

# Republican Perspective

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## Is Trump Abusing His Pardon Power?

On Aug. 25, 2017, President Trump issued a pardon for Maricopa County Sheriff Joe Arpaio, who had been convicted for contempt of court.

The pardon drew condemnation in the media and on line. There are web sites which list the Arpaio pardon as being one of the most controversial ever. The web site [needtoimpeach.com](http://needtoimpeach.com), which of course advocates Trump's impeachment, lists eight "impeachable offenses," one of which is abuse of the pardon power in the Arpaio case.

In this column we will compare the use of the pardon power by the last seven presidents. In a subsequent column, we will look at some of the most controversial recent pardons.

First, a word about terminology. The U.S. Constitution gives the president the power to grant pardons for federal offences. This is understood to include the power to commute sentences. Essentially, a *pardon* removes the conviction while a *commutation* removes or lowers the penalty but leaves the conviction. An *amnesty* is granted to a class of offenders, and basically says the government will just forget about it (as in "amnesia"). For the purpose of the comparisons to follow, "clemency" will include both pardons and commutations (but not amnesties).

At [www.justice.gov/pardon/clemency-statistics](http://www.justice.gov/pardon/clemency-statistics), the U.S. Department of Justice provides statistics on the clemencies issued by all presidents since fiscal year 1900. The period of the government's fiscal year changed during 1976 so, for ease and consistency of comparison, statistics from

President Carter onward are presented here. The DOJ statistics were last updated June 8, 2018.

Conveniently, the DOJ statistics separately report the final three-and-one-half months of each of these presidencies, which provides the opportunity to compare clemencies at the end of each presidency against the whole of that presidency.

In the accompanying table, the “Total” column is the total number of clemencies granted; the “Per Month” column is the total number of clemencies granted divided by the number of months in that presidency; and the “Last Minute” column shows the number of clemencies granted in the final days of that presidency as a percentage of the total clemencies.

So let’s look at the numbers.

Presidency	Clemencies Granted		
	Total	Per Month	Last Minute
Carter	563	5.9	14%
Reagan	406	4.2	8%
Bush-41	77	1.6	49%
Clinton	457	4.8	56%
Bush-43	200	2.1	19%
Obama	1,927	20.1	61%
Trump	6	0.4	na

First, the total number of clemencies for each presidency: Obama’s clemencies included 1,715 commutations of which the next-highest was Clinton with 61 commutations. In fact, Obama’s 1,715 commutations exceeded the total of the previous 12 presidents combined and included 568 with life sentences.

Now the average number of clemencies granted per month of each presidency: Bush-41 served 48 months, Trump has served just over 16 months, and the others each served 96 months. On a clemencies-per-month basis, the Bushes were restrained in comparison with the other presidents, and Trump is by far the most restrained of all seven.

Finally, the percentage of clemencies granted at the “last minute” (that is, in the last 3.5 months of each presidency): Note the wide range in these percentages, from Reagan at 8% to Obama at 61%. A widely held interpretation is that presidents may have granted last-minute clemencies in order get out of town rather than endure the political impact of unpopular actions. Clinton granted one-third of his clemencies on the morning of the day he left office, and Obama granted 395 clemencies on his last full day in office.

The take-away from these DOJ statistics is that President Trump is not granting clemencies by the bushel but is instead quite restrained. This may change with the next tweet but, for now, it simply is not happening. Trump just isn't abusing the pardon power, at least not by granting more than his share.

In a subsequent column, we'll look at a few of the most controversial recent clemencies, including the Arpaio pardon.