

Obtaining a Criminal Pardon

Clear Your Name Legally

Christopher Guly

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*For my mom, Ollie, and my aunt and godmother, Mary,
who always believed in the importance of forgiveness
and the healing power and fresh start that brings;
and my kids, Wolfgang, Monty, Finn, Emma, Henry and Claire,
who were and are living examples of that philosophy.*



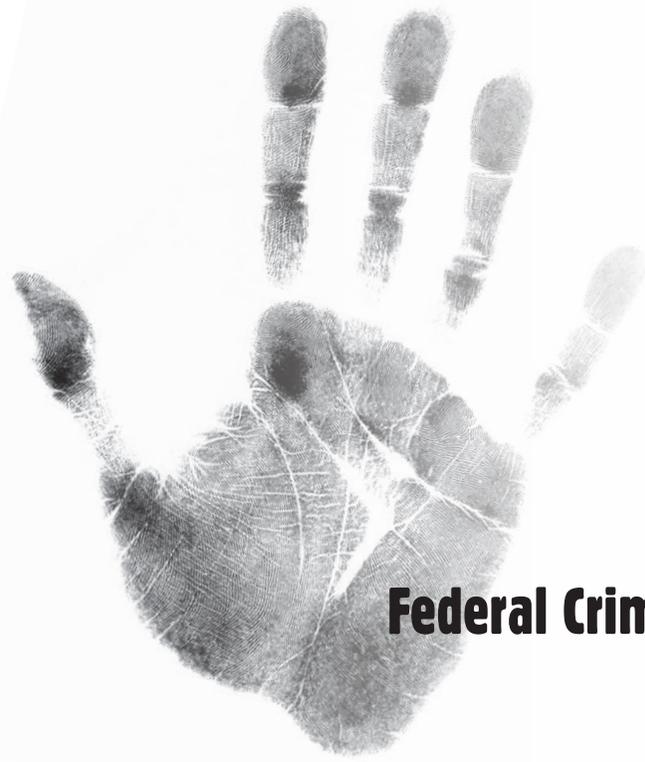
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Part 1

Getting a Pardon in the United States



1

Federal Criminal Convictions

Under Article II, section 2, of the US Constitution, the President has the “Power to grant Reprieves and Pardons for offenses against the United States, except in Cases of Impeachment.” In other words, the President has the executive power to grant clemency to those who have been convicted of federal criminal offenses adjudicated in the US district courts and in the Superior Court of the District of Columbia.

Executive clemency may take several forms, and applies to the President’s constitutional power to exercise leniency toward people who have committed federal crimes, according to the US Department of Justice. These include the following:

- Commutation of sentence.
- Remission of fine or restitution.
- Reprieve.
- Pardon.

A commutation reduces a sentence, either totally or partially, that is being served, but it doesn’t change the fact of conviction,

imply innocence, or remove civil disabilities that apply to the convicted person as a result of the criminal conviction. To be eligible to apply for commutation of sentence, a person must have reported to prison to begin serving his or her sentence and may not be challenging his or her conviction in the courts.

A commutation may include remission (release) of the financial obligations that are imposed as part of a sentence, such as payment of a fine or restitution. A remission applies only to the part of the financial obligation that has not already been paid.

A person whose petition for commutation of a sentence is denied by the President may reapply one year after the date of the denial. However, a person whose petition for a presidential pardon is denied must wait two years from the date of denial before reapplying. In both cases, you must reapply with a new application form that contains current information in response to all questions.

A pardon is an expression of the President’s “forgiveness” and is usually granted in recognition of the applicant’s acceptance of responsibility for the crime and established good conduct for a significant period of time after conviction or completion of sentence, according to the US Department of Justice. It is also not a “sign of vindication” signifying innocence, and for that reason, when considering the merits of a pardon petition, pardon officials take into account the petitioner’s acceptance of responsibility, remorse, and atonement for the offense.

However, a pardon removes civil disabilities, such as restrictions on the right to vote, hold state or local office, or sit on a jury — imposed because of the conviction for which a pardon is sought, and should lessen the stigma arising from the conviction. It may also be helpful in obtaining licenses, bonding, or employment.

It’s important to note that a presidential pardon isn’t the only way a person convicted of a federal felony can regain his or her civil rights. Some states have procedures for restoring rights to vote, hold office, or sit on a jury even if a federal felony conviction is involved. If you’re thinking about applying for a presidential pardon to restore such rights, you may first wish to contact the clemency authorities in your state of residence to see whether such a procedure exists.

