This report was prepared by RAND Corporation using federal funding provided by the Bureau of Justice Statistics.

Document Title: Statistical Analysis of Presidential Pardons

Authors: Nicholas M. Pace, RAND
James M. Anderson, RAND
Shamena Anwar, RAND
Danielle Schlang, RAND
Melissa A. Bradley, RAND
Amalavoyal Chari, RAND

Abstract:

This report was produced by RAND Corporation for BJS under award number 2012-MU-CX-K045. It is a study of pardon-petition evaluations performed by the Office of the Pardon Attorney (OPA), a unit in the Department of Justice. OPA processes thousands of requests for executive clemency each year. RAND conducted a statistical examination of how OPA screens incoming petitions, investigates the facts underlying the petitions, and evaluates the merits of petitions when crafting recommendations to the President to grant or deny a pardon. Data were analyzed for any patterns in OPA decisions that indicated racial or ethnic bias.

Disclaimer

This page intentionally left blank.

Working Paper

Statistical Analysis of Presidential Pardons

Nicholas M. Pace, James M. Anderson, Shamena Anwar, Danielle Schlang, Melissa A. Bradley, and Amalavoyal Chari

RAND Social and Economic Well-Being

Preface

> The President shall…have Power to grant Reprieves and Pardons for Offenses
> against the United States, except in Cases of Impeachment.

While the Constitution's language in Article II, section 2 regarding the scope of executive clemency and the limitations upon its exercise is quite brief, the ability it bestows upon the President to grant pardons (thus removing or mitigating all or part of the consequences of the commission of an offense) and commutations (ending punishment outright or reducing its severity) represents a powerful last recourse for relief in regard to the federal criminal justice system.

This study focuses on the pardon petition evaluations performed by the Office of the Pardon Attorney (a unit within the U.S. Department of Justice), which provides assistance and advice to the President of the United States by processing thousands of requests for executive clemency each year. We conducted a statistical examination of the manner in which the Office of the Pardon Attorney screens incoming petitions for technical compliance, conducts investigations of the facts underlying each petitioner's request for clemency, and then applies substantive standards for evaluating the merits of such petitions when crafting its recommendations to the President to either grant or deny the relief. Our analysis included an effort to determine whether there were patterns in the decisions made by the Office of the Pardon Attorney that indicated statistically significant evidence of racial or ethnic bias.

This study should be of interest to policymakers in regard to the exercise of the federal executive clemency power as well as those concerned about issues related to evaluating justice system organizations for bias in decision-making.

Justice Policy Program

RAND Social and Economic Well-Being is a division of the RAND Corporation that seeks to actively improve the health and social and economic well-being of populations and communities throughout the world. This research was conducted in the Justice Policy Program within RAND Social and Economic Well-Being. The program focuses on such topics as access to justice, policing, corrections, drug policy, and court system reform, as well as other policy concerns pertaining to public safety and criminal and civil justice. For more information, email

justicepolicy@rand.org. Questions or comments about this report should be sent to the project leaders, Nicholas M. Pace (nickpace@rand.org) or James M. Anderson (janderso@rand.org).

Table of Contents

vi

Tables

Figures

Summary

Introduction

> The President shall…have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

While the Constitution's language in Article II, section 2 regarding the scope of executive clemency and the limitations upon its exercise is quite brief, the ability it bestows upon the President to grant pardons (thus removing or mitigating all or part of the consequences of the commission of an offense) and commutations (ending punishment outright or reducing its severity) represents a powerful last recourse for relief in regard to the federal criminal justice system.

Thousands of petitions for executive clemency are sent to the President's attention each year, but it would essentially be impossible for the President to personally review each petition and conduct thorough investigations of those seeking clemency without ignoring other important duties of state. For over 120 years, the Office of the Pardon Attorney, a unit within the Department of Justice (DOJ), has assisted the President in taking on this formidable task (the abbreviation for the Office that is currently found on its website is PARDON, but traditionally OPA has been in widespread use, and this document uses it as well). OPA is headed by the Pardon Attorney, a career position within DOJ and an appointee of the Attorney General. Staff attorneys at OPA are known as *attorney advisors*, because they are part of a chain of counsel that also includes the Pardon Attorney, the Deputy Attorney General (DAG, the second-highest-ranking official in DOJ), and the White House Counsel (chief advisor to the President on legal issues pertaining to the President and the White House), who together provide legal advice to the President in regard to his or her decisions related to the exercise of executive clemency.

OPA performs a form of triage on incoming petitions. It first eliminates those in which federal executive clemency is not constitutionally possible, such as relief sought for a criminal conviction under state law. It then screens out petitions that fail to meet certain technical requirements, such as a DOJ mandate that the underlying conviction involve a felony. These technical requirements are not found in the Constitution, but instead have been developed by the DOJ over decades and memorialized in agency regulations, policy manuals, internal practices, and instructions given to prospective petitioners. Petitions that are screened in this manner and are no longer considered for a grant of executive clemency are referred to as *administrative closures*. For those petitions that are not closed in this manner, OPA is very likely to request that the U.S. Probation and Pretrial Services System (generally known by the acronym USPO due to its historical name of U.S. Probation Office) provide the pre-sentence investigation report (PSR) that was originally drafted for use by the sentencing judge following petitioner's original

conviction for a federal offense. PSRs contain a wealth of information about a convicted defendant's background up to and including conviction. Depending on what is learned from the PSR, OPA may also request that the Federal Bureau of Investigation (FBI) conduct an exhaustive investigation into a petitioner's recent life. Other sources of information can be consulted as well, such as the U.S. Attorney in the sentencing district as well as the original trial judge. After the investigation is complete, OPA summarizes salient facts about the petitioner's current and past background and behavior, as well as about the conviction that led to the clemency request, and provides a *Report & Recommendation* to the DAG as to whether the petition should be *granted* or *denied*. The screening of incoming petitions, decisions to administratively close a case or conduct additional investigation, decisions as to the scope of that investigation, and the crafting of recommendations to the President are reasons why OPA's efforts in this regards can be referred to as *petition evaluations*. The DAG in turn drafts a *Letter of Advice* for the President's attention that contains the OPA recommendations (OPA subsequently transmits the letter to the White House Counsel). Such recommendations are advisory only, and the President is free to ignore any clemency-related advice offered by OPA, the DAG, or the White House Counsel.

While the pardon power receives considerable media interest when exercised, what has not generated an equal level of national attention is the corollary question of why *others* who have received similar (or even less severe) sentences for similar offenses, have similar personal backgrounds, and have similar needs for presidential relief have *not* been the recipients of federal clemency. But in December 2011, a series of articles by *ProPublica* and *The Washington Post* described the results of a joint investigation by the two publications that used Freedom of Information Act requests to obtain the names of those who requested a presidential pardon but were nevertheless denied one during the two terms of President George W. Bush.[1] The lead authors of the study asserted that, based on their analysis, "[w]hite criminals seeking presidential pardons over the past decade have been nearly four times as likely to succeed as minorities" while "[b]lacks have had the poorest chance" of receiving clemency and that, despite controlling for characteristics and crime in the analysis, "race emerged as one of the strongest predictors of a pardon."[2]

Presumably in response to the issues raised in the December 2011 articles, the Bureau of Justice Statistics (BJS), the principal statistical agency within DOJ, announced in June 2012 that it was seeking applications for an examination of how requests for presidential pardons were evaluated, with a particular emphasis on testing the effects of race on the progress of petitioners

---

[1] Linzer and LaFleur, 2011; LaFleur, 2011; Linzer, 2011a; Linzer, 2011b; Linzer, 2011c; LaFleur and Schmidt, 2011; ProPublica, 2011; and Beckett and Respaut, 2011.

[2] LaFleur, 2011.

as they move through the pardon adjudication process.[3] The RAND Corporation was awarded a grant to conduct the examination.

Approach

Our research included the following key steps:

- Conducted background research on federal clemency.
- Engaged in a series of interviews and discussions with OPA staff to better understand how the Office's process for evaluating the technical compliance and substantive merits of incoming petitions worked in practice.
- Developed a conceptual model of the deliberative process utilized by OPA for pardon petitions.
- Drew a sample of petitions that reached final disposition (i.e., administrative closure by OPA, presidential denial, or presidential grant) between October 1, 2001, and April 30, 2012, inclusive. The analysis dataset would include all pardons granted during the study period, plus a stratified sample of petitions that were either denied by the President or administratively closed by OPA in proportion to their relative frequency during the study period.
- Developed a data collection instrument to be used for coding information contained in the case files maintained by OPA.
- Conducted an eyes-on review of the case files in order to collect both objective information (e.g., petitioner age, race, ethnicity, sex, the nature of the underlying offense, the sentence imposed) as well as subjective information that captured, to the extent possible, the degree to which the petitioner's request evidenced compliance with established DOJ guidelines for evaluating the merits of pardon petition.
- Analyzed the data collected from the reviewed case files with the goals of understanding the pardon decision process and of testing, as requested by BJS, "the primary hypothesis that all other things being equal African Americans and other minorities are less likely to progress in the pardon adjudication process than applicants of other races."[4]

The steps described above differ from the original project plan in one important aspect. Because of logistical issues related to the April 2014 announcement of President Barack H. Obama's Clemency Initiative and the apparent need for OPA to essentially focus on little else until the end of the Obama Administration, our eyes-on case file review was halted after about a quarter of the target sample had been examined. Notwithstanding the abbreviated data collection effort, we believe that our analysis dataset provides useful insight into the pardon evaluation process, including issues related to race and ethnicity.

---

[3] Bureau of Justice Statistics, 2012.

[4] Bureau of Justice Statistics, 2012, p. 9.

Findings

Who Gets Pardoned and Who Doesn't?

We begin by examining the end point in the process by which a request for executive clemency is reviewed by OPA and, in many instances, by the Deputy Attorney General and the White House as well. Our abstraction team examined 287 case files, of which 57 were closed administratively, 186 ended with the petition denied, and 44 resulted in a presidential pardon (***Table S.1***).

Table S.1 Final Outcomes in Weighted Sample – All Case Files

Evaluation Type	N	Outcome	Unweighted Percent of Petitions	Weighted Percent of Petitions
All	287	Administrative closure	19.9	21.0
		Petition denied	64.8	73.4
		Petition granted	15.3	5.6
Formal only	230	Petition denied	80.9	92.9
		Petition granted	19.1	7.1

Notes: Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

We generally present our results in terms of weighted values in order to more helpfully describe the business of the Office of the Pardon Attorney for petitions disposed from October 1, 2001, through April 30, 2012. The transactional database utilized by OPA during that period indicated that there were 210 pardon grants, 2,748 petition denials, and 788 administrative closures during this period. The weights we utilized for our analysis dataset result in a distribution that mirrors what actually took place (i.e., 21.0 percent administrative closures, 73.4 percent denials, and 5.6 percent grants). With such weighting, the proportion of all pardon petitions that resulted in a grant of executive clemency (which for the purposes of this report we refer to as the *clemency rate*) was 5.6 percent.

Note that the lower portion of ***Table S.1*** presents weighted percentages for petition outcomes in which a grant or a denial are the only two options. Administrative closures represent a decision by OPA attorney advisors that the application package has failed to meet objective standards set forth in various regulations and policy statements (e.g., that the petitioner should be a resident of the United States). Petitions that survive this initial technical scrutiny are thereafter judged on more subjective criteria (such as whether the petitioner is genuinely desirous of forgiveness), and instead of OPA being the sole decider as to whether to terminate the application or move forward, others in the chain of decision-making, including the Deputy Attorney General and the White House, are now involved. Because the outcome of the OPA petition evaluation process at this point is a recommendation to the President, for the purposes of

this discussion we characterize the percentage of cases surviving the administrative closure stage that ultimately result in a pardon grant as having a *recommendation rate* of 7.1 percent.

