

## Fair and Independent Experts in Clemency (FIX Clemency) Act

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### BACKGROUND

The United States Constitution vests the President with clemency power, but Congress created a process for reviewing clemency applications that is inherently flawed, severely burdensome, and contributes to America's mass incarceration crisis. Because the clemency process is within the Department of Justice, it is greatly influenced by law enforcement and prosecutorial interests. The review structure also includes redundant levels of scrutiny by Department of Justice staff who can unilaterally prevent a clemency application from reaching the President.

An estimated 2.3 million people are incarcerated in the United States, which is more people per capita than any other nation in the world. Of that amount, approximately 10% are held in federal prisons and jails. Black, Latinx, Indigenous, LGBTQ+ folks, and people with disabilities are disproportionately overrepresented in our nation's jails and prisons due to centuries of racist and biased laws. The criminal legal system has locked up far too many people for far too long, and America's reliance on incarceration destabilizes families, ravages communities, and reproduces generational trauma.

Clemency is a powerful tool to reduce the federal prison population and rectify the injustices created by the criminal legal system. Currently, there are over 15,000 pending clemency petitions waiting to be reviewed. Democratic and Republican Presidents, alike, have circumvented the Department of Justice process because of its inefficiency and bias. Policymakers, legal advocates, academics, and people who are involved with the federal criminal legal system agree that it is past time for structural reform that centers justice and equity.

The **FIX Clemency Act** would create an independent U.S. Clemency Board (Board) that is made up of nine individuals appointed by the President, including a person who is formerly incarcerated. The Board would be responsible for reviewing applications requesting a pardon, commutation, or relief from collateral consequences of convictions. All recommendations by the Board will be transmitted directly to the President and included in an annual report to Congress.

The **FIX Clemency Act** specifically:

- Empowers people with relevant expertise, including in behavioral health, rehabilitation, and re-entry, to recommend individuals for clemency directly to the President;
- Creates greater transparency in the clemency process by publicly disclosing Board activities and recommendations disaggregated by relevant characteristics, including age, gender identity, and type of offense;
- Ensures the Board has the authority to review all relevant information related to an application;
- Protects applicants for clemency from greater prosecution;
- Eliminates the Office of the Pardon Attorney of the Department of Justice;
- Allows defense lawyers to help their indigent clients apply for clemency;
- Studies how United States Attorneys make decisions on charging and plea bargaining to end disparities that negatively impact marginalized communities; and
- Researches how prisons and jails affect the psychological development of people who are incarcerated.