \$18 million in the process. Finally, to tie it all together, the aforementioned “gambling ring [just] happened to be run out of Trump Tower.”²²²

As mentioned above, the final pardons by President Trump did not receive the same coverage by news organizations as those that came before. As a result, only six out of the fifty-two pardons issued on January 19, 2021, have been categorized as deviating from the standard of presidential pardons. To illustrate this trend, I direct my readers to an article in *The Washington Post* titled “All the people President Trump pardoned on his way out of office.” Of this group of fifty-two, only twelve individuals (and that includes the six I discussed) received some sort of coverage, while the remainder were only listed by name. And so it goes that the remaining forty-six are characterized as being **indeterminate** to the standard of presidential pardons.*

²²⁰ Ibid.

²²¹ Sarah Bahr, “Trump Pardons Hillel Nahmad, Madison Avenue Art Dealer,” *The New York Times*, January 20, 2021, <https://www.nytimes.com/2021/01/20/arts/design/trump-pardons-helly-nahmad.html>.

²²² Kyle Chayka, “Art Has the Power to Redeem, but Not Always in a Good Way,” *ARTnews*, January 26, 2021, <https://www.artnews.com/art-news/news/art-pardon-michael-pelletier-trump-1234582230>.

On the morning of January 20, 2021, President Donald J. Trump told his advisors that he would like to pardon one more individual. With just hours left of his presidency, Mr. Trump pardoned a longtime friend by the name of Albert J. Pirro, Jr. A few hours later, the pardon was announced to the press corps outside Mr. Trump’s Mar-a-Lago compound in Florida when the outgoing president arrived there at around 11:30 am, some 30 minutes before Joe Biden took the oath of office for president of the United States. Mr. Pirro’s ex-wife, Jeanine F. Pirro of Fox News, had lobbied for the pardon and had expressed her frustration to the president that her ex-husband had not been included on the previous day’s list of pardon recipients.²²³ In one of his last official acts as president of the United States, Mr. Trump heeded the call of a Fox News host, who “is well known for her vehement defenses of Trump and attacks against his perceived enemies.”²²⁴ The pardon on Albert J. Pirro, Jr. **deviates** from the standard of presidential pardons, as the president extended clemency towards an ally one last time. The two men had known each other for over 25 years and had worked together on real estate deals.²²⁵ Having been “convicted of tax evasion and conspiracy in 2000 [and] sentenced to 29 months in prison,” Mr.

* These individuals include Alex Adjmi, Fred Keith Alford, Mahmoud Reza Banki, Faustino Bernadett, Carl Andrew Boggs III, Todd A. Boulanger, Robert Douglas Bowker, Drew Kallman Brownstein, Dwayne Michael Carter, Robert William Cawthon, David Lamar Clanton, Jeffrey Alan Conway, Robert Corkern, Steven Benjamin Floyd, Duncan Fordham, Clarence Olin Freeman, George Gilmore, Steven Samuel Grantham, Joey Murray Hancock, Wesley Scott Harkonen, Jr., James Austin Hayes IV, Gary E. Hendler, William E. Henry, Abel Holtz, James E. Johnson, Jr., Amir B. Khan, Anthony Scott Levandowski, Michael A. Liberty, Brian Lyle McSwain, Hal Knudson Mergler, David Eugene Miller, Glen Moss, Stephen Odzer, Benedict Guthrie Olberding, Eric Wesley Patton, Desiree Perez, Johnny D. Phillips, Richard George Renzi, Gregory Louis Reyes, Aviem Sella, Robert C. Sherrill, Syrta Rashida Steib-Martin, Patrick Lee Swisher, Casey Urlacher, John Harold Wall, and Robert Zangrillo.

²²³ Maggie Haberman, “Trump Departs Vowing, ‘We Will Be Back in Some Form’”; “All the People President Trump Pardoned on His Way out of Office”; “Here Are Some of the People Trump Pardoned.”

²²⁴ Pamela Brown and Caroline Kelly, “Judge Jeanine Lobbied Trump during His Last Few Hours in Office to Pardon Her Ex-Husband. It Worked.,” *CNN*, January 21, 2021, <https://edition.cnn.com/2021/01/20/politics/judge-jeanine-lobbied-trump-pardon-ex-husband/index.html>.