OPA does not administer a lottery where every petitioner has an equal chance of receiving a presidential pardon. Instead, it conducts an evaluation, one that is generally designed to result in recommendations that give great weight to DOJ guidelines and presidential preferences. Such preferences, as memorialized in periodic memos from the White House Counsel to the Deputy Attorney General, urge OPA to recommend for executive clemency those petitioners who have evidenced "exemplary post-conviction conduct," lack "extensive criminal history," and have made "sustained and significant contributions to the community" or were involved in a crime only when they were "very young." The result, as illustrated by *Table S.2*, is that those petitioners who are more likely to receive a grant of pardon look very different from those who are less likely to receive one and often look very different from petitioners generally. We caution the reader to consider that this table presents a very informal summarization of what was described in the main body of our report, identifying petitioner and case characteristics that our descriptive statistics indicated were associated with relatively high or low clemency rates, focusing on those characteristics that often appeared in our sample cases.[5] Our sole goal here is to point out observed differences in the overall likelihood of receiving a pardon, not to precisely describe the type of people who received the most pardons or were denied most of the time.[6] No attempt was made to test the results for statistical significance, so any of the assertions listed in the table may be due to chance in the sample selection. Because the limited purpose of *Table S.2* is illustrative rather than a definitive summation of the grantee and denied populations, the reader is urged to consult the main body of our report for a more detailed description of the incident rates of each of these characteristics and their frequency.[7] A more sophisticated identification of what can be characterized as predictor variables utilizing regression-based analyses in which characteristics are tested while holding others constant is presented elsewhere in this Summary.

---

[5] We primarily used a comparison of clemency rates for classifying characteristics as either more likely or less likely to be associated with a grant of pardon. Because some petitions are administratively closed and because the proportion of petitions that close in this way vary by characteristic, it is possible that a characteristic with the lowest clemency rate among others in a comparison group would not have the highest rate of denials. Continuous values (such as dollars or time) were handled in a different manner, and represent the median values for all petitions taken together, for petitions resulting a grant of pardon, and for petitions resulting in a recommendation of denial for the columns "Typical Petitioner," "More Likely to be Granted," and "Less Likely to be Granted," respectively.

[6] For example, about 85 percent of our weighted sample were males. As such, most of the petitioners were males, most of the grantees were males, and most of the denied petitioners were males. But while 5.3 percent of male petitioners received a pardon, the corresponding rate for females was just 4.3 percent. As our intent was to highlight characteristics that <u>differ</u> from one another in terms of clemency rates, we describe males as "more likely to be granted" and females as "less likely to be granted."

[7] The table reflects only characteristics that were present in at least 5 percent of weighted petitions in our analysis sample. Characteristics primarily described as "other" or some other non-specific categorization were not included.

Table S.2 Likelihood of Receiving a Pardon, by Characteristics of Petitioner

Characteristic	Typical Petitioner	More Likely to be Granted	Less Likely to be Granted
Age at application	52 years	53 years	52 years
Age at offense	37 years	29 years	37 years
Sex	Male	Male	Female
Citizenship	U.S.-born	U.S.-born	Not U.S.-born
Race & ethnicity	Non-Hispanic White	Non-Hispanic White	Non-Hispanic Black
Crime type	White-collar crime	White-collar crime	Firearms
Conviction method	Guilty plea	Guilty plea	Trial verdict
Primary sentence component	Incarceration	Probation only	Incarceration
Length of incarceration	12 months	7.0 months	12 months
Fine and/or restitution	$5,000	$1,367	$5,000
Length of supervised release	36.0 months	24.0 months	36.0 months
Appealed conviction?	No	No	Yes
Behavioral issues during satisfaction of sentence	None	None	Yes
Time from sentencing	11.2 years	20.9 years	11.4 years
Time from incarceration	9.7 years	18.3 years	9.8 years
Criminal activity prior to offense	Yes	No	Yes
Criminal activity after offense	No	No	Yes
Marital status	Married	Married	Divorced
Spousal support responsibilities	No	No	Yes
Children, any age	Yes	No	Yes
Minor children at home	No	Yes	No
Child support responsibilities	No	No	Yes
Highest education level at time of application	At least some college	At least some trade or tech school	No high school diploma or GED
Advanced to higher education level after conviction?	No	Yes	No
Employment	Working	Retired	Disabled or unemployed
Time currently employed	6.3 years	8.5 years	6.1 years
Fired from job after conviction	No	No	Yes
Failed to report criminal history	No	No	Yes
Alcohol or legal substance abuse after conviction	No	No	Yes
Illegal substance abuse after conviction	No	No	Yes

Characteristic	Typical Petitioner	More Likely to be Granted	Less Likely to be Granted
Alcohol, drug, or mental health treatment after conviction	No	No	Yes
Financial troubles, bankruptcies, or tax liens after conviction	No	No	Yes
Defendant in civil suit after conviction	No	No	Yes
Military service	None	Honorably discharged	None
Charitable, community, or civil activities	Yes	Yes	No
Religious or spiritual beliefs	No	Yes	No
Actively participating in faith	No	Yes	No
Represented by counsel	No	Yes	No
Reason for seeking pardon	Seeking forgiveness	Remove firearm restrictions	Obtain or restore professional licenses
Character references	Acquaintances	Government or law enforcement	Relatives & family
U.S. Attorney recommendation	Deny	Other than deny	Deny
U.S. Probation Office recommendation	No position	Grant	Deny

Notes: Time and money values are expressed as medians.

If one had to describe a petitioner in our analysis case files more likely to receive a presidential grant of pardon than others (and to do so without controlling for other petitioner and evaluation process characteristics), *Table S.2* suggests it would have been a non-Hispanic white male who was a U.S.-born citizen and was in his late twenties when the underlying offense (a white-collar crime such those involving tax violations, embezzlement, forgeries, or counterfeiting) was committed. There was no indication in his case file of any criminal activity before or after the conviction. He pled guilty (with no subsequent appeal of the conviction) and was likely to receive only probation. About 21 years elapsed between when he was sentenced for the underlying offense and when clemency was sought. If he was sentenced to serve jail time, he was out in seven months, and if he paid a fine or restitution, it was no more than $1,400. The sentence was served without incident, and any court-ordered responsibilities (such as restitution) were satisfied as required. He was married, and if he had any children at all, they were minors living with him at the time of the application filing. He had no spousal or child support obligations of any kind. He had at least some trade or technical school training after high school and after conviction took active steps to advance his pre-conviction education level. He was most likely to be retired when he filed the petition, but if he was still working, it was after at least eight years of steady employment. After conviction, he was never fired from a job; never failed

to report his criminal background when asked to do so; never was an alcohol or substance (legal or illegal) abuser; never received alcohol, drug, or mental health treatment; never had financial troubles, bankruptcies, or tax liens; and never was a defendant in civil suit. He served his country in the military and was honorably discharged at the end of his service. He professed that he engaged in charitable, community, or civil activities, held religious or spiritual beliefs, and actively participated in his faith. His petition was guided through the OPA process by his legal counsel; he likely sought clemency for the purpose of removing any state or federal restrictions on his right to own, possess, or use firearms; and at least some of the character references he submitted in support of his petition came from government officials or members of law enforcement. When asked their opinions as to whether executive clemency would be appropriate for this former defendant with whom they had contact as part of a criminal justice prosecution, the USPO recommended that the pardon be granted and the U.S. Attorney did not object. While no single case file in our data in which a pardon was granted reflected all of these petitioner and evaluation process characteristics, the takeaway here is that a petition has the best chance for success when the petitioner has led a fairly ordinary life other than in regard to a single brush with the law, received only modest sanctions when sentenced and served it without incident, never experienced financial or behavioral troubles, had a stable family and employment history, waited decades before seeking executive clemency, and had a criminal justice experience benign enough so that those who prosecuted his case or were responsible for his pretrial evaluation had little concern over a grant of pardon.

What sort of petitioner was least likely to be pardoned? Here *Table S.2* suggests it would have been a non-Hispanic Black female who was not a U.S. citizen by birth and was in her late thirties when the underlying offense (a firearms-related crime) was committed. There were indications in her case file of criminal activity both before and after the conviction. She was found guilty as a result of a trial verdict (which was subsequently appealed) and was sentenced to serve jail time (out in about a year), and if a fine or restitution was assessed, it was about $5,000. About 11 years have elapsed since she was sentenced for the underlying offense. There were problems with the service of the sentence (perhaps less-than-good behavior while incarcerated or a failure to fully and timely pay fines or restitution). She was divorced and had children, but no children who were living with her at the time of application were minors. She was likely to have had spousal or child support obligations (or both) at some point. She did not finish high school or receive a GED and never was able to advance her education after conviction. She was most likely unemployed or disabled when the petition was filed, but if she was still working, it was after six years of steady employment. After the conviction, she had been fired from a job; had failed to report her criminal background when asked to do so; had been an alcohol or substance abuser; had received alcohol, drug, or mental health treatment; had financial troubles, bankruptcies, or tax liens; and had been a defendant in civil suit. She did not serve her country in the military. She professed no engagement in charitable, community, or civil activities, nor did her case file show evidence of religious or spiritual beliefs. Her petition was filed without benefit

of counsel, she was likely seeking clemency for the purpose of obtaining or restoring a professional license, and many of the character references she submitted in support of her petition came from members of her family. When asked their opinions as to whether executive clemency would be appropriate for this former defendant with whom they had contact as part of a criminal justice prosecution, both the USPO and the U.S. Attorney recommended that it be denied. While no single case file in our data in which a pardon was denied reflected all of these petitioner and evaluation process characteristics, the takeaway here is that a petition has the worst chance for success when the petitioner has led a life in which there are indications of criminal activity in addition to the underlying offense, received sanctions that were relatively more serious than those meted out to grantees when sentenced and was unable to serve that sentence without some sort of incident, had experienced financial or behavioral troubles on occasion, had a spotty employment history, and whose criminal justice experience was serious enough that those who prosecuted her case or were responsible for her pretrial evaluation voiced their concerns over a possible grant of pardon.

These simplistic caricatures of successful and unsuccessful petitioners described above suggest that the life experiences of those seeking executive clemency can differ markedly. Whether those differences evidence systemic racial and ethnic bias is explored in the discussion that follows.

Outcome Predictors

A Conceptual Model of Pardon Petition Evaluations

We first describe the conceptual model of the presidential pardon evaluation process used for our outcome analysis. In *Figure S.1*, Stage 1 represents the point at which OPA initially reviews the incoming pardon petition and accompanying materials. Many petitions are administratively closed after this initial review and proceed no further. Those that are not administratively closed reach Stage 2 and enter what might be characterized as OPA's "formal review" cycle, in which the merits of the petition on subjective aspects such as acceptance of responsibility, conduct, and the need for relief form the basis of the recommendation from that point forward (rather than technical criteria established by DOJ to filter out non-standard clemency claims). Stage 2 petitions typically trigger a request to the USPO for information about the petitioner's underlying conviction as well as about the petitioner's life prior to sentencing. Once such USPO materials have been received and evaluated, the petition either results in a recommendation of denial or a progression to Stage 3, where the FBI is asked to conduct a background investigation. That FBI report may lead to a recommendation of denial or lead to the petition reaching Stage 4, where additional requests for input from various sources are made. After consideration of such information, the result is a recommendation to grant or deny.

