

CAMPAIGN STRATEGY

CANNABIS CLEMENCY

THE GOAL

The vast majority of Americans, on both sides of the aisle, believe that people should not be in prison for most marijuana-related activity. To that end, the Biden Administration should provide legal relief for those currently and formerly incarcerated due to federal marijuana-related criminal convictions.

This federal "cannabis clemency" effort would secure the freedom of the thousands of individuals currently incarcerated due to federal cannabis-related convictions. It would also provide legal relief to those still suffering the burden of attendant cannabis-related collateral consequences.

This approach, which draws from historical precedent, would first see President Biden issue an Executive Order authorizing the convocation of a Presidential Cannabis Clemency Board.

Once impaneled, the independent Board would be tasked exclusively with evaluating the clemency petitions of federal "cannabis offenders". The Board, which would be staffed with individuals with lived and/or professional expertise and operate independently from the Department of Justice, would then provide individualized grant recommendations to President Biden.

Not only would this effort provide desperately-needed relief to thousands, but it would also provide data, insights, and learnings that could be used to expand this clemency grant evaluation model to other offense types.

This effort would also serve as a template and example for government authorities like state governors, who can use their clemency power to grant retroactive relief to exponentially more individuals suffering due to state-level cannabis-related convictions.

Furthermore, this "pop-up" approach would provide the data and insights necessary for broader applications of more challenging and/or expansive class-wide clemency efforts.

Perhaps most importantly, this effort would dovetail with the Biden Administration's stated desire to "heal the nation" by "rooting systemic racism from our laws, our policies, our institutions, and our hearts."

THE PRECEDENT

In the mid-1970s, President Ford impaneled a civilian "Presidential Clemency Board", which hired staff to review tens of thousands of petitions from individuals charged and convicted of violations of the Selective Service Act.

During the year it was in session, the eighteen-member board (made up of attorneys, clergy-members, legislators, and other civilians) reviewed approximately 21,500 petitions, eventually submitting a total of 14,514 recommendations to President Ford. The Board's recommendations ranged from an immediate pardon to twenty-four months of community service.

IMPLEMENTATION RECOMMENDATION

President Biden should create a *Presidential Cannabis Clemency Board* tasked, for the time being, with expediting the review and processing of clemency petitions from individuals currently or formerly under federal custody due to cannabis and cannabis-related convictions.

President Ford's *Presidential Clemency Board* is a helpful precedent for this approach. The Ford Board, which was impaneled following an executive order, operated between 1974-1975. During the Board's year-long tenure, its eighteen members were able to review over 21,000 cases — ultimately delivering over 14,000 recommendations for clemency to President Ford's desk.

The creation of an independent Board tasked with considering the legal merits of each petitioner's case has many benefits. These include, but are not limited to, the following.

- Currently, the federal clemency process operates as what some scholars have called a “redundant bureaucracy” in which the Office of the Pardon Attorney, the Deputy Attorney General, and White House Counsel are each tasked with reviewing the same file. The independence and relative logistical ease of a “board approach” would allow for a transparent, consistent, and fair process by which the president would fairly exercise an enumerated constitutional power. This would help to rehabilitate the concept of executive clemency amongst policymakers and the American public.
- Because the Board operates outside of the purview of the Department of Justice, it would naturally limit the influence — as well as conserve the bandwidth — of federal prosecutors. Limited DOJ resources, as well as the natural biases of federal prosecutors, would otherwise undermine the stated goal of this nationwide clemency operation: the bipartisan desire to extricate
- By creating a separate pathway for cannabis clemency, the administration can signal their willingness to take concrete action on their stated desire to limit the influence of America's five-decade-long drug war. This initiative will have an immediate, clear impact (and leave a lasting legacy), while also giving the Biden Administration some distance from broader, potentially more controversial, legislative efforts around drug policy reform.
- The Board approach also allows the decoupling of large-scale clemency programs from the DOJ / Office of the Pardon Attorney without necessitating an expensive and time-consuming overhaul of the federal clemency process. That said, while the impaneling of the “Presidential Cannabis Clemency Board” will be an important and necessary step towards reimagining the federal criminal justice system, it should not preclude consideration of additional, ostensibly more expansive reforms. If anything, the Board approach can serve as a template for a clemency apparatus that would be able to be deployed more regularly and extensively in the future.