²²⁵ *Ibid*; Maggie Haberman, “Trump Departs Vowing, ‘We Will Be Back in Some Form.’”

Pirro was far from being the ideal candidate deserving of a presidential pardon. Rather, his pardon highlights Mr. Trump’s willingness to dole out pardons to friends and allies, which is either an expression of favoritism or simply the “final lashing meted out by Mr. Trump at a criminal justice system that he had come to view as unfairly hounding him and his allies.”²²⁶

Each of President Trump’s pardons has hereby been addressed. The following table lists these pardons in chronological order, with the date, name, and whether or not they conformed to the standard of presidential pardons:

TABLE 3.1: PARDONS ISSUED BY PRESIDENT DONALD J. TRUMP

#	Date	Name	Pardon Standard
1	August 25, 2017	Joseph M. Arpaio	Deviate
2	March 9, 2018	Kristian Mark Saucier	Deviate
3	April 13, 2018	I. Lewis “Scooter” Libby	Deviate
4	May 24, 2018	John Arthur “Jack” Johnson	Conform
5	May 31, 2018	Dinesh D’Souza	Deviate
6	July 10, 2018	Dwight Lincoln Hammond	Deviate
7	July 10, 2018	Steven Dwight Hammond	Deviate
8	May 6, 2019	Michael Chase Behenna	Deviate
9	May 15, 2019	Patrick James Nolan	Deviate
10	May 15, 2019	Conrad Moffat Black	Deviate
11	July 29, 2019	Michael Anthony Tedesco	Conform
12	July 29, 2019	Roy Wayne McKeever	Conform
13	July 29, 2019	John Richard Bubala	Conform
14	July 29, 2019	Chalmer Lee Williams	Conform
15	July 29, 2019	Rodney M. Takumi	Conform
16	October 10, 2019	Zay Jeffries	Conform
17	November 15, 2019	Mathew Golsteyn	Deviate
18	November 15, 2019	Clint A. Lorance	Deviate
19	February 18, 2020	Angela Ronae Stanton	Deviate
20	February 18, 2020	Ariel Manuel Friedler	Deviate
21	February 18, 2020	David Hossein Safavian	Deviate
22	February 18, 2020	Michael Robert Milken	Deviate
23	February 18, 2020	Paul Harvey Pogue	Deviate
24	February 18, 2020	Bernard Bailey Kerik	Deviate

²²⁶ Maggie Haberman et al., “Trump Pardoned Dozens in the Last Hours of His Presidency, Including Al Pirro in the Final Minutes.,” *The New York Times*, January 20, 2021, <https://www.nytimes.com/2021/01/20/us/politics/trump-pardoned-dozens-in-the-last-hours-of-his-presidency-including-al-pirro-in-the-final-minutes.html>.