Figure S.1 Flowchart of Presidential Pardon Evaluations

```
                                    ┌─────────────────────────────┐
                                    │          STAGE 1            │
                                    │  Initial Review of Application│
                                    └─────────────────────────────┘
┌─────────────────────────────┐                  │
│   ADMINISTRATIVE CLOSURE     │──────────────────┤
└─────────────────────────────┘                  │
                                    ┌─────────────────────────────┐
                                    │          STAGE 2            │
                                    │     Request USPO Report     │
                                    └─────────────────────────────┘
┌─────────────────────────────┐                  │
│    RECOMMENDATION OF         │──────────────────┤
│         DENIAL               │                  │
└─────────────────────────────┘                  │
                                    ┌─────────────────────────────┐
                                    │          STAGE 3            │
                                    │     Request FBI Report      │
                                    └─────────────────────────────┘
┌─────────────────────────────┐                  │
│    RECOMMENDATION OF         │──────────────────┤
│         DENIAL               │                  │
└─────────────────────────────┘                  │
                                    ┌─────────────────────────────┐
                                    │          STAGE 4            │
                                    │     Request Other Input     │
                                    └─────────────────────────────┘
┌─────────────────────────────┐                  │
│    RECOMMENDATION OF         │──────────────────┤
│         DENIAL               │                  │
└─────────────────────────────┘                  │
                                    ┌─────────────────────────────┐
                                    │    RECOMMENDATION OF        │
                                    │          GRANT              │
                                    └─────────────────────────────┘
```
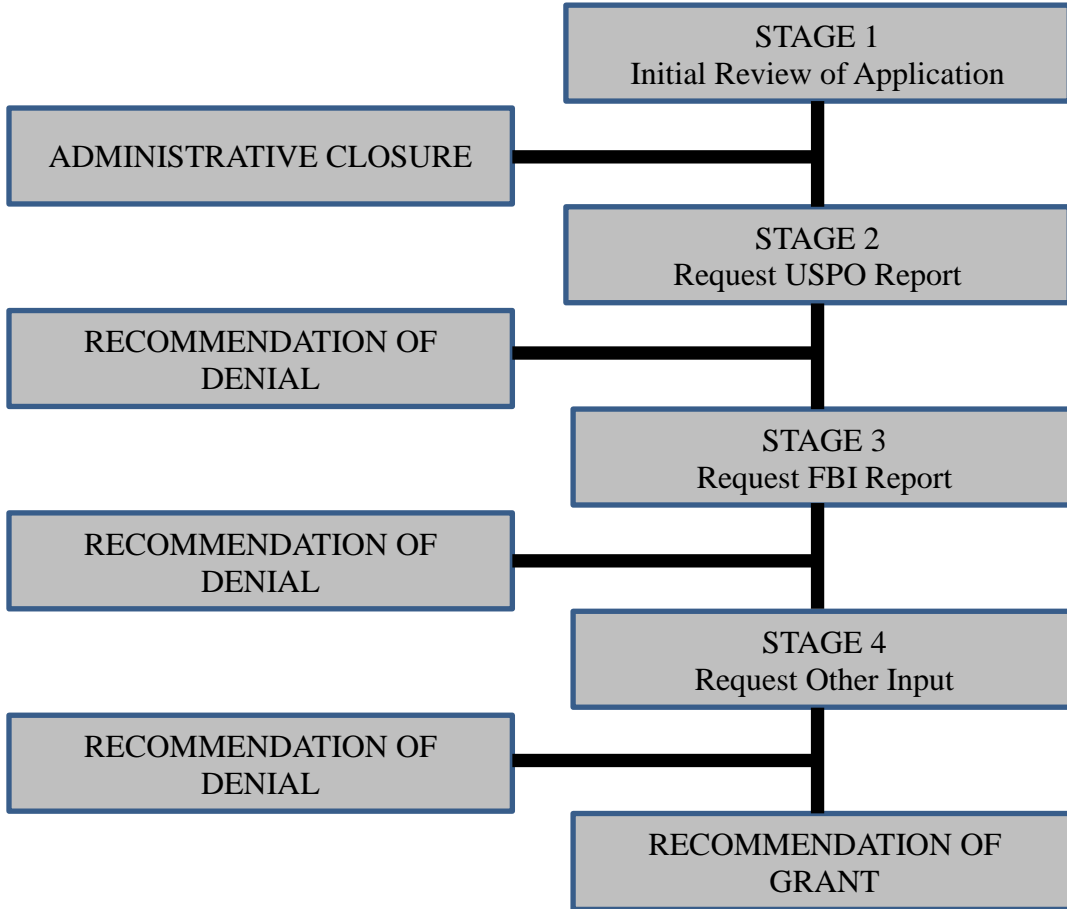
To aid in understanding the flow of petitions through the evaluation process, *Table S.3* presents both unweighted and weighted percentages of petitions reaching each of the key stages represented in *Figure S.1*. In the discussion that follows, we will focus on weighted percentages in order to conform to the actual throughput at OPA during the study period. As can be seen in *Table S.3*, 21 percent of petitions are closed administratively by OPA after a new case is opened, with the remainder moving on to Stage 2.

Table S.3 Procedural Progress for Petitions Included in the Study

Point in the Evaluation Process	N	Percent of All Petitions		Percent of Previous Stage	
		Unweighted	Weighted	Unweighted	Weighted
Stage 1 (initial review)	287	100.0	100.0	n/a	n/a
Administrative closure between Stages 1 & 2	*57*	*19.9*	*21.0*	*19.9*	*21.0*
Stage 2 (USPO request)	230	80.1	79.0	80.1	79.0
Denial between Stages 2 & 3	*112*	*39.0*	*44.2*	*48.7*	*55.9*
Stage 3 (FBI request)	118	41.1	34.8	51.3	44.1
Denial between Stages 3 & 4	*39*	*13.6*	*15.4*	*33.1*	*44.2*
Stage 4 (other source request)	79	27.5	19.4	66.9	55.8
Denial after Stage 4	*35*	*12.2*	*13.8*	*44.3*	*71.1*
Grant Recommendation	44	15.3	5.6	55.7	28.9

Note: Weighted values reflect all OPA petition decisions made during the study period of October 1, 2001, through April 30, 2012.

As seen in ***Table S.3***, the decision point where the largest single block of petitions is disposed is between Stages 2 and 3, in which 44 percent of all petitions are denied. About 35 percent of all petitions reach Stage 3, where FBI background investigations are requested. Another 15 percent of all petitions result in a recommendation of denial after this point. Viewed in a different way, the information in an FBI report triggers an immediate denial recommendation in about 44 percent of the petitions where the investigation was requested. About 19 percent of all petitions reach Stage 4, where OPA requests information from one or more additional sources. Of those cases, 71 percent result in recommendation of denial, while 29 percent are considered to be worthy of a presidential grant.

<u>Overview of the Potential Predictor Variables</u>

Definitions and Summary Statistics. In general, the goal of the analyses in this discussion is to identify the individual factors that predict whether a petitioner will receive a pardon. Although the data that was collected mirrors as closely as practical the totality of information present in a petitioner's file, we found it necessary to collapse this information into a smaller set of variables before any regression analyses could be done. We refer to the resulting analysis fields as *potential predictor variables*.

Table S.4 presents unweighted descriptive statistics on the resulting potential predictor variables. The first results column ("Sample Size") presents the number of cases in our analysis data for which information was available in regard to the characteristic or event captured by the potential predictor variable. For variables that flag whether a characteristic or event is true (such as *Male* or *Married and Never Divorced*), the "Overall" column presents the proportion of the complete petitioner sample for a true condition. For variables that describe time, the Overall column presents the mean number of years. The next three columns also present proportions or

mean years, but only for subsets of the analysis sample characterized by one of the three OPA final actions: administrative closures, denials, or grants (to be precise, OPA does not deny or grant any petition; it simply makes a recommendation one way or the other). For example, 85 percent of all of the petitioners in our sample were male, as were 83 percent of those who received administrative closures, 86 percent of those who received denials, and 89 percent of those who received pardons. Note that all of the proportions and means shown in the table are unweighted. The last column presents the p-value from a test of whether the proportion of the population or the mean years for that particular characteristic is significantly different among those that receive a pardon versus those that receive a denial.

Table S.4 Summary Statistics for Potential Predictor Variables

Petitioner and Case Characteristics	Sample Size	Overall	Administrative Closures	Denials	Grants	p-value for Denials v. Grants
Petitioner Characteristics						
Male	287	0.854	0.825	0.855	0.886	0.5888
White	282	0.791	0.741	0.788	0.864	0.2597
Black	282	0.145	0.148	0.152	0.114	0.5161
Hispanic	282	0.025	0.056	0.016	0.023	0.7719
Asian	282	0.025	0.019	0.033	0.000	0.2266
Age (mean years)	284	53.1	54.3	52.5	53.8	0.5266
Married and Never Divorced	285	0.400	0.375	0.384	0.500	0.1597
Military Positive	284	0.250	0.25	0.234	0.318	0.2469
Charitable Actions	259	0.849	0.857	0.826	0.930	0.0918
Religious	281	0.470	0.327	0.484	0.591	0.2027
Pre-Conviction Crime	285	0.491	0.429	0.557	0.295	0.0017
Conviction Characteristics						
WHC Memo Crime	287	0.321	0.386	0.339	0.159	0.0198
Incarcerated	286	0.566	0.456	0.632	0.432	0.0148
Post-Conviction Activity						
Post-Conviction Crime	282	0.227	0.192	0.258	0.136	0.0875
Low Employment	277	0.051	0.056	0.061	0.000	0.0925
Adverse Employment	282	0.135	0.089	0.165	0.068	0.1042
Drug/Alcohol Issues	284	0.236	0.286	0.245	0.136	0.1229
Financial Difficulties	282	0.397	0.304	0.467	0.227	0.0037
Civil Litigation	282	0.135	0.071	0.158	0.116	0.4884
Application Characteristics						
Pardon Reason Important	286	0.517	0.536	0.511	0.523	0.8870
Mean Years Since Conv./Incarc.	280	13.8	11.5	12.6	21.4	0.0000
0-10 years	280	0.475	0.574	0.511	0.205	0.0002
10-20 years	280	0.318	0.296	0.330	0.295	0.6649
20 plus years	280	0.207	0.130	0.159	0.500	0.0000
Government Support	286	0.178	0.179	0.156	0.273	0.0692
Attorney	285	0.196	0.218	0.167	0.295	0.0511

Petitioner and Case Characteristics	Sample Size	Overall	Administrative Closures	Denials	Grants	*p*-value for Denials v. Grants
Obama Era	287	0.366	0.509	0.366	0.182	0.0197
Agency Feedback						
USPO Feedback:						
none	287	0.481	0.772	0.409	0.409	0.9953
negative	287	0.105	0.000	0.161	0.000	0.0041
neutral	287	0.202	0.105	0.231	0.205	0.7055
positive	287	0.213	0.123	0.199	0.386	0.0082
Other Agency Feedback:						
none	287	0.732	0.912	0.849	0.000	0.0000
all positive	287	0.077	0.000	0.011	0.455	0.0000
any negative	287	0.115	0.070	0.129	0.114	0.7832
neutral/mixed positive	287	0.077	0.018	0.011	0.432	0.0000

Note: Year values are means. All values are unweighted. Includes all administrative closures, denial recommendations, and grant recommendations.

The first set of variables presented in ***Table S.4*** measure the petitioner's personal characteristics. The variables for *Black*, *Hispanic*, and *Asian* are set when there was specific evidence in the file of the petitioner's race or ethnicity, and in those instances where such specific evidence is lacking, we rely on the coder's best guess. It should be noted that in the analysis of outcome predictors presented here, we define *Black* as any petitioner whose race had been identified by the coder as black regardless of Hispanic ethnicity and *Hispanic* as any non-black petitioner whose ethnicity had been identified by the coder as Hispanic (other racial categories in this chapter's analysis, such as Asians and whites, exclude petitioners of Hispanic ethnicity). The indicator variable *Military Positive* was set if a petitioner was ever in the military, was honorably discharged, and had no indication of having a court-martial or non-judicial punishment. *Charitable Actions* is an indicator for whether the petitioner engaged in charitable, community, or civic activities post-conviction. *Religious* is an indicator for whether there was any evidence that the petitioner was religious. *Pre-Conviction Crime* is an indicator for whether the petitioner has any arrests, charges filed, or convictions prior to the conviction for which he or she sought a pardon.

The two variables measuring conviction characteristics reflect the seriousness of the original crime that the petitioner is seeking a pardon for. *WHC Memo Crime* is an indicator for whether the specific crime the petitioner is seeking a pardon for was included in one of two memos the respective White House Counsels for President Bush and President Obama provided to the Deputy Attorney General at the time that listed offenses and petitioner histories for which clemency would rarely be granted. Because the list of disfavored situations differs slightly on the two memos, we coded *WHC Memo Crime* according to the memo that was the controlling authority when the petitioner's case reached the final action stage. Instead of creating numerous controls for the different crime types, we decided a more succinct approach would be to classify

crimes by whether they were on the applicable memo or not.[8] The variable *Incarcerated* is an indicator for whether the sentence for the conviction the petitioner was seeking a pardon resulted in incarceration.

The next set of variables measure the post-conviction activities of the petitioner (we use the terms "post-conviction" or "after conviction" to refer to the period following release for petitioners who were incarcerated and, for those who were not, to the period following sentencing). *Post-Conviction Crime* is an indicator for whether the petitioner had any subsequent arrests, charges filed, or convictions after the conviction for the offenses for which they were seeking a pardon. *Adverse Employment* is set to true when there was any indication that a petitioner was involuntarily terminated from a job for cause or failed to list arrests or convictions on any application (employment or otherwise) where the information was requested. *Drug/Alcohol Issues* reflects any indication of post-conviction issues with alcohol, substance abuse, or illegal drug use, or whether the petitioner was ever in an alcohol or drug treatment program or facility post-conviction. *Financial Difficulties* indicates whether the petitioner had any post-conviction financial troubles, debt issues, tax liens, bankruptcy filings, or payment issues with child support or spousal support. *Civil Litigation* is an indicator for whether they were involved in a civil litigation case during the time of the OPA review or if they had been named as a defendant in a civil litigation case during the post-conviction period.

