

## [President Biden Should Commute Death Sentences of All Federal Inmates](#)

Contributors David A. Carrillo and Brandon V. Stracener ask President Biden to commute the sentences of the 40 inmates currently on federal death row to life in prison without parole.

December 17, 2024 at 04:06 PM



David A. Carrillo, left, and Brandon V. Stracener, right, of the California Constitution Center at Berkeley Law. Courtesy photos

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President Joe Biden, thank you for your long and honorable service to the nation. We ask you to muster one last great act of leadership: commute to life in prison without parole the sentences of the [40 inmates](#) currently on federal death row. Seize this moment as your final chance to show the courage of your convictions and do as your faith counsels you. Justice will still be served, with those inmates suffering a lifetime of punishment. And you can rest easy, knowing that you did the right thing to the end. Be bold, act without fear, and show grace.

As president your clemency powers are practically unlimited. The power to be merciful, unhampered by legal technicalities, has been a core feature of the executive power since the King of England ruled here. The U.S. Supreme Court has [held](#) that “the executive alone” has the power of pardon, “and it is granted without limit.” Except for impeachments [it is](#) “unlimited” and “not subject to legislative control.” And the high court has recognized that this discretionary executive power to grant clemency exists in virtually every state and the federal government.

Only you can do this. Federal clemency is exclusively executive: the president alone may grant clemency for federal offenses. It’s different here in California, where our governor must ask the

California Supreme Court to concur in commuting the sentences of capital inmates with two or more felonies. That requirement arguably forced Gov. Gavin Newsom to settle for an execution moratorium. But that stay is only effective until he leaves office—his successor could order immediate execution for all capital inmates who have exhausted their appeals. You have no such limits. You can close this issue to your successor and anyone else.

All it takes is your signature on a single page with a simple, powerful message: “I hereby commute to life in prison without possibility of parole the final death sentence imposed on any current federal inmate.” President Abraham Lincoln [used](#) such a blanket act, offering a full pardon to anyone who had “engaged in the rebellion” but agreed to take an oath of allegiance to the Union. When Congress attempted to nullify that pardon’s restoration of property rights, the U.S. Supreme Court [quashed](#) the law because it impaired the executive’s “conclusive and preclusive” pardon power.

Don’t worry about legal challenges. Executive clemency is nearly unlimited and practically unreviewable, because commutations are an act of grace reserved to an executive’s unfettered discretion. The high court has [held](#) that “pardon and commutation decisions have not traditionally been the business of courts; as such, they are rarely, if ever, appropriate subjects for judicial review.” Courts can enforce minimal due process procedural safeguards for death-penalty clemency proceedings to prevent capricious acts like coin flips. But, at most, judicial review ensures procedural compliance; the separation of powers doctrine bars a more aggressive review.

That courts have even this limited review flows from historical concerns about abuse of the clemency power involving political pressure or untoward influence. Unrestrained power is ripe for abuse, particularly from corruption, improper political influence, and cronyism. Your successor may issue his own controversial pardons—let him explain them to the voters and the courts. A corrupt executive abusing power by selling clemency is plainly wrong, and may bedevil future courts, but no one could accuse you of such chicanery here. Instead, you need only look into your heart to find a sincere moral conviction, and the will to act with compassion. The clemency power rests with you alone, and may therefore be exercised by you for reasons of your own.

Your enemies will howl that blanket capital clemency contravenes the law and jury verdicts. They will argue that victims deserve to see the sentence imposed on perpetrators of awful crimes. But clemency *always* counters the ordinary legal process. No one can countermand the federal executive’s express and sole constitutional clemency power. Clemency decisions are never about legal process because they exist outside that framework. It is an act of grace to forgive wrongs done against the state. It is a standardless grant of relief from punishment, on whatever moral, religious, or ethical grounds move the executive’s heart. It’s how you might explain your Catholic faith: it’s a matter of personal conviction. When a president is moved to be merciful, that’s between him and the Almighty. The rest is politics.

Yet you need fear no political consequences. Most obviously because your term is ending; even so, the lasting consequences of this great act will only inure to your benefit. Your friends will love you for this. It will stymie your enemies because commutation decisions are final. Your

predecessor executed 13 condemned inmates just before leaving office—no president since President Grover Cleveland has overseen so many federal executions. And he has vowed to resume executions on retaking office. You could prevent *any* federal executions from happening in the next four years.

Your courage of conviction could be magnified a hundredfold by those you inspire with your example, perhaps emboldening Newsom to do what former California Gov. Jerry Brown could not. On the eve of the Brown–Newsom transition six state governors [urged](#) Brown to clear California’s death row with a blanket commutation; he ignored their calls. But Newsom could still be persuaded. Just as you now have this opportunity, in his final two years Newsom will face pleas to seize the same opening that his predecessor neglected. And Newsom might be president himself one day. Lead by example and show him how it’s done.

Once the furor abates, this act will be a lasting legacy. Presidential biographies will close your chapter with this great act of mercy. Your successor will be powerless to undo it. The Secret Service will change your call sign to Lifesaver. You will inspire state governors to act with courage and follow your lead. And you can rest easy, knowing in your heart that you achieved one truly moral act.

Do it, Joe. Go out strong.

Respectfully,

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