25	February 18, 2020	Edward J. DeBartolo, Jr.	Deviate
26	August 18, 2020	Susan B. Anthony	Conform
27	August 25, 2020	Jon Donyae Ponder	Ambiguous (C)
28	August 28, 2020	Alice Marie Johnson	Conform
29	November 25, 2020	Michael T. Flynn	Deviate
30	December 22, 2020	Phillip Kay Lyman	Deviate
31	December 22, 2020	Otis Gordon	Conform
32	December 22, 2020	Weldon Hal Angelos	Conform
33	December 22, 2020	Alex Van Der Zwaan	Deviate
34	December 22, 2020	George Papadopoulos	Deviate
35	December 22, 2020	Christopher Carl Collins	Deviate
36	December 22, 2020	Duncan D. Hunter	Deviate
37	December 22, 2020	Alfonso Antonio Costa	Deviate
38	December 22, 2020	Paul Alvin Slough	Deviate
39	December 22, 2020	Nicholas Abram Slatten	Deviate
40	December 22, 2020	Evan Shawn Liberty	Deviate
41	December 22, 2020	Dustin Laurent Heard	Deviate
42	December 22, 2020	Jose Alonso Compean	Deviate
43	December 22, 2020	Alfred Lee Crum	Conform
44	December 22, 2020	Ignacio Ramos	Deviate
45	December 23, 2020	Roger Joseph Stone, Jr.	Deviate
46	December 23, 2020	Paul J. Manafort	Deviate
47	December 23, 2020	Margaret E. Hunter	Deviate
48	December 23, 2020	Charles Kushner	Deviate
49	December 23, 2020	William Plemons	Ambiguous (C)
50	December 23, 2020	Topeka Kimberly Sam	Conform
51	December 23, 2020	Peter Y. Atkinson	Deviate
52	December 23, 2020	John A. Boulton	Deviate
53	December 23, 2020	Andrew Barron Worden	Ambiguous (C)
54	December 23, 2020	Mary Ballard McCarty	Ambiguous (C)
55	December 23, 2020	James J. Kassouf	Ambiguous (C)
56	December 23, 2020	John Frederick Tate	Ambiguous (C)
57	December 23, 2020	Jesse R. Benton	Ambiguous (C)
58	December 23, 2020	Christopher Michael Wade	Ambiguous (C)
59	December 23, 2020	Joseph Martin Stephens	Ambiguous (C)
60	December 23, 2020	Christopher II X	Conform
61	December 23, 2020	Cesar Augusto Lozada	Conform
62	December 23, 2020	Rickey Ivan Kanter	Ambiguous (C)
63	December 23, 2020	Stephanie Christine Mohr	Deviate
64	December 23, 2020	Robert Edward Coughlin II	Ambiguous (C)
65	December 23, 2020	Mark Siljander	Deviate
66	December 23, 2020	James Harutun Batmasian	Ambiguous (C)
67	December 23, 2020	Gary Mark Brugman	Deviate
68	December 23, 2020	Joseph Occhipinti	Deviate
69	December 23, 2020	Rebekah Kay Charleston	Conform

70	December 23, 2020	Russell Paul Plaisance	Conform
71	January 13, 2021	Lynn Wade Barney	Indeterminate
72	January 13, 2021	Paul L. Behrens	Indeterminate
73	January 13, 2021	Thaddeus M. S. Bereday	Indeterminate
74	January 13, 2021	Peter E. Clay	Indeterminate
75	January 13, 2021	Scott Conor Crosby	Indeterminate
76	January 13, 2021	Randall Harold Cunningham	Deviate
77	January 13, 2021	Paul Erickson	Deviate
78	January 13, 2021	Todd S. Farha	Indeterminate
79	January 13, 2021	Thomas K. Ford	Indeterminate
80	January 13, 2021	Jessica Jean Frease	Indeterminate
81	January 13, 2021	Robert Cannon Hayes	Indeterminate
82	January 13, 2021	Deborah L. Jorgensen	Indeterminate
83	January 13, 2021	Gregory L. Jorgensen	Indeterminate
84	January 13, 2021	Martin Frederick Jorgensen	Indeterminate
85	January 13, 2021	William L. Kale	Indeterminate
86	January 13, 2021	Frederick J. Nahas	Indeterminate
87	January 13, 2021	John Michael Nystrom	Indeterminate
88	January 13, 2021	Amy Ralston Povah	Indeterminate
89	January 13, 2021	David Francis Rowland	Indeterminate
90	January 13, 2021	Joshua James Smith	Indeterminate
91	January 13, 2021	David Tamman	Indeterminate
92	January 19, 2021	Alex Adjmi	Indeterminate
93	January 19, 2021	Fred Keith Alford	Indeterminate
94	January 19, 2021	Mahmoud Reza Banki	Indeterminate
95	January 19, 2021	Stephen Bannon	Deviate
96	January 19, 2021	Faustino Bernadett	Indeterminate
97	January 19, 2021	Carl Andrew Boggs III	Indeterminate
98	January 19, 2021	Todd A. Boulanger	Indeterminate
99	January 19, 2021	Robert Douglas Bowker	Indeterminate
100	January 19, 2021	Elliott Broidy	Deviate
101	January 19, 2021	Drew Kallman Brownstein	Indeterminate
102	January 19, 2021	Tommaso Buti	Deviate
103	January 19, 2021	Dwayne Michael Carter	Indeterminate
104	January 19, 2021	Robert William Cawthon	Indeterminate
105	January 19, 2021	David Lamar Clanton	Indeterminate
106	January 19, 2021	Jeffrey Alan Conway	Indeterminate
107	January 19, 2021	Robert Corkern	Indeterminate
108	January 19, 2021	Steven Benjamin Floyd	Indeterminate
109	January 19, 2021	Duncan Fordham	Indeterminate
110	January 19, 2021	Clarence Olin Freeman	Indeterminate
111	January 19, 2021	George Gilmore	Indeterminate
112	January 19, 2021	Steven Samuel Grantham	Indeterminate
113	January 19, 2021	Joey Murray Hancock	Indeterminate
114	January 19, 2021	Wesley Scott Harkonen, Jr.	Indeterminate