The next set of variables in ***Table S.4*** describe various aspects regarding the petition itself. The petition form requires petitioners to state their reasons for seeking a pardon, and some of the explanations can cover multiple handwritten pages. We initially attempted to code cases into a binary indicator (*Pardon Reason Important*) for whether we felt OPA would view the case as having a relatively more important reason for wanting a pardon, such as whether the pardon was needed for employment purposes, was necessary to avoid deportation, or was because the petitioner wanted to become a foster or adoptive parent. *Years Since Conviction/Incarceration* measures the number of years from the date of sentencing if the individual was not incarcerated and the number of years from the date of release if the individual was incarcerated. *Government Support* is an indicator for whether a person in government (other than in law enforcement or in the judiciary) supplied a character reference for the petitioner, endorsed their support for the petition, or contacted OPA to check on the status of the application. In a number of instances, the person providing government support in some manner was a member of the Senate or House of Representatives. *Attorney* is an indicator for whether the petitioner was represented by counsel at any point in the pardon application process. *Obama Era* is an indicator for whether the final

---

[8] Depending on date of the memo, the list of offenses can include convictions that involve violent crimes; use of firearms, arson, or deadly explosives; trafficking in illegal drugs; harm to children; public corruption; terrorism-related offenses; and financial fraud involving harm to a large number of individuals or a substantial loss to the government.

decision on the petitioner's pardon took place during a period when OPA had been advised of President Obama's preferences in regard to executive clemency decisions.[9]

The final set of variables in **Table S.4** correspond to the feedback OPA received from the USPO as well as feedback from various agencies and other sources of information contacted in Stage 4. We coded *USPO Feedback* to reflect the nature of what we found in the file: Negative feedback, neutral feedback, positive feedback, or no feedback found (separate indicator variables were created for each of these categories). It is important to note that a sizeable fraction of the individuals that move into the formal pardon process (i.e. Stage 2 or later) do not have USPO feedback in their pardon file. The USPO does not indefinitely retain records on defendants they investigated as part of the sentencing process (individual USPO offices appear to differ in their retention policies in regard to length of time), and as such OPA's files often lack USPO input for those petitioners with convictions dating back many decades. *Other Agency Feedback* summarizes the feedback that OPA requested from agencies other than the FBI and the USPO regarding petitioners who made it to the last stage of the process, with the U.S. Attorney's Office in the federal district where the conviction took place constituting the most common source of such input. As there was sometimes feedback from more than one non-FBI/non-USPO agency in the file, *Other Agency Feedback* consists of four separate indicator variables: Positive feedback from all non-FBI/non-USPO agencies, any negative feedback from any agency, neutral or a mix of neutral and positive feedback, or no feedback found in the file.

Analysis of Information Considered in the Petition Evaluation Process

Background on Predictor Variables and Race. Since we have relatively few Hispanic and Asian petitioners in our data, our analyses focusing on racial differences will only compare white petitioners with black petitioners. **Table S.5** examines how blacks and whites compare to each other in terms of the proportion of each group meeting the tests for the same potential predictor variables that were presented in **Table S.4** (the exceptions are *Age* and *Years Since Conviction or Incarceration*, which describes average years for each of the two groups). The last column presents the *p*-value from the hypothesis test of whether a value shown for mean (for year variables) or proportion (for all other variables) for whites exhibits a statistically significant difference from the corresponding value for blacks. For the most part, black and white pardon petitioners are relatively similar in terms of those characteristics. The key areas they differ in are that black petitioners are less likely to be male, more likely to have evidence of religious beliefs in their case files, more likely to have had evidence of adverse employment issues, and are more likely to assert arguably more compelling reasons for seeking a pardon.

---

[9] Although President Obama took office on January 20, 2009, the first petition in our data set that resulted in an OPA final action other than an administrative closure was disposed of on October 11, 2010. Notably, this disposition occurs after the White House Counsel for his administration issued a pardon policy memo on July 13, 2010.

Table S.5 How the Predictor Variables Vary by Petitioner Race

Petitioner and Case Characteristics	Whites	Blacks	*p*-value for Whites vs. Blacks
Petitioner Characteristics			
Male	0.883	0.732	0.010
Age (mean years)	54.2	49.1	0.014
Married and Never Divorced	0.401	0.375	0.759
Military Positive	0.275	0.225	0.514
Charitable Actions	0.851	0.838	0.832
Religious	0.429	0.718	0.001
Pre-Conviction Crime	0.480	0.610	0.127
Conviction Characteristics			
WHC Memo Crime	0.300	0.415	0.150
Incarcerated	0.572	0.585	0.875
Post-Conviction Activity			
Criminal Activity	0.231	0.211	0.785
Employment Low	0.056	0.000	0.127
Adverse Employment	0.110	0.250	0.016
Drug/Alcohol Issues	0.249	0.200	0.508
Financial Difficulties	0.374	0.500	0.136
Civil Litigation	0.150	0.075	0.208
Application Characteristics			
Pardon Reason Important	0.475	0.675	0.020
Mean Years Since Conv./Incarc.:	14.1	12.3	0.318
Government Support	0.206	0.100	0.116
Attorney	0.206	0.175	0.651
Obama Era	0.345	0.390	0.581
Agency Feedback			
USPO Feedback: *none*	0.484	0.512	0.744
negative	0.103	0.122	0.720
neutral	0.197	0.195	0.974
positive	0.215	0.171	0.521
Other Agency Feedback: *none*	0.670	0.805	0.171
all positive	0.076	0.098	0.644
any negative feedback	0.130	0.073	0.307
neutral/mixed	0.094	0.024	0.1384

Note: All values are unweighted. Includes all administrative closures, denial recommendations, and grant recommendations with either a white or a black petitioner (223 whites and 41 blacks).

Table S.6 shows the weighted proportion of blacks and whites who are granted a pardon, as well as the proportion that drop out at each of the earlier stages. While black petitioners are about two percentage points less likely to receive a pardon, this overall difference is not statistically

significant. We expand on this analysis later by examining the racial disparity in the granting of pardons when some of the key predictor variables are controlled for in cases that have survived the administrative closure screening. It is important to note that the sample of black petitioners is relatively small (41); later in this Summary, we discuss the potential implications sample size may have on our results.

Table S.6 How the Outcome Variables Vary by Petitioner Race

Outcome	Whites	Blacks	*p*-value for Whites vs. Blacks
Administrative Closure	0.192	0.202	0.891
Stage 2 Denial	0.431	0.485	0.542
Stage 3 Denial	0.180	0.081	0.061
Stage 4 Denial	0.134	0.189	0.422
Pardon Granted	0.063	0.044	0.388

Note: All values are weighted. Includes all administrative closures, denial recommendations, and grant recommendations with either a white or black petitioner (223 whites and 41 blacks).

The Formal Pardon Process. The analyses presented in the remainder of this discussion drop all cases that were administratively closed in order to more closely examine what factors seem to predict whether a petitioner has their pardon petition granted rather than formally denied (thus our focus from this point forward is on the *recommendation rate* for matters surviving the administrative closure stage rather than on the *clemency rate* for all petitions). We cannot separately identify the decisions of OPA, the DAG, and the President, and thus we consider all three to jointly be the decision-maker at this stage.

Because decision-makers are supposed to simultaneously consider all of the characteristics germane to DOJ guidelines for evaluating the merits of pardon petitions, and because many of these characteristics might be correlated with each other, our core analysis uses a regression framework whereby the indicator variable of whether a pardon granted is regressed on petitioner and case characteristics. A multivariate regression analysis should identify the impact a control variable has on the likelihood a petitioner will receive a pardon, holding the other variables controlled for in the model constant. These impacts can be considered causal if two main requirements are satisfied: (1) All relevant control variables are included in the model; and (2) A large enough sample is used to accurately estimate these relationships. Unfortunately, as we discuss in detail below, we ran into problems on both of these fronts, and we describe how our results should be interpreted in light of these issues.

There are two reasons why our analysis was unable to control for *all* relevant control variables. First, there are some reasons OPA uses for justifying a denial recommendation that are based upon information that we simply do not observe. These include whether a petitioner has adequately shown remorse or fully accepts responsibility (which is inherently difficult to

objectively code) as well as whether the candidate failed to fully disclose required information or stated falsehoods in the pardon application package. Second, our sample size is too low to effectively include all of the predictor variables we do observe (listed in **Table S.3**), and thus we decided to narrow the variables further at this point. As it will be particularly difficult to identify the impact of a predictor variable that has very low variation, we made the decision to drop those with an incident rate in our sample that is less than 20 percent or over 80 percent —this includes *Male*, *Charitable Actions*, *Low Employment*, *Adverse Employment*, and *Civil Litigation*. Despite the fact that both *Black* and *Government Support* fall in this category, we decided to include these variables since previous research (Linzer and LaFleur, 2011; and Linzer, 2011) on the pardon process suggested their particular importance (we take into account the sensitivity of these results when we interpret them). As a petitioner's age could be highly correlated with the length of time from conviction or incarceration to petition submission, we dropped *Age* from the analysis (in any event, *Age* was not correlated with the likelihood of receiving a pardon, at least not in the sample we examined). Because we omit variables, it is possible that the control variables we do include in our regression models are correlated with these unobservable variables and will pick up their impact, potentially resulting in our regression coefficients overstating the true importance of a given variable. We thus interpret our results as being able to identify the variables within our subset of control variables that are the *strongest predictors* of whether a petitioner receives a pardon, with the understanding that such an identification does not necessarily reflect a *causal relationship*.

The other estimation issue our analysis encountered is that our smaller-than-anticipated sample size makes it difficult to accurately estimate the coefficients on the variables we do include in the model. The variable restrictions discussed above leave us with 15 control variables. For models with a binary dependent variable as we have here, simulation studies have led to recommendations that one have at least five events (in this study, five pardons) per control variable included, although some studies recommend an *event-per-variable* (EPV) ratio of at least ten. Despite the fact that we purposefully oversampled petitioners who have a pardon granted, we still only have 43 cases in our sample where a pardon was granted, which results in an EPV ratio below conventional recommendations. The key issue that can arise with having a low EPV ratio is that the regression model can overfit our sample and thus find some strong idiosyncratic relationships between control variables and grants of pardons that happen to be present in our sample but would not be present in the larger population. The intuitive reason for why this occurs is that regression models with a low EPV ratio will produce regression coefficients with high variance, with coefficient estimates fluctuating considerably over repeated samples. This increases the likelihood that, in the given sample we have drawn here, the model will estimate a coefficient that differs from the true population coefficient. Low EPV ratios also result in decreased power to detect significant effects, meaning there will be some variables that will show up as being an unimportant predictor of receiving a pardon in our sample but actually have an impact in the population. While we will still utilize conventional regressions in our

analysis (using both logit and ordinary least squares (OLS) estimation), the results should be interpreted with caution due to the issues described above.

In addition to using traditional regression models, we also estimate the model using a least absolute shrinkage and selection operator (LASSO) regression. LASSO regression, which has become a more commonly employed tool in empirical work in recent years, has been proposed as a potential solution to the overfitting problem that occurs in standard regressions when the EPV ratio is low. As discussed above, overfitting will lead to inflated coefficients, but LASSO regressions apply a shrinkage algorithm to the regression coefficients that have been shown in simulations to reduce the magnitude of the inflated coefficients to a point closer to the population values, thereby helping with the overfitting problem. The LASSO method will set the coefficients on some variables to zero, so it is also considered a way to remove control variables with low predictive power from the model. The LASSO estimator is a biased estimator, so standard errors will not have the typical interpretation for LASSO estimates that they do for conventional regression coefficients; accordingly, we do not report them here. One downside to the LASSO is that statistical inference on the coefficients is still an area that is being actively studied, and thus there is currently no well-agreed-upon way to conduct inference. Due to these issues, we will not interpret the coefficients on any of the estimation methods too literally but will rather use them as helpful indicators to identify which of the variables considered seem to predict the likelihood of receiving a pardon most strongly.