The President decides on most clemency requests unless the following applies:¹

- Applicant withdraws the petition.
- Applicant repeatedly fails to respond to an Office of the Pardon Attorney request for required information.
- Applicant dies during processing of the application.
- Applicant is released from prison during the processing of a commutation application that seeks only a reduction in the sentence.

Note that a presidential pardon doesn't erase or expunge the record of someone convicted of a crime. However, when a pardon is granted, the Office of the Pardon Attorney notifies the US Probation and Pretrial Services System and other officials in the district of the conviction of the clemency along with the Federal Bureau of Investigation (FBI) to note the pardon in the person's criminal record.

A pardon also doesn't remove the obligation of disclosing a conviction when required to report that information, as the US Department of Justice points out. However, if you obtained a pardon, you may include that information and present the warrant of pardon as evidence.

A person is not eligible to apply for a presidential pardon until a minimum of five years has elapsed since his or her release from any form of confinement imposed on him or her as part of a sentence for the most recent criminal conviction, whether or not that is the conviction for which the individual is seeking the pardon. The Office of the Pardon Attorney usually doesn't accept pardon petitions from people who are on probation, parole, or supervised release.

1. Regain Right to Bear Arms

A presidential pardon is the only way someone convicted of a federal felony offense may regain the right to bear arms. Under US Supreme Court case law interpreting federal firearms laws, a state restoration of civil rights does not remove the federal firearm disability that arises from a federal felony conviction and relief can only be provided through action under federal law. As the US

¹ "Frequently Asked Questions Concerning Executive Clemency," The United States Department of Justice, accessed March 2015. <http://www.justice.gov/pardon/faq.htm>

Department of Justice points out, the Attorney General may, under the *Gun Control Act*, grant relief from federal firearms prohibitions “if it is established to his satisfaction that ... the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.”

However, since 1992, the US Congress has prohibited the Bureau of Alcohol, Tobacco, Firearms and Explosives, the agency responsible for processing such requests, from spending any appropriated funds to investigate or act on applications for such relief.

2. Removal or Deportation

Under some — but not all — circumstances, a presidential pardon will eliminate the legal basis for removal or deportation from the US Pursuant to the Rules Governing Petitions for Executive Clemency.

A commutation of sentence has no effect on a person’s immigration status and will not prevent removal or deportation from the US.

2.1 Nonresidents

The US Department of Justice’s general policy is also not to accept pardon applications from non-US residents given the difficulty in conducting “the type of thorough and exacting investigation into the applicant’s personal background and activities”² required to determine an applicant’s worthiness for a pardon.

3. Posthumous Pardons

The US Department of Justice does not accept posthumous pardons petitions on the basis that many such requests “would likely be based on a claim of manifest injustice, and given that decades have passed since the commission of the offense and the historical record would have to be scoured objectively and comprehensively to investigate such claims. It is the Department’s position that the limited resources available to process applications for Presidential pardon are best dedicated to applications submitted by living persons who can truly benefit from a grant of clemency.”³

2 “Pardon Applications Submitted by Non-Residents of the United States,” The United States Department of Justice, access March 2015. <http://www.justice.gov/pardon/policies.htm#s1>

3 “Policy on Posthumous Pardon Applications,” The United States Department of Justice, accessed March 2015. <http://www.justice.gov/pardon/policies.htm#s1>

The US Department of Justice also notes that posthumous-pardon applications are less likely to involve issues generally explored in routine pardon investigations, such as the recent, or ongoing, rehabilitative efforts of a defendant, and would be less likely to benefit from the commonly employed investigative techniques used in the pardon process.

4. Victims

When a clemency request — either in the form of a commutation of a sentence or a pardon of a sentence served — for a conviction of a felony offense involving one or more victims and the Attorney General concludes the investigation of the clemency case warrants contacting the victims of the crime for which clemency is sought of a felony conviction for which there was a victim, and the Attorney General concludes from the information developed in the clemency case that investigation of the clemency case warrants contacting the victim, the Attorney General “shall cause reasonable effort to be made to notify the victim or victims of the crime for which clemency is sought: That a clemency petition has been filed; that the victim may submit comments regarding clemency; and whether the clemency request is granted or denied by the President.”⁴

According to the US Department of Justice, in determining whether the victim should be contacted, the Attorney General will consider the following:

- Seriousness of the offense.
- How recent it occurred.
- The nature and extent of the harm to the victim.
- The defendant’s overall criminal history and history of violent behavior.
- The likelihood that clemency could be recommended in the case.