115	January 19, 2021	James Austin Hayes IV	Indeterminate
116	January 19, 2021	Gary E. Hendler	Indeterminate
117	January 19, 2021	William E. Henry	Indeterminate
118	January 19, 2021	Abel Holtz	Indeterminate
119	January 19, 2021	Douglas Jemal	Deviate
120	January 19, 2021	James E. Johnson, Jr.	Indeterminate
121	January 19, 2021	Amir B. Khan	Indeterminate
122	January 19, 2021	Kenneth Kurson	Deviate
123	January 19, 2021	Anthony Scott Levandowski	Indeterminate
124	January 19, 2021	Michael A. Liberty	Indeterminate
125	January 19, 2021	Brian Lyle McSwain	Indeterminate
126	January 19, 2021	Hal Knudson Mergler	Indeterminate
127	January 19, 2021	David Eugene Miller	Indeterminate
128	January 19, 2021	Glen Moss	Indeterminate
129	January 19, 2021	Hillel “Helly” Nahmad	Deviate
130	January 19, 2021	Stephen Odzer	Indeterminate
131	January 19, 2021	Benedict Guthrie Olberding	Indeterminate
132	January 19, 2021	Eric Wesley Patton	Indeterminate
133	January 19, 2021	Desiree Perez	Indeterminate
134	January 19, 2021	Johnny D. Phillips	Indeterminate
135	January 19, 2021	Richard George Renzi	Indeterminate
136	January 19, 2021	Gregory Louis Reyes	Indeterminate
137	January 19, 2021	Aviem Sella	Indeterminate
138	January 19, 2021	Robert C. Sherrill	Indeterminate
139	January 19, 2021	Syrita Rashida Steib-Martin	Indeterminate
140	January 19, 2021	Patrick Lee Swisher	Indeterminate
141	January 19, 2021	Casey Urlacher	Indeterminate
142	January 19, 2021	John Harold Wall	Indeterminate
143	January 19, 2021	Robert Zangrillo	Indeterminate
144	January 20, 2021	Albert J. Pirro, Jr.	Deviate ²²⁷

²²⁷ “Pardons Granted by President Donald J. Trump (2017-2021).”

CHAPTER 4: DEMOCRATIC NORMS

Steven Levitsky and Daniel Ziblatt ask their readers, in *How Democracies Die*, to imagine a scenario occurring some twenty-five years ago. In other words, if someone had asked you before the turn of the century to imagine a country where a presidential candidate threatened to lock up his rival, where the integrity of elections was being questioned, where presidents get impeached, and where supreme court seats get stolen, would you have thought of the United States? You probably would not have, as Ecuador or Romania would have been a much more likely answer. But this above-mentioned scenario describes the election of Donald J. Trump as president of the United States in 2016, and his subsequent time in office.²²⁸

Having been released in 2018, *How Democracies Die* only covers the first few months of the Trump presidency. Moreover, Levitsky and Ziblatt, who are both professors at Harvard University, argue that the norms of mutual toleration and forbearance in the United States have been under attack these last few decades, being none more so evident than today.²²⁹ Mr. Trump is seen as a symptom of this trend, rather than its cause, as Republicans have veered to the far right much more so than the Democrats have veered more to the left.²³⁰ Mr. Trump's successor, President Joseph R. Biden, Jr., remarked after reading this book that "Trump's actions played on a reservoir of existing anger [which] didn't just happen with Trump."²³¹ In fact, Mr. Biden "became obsessed with" *How Democracies Die* when it was released and carried it "everywhere,

²²⁸ Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (New York: Broadway Books, 2019), 167.