Analysis of Overall Pardon Recommendation Rates

The results of our regression analyses are presented in ***Table S.7***. It should be kept in mind that the dependent variable in the regressions is always an indicator for whether the petitioner had his or her pardon granted, the case files examined include all petitions surviving the administrative closure stage, and the control variables are a subset of those defined in ***Table S.4***. Our control for the time since conviction/incarceration tests whether 20 or more years elapsed until petition filing, which creates a time variable with a non-linear relationship with the likelihood of receiving a pardon. A control for the USPO's feedback is not used in Columns 1, 2, and 3 but is added as a control in Columns 4, 5, and 6. We explain shortly why we ran separate specifications excluding and including this control. Columns 1 and 4 presents the results from estimating this regression using OLS, varying the results depending on whether USPO feedback was included; Columns 2 and 5 similarly present the average partial effects from a logit

regression; and Columns 3 and 6 similarly present the results from the LASSO regression.[10,11] We restrict the sample tested to petitioners who were either white or black as we want to examine race effects. (As discussed previously, there are very few petitioners who fall outside of these two racial groups.) Recall that **Table S.4** indicated some control variables had a small number of missing values. While we drop cases where *Years 20 Plus* had missing values, we set the missing values on the other control variables to zero in order to maximize observations when practical.[12] All regression models were run with weights that account for the choice-based sampling scheme used.[13]

Table S.7 Impact of Predictor Variables on the Likelihood of Pardon Grants

Petitioner and Case Characteristics	USPO Feedback Not Included			USPO Feedback Included		
	OLS (1)	Logit (2)	LASSO (3)	OLS (4)	Logit (5)	LASSO (6)
Black	-0.00749	-0.0180		-0.000537	-0.0216	
	(0.0337)	(0.0348)		(0.0339)	(0.0372)	
Married and Never Divorced	0.0473*	0.0413	0.0387	0.0461	0.0428*	0.0287
	(0.0278)	(0.0258)		(0.0281)	(0.0251)	
Military Positive	-0.0427	-0.0385	-0.0283	-0.0404	-0.0413	-0.0102
	(0.0371)	(0.0305)		(0.0372)	(0.0304)	
Religious	0.0241	0.0277	0.0170	0.0149	0.0114	0.0037
	(0.0277)	(0.0243)		(0.0273)	(0.0244)	
Pre-Conviction Crime	-0.0559*	-0.0542**	-0.0507	-0.0546*	-0.0587**	-.0433
	(0.0284)	(0.0269)		(0.0289)	(0.0274)	
WHC Memo Crime	-0.0257	-0.0217	-0.0212	-0.0188	-0.0123	-0.0100
	(0.0253)	(0.0319)		(0.0255)	(0.0308)	
Incarcerated	-0.0290	-0.0174	-0.0250	-0.0195	-0.00839	-0.0135
	(0.0314)	(0.0282)		(0.0315)	(0.0270)	
Post-Conviction Crime	-0.0710**	-0.0809**	-0.0592	-0.0810***	-0.0796**	-0.0566
	(0.0281)	(0.0358)		(0.0296)	(0.0337)	

---

[10] While the OLS estimator may be biased in situations where the dependent variable is binary, in practice the results often do not differ much. We thus present results from both specifications. While logit coefficients are not easily interpreted, the average partial effects shown here for the logit estimation have a similar interpretation to the OLS coefficients.

[11] The LASSO regression was estimated in R using the "glmnet" package (a statistical routine that fits a generalized linear model via penalized maximum likelihood). We fit a linear model (as opposed to a logistic one) so the results would be more easily interpretable.

[12] These sample restrictions resulted in 18 additional cases being dropped: 14 cases because their petitioners were neither white nor black, and four because *Years 20 Plus* was missing. Note that cases that were administratively closed are not included in these analyses.

[13] As noted in Solon, Haider, and Wooldridge (2015), the regression coefficient estimators will be inconsistent if there is choice-based sampling and weights are not used to account for this. We weighted sample observations by the inverse probability of selection from the population.

Petitioner and Case Characteristics	USPO Feedback Not Included			USPO Feedback Included		
	OLS (1)	Logit (2)	LASSO (3)	OLS (4)	Logit (5)	LASSO (6)
Drug/Alcohol Issues	0.0187	0.0136	0.0054	0.0204	0.00230	
	(0.0281)	(0.0341)		(0.0285)	(0.0319)	
Financial Difficulties	-0.0328	-0.0463	-0.0301	-0.0169	-0.0258	-0.0127
	(0.0246)	(0.0301)		(0.0246)	(0.0290)	
Pardon Reason Important	0.0308	0.0269		0.0313	0.0278	0.0127
	(0.0279)	(0.0242)		(0.0281)	(0.0231)	
Years 20 Plus	0.192***	0.145***	0.1771	0.215***	0.172***	0.1807
	(0.0511)	(0.0293)		(0.0517)	(0.0311)	
Government Support	0.0518	0.0275	0.0405	0.0496	0.0148	0.0256
	(0.0449)	(0.0303)		(0.0451)	(0.0332)	
Obama Era	0.0798***	-0.0733**	-0.0704	-0.0822***	-0.0737**	-0.0623
	(0.0278)	(0.0296)		(0.0284)	(0.0288)	
USPO Feedback Positive	---	---	---	0.0992**	0.0876***	0.0854
	---	---	---	(0.0403)	(0.0287)	
Constant	0.110***		0.1101	0.0765*		0.0806
	(0.0395)			(0.0403)		
Sample size	212	212	212	212	212	212
R-squared	0.132			0.152		

Note: Includes all cases not administratively closed, that have a white or black petitioner, and where *Years 20 Plus* is not missing. All estimates are weighted. Average partial effects shown for the logit specification. Heteroskedasticity-robust standard errors are included in parentheses for OLS and logit specifications; *, **, and *** indicate a coefficient is statistically significant at the 10%, 5%, and 1% levels, respectively. The LASSO specification is run using a linear model. Blank coefficients in the LASSO specification indicate the LASSO estimation method dropped those variables from the model due to their low predictive power.

Although we used three different estimation methods, *Table S.7* shows these methods produce results that are relatively similar. Note that the LASSO drops variables from the model that have low predictive power, which is why some of the entries are blank in Columns 3 and 6. Predictor variables *Pre-Conviction Crime*, *Post-Conviction Crime*, *Years 20 Plus*, *Obama Era*, and *USPO Feedback Positive* are ones for which both OLS and logit estimations showed that the coefficients were statistically significant and the LASSO estimator had a coefficient above .04. In general, other variables in *Table S.7* have coefficients that are much smaller, and thus these five variables seem to be the ones among those we considered that most strongly predict whether a petitioner receives a pardon.

There are two reasons why the first set of specifications run (Columns 1-3) do not include the variable measuring USPO feedback. First, this variable may itself be highly correlated with the other control variables already included in the model, if the USPO takes that information into account when providing their feedback. Including this control would then mask the individual impacts of the other control variables. As second reason is that any feedback variable is inherently subjective and thus can reflect prejudice on the part of the agency. Thus, if the USPO

exhibited racial or ethnic prejudice in some way and tended to give minority petitioners worse feedback than white petitioners as a result, including the USPO feedback variable would explain away any potential racial disparities, as it would make it seem like any difference in recommendation rates was justified by the information OPA considered. Nevertheless, the USPO report to OPA is an important component of the evaluation and, accordingly, we repeated the earlier specifications by including a control for whether the USPO provided a positive recommendation (*USPO Feedback Positive*) with the results presented in Columns 4-6. The fact that the coefficients on the other variables are largely unchanged when this control is added indicates that the issues described above do not seem to be occurring. We thus primarily focus on the interpretation of Columns 4-6 in our discussion below. Note that we cannot control for the feedback of the other agencies in this regression (specifically the *Other Agency Feedback* control described in *Table S.4*), as this variable is not defined for a sufficiently large fraction of the sample.

As indicated previously, *Pre-Conviction Crime*, *Post-Conviction Crime*, *Years 20 Plus*, *Obama Era*, and *USPO Feedback Positive* are ones that we considered most strongly predictive of whether a petitioner will receive a pardon. Interpreting the results from Column 6, the coefficient on *Years 20 Plus* implies that if we look among petitioners who wait 20 or more years since incarceration/conviction before applying, they have a likelihood of receiving a pardon that is roughly 18 percentage points greater than petitioners who wait less than 20 years, holding the other variables controlled for in the table constant (note that all estimation methods produce coefficients that have exactly the same interpretation, although the estimates will naturally vary slightly). As we noted earlier, we are not able to control for all relevant variables and thus we do not want to conclude this is a causal effect. Further, as our discussions above noted, coefficient estimates can potentially overfit the sample so we do not want to interpret the magnitude of the estimates too literally, but instead just discuss in more general terms the variables that seem to predict the likelihood of receiving a pardon. The other variable that seemed to predict a higher likelihood of receiving a pardon was whether the USPO provided a positive review. Variables that predicted a lower chance of receiving a pardon include having a criminal record prior to the underlying conviction, having a criminal record after the underlying conviction, and having a pardon petition decided by the Obama Administration during our study period.

The results in *Table S.7* are also interesting in that they identify variables that do not seem to impact whether the petitioner receives a pardon, including whether the crime a pardon is sought for is listed on the WHC memo of crimes that should rarely receive pardons, the reasons why the petitioner was seeking a pardon, and whether they had any drug or alcohol issues or financial difficulties post-conviction. While admittedly our model has low power and thus some of these variables could have been identified as having significant impacts if the sample size had been larger, these variables do not seem to be as important as the five we have singled out.

Racial Differences in Overall Pardon Recommendation Rates. Consistently, in both *Table S.6* (which used no controls) and *Table S.7* (which includes controls), our results do not find statistically significant evidence that there are racial differences in the rates at which black and white petitioners receive pardon recommendations. This result differs markedly from the study conducted by *ProPublica* (Linzer and LaFleur, 2011) which found that white petitioners were nearly four times as likely to be granted pardons as minorities. Note that the *ProPublica* study examined petitions that were either granted or denied by the President, and thus do not include those administratively closed.

While the variables used in the models differ slightly, the root cause of the difference in the findings between our study and *ProPublica*'s is likely to be due to the fact that both studies utilized relatively small samples of pardons granted.[14] This makes it more likely for different random samples chosen from the population of pardons granted to have reasonably different proportions of black petitioners among them. Linzer and LaFleur (2011) assert that, under President Bush, 3.7 percent of all pardons granted went to black petitioners (seven out of 189). Because both the *ProPublica* study and ours are based upon a small random sample of all pardons granted, it is likely that the proportions of black grantees in the two samples drawn will differ from 3.7 percent. This is indeed what we find: The *ProPublica* study drew a sample of 47 pardons granted by President Bush and found that none went to black petitioners, while our study drew a sample of 36 pardons granted by President Bush and found that 11 percent of these went to black petitioners. If in fact the *ProPublica* estimate of seven black clemency recipients during the Bush Administration reflects the actual count, then our sample contained four of those grantees. The *ProPublica* sample thus has relatively fewer black petitioners granted pardons than would be expected (0 percent), and our sample has significantly more (11 percent). This is what likely leads their study to find evidence that blacks are pardoned at a lower rate and our study to find that there are no statistically significant racial differences. Note that the race variable has low variation overall and that our general policy in this study is to drop such variables with low variation precisely because of the noisiness involved in estimating coefficients for these variables.[15]

---

[14] While we include many of the same controls as the *ProPublica* study, we also include controls for whether the petitioner showed signs of being religious, their pre-conviction criminal activity, whether their reason for seeking a pardon was important, whether they had drug or alcohol issues post-conviction, and whether the feedback from the USPO was positive. While both of our samples cover the eight years of President Bush's presidency, our study also examines petitions formally decided upon by President Obama in his first term.

[15] When a variable has low sample variation, it will result in the variance of the coefficient estimate being larger, thus making it easier to draw a more extreme value. This is why our model focused on identifying coefficients for variables that exhibited larger sample variation. This may also explain why the *ProPublica* study found that having support from someone in the government significantly increased the likelihood of receiving a pardon, while we did not find a statistically significant increase. As we noted, *Government Support* also had low variation and was only included for the purposes of comparing the results with the *ProPublica* study.

While the above discussion explains why the two studies could produce different results, it is more difficult to identify the true state of racial disparities in recommendation rates from the information these two samples provide. The *ProPublica* study drew a sample that seems to overstate the raw racial gap, and it does not include enough control variables to understand why any racial disparity exists. Our study drew a sample that seems to understate the raw racial gap and, while it includes more control variables than the *ProPublica* study, still it does not control for every possible influence on the decision-making process. Linzer and LaFleur (2011) report findings that suggest the pardon recommendation rate for blacks during the Bush Administration was about 2.9 percent, and using information from both our study and Linzer and LaFleur's, a reasonable estimate of the recommendation rate for whites was about 11.3 percent.[16] Thus it does seem like there are *raw* racial differences in the likelihood of obtaining a pardon, but the extent to which these disparities would diminish if all relevant control variables were properly controlled for is not clear.