A “victim” is defined as someone who has suffered “direct or threatened physical, emotional, or pecuniary harm as a result of the commission of the crime for which clemency is sought (or, in the case of an individual who dies or was rendered incompetent as a direct and proximate result of the commission of the crime

⁴ “Rules Governing Petitions for Executive Clemency,” The United States Department of Justice, accessed March 2015. <http://www.justice.gov/pardon/clemency.htm>

for which clemency is sought, one of the following relatives of the victim [in order of preference]: the spouse; an adult offspring; or a parent);” has filed a request with the Federal Bureau of Prisons to be notified of the offender’s release from custody.

5. Federal Misdemeanors

If you’ve been convicted of a federal misdemeanor, it’s unlikely you can obtain a pardon since — as the US Department of Justice explains — most civil disabilities are imposed following a federal conviction of a felony offense. However, you can apply for a waiver of this policy. But in so doing, you must provide “concrete evidence” of a “specific harm or disability suffered that is directly and solely attributable to the misdemeanor federal conviction.”⁵

6. Application Process

All requests for executive clemency for federal offenses are directed to the Office of the Pardon Attorney for review, investigation, and preparation of the departmental recommendation to the President — signed off by the Deputy Attorney General — for final disposition of each application. The Office of the Pardon Attorney also prepares the documents the President signs when granting executive clemency and notifies all applicants, in writing, of clemency decisions. (It’s important to notify the Office of the Pardon Attorney of any address changes while an application is under consideration.)

The Attorney General reviews every petition and relevant information gathered through the investigation, and then submits a report to the President either recommending or denying clemency. If the President denies a request, the Attorney General notifies the petitioner and closes the case. “Except in cases in which a sentence of death has been imposed, whenever the Attorney General recommends that the President deny a request for clemency and the President does not disapprove or take other action with respect to that adverse recommendation within 30 days after the date of its submission to him or her, it shall be presumed that the President concurs in that adverse recommendation of the Attorney General, and the Attorney General shall so advise the petitioner and close the case,”⁶ according to the US Department of Justice.

5 “Policy on Pardons for Misdemeanor Federal Convictions,” The United States Department of Justice, accessed March 2015. <http://www.justice.gov/pardon/policies.htm#s1>

6 “Rules Governing Petitions for Executive Clemency,” The United States Department of Justice, accessed March 2015. <http://www.justice.gov/pardon/clemency.htm>

When requesting a pardon, you should state the specific purpose and, if applicable, attach any relevant documentary evidence that indicates how a pardon would help you accomplish that purpose, such as the US Department of Justice illustrates, can include citations to applicable provisions of state constitutions, statutes or regulations, or copies of letters from appropriate officials of administrative agencies, professional associations, or licensing authorities.

There is no fee to apply for any form of executive clemency and no need to hire a lawyer. If you have questions regarding the application process, you can contact the Office of the Pardon Attorney by email (USPardon.Attorney@usdoj.gov). If your application is incomplete or doesn't adequately answer the questions, the Office of the Pardon Attorney will contact you by mail and outline what additional information is required.

A public notice is prepared for each case in which the President grants clemency, and the clemency warrant evidencing the grant is treated as a public record. If a third party inquires about a specific, named person, the Office of the Pardon Attorney will confirm whether that person has applied for clemency and whether clemency has been granted or denied. Furthermore, as the result of a ruling by the federal courts of the District of Columbia in *Lardner v. Department of Justice*, 638 F.Supp.2d 14 (D.D.C. 2009),⁷ affirmed, *Lardner v. United States Department of Justice*, No. 09-5337, 2010 WL 4366062 (D.C. Cir. Oct. 28, 2010) (unpublished), the Office of the Pardon Attorney is obliged to release existing lists of the names of persons who have been denied executive clemency by the President to anyone who requests such records under the *Freedom of Information Act and Privacy Act*.

Still, the President's power to commute a sentence for a federal offense is an "extraordinary remedy that is very rarely granted," according to the US Department of Justice.

No hearing is held on either a pardon or commutation application by either the Justice Department or the White House; no appeal is available regarding the President's decision to deny a clemency request.