²²⁹ Ibid, back cover, 170.

²³⁰ Ibid, 170.

²³¹ Evan Osnos, "Can Biden's Center Hold?" *The New Yorker*, August 23, 2020, <https://www.newyorker.com/magazine/2020/08/31/can-bidens-center-hold>.

scrawling notes on the pages and pulling out well-worn copies to share passages.”²³² *The Washington Post* remarked that “two of the most respected scholars in the field of democracy studies [present] a sober, dispassionate look at the current state of affairs”; *The Economist* called it “[t]he most important book of the Trump era”; and *The New York Times* stated that “Levitsky and Ziblatt show how democracies have collapsed elsewhere—not just through violent coups, but more commonly (and insidiously) through a gradual slide into authoritarianism. ... *How Democracies Die* is a lucid and essential guide to what can happen here.”²³³

The United States is plagued by deep-seated polarization, which can be said to have begun with the Civil Rights Act of 1964 when the two major parties experienced a realignment. Not only would they lose their “big tent” mentality for political inclusion, but policy representation gave way to representing communities, cultures, and values.²³⁴ A quarter-century later, the Republicans, under the helm of Newt Gingrich, had adopted the tactic of political warfare, where hardline rhetoric came to paint opponents as being immoral.²³⁵ And even though Mr. Gingrich “led the initial assault on mutual toleration and forbearance,” norm-breaking by the Republicans only intensified once he left Congress in 1999.²³⁶ Perhaps the most egregious moment occurred in 2016, when Senate Republicans refused to take up the nomination of

²³² Ashley Parker, “Weightlifting, Gatorade, Birthday Calls: Inside Biden’s Day,” *The Washington Post*, May 24, 2021, https://www.washingtonpost.com/politics/biden-daily-routine-gatorade/2021/05/23/b6f608c2-b40e-11eb-a3b5-f994536fe84a_story.html.

²³³ “How Democracies Die by Steven Levitsky and Daniel Ziblatt,” Penguin Random House (Penguin Random House Network, 2019), <https://www.penguinrandomhouse.com/books/562246/how-democracies-die-by-steven-levitsky-and-daniel-ziblatt/>.

²³⁴ Steven Levitsky and Daniel Ziblatt, *How Democracies Die*, 170.

²³⁵ *Ibid*, 147-9.

²³⁶ *Ibid*, 151.

Merrick Garland for the Supreme Court by President Barack Obama, but in doing so, they broke a precedent that had stood firm since Reconstruction.²³⁷ That same year, of course, “for the first time in U.S. history, a man with no experience in public office, little observable commitment to constitutional rights, and clear authoritarian tendencies was elected president.”²³⁸

As it relates to the United States, Levitsky and Ziblatt conclude that the racial exclusion of African-Americans and minorities spurred the stability of the American political system for over a century. Southern Democrats and conservative Republicans cooperated to create partisan civility and bipartisanship,²³⁹ which started to fall apart once full democratization was realized with the Civil Rights Movement.²⁴⁰ Although hard to come by, the cure to today’s polarization is for Americans “to restore the basic norms that once protected [our democracy, but that those norms be extended] through the whole of society.”²⁴¹ The two major parties must address the critical social foundations of American society, or that of race, religion, and economic inequality, and in the process, reshuffle for what they stand for.²⁴²

As mentioned above, this book only covers the first few months of the Trump presidency. But more so than that, the authors give detailed accounts of historical examples all around the world when a clear breakdown of democracy has occurred. Alberto Fujimori of Peru, Hugo Chávez of Venezuela, Viktor Orbán of Hungary, and Recep Erdoğan of Turkey are all frequently

²³⁷ Ibid, 164-7.

²³⁸ Ibid, 2.

²³⁹ Ibid, 143.

²⁴⁰ Ibid, 170.

²⁴¹ Ibid, 231.

²⁴² Ibid.

cited as recent autocrats that have subverted democracy. Levitsky and Ziblatt go on to stress the importance of defending constitutions, whether it be by political parties, organized citizens, or democratic norms. Also known as the soft guardrails of democracy, these norms must not be ignored, as institutional forbearance must be exercised by politicians. The dismissal of norms can lead to institutions becoming political weapons, where the rules of politics are rewritten against opponents.²⁴³ In effect, their role is to “[prevent] day-to-day political competition from devolving into a no-holds-barred conflict.”²⁴⁴ Democracy does not crumble overnight, rather, autocrats use the institutions of democracy to gradually destroy it.²⁴⁵ This roadmap of authoritarianism is bolstered by the presentation of the “four behavioral warning signs that can help us know an authoritarian when we see one.”²⁴⁶ These warning signs include when a politician

- 1) rejects, in words or action, the democratic rules of the game
- 2) denies the legitimacy of opponents
- 3) tolerates or encourages violence
- 4) indicates a willingness to curtail the civil liberties of opponents, including the media²⁴⁷

Donald J. Trump showed all these signs of authoritarian tendencies, both as candidate and president.²⁴⁸ The GOP failed in its role as party gatekeeper, but it must be said that party gatekeeping was severely limited after the suggestions of the McGovern-Fraser Commission

²⁴³ Ibid, 8.

²⁴⁴ Ibid, 101.

²⁴⁵ Ibid, 8.

²⁴⁶ Ibid, 21.

²⁴⁷ Ibid, 21-2.

²⁴⁸ Ibid, 65.

from the early 1970s, which eventually opened up the nomination system.²⁴⁹ The soft guardrails had been eroded before Trump's election, and even though he didn't dismantle democratic institutions, his serial norm-breaking corroded them even further.²⁵⁰ His dismissal of mutual toleration and forbearance sets a dangerous precedent, as future presidents might take heed of Mr. Trump's actions. Future office-holders might well mimic the Donald J. Trump presidential playbook, which would only legitimize the furtherance of norm-breaking and the backsliding of American democracy.

The checks and balances of the U.S. political system “[require] that public officials use their institutional prerogatives judiciously.”²⁵¹ Over the last century, American politicians showcased remarkable forbearance in the execution of their duties, which includes the presidents' use of the pardon power. As noted in Chapter 1, President Bill Clinton might be the exception that proves the rule since a few of his last-minute pardons were questionable and drew criticism. Although Levitsky and Ziblatt do not extensively cover the presidential pardon power in their book, they say that its “weaponization could easily result in deadlock, dysfunction, and even democratic breakdown.”²⁵² Historically, presidents sought advice from the Justice Department when issuing pardons, and pardons were never issued “for self-protection or political gain.”²⁵³ Those norms were boldly violated by President Trump when he issued his very first pardon, or the pardon of Joseph M. Arpaio, which is said to have been “an indirect swipe at the

²⁴⁹ Ibid, 50, 57.

²⁵⁰ Ibid, 193.

²⁵¹ Ibid, 127.

²⁵² Ibid.

²⁵³ Ibid, 177.

judiciary.”²⁵⁴ No other pardon is discussed in *How Democracies Die*, which brings us back to my research of the presidential pardons by Donald J. Trump.

The forty-fifth president of the United States clearly showed authoritarian tendencies with his use of the presidential pardon power. By breaking established democratic norms by issuing a multitude of questionable pardons that did not meet the standard of presidential pardons (an “act of grace” or for “the public welfare”²⁵⁵), Donald J. Trump showed a remarkable lack of forbearance in his exercise of the pardon power. Despite the fact that the president did not pardon himself, those that received a presidential pardon include his son’s father-in-law, close associates and allies, as well as a slew of those convicted under Mueller’s Russia probe. The pardon power is a dangerous thing, and it only works the way it is supposed to work when presidents use it with restraint. President Trump flagrantly wielded his pardon power in the disservice of democracy, which ultimately “constituted an unprecedented check on judicial independence.”²⁵⁶ He began by pardoning a man who “was convicted of violating constitutional rights, in defiance of a court order involving racial profiling,”²⁵⁷ and he concluded by pardoning a man he had known for over twenty-five years, who happened to be the ex-husband of one of his most ardent supporters.²⁵⁸ These two pardons were politically motivated and issued as a social favor, respectively, but a whole host of his other pardons fit in these two categories. Collectively, President Trump’s pardons were “reckless” and “an obvious affront to the rule of

²⁵⁴ Ibid.

²⁵⁵ Jeffrey Crouch, “The Law: Presidential Misuse of the Pardon Power”: 732.

²⁵⁶ Steven Levitsky and Daniel Ziblatt, *How Democracies Die*, 180.

²⁵⁷ Martin H. Redish, “A Pardon for Arpaio Would Put Trump in Uncharted Territory,” *The New York Times*, August 24, 2017, <https://www.nytimes.com/2017/08/24/opinion/trump-arpaio-pardon-arizona-sheriff.html>.

²⁵⁸ Maggie Haberman, “Trump Departs Vowing, ‘We Will Be Back in Some Form.’”

law,” but that so many of his pardons deviated from the standard of presidential pardons “reinforced Mr. Trump’s antipathy towards the law enforcement establishment,” while suggesting that their issuance were “[driven] by friendship, fame, personal empathy and a shared sense of persecution.”²⁵⁹

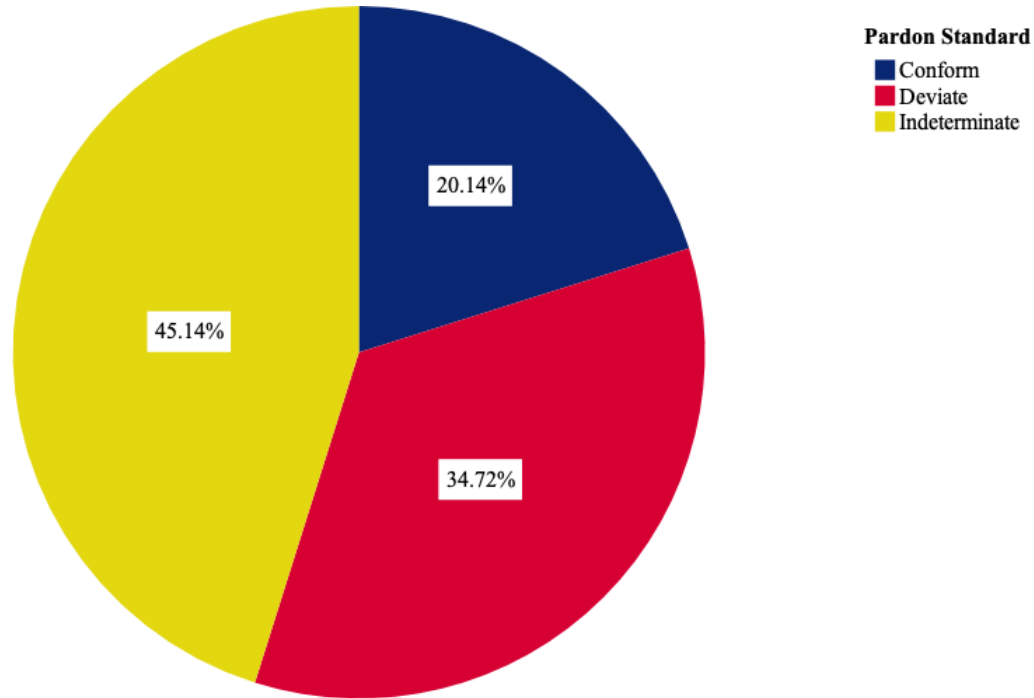
²⁵⁹ Aziz Huq, “Trump’s Pardon Spree Could Actually Be Good for Democracy,” *The Washington Post*, December 24, 2020, <https://www.washingtonpost.com/outlook/2020/12/22/trump-pardons-congress-investigations-self/>; Peter Baker et al., “The 11 Criminals Granted Clemency by Trump.”