Analysis of Key Decision Points by Stage

While the analysis in the preceding section described the variables that appear to be most strongly predictive of receiving a pardon overall, the remainder of this chapter looks at the variables that are predictive of a petitioner progressing through various stages of the evaluation process. These analyses can help to determine whether the variables that are identified as predicting pardons are correlated with decisions made by OPA prior to the final grant-or-deny recommendation. They can also identify whether some of the variables that were not predictive of receiving a pardon overall may, in fact, predict whether an individual advances through various stages in the process. ***Table S.8*** presents the results from regressions conducted at each stage of the process (conditional on the case not being administratively closed). In Columns 1-3 the dependent variable is whether an FBI check was completed, with the sample mirroring the one underlying ***Table S.7***. In Columns 4-6 the dependent variable is whether additional agency checks (i.e., consultations with Stage 4 information sources) were completed, but the sample only includes petitioners who had an FBI check completed. In Columns 7-9 the dependent variable is whether a pardon was granted, though here the sample only includes petitioners who

---

[16] Linzer and LaFleur (2011) concluded that there were 62 blacks in their total sample of 494 petitions (12.6 percent). Applying this rate to the 1,918 petitioners with petition recommendations during the Bush Administration, an estimated 241 of the total could have been black. Given Linzer and LaFleur's conclusion that a total of seven pardons were granted to blacks during that period, the black recommendation rate would have been 2.9 percent (241/1,918). Because Linzer and LaFleur (2011) did not present parallel information for white petitioners, we use the numbers in our sample to help fill in the gaps. In our sample about 81 percent of petitioners with petitions decided during the Bush Administration were white, which suggests that out of the 1,918 total, 1,553 were white. Linzer and LaFleur also assert that 176 of pardons granted under the Bush Administration went to whites, resulting in an estimated pardon recommendation rate for whites during that same time of 11.3 percent (176/1,553).

had additional agency checks completed.[17] The predictor variables included in Columns 1-6 are the same as before, although for simplicity we only show the results from the specification that includes a control for USPO positive feedback. Columns 7-9 also include a control for whether all of the feedback provided by the additional agencies contacted in the previous stage (including the U.S. Attorney and sentencing judge) was positive.

For each of the three models, we use the same three estimation methods as before: OLS, logit (where average partial effects are shown), and LASSO. In regard to predicting whether an FBI investigation is requested (Columns 1-3), *Married and Never Divorced*, *Pre-Conviction Crime*, *Financial Difficulties*, Y*ears 20 Plus*, *Obama Era*, and *USPO Feedback Positive* are variables that show up as being statistically significant in OLS and logit specifications and had a coefficient of at least .04 in the LASSO specification. Similar results for predicting whether additional sources (such as the U.S. Attorney) will be consulted for information (Columns 4-6) are present for variables *Black*, *Married and Never Divorced*, *Post-Conviction Crime*, *Financial Difficulties*, and *Government Support*. For actual grants of pardons (Columns 7-9) the important variables are Y*ears 20 Plus*, *Obama Era*, and *Other Agency Feedback Positive*. (Note that for *Black*, statistical significance is shown only with the logit estimation method, but not the OLS.) For brevity, we do not show the standard errors of the OLS and logit coefficients.

---

[17] Note that Columns 7-9 in **Table S.8** do not match the results in **Table S.7** because Columns 7 through 9 only apply to those who received additional agency checks while **Table S.7** applies to every case that moved past the administrative closure stage.

Table S.8 Impact of Predictor Variables by Petition Evaluation Stage

Petitioner and Case Characteristics	Receive an FBI check			Receive Additional Agency Checks			Pardon Granted		
	OLS (1)	Logit (2)	LASSO (3)	OLS (4)	Logit (5)	LASSO (6)	OLS (7)	Logit (8)	LASSO (9)
Black	-0.0239	-0.0294		0.226*	0.244**	0.161	-0.157	-0.292**	-0.0890
Married and Never Divorced	0.165**	0.159**	0.114	0.186*	0.171*	0.122	0.00164	0.0163	---
Military Positive	-0.0299	-0.0270	---	0.0791	0.0845	0.0143	-0.0834	-0.162	-0.0034
Religious	0.0132	0.0245	---	0.0920	0.0948	0.0535	0.0623	0.0715	---
Pre-Conviction Crime	-0.180**	-0.174**	-0.143	0.0967	0.123	---	-0.0938	-0.0638	-0.0240
WHC Memo Crime	0.0166	0.0140	---	0.117	0.172	0.0657	-0.132	-0.141	-0.0957
Incarcerated	-0.0281	-0.0263	-0.0093	-0.0707	-0.107	-0.0012	-0.0112	0.0431	---
Post-Conviction Crime	0.0368	0.0298	0.0120	-0.313***	-0.329***	-0.244	-0.101	-0.112	---
Drug/Alcohol Issues	0.00767	0.000280	---	0.186	0.201*	0.0722	0.0616	0.0368	---
Financial Difficulties	0.123*	0.130*	0.0678	-0.242**	-0.235***	-0.1764	0.0290	0.0839	---
Pardon Reason Imp.	0.0703	0.0744	0.0267	-0.0212	-0.0227		0.0421	0.0222	
Years 20 Plus	0.409***	0.392***	0.330	-0.154	-0.178*	-0.145	0.613***	0.570***	0.512
Government Support	0.0655	0.0727	0.0200	0.249*	0.301**	0.201	-0.0187	-0.0137	---
Obama Era	-0.136*	-0.141**	-0.0969	-0.0640	-0.0634	-0.0013	-0.200**	-0.180*	-0.0924
USPO Feedback Pos.	0.392***	0.360***	0.337	0.0100	-0.0133	---	0.0646	0.0909	---
Oth. Agcy. FB. Pos.	---	---	---	---	---	---	0.484***	0.380***	0.443
Constant	0.286***	---	0.348	0.510***	---	0.559	0.231	---	0.225
Sample	212	212	212	112	112	112	75	75	75
R-squared	0.233			0.328			0.568		

Note: Includes all cases not administratively closed, that have a white or black petitioner, and where *Years 20 Plus* is not missing. All estimates are weighted. *, **, and *** indicate a coefficient is statistically significant at the 10%, 5%, and 1% level, respectively. Average partial effects shown for the logit specification. The LASSO specification is run using a linear model. Blank coefficients in the LASSO specification indicate the LASSO estimation method dropped those variables from the model due to their low predictive power.

Before examining the results in ***Table S.8***, it is important to consider two caveats. First, for some of these regressions the sample size is smaller than for our specification in ***Table S.7***. However, the main limiting factor of our sample is the number of rare events we observe in the dependent variable, and in the regressions utilized to produce ***Table S.8***, the rare event counts are relatively similar to and in some cases larger than in those in ***Table S.7*** (particularly with respect to receiving an FBI investigation, given that roughly half the sample receives one). Second, the manner in which our data was collected likely impacts the validity of the first specification, which uses whether the petitioner received an FBI check as a dependent variable (shown in Columns 1-3). Specifically, as we noted earlier, we only collected the latest and presumably the most trustworthy information from the case file in regard to petitioner and case characteristics. Because the FBI information collected likely layers over the information individuals seeking pardons originally provided on their applications, the most comprehensive evaluation of the factors potentially impacting the likelihood of a petitioner becoming the target of an FBI investigation would require that we observe the values of these variables *before* the investigation results were added to the case file. Only being able to observe the variables afterwards is problematic because it might make possibly derogatory information in the original application seem less important if individuals provided misstatements at the time (even if unintentional) since we only capture the (presumably) corrected information. For example, suppose an individual had post-conviction criminal activity that they did not describe on their application but was later identified in the FBI check. When OPA decided to conduct an FBI check, they did so under the assumption that the petitioner had no post-conviction criminal activity. Our model, however, will nevertheless interpret OPA as triggering the FBI check as if post-conviction criminal activity was a known issue for the petitioner. Such blurring of what was known and not known at the time OPA decided whether to move forward to the next stage or terminate the clemency evaluation process can thus understate the impact of these variables.[18]

In light of the above caveats, we will explain how the results in ***Table S.8*** compare with our earlier results in ***Table S.7*** in more general terms. The findings indicate that prior convictions and positive feedback from the USPO, which are both variables shown to matter overall in ***Table S.7*** also seem to matter early on, but they are less important later in the process. In contrast, the variables *Years 20 Plus* and *Obama Era* seem to matter throughout the process. Being married and never divorced, which was not identified as an important predictor in ***Table S.7*** seems to be predictive of moving on to subsequent stages in the process early on. Conditional on making it to the final stage, having positive feedback from other agencies seems to be very predictive of

---

[18] Note that we do not expect the fact that we only observe the final values of control variables to impact our regression models in ***Table S.7****.* Those regressions examine how well control variables predict whether a petitioner gets a pardon overall and do not consider how far the petitioner advanced in the evaluation process. When examining the impact a variable has on the decision to deny a petition, we need to observe the value of the variable at the time they were denied. This is precisely what is in our data.

receiving a pardon. Interestingly, the specifications in Columns 4-6 are the only ones where, in regard to the relationship between race and the evaluation process, OLS and logit both show statistical significance with LASSO at .04 or above. There is evidence that, given they have received FBI scrutiny, blacks may be more likely than whites to move past the point where a denial would result primarily on the basis of information contained in that report. However, once additional information is received from various sources such as the U.S. Attorney following the OPA request, blacks do appear to be less likely than whites to receive a pardon, suggesting that whatever benefit they may receive in the previous stage might get them further in the process, but it does not impact their overall likelihood of receiving a pardon. (It should be noted that the difference in recommendation rates for blacks to receive a pardon after Stage 4 sources were consulted was not statistically significant across all specifications.)

<u>Key Findings</u>

Our regression analyses examining the decision to grant versus deny a pardon (after the administrative closure stage) indicated that the factors that are most strongly predictive of a petitioner receiving a pardon in our sample are as follows:

- Waiting more than twenty years since incarceration/conviction before applying
- Receiving a positive review from the USPO
- Not having a criminal record prior to the underlying conviction
- Not having a criminal record after the underlying conviction
- Having the pardon decision made during the Bush Administration (as opposed to the Obama Administration, based on presidential decisions through April 30, 2012).

Note, however, that while it is reasonable to conclude that individuals with these factors were more <u>likely</u> to receive a pardon (holding constant the other factors explicitly controlled for in the regression), it is possible that not all of these findings represent a <u>causal</u> relationship. In particular, there were several potentially important petitioner and case characteristics we were forced to omit either because the information was not collected or because the sample size was too small to include all collected variables in the analysis. This implies that we likely have not identified all of the factors that impact the pardon decision and that the predictive relationships we do identify here might overstate the causal relationship.

Our analysis looking at the impact race has on the overall decision to recommend or deny a petition was inconclusive. While we found no evidence that was consistently statistically significant for racial disparities in the overall recommendation rates for the sample of cases we analyzed, our essentially random sample had relatively more black pardons than would have been expected, and thus it is difficult to make definitive statements with respect to what racial differences existed in OPA decision-making for the larger population once petitioner and case characteristics are controlled for. This issue arose because our data collection effort was terminated prematurely, resulting in an insufficiently large sample of pardons granted to

guarantee that the characteristics of those in our analysis data would be reflective of the entire population of pardons granted. Further, because we could not control for all relevant variables considered, even if we found that blacks were less likely to receive a pardon, it would not necessarily imply that it was due to discrimination, intentional or otherwise. In order to more accurately determine the raw racial gap in pardoning, as well as to understand the extent to which petitioner and case characteristics can and cannot explain this gap, we would recommend collecting a significantly larger data set that includes additional petitioner controls, such as whether there is evidence that the petitioner has made misstatements to a federal agency during the pardon process.

In that light, we recommend that the data-collection effort that was ended prematurely be completed at some future point when the current surge in OPA's workload has tempered, either by focusing on the remaining case files that were not abstracted prior to the cutoff or by drawing an updated sample that would reflect OPA's policies and practices in 2018 and beyond. The coding instruments included in the appendix to this report provide a ready-made tool for whomever conducts that inquiry. Future research could also rely more heavily on an examination of OPA's current case management system, which contains a wealth of information not available to the authors of this report.