The Office of the Pardon Attorney does not disclose information regarding the nature or results of any investigation regarding a

⁷ *Lardner v. Department of Justice*, United States Court of Appeals, accessed March 2015.
Lardner v. Department of Justice

particular case, or the exact point in the clemency process at which a particular petition is pending at a given time. Neither the White House nor the US Department of Justice disclose the reasons to grant or deny a petition, although the President may choose to do so in a particular case, typically by issuing a public statement. Documents related to the US Department of Justice's recommendation to the President in a clemency matter are considered confidential and are not available under existing case law interpreting the *US Freedom of Information Act and Privacy Act*. However, the US Attorney General may make available petitions, reports, memoranda, and communications regarding an executive-clemency request if their disclosure is required by law or the "ends of justice," according to the US Department of Justice.

When completing the application for a pardon, you must disclose any additional arrest or charge by any civilian or military law enforcement authority, including any federal, state, local, or foreign authority, whether it occurred before or after the offense for which you are seeking a pardon, according to the US Department of Justice. You should list every violation, including traffic violations that resulted in an arrest or criminal charge, such as driving under the influence. Failure to disclose any such arrest, whether or not it resulted in conviction, may be construed as a falsification of the petition.

You must also list the following:

- All delinquent credit obligations, whether or not you dispute them.
- All civil lawsuits in which you were named as a party, whether as plaintiff or defendant, including bankruptcy proceedings.
- All unpaid tax obligations, whether federal, state, or local.

You may submit explanatory material in connection with any of these matters (such as an agreed method of payment for indebtedness).

The Office of the Pardon Attorney also requires three character affidavits to accompany the petition (a form is provided with the application). If there are more, you should designate the three persons whom you consider to be primary references. However, letters of recommendation may be substituted if they contain the full name, address, and telephone number of the reference, indicate a

knowledge of the offense for which you seek a pardon, and bear a notarized signature. Persons related to you by blood or marriage cannot be used as primary character references, according to the US Department of Justice. A letter of recommendation from a public official carries no special weight when the Office of the Pardon Attorney evaluates a clemency application.

In fact, politics is absent from the review process, states the US Department of Justice. You won't be asked to identify your political affiliation and it will not be considered. You also can't choose which President will decide on your request for clemency, and if there's a change in administration while your application is pending, the new President will consider it. However, you are free to withdraw the application at any time and for any reason before the President has made a decision.

Keep in mind the pardon-application process is lengthy and thorough, so be prepared to answer questions about your personal background and activities. The FBI may also conduct a background investigation. You — or a third party — are also free to submit any information you believe is relevant to your clemency request at any time while your application is pending.

Note that a waiver of any portion of the waiting period is rarely granted and then only in the most exceptional circumstances, according to the US Department of Justice. In order to request a waiver, you must complete the pardon application form and submit it with a letter explaining why you believe the waiting period should be waived in your case.

Although the pardon application is available online, its paper form must be signed and submitted by regular mail. Also note that the personal oath (the Authorization for Release of Information) at the end of the application must be notarized along with the three character affidavits in support of the clemency request, and included with the application. "The candor of the applicant is crucial to the pardon process," the US Department of Justice explains, "and the requirement that the application be executed under oath before a notary public is intended to ensure the applicant's understanding of this fact."

Completed applications should be addressed to the President of the United States and sent to:

Pardon Attorney
Department of Justice
1425 New York Avenue, NW
Suite 11000
Washington, DC 20530

You can find the Petition for Pardon after Completion of Sentence on the US Department of Justice's website: http://www.justice.gov/sites/default/files/pardon/legacy/2010/03/26/pardon_form.pdf. This link is included in the download kit (see last page of this book for instructions).

In determining whether an applicant qualifies for a pardon, the Office of the Pardon Attorney states that it considers the following:

- The applicant's post-conviction conduct, character, and reputation.
- The nature and seriousness of the offense — and when it occurred.
- The applicant's acceptance of responsibility, remorse, and atonement.
- The applicant's criminal record, if applicable.
- Any hardship the applicant may have because of the conviction and need for relief.
- The nature and extent of post-conviction involvement in community service, or charitable or other meritorious activities. Therefore, highlighting any contributions to community can only help your application.

However, if you don't "fully and accurately" complete the application form, it "may be construed as a falsification of the petition," and result in its denial, warns the US Department of Justice. "In addition, the knowing and willful falsification of a document submitted to the government may subject you to criminal punishment, including up to five years' imprisonment and a [US]\$250,000 fine."