CHAPTER 5: CONCLUSION

President Donald J. Trump issued 144 pardons during his time in office. This research has examined each of those pardons, but in Chapter 2, I established that a legitimate presidential pardon followed Dr. Jeffrey Crouch's standard of either being a disinterested "act of grace" or for "the public welfare."²⁶⁰ Out of those 144 pardons, 17 (11.81%) conformed to the standard, while another 12 (8.33%) were deemed to be ambiguous to this standard. These two categorizations are collectively tallied together as conforming to the standard of presidential pardons so that a total of at least 29 (20.14%) of President Trump's pardons served the public welfare or were disinterested acts of grace. Conversely, by corroborating with reporting from *The New York Times* and *The Washington Post*, in particular, I have found that at least 50 (34.72%) of his pardons deviated from the standard. The remaining 65 (45.14%) pardons could not be determined to meet the standard or not, as not enough information was found. Those pardons have been marked as being "indeterminate."

²⁶⁰ Jeffrey Crouch, "The Law: Presidential Misuse of the Pardon Power": 732.

FIGURE 5.1: PARDONS ISSUED BY PRESIDENT DONALD J. TRUMP



The above-mentioned data considers all the pardons granted by President Trump during his time in office. Just over a fifth conformed from the standard of presidential pardons, over a third deviated, and less than half was deemed indeterminate. Regardless of this last category, I was able to place a total of 79 pardons on my comparative rating scale as either conforming or deviating to and from the standard. Those results show that the pardons that deviated trumped those that conformed to a ratio of almost 2 to 1. Simply omitting indeterminate pardons does not represent the actual results of this research, but the fact remains that all the indeterminate pardons were issued in the waning days of the Trump presidency. In fact, President Trump issued 70 pardons from 2017-2020 and another 74 in 2021. The latter group of pardons was overwhelmingly indeterminate to the standard, as news organizations, for the most part, did not present enough information on these pardons. This is possibly due to the fact that the events relating to the January 6 attack on the U.S. Capitol, the impeachment of President Trump, and

the presidential transition of Joe Biden were more pressing. However, if the preceding four years were any indicator, a pattern emerges to show that the majority of President Trump's pardons deviated from the standard.

The simple fact that a substantial amount of Mr. Trump's pardons deviated from the standard indicates that the president was not preoccupied with issuing pardons in service of the public. Rather than being disinterested acts of grace, his pardons pursued a partisan, political, and/or social goal. No other president has used the pardon power in such a unilateral way, which highlights Mr. Trump's total lack of forbearance in his exercise of his constitutional power to grant pardons. The institutional traditions and procedures and the underlying understanding of how the pardon power should be performed were completely disregarded by Mr. Trump. These democratic norms, also known as the soft guardrails of democracy, are unwritten rules that his predecessors had laid ever since the founding of the Republic. By not following their guidance, Mr. Trump eroded those norms to the detriment of American democracy. Moreover, he exhibited clear authoritarian tendencies by using the pardon power to appease his political base, to grant reprieves to friends and associates, and by nullifying many of the convictions derived from Mueller's Russia Probe.

Since leaving office, Mr. Trump has suggested that he would pardon those prosecuted for participating in the attack on the U.S. Capitol on January 6, 2021, stating: "If I run and I win, we will treat those people from Jan. 6 fairly. ... And if it requires pardons, we will give them pardons."²⁶¹ Having made that statement at a campaign rally in Conroe, Texas, on January 29, 2022, the former president went on to incite mob rule, as he encouraged his supporters to mount

²⁶¹ J. David Goodman and Emily Cochrane, "Trump Says He Would Consider Pardons for Jan. 6 Defendants If Elected," *The New York Times*, January 30, 2022, <https://www.nytimes.com/2022/01/30/us/politics/trump-speech-texas.html>.

“the biggest protests we have ever had [in this country] if these radical, vicious, racist prosecutors [who are investigating him and his businesses] do anything wrong or corrupt.”²⁶²

These statements should not be mistaken as the affirmation of political persecution, as they are examples of Mr. Trump’s dismissal of the judicial process and the rule of law.

The underlying goal of this research was to report on recent political events in an effort to understand the political phenomenon of Donald J. Trump. By researching his presidential pardons, I have presented evidence of how he governed against the spirit of the Constitution and the workings of democracy. This, in and of itself, should be enough to disqualify him in the eyes of the American electorate.

I make no attempt to propose reforms to the clemency clause of the U.S. Constitution in these closing remarks. Rather, if we are to create a more perfect Union, the example set by President Donald J. Trump must be remembered as a one-time paradigm never to be repeated.

²⁶² Ibid.

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