Acknowledgments

Abbreviations

AAG	Assistant Attorney General
AOUSC	Administrative Office of the U.S. Courts
APACS	Application for Pardon after Completion of Sentence
BJS	Bureau of Justice Statistics
CMS	Case management system (a transactional database used for tracking cases, related events, and recording summary information)
DAG	Deputy Attorney General
DHS	Department of Homeland Security
DOJ	Department of Justice
EPV	Event-per-variable rate (ratio between the number of variables included in a logistic regression model and the smallest number of dependent variable event outcomes)
FBI	Federal Bureau of Investigation
FOIA	Freedom of Information Act
IRS	Internal Revenue Service
LASSO	Least Absolute Shrinkage and Selection Operator (a regression analysis method)
OLS	Ordinary Least Squares (a method for estimating unknown parameters in a linear regression model)
OPA	Office of the Pardon Attorney
PSR	Pre-sentence investigation report
SOR	Statement of Reasons
USPO	United States Probation and Pretrial Services System (more commonly referred to as the U.S. Probation Office)

1. Introduction

A Powerful Act of Grace

As the United States Supreme Court has noted, "[e]xecutive clemency has provided the 'fail safe' in our criminal justice system," a final mechanism by which injustices can be corrected or mercy dispensed when appropriate.[19] Federal executive clemency can be thought of as encompassing four different types of presidential actions:

- A *pardon* to remove or mitigate all or part of punishment (such as imprisonment or voting restrictions) that has been or could be meted out for the commission of an offense. When pardons are granted to large numbers of individuals under similar circumstances, especially when such individuals have not yet been the subject of prosecution, the act is commonly referred to as an *amnesty*.
- The *commutation* of a sentence (either ending punishment outright or reducing its severity) that has been or could be imposed following a conviction.
- The *remission* (i.e., cancellation) of a fine, restitution, or forfeiture required as part of a sentence but not yet fully satisfied or relinquished.
- A *reprieve* that temporarily suspends or postpones the imposition of a sentence.

In none of these instances is an underlying conviction overturned or an act constituting a criminal offense transformed into legal behavior; nevertheless, the exercise of executive clemency represents a powerful last recourse for relief in regard to the federal criminal justice system. This expansive nature of the executive clemency power is not an accident of history; the framers of the Constitution saw it as a "benign prerogative" of the President that could, under certain circumstances, "restore the tranquillity of the commonwealth."[20] Early Supreme Court interpretations of the provision focused less on addressing overarching issues of public policy and national unity and more instead on its benevolent nature, characterizing a grant as "an act of grace"[21] and a matter of "political morality."[22]

---

[19] *Hererra v. Collins*, 506 U.S. 390, 415 (1993).

[20] Hamilton, 1788.

[21] *United States v. Wilson*, 32 U.S. 150 (1833): "A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed."

[22] *Ex parte Well*s, 59 U.S. 18 How. 307 307 (1855): "Without such a power of clemency, to be exercised by some department or functionary of a government, it would be most imperfect and deficient in its political morality, and in that attribute of deity whose judgments are always tempered with mercy."

The Constitution's language in Article II, section 2, regarding the scope of executive clemency and the limitations upon its exercise is surprisingly terse:

> The President shall…have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

There are, however, a number of important concepts compressed into these few words. First is that only the President is specifically granted the power to act unilaterally when granting clemency. Congress is not explicitly prohibited from drafting legislation that could essentially result in relieving one or more individuals from the potential for punishment, but like any other bill that passes both the House and the Senate, the President's signature would be required for it to become law. And while the judiciary certainly has the ability to set aside convictions, sentences, or other judgments and decrees issued by its courts, there must be a preexisting legal foundation for doing so, one that arises from substantive or procedural law. Unlike the wide latitude granted to the President, the personal preferences of a trial judge or appellate court justice would be an insufficient basis for such actions.

Another important aspect of executive clemency under the Constitution is that it is available only in regard to federal criminal offenses. Matters involving violations of state law crimes are not subject to this exercise of presidential power, nor are matters that concern federal or state civil law. Further, clemency need not be granted solely for actual convictions and can address criminal behaviors that were never the subject of a law enforcement investigation or prosecution.[23] That said, it is generally accepted by legal scholars that the power cannot be used to dispense with the observance of the law in advance of the actual commission of the offense.[24]

Though Article II specifically refers only to "reprieves" and "pardons," such words encompass an expansive notion of executive clemency that would have been shared by the Constitution's framers as a result of living under British common law. Royal clemency could take the form of whatever relief a British monarch desired to grant and be given for any reason the monarch found compelling, including cash payments or military service.[25] While in this report we classify executive clemency by the forms it usually takes in modern times (i.e., pardons, commutations, remissions, or reprieves), the generic sense of a "pardon" utilized in the early days of this nation referred to any act of mercy a king or queen might grant in order to mitigate the severity of the criminal law.[26]

---

[23] Grants of executive clemency prior to an actual conviction would not necessarily prevent one from being prosecuted for the underlying offense, but instead prevent "any of the penalties and disabilities consequent upon conviction from attaching [thereto]." *Ex parte Garland*, 71 U.S. (4 Wall.) 333, 334 (1866). Presumably the decision whether or not to prosecute would be greatly influenced by the inability to impose imprisonment or a fine after conviction.

[24] Duker, 1977, p. 526; see also *Ex parte Garland* at p. 380.

[25] Duker, 1977, p. 478.

[26] See, e.g., Grupp, 1963.

And finally, the sole limitation in regard to scope is the Constitution's explicit exclusion for cases of impeachment, which essentially prohibits the use of executive clemency to undercut congressional attempts to remove the President, Vice-President, cabinet secretaries, other officers of the federal executive branch, or federal judges from office for treason, bribery, or other offenses.

While the federal appellate courts have addressed a number of ancillary issues in regard to executive clemency (such as whether acceptance of a grant is an admission of guilt[27]) and while various legal commentators have argued about theoretical limitations on the exercise of the power (such as whether it is possible for a President to pardon him or herself[28]), ultimately the President has essentially unfettered discretion when wielding a prerogative that was "granted without limit"[29] by the Constitution. Notable examples of federal clemency provide strong evidence of its expansive scope. On various occasions, a presidential action resulted in clemency granted to hundreds of members of an Indian tribe in order to commute their death sentences,[30] to all former members of the Confederacy following the end of the Civil War,[31] to every person who had been convicted of a violation of the federal criminal code prior to World War II but who subsequently served in the military during that war for at least a year and was honorably discharged,[32] to thousands of Vietnam-War-era deserters and draft evaders on a conditional basis,[33] to hundreds of thousands of Vietnam War draft resisters on an unconditional basis,[34] and to about 1,700 federal inmates who would have received a substantially shorter sentence if they had been convicted of the same offense years later.[35]

The acknowledged ability of a President to grant clemency to anyone he or she so chooses and for any reason he so chooses (other than in regard to impeachment or non-federal offenses) without any oversight by the legislative and judicial branches of the federal government does not

---

[27] See, e.g., *Burdick v. United States*, 236 U.S. 79, 90-92 (1915): The "…confession of guilt implied in the acceptance of a pardon may be rejected," as the subject of the offered pardon may prefer "to be the victim of the law rather than its acknowledged transgressor, preferring death even to such certain infamy."

[28] See, e.g., Kalt, 1996.

[29] *United States v. Klein*, 80 U.S. 128, 147 (1871): "It is the intention of the Constitution that each of the great co-ordinate departments of the government—the Legislative, the Executive, and the Judicial—shall be, in its sphere, independent of the others. To the executive alone is intrusted the power of pardon; and it is granted without limit."

[30] Wiener, 2012.

[31] *Proclamation 179*, "Granting Full Pardon and Amnesty for the Offense of Treason Against the United States During the Late Civil War," December 25, 1868. As of February 3, 2018: http://www.presidency.ucsb.edu/ws/?pid=72360

[32] *Proclamation 2676*, "Granting Pardon to Certain Persons Who Have Served in the Armed Forces of the United States." 10 Fed. Reg. 15,409, December 24, 1945.

[33] U.S. General Accounting Office, 1977.

[34] Shichor and Ranish, 1980/

[35] U.S. Sentencing Commission, 2017.

mean that its exercise is of little interest to the public or policymakers. Other notable examples of federal clemency provide equally strong evidence of its often polarizing and controversial nature. High-profile pardons and commutations have been granted to those convicted of extremely serious crimes such as treason, sedition, espionage, and murder; to a fugitive from tax evasion charges whose ex-wife had reportedly donated over one million dollars to the President's party,[36] to members of a separatist group that had employed a bombing campaign in pursuit of its goals,[37] to an indicted former Secretary of the Defense just prior to his trial on charges of perjury and obstruction of justice,[38] and, perhaps most notably, to a former President.[39] Each of these grants, as well as many others during our nation's history, drew strong reactions from certain quarters, sparked widespread debate over the appropriateness of the presidential decisions to choose these particular individuals as recipients of clemency, and triggered considerable speculation over the possible motivations behind those choices.

What has not received an equal level of national attention in the wake of these widely reported grants is the corollary question of why *others* who have received similar (or even less severe) sentences for similar offenses, have similar personal backgrounds, and have similar needs for presidential relief have *not* been the recipients of federal clemency. Part of the reason for the relative quiet in regard to the issue of why clemency is denied is that traditionally the identity of those who seek presidential mercy in regard to federal offenses has not been released publicly (in contrast, the names of recipients of grants of pardons, commutations, or other relief has long been a matter of public record).[40] But in December 2011, a series of articles by *ProPublica* and *The Washington Post* described the results of a joint investigation by the two publications that used Freedom of Information Act (FOIA) requests to obtain the names of those who requested a presidential pardon but were nevertheless denied one during the two terms of President George W. Bush.[41] A random sample of the names of both those who were denied a pardon and those who received a grant of clemency during the same period was drawn and was subsequently supplemented with demographic, criminal history, and financial information for those individuals by searching publicly available records, examining the results of other FOIA

---

[36] Grimaldi and Eggen, 2001 (January 2001 pardon of Marc Rich).

[37] Brodersept, 1999 (August 1999 commutations of sentences for members of Fuerzas Armadas de Liberación Nacional Puertorriqueña).

[38] Johnston, 1992 (December 1992 pardon of Caspar W. Weinberger).

[39] Rozell, 1994 (September 1974 pardon of President Richard M. Nixon).

[40] As a result of a flurry of Freedom of Information Act requests that followed the ruling in *Lardner v. Department of Justice*, 638 F.Supp.2d 14 (D.D.C. 2009), the OPA website now lists the names of all petition filers who were formally denied clemency beginning with the presidency of George H. W. Bush. No additional information (e.g., underlying federal offense type) is reported.

[41] Linzer and LaFleur, 2011; LaFleur, 2011; Linzer, 2011a; Linzer, 2011b; Linzer, 2011c; LaFleur and Schmidt, 2011; ProPublica, 2011; and Beckett and Respaut, 2011.

requests, and by phone contacts.[42] The lead authors of the study asserted that, based on their examination of the sample, "[w]hite criminals seeking presidential pardons over the past decade have been nearly four times as likely to succeed as minorities" while "[b]lacks have had the poorest chance" of receiving clemency and that despite controlling for characteristics and crime in the analysis, "race emerged as one of the strongest predictors of a pardon."[43] A *ProPublica* editorial suggested that the Attorney General "could order an immediate review of pardons granted by past presidents to see when and under what circumstances the racial disparities arose," since the Department of Justice (DOJ) "has the data to do this for every pardon case," resulting in "a study that would be even more definitive."[44]

Presumably in response to the issues raised in the December 2011 articles, the Bureau of Justice Statistics (BJS), the principal statistical agency within DOJ, announced in June 2012 that it was seeking applications for an examination of how requests for presidential pardons were evaluated, with a particular emphasis on testing the effects of race on the progress of petitioners as they move through the pardon adjudication process.[45] The RAND Corporation was awarded a grant to conduct the examination, and this document serves as the final project report.

Background on Clemency

While the examples of executive clemency grants described above certainly received widespread attention, they represent only the very tip of the iceberg in regard to the potential universe of executive clemency recipients. If we focus just on the two major types of executive clemency (pardons and commutations) and define a pardon as a grant that is generally made to someone after release from custody or supervision (usually granted to remove any continuing legal consequences of a conviction), and a commutation as a grant that is generally made to someone who is still incarcerated or under supervision (usually granted to reduce the severity of the punishment or end it outright), we can get a rough idea of the size of the pool of individuals who might be eligible. On September 30, 2014, there were 130,409 individuals under federal supervision (probation, community supervised release, or parole) and 195,385 prisoners in federal custody.[46] All 326,000 would have been at least theoretically eligible for a commutation on that particular day. Estimating the pardon-eligible population is more difficult. During a 20-

---

[42] LaFleur, 2011.

[43] LaFleur, 2011.

[44] Steiger and Engelberg, 2011.

[45] Bureau of Justice Statistics, 2012.

[46] Motivans, 2017, Tables 7.1 and 7.9.

year period ending September 2014, 1,481,432 defendants were convicted of federal offenses.[47] This number double counts those individuals who were convicted more than once as a result of separate prosecutions during this time span (each conviction is treated as a unique defendant), has not been adjusted for deaths, and of course does not include all of those who had been convicted in a federal court prior to 1995 but were still alive in 2014. Nevertheless, after excluding the 326,000 then in federal custody or under federal supervision, it is a safe assumption that *at least* one million individuals were theoretically eligible for a presidential pardon on September 30, 2014.

In light of the above estimates, instances where the power of executive clemency is exercised are relatively rare. Setting aside special proclamations by Presidents Gerald R. Ford and James E. Carter, Jr. related to mass clemency programs for Vietnam War era draft evaders and military deserters, over a 39-year span from 1978 to 2016 a total of 1,656 pardons and 788 commutations were issued, yielding an average of 40 pardons and 20 commutations annually (***Table 1.1***). Focusing only on the years of 2014 and 2015 in order to straddle our September 30, 2014, target date, a total of just 25 pardons and 88 commutations were granted, a particularly small count given that the potential pool of recipients at that time was at least 40,000 times larger for pardons and nearly 4,000 times larger for commutations.

Table 1.1 Annual Grants of Executive Clemency, 1978-2016

Year Ending Sept. 30	Pardons	Commutations
1978	162	3
1979	143	10
1980	155	8
1981	76	7
1982	83	3
1983	91	2
1984	37	5
1985	32	3
1986	55	0
1987	23	0
1988	38	0
1989	41	1
1990	0	0
1991	29	0
1992	0	0
1993	36	2
1994	0	0
1995	53	3

---

[47] RAND analysis of terminated criminal caseload disposition data presented in the Bureau of Justice Statistics publication series *Compendium of Federal Justice Statistics* and *Federal Justice Statistics* for reporting years 1995 through 2014 (as of January 23, 2018: https://www.bjs.gov/index.cfm?ty=tp&tid=64).

Year Ending Sept. 30	Pardons	Commutations
1996	0	0
1997	0	0
1998	21	0
1999	34	12
2000	70	6
2001	218	40
2002	0	0
2003	7	0
2004	12	2
2005	39	0
2006	39	0
2007	16	2
2008	44	2
2009	32	5
2010	0	0
2011	17	0
2012	5	1
2013	17	0
2014	13	9
2015	12	79
2016	6	583
Total	1,656	788

Source: Office of the Pardon Attorney, 2018a. Excludes clemency granted to Vietnam War era draft evaders and military deserters.

Calculating the rate at which clemency is granted by using as the denominator the number of all individuals across the United States who theoretically might welcome a presidential pardon or commutation is arguably misleading. While there have been a number of blanket proclamations to all persons meeting some pre-determined criteria (ones previously described relating to actions taken after the cessation of hostilities in the Civil War, World War II, and the Vietnam War are notable examples), a President (or more broadly, those advising him or her) typically is aware of the specific identity of an individual and the nature of his or her legal issues prior to making a decision as to whether a grant should be issued or not. As such, a more helpful way to understand the true size of the potential executive clemency pool would be to measure the number of individuals whose situation has been brought to the attention of the President's administration in some manner.

Presidents can certainly identify someone to whom they wish to grant executive clemency based on their own personal knowledge, they can become aware of a possible candidate as a result of recommendations from staff or entreaties from constituents, and they can learn of the interest an individual might have in receiving a grant through a direct request made by that individual (such direct requests are typically referred to as *petitions*). But mere knowledge of someone's name is unlikely to be a sufficient basis for a decision to relieve that person of

obligations imposed by the federal criminal justice system. Accordingly, additional information about the nature of the alleged or proven offenses would understandably be of interest to the President, as would be information about the potential recipient's personal and criminal background. During much of our nation's early history, the burden of learning more as to whether a specific individual merited executive clemency and making a decision based on those merits was taken on by the President. Andrew Johnson was said to have spent much of his available time reviewing petitions and issuing pardons, to the consternation of his department heads.[48] James K. Polk's reviews included writing "careful notes, demanding copies of indictments and court records, [and] insisting on reports from judges and district attorneys,"[49] and Abraham Lincoln met with petitioners at the White House and granted audiences to the mothers of condemned soldiers.[50]

Eventually, the increasing demands on a President's time for this level of hands-on involvement in vetting requests for executive clemency required a restructuring of the process. As one observer has noted, a "regime in which a petitioner could appear personally before the president to plead for a pardon became unthinkable after the Civil War, as the federal justice system grew in size and complexity."[51] By the beginning of the 20th Century, responsibility for performing an initial review of incoming clemency petitions, conducting investigations of individuals being considered for clemency by the President's administration, making an initial recommendation about each petition it reviews, issuing the paperwork required for officially documenting a grant of clemency (such documentation is known as a *warrant*), and performing other related administrative tasks was placed within the responsibilities of the Office of the Pardon Attorney, a unit within DOJ (the abbreviation for the Office that is currently found on its website is PARDON, but traditionally OPA has been in widespread use, and this document uses it as well). OPA is headed by the Pardon Attorney, who is appointed by the Attorney General. The Pardon Attorney is a career position within DOJ.

Over the years, administrative regulations have been promulgated to provide guidance to OPA in its work, particularly in regard to reviewing newly received clemency petitions, conducting investigations, and performing its advisory function.[52] Such regulations, for example, require that a "person seeking executive clemency…shall execute a formal petition" that must include "the information required in the form prescribed by the Attorney General," describe standards for determining whether a petition should be submitted at all (pardon petitions, for example, should not "be filed until the expiration of a waiting period of at least five

---

[48] Schroeder-Lein and Zuczek, 2001, p. 219.

[49] Love, 2010, fn. 24, quoting George Lardner, Jr.

[50] Love, 2010, pp. 1177-1178.

[51] Love, 2010, p. 1177.

[52] Executive clemency regulations are set forth in 28 C.F.R. Ch. I, Pt. 1.

years after the date of the release of the petitioner from confinement" nor should they "be submitted by a person who is on probation, parole, or supervised release"), and grant authority to the Attorney General to "cause such investigation to be made of the matter as he or she may deem necessary and appropriate, using the services of, or obtaining reports from, appropriate officials and agencies of the government."[53] DOJ has also adopted various internal policies in regard to the types of petitions it will refuse to accept for processing based upon its view of whether the relief sought merits the expenditure of OPA and other governmental resources required for a thorough investigation. For example, OPA will generally not accept petitions for posthumous pardons, those related to federal misdemeanor convictions, or those submitted by non-residents of the United States.[54] Moreover, other DOJ guidelines have been developed to describe the standards by which petitions are to be evaluated, noting, for example, that recommendations for the granting of pardons are based on "the petitioner's demonstrated good conduct for a substantial period of time after conviction and service of sentence" and take into account various "principal factors" such as the seriousness of the underlying offense. A commutation, on the other hand, is an "extraordinary remedy" where grounds for considering commutation might include "critical illness or old age" of the petitioner.[55]

The form prescribed by the Attorney General for petitioning the President requires the submitter to provide detailed information about his or her citizenship, the underlying offense, other criminal history, marital status, employment history, education, illegal drug use, and an array of other personal information. Other materials such as character affidavits and authorizations for release of information are also required submissions. Together, the petition and accompanying materials are referred to as the *application*. When a petition is received by OPA, the matter is opened as a new *case*.[56] As a matter of practice, OPA's review consists of first evaluating whether the application is deficient in some way such as result of missing information required by the Attorney General's form or failing to meet a DOJ policy or regulation, such as one requiring the petitioner to be a resident of the United States. If the defect is judged to be fatal and cannot be cured, the case is *administratively closed* and no further action is taken. Petitions that proceed with the evaluation process are subjected to varying levels of investigation, which may include, for example, requesting Federal Bureau of Investigation (FBI) background checks, reaching out to the U.S. Attorney in the district where the petitioner was sentenced for his or her opinion about the merits of the petition, or performing web searches for

---

[53] 28 C.F.R. §§ 1.1, 1.2, and 1.6.

[54] Office of the Pardon Attorney, 2018d.

[55] *United States Attorneys' Manual*, §§ 9-1-2.111, 9-1-2.112, and 9-1-2.113 (described in Offices of the United States Attorneys, 2018).

[56] As explained in **Chapter 2**, a newly received application might not be opened as a new case if OPA determines that it does not meet a threshold requirement for seeking federal executive clemency, such as when the application requests a pardon for a conviction rendered in a state court.

media articles and social media postings related to the petitioner. Ultimately, the Pardon Attorney will communicate OPA's proposed recommendations regarding whether a petition should be granted or denied to DOJ's Deputy Attorney General (who has direct supervisory authority over OPA), who in turn issues a written report to the White House Counsel (more formally Counsel to the President) with his or her final recommendations for the President.

It should be kept in mind that DOJ regulations covering executive clemency acknowledge that its procedural rules "are advisory only and for the internal guidance of Department of Justice personnel," and furthermore do not "restrict the authority granted to the President under Article II, section 2, of the Constitution."[57] The President need not utilize OPA for any purpose whatsoever in his or her exercise of the executive clemency power, is likewise free to ignore OPA's or the Attorney General's recommendations or other actions if he or she so chooses, and could simply decide one moment that someone should be granted a pardon or commutation and then announce that decision to the world immediately thereafter via an oral statement to the press or even a "tweet" without informing OPA in advance.[58] Indeed, a number of instances have been reported over the years in which the process for seeking clemency contemplated by DOJ regulations (i.e., the filing of a petition with OPA, an investigation of the underlying facts, and a recommendation to the President) was either short circuited[59] or bypassed completely.[60]

Nevertheless, OPA records regarding the processing of petitions it receives as well as the final dispositions of those petitions provide a useful indication of the likelihood of clemency for those who have taken steps to plead their case to the President's administration. *Table 1.2* presents summary counts for petitions before OPA and clemency grants for fiscal years (ending September 30) 2002 through 2013. We limited our table's calculations to just these years because fiscal years 2001 and 2014 were unusual ones in regard to OPA clemency administration historically. A flurry of pardons were issued during the last months of the presidency of William J. Clinton, resulting in a pardon total for fiscal year 2001 that was about five times the size of the

---

[57] 28 C.F.R. § 1.11.

[58] See, e.g., McLaughlin, 2018. Note that such an informal announcement alone would have a muted effect on the legal status of the recipient until OPA issues a clemency warrant for the sake of posterity and to make clear the President's specific intentions.

[59] See, e.g., Goldstein and Schmidt, 2001 ("Roger Adams, the U.S. pardon attorney in the Justice Department who has been involved with pardons throughout the Clinton administration and now oversees the process, said yesterday: 'I've never seen anything like this.' 'We were up literally all night as the White House continued to add names of people they wanted to pardon,' Adams said. 'Many people on the list didn't even apply for pardons.' Some requests from the White House arrived so late, Adams said, that pardon officials did not have time to conduct record checks with the FBI.").

[60] See, e.g., Reynolds, 1981 ("Chief Justice Department spokesman Tom DeCair said the pardon was initiated by the White House, and there was no pardon application, which is normally submitted to the Justice Department for review and recommendation to the president."); and Pear, 1981 ("Mr. Felt and Mr. Miller had not formally applied for pardons. Justice Department and White House officials said that the pardons had been initiated by the White House. The normal procedure is for a defendant to apply for such clemency.").

next largest annual count through the end of fiscal year 2016.[61] In fiscal year 2014, a special clemency initiative was set into motion by President Barack H. Obama in which federal prisoners were encouraged to apply for commutation if it was likely that they would have received a substantially lower sentence if convicted of the same offenses in a contemporary trial. The initiative triggered a wave of more than 20,000 petitions submitted to OPA over the ensuing years.[62]

Table 1.2 Executive Clemency Processing, Fiscal Years 2002-2013

Clemency Type	Petitions Pending Oct. 1, 2002	Petitions Pending Sept. 30, 2013	Petitions Received	Petitions Admin. Closed	Petitions Denied	Reported Grants
Pardons	988	754	3,899	843	3,062	228
Commutations	2,332	2,785	16,518	3,183	12,867	12

Clemency Type	Annual Average Petitions Received	Annual Average Reported Grants	Clemency Rate (%)
Pardons	324.9	19.0	5.8
Commutations	1,376.5	1.0	0.1

Source: Office of the Pardon Attorney, 2018a.

Table 1.2 indicates that during what was arguably a "normal" period of time for OPA, the clemency granting rate, even if the number of petitions considered is used as the denominator (instead of the size of the clemency-eligible universe), is less than 6 percent for pardons and about 0.1 percent for commutations. It should be noted that the figures shown for clemency grants include pardons and commutations that did not originate as a petition initially received and considered by OPA but instead were the result of direct presidential action.[63] Our analysis of publicly available OPA clemency statistics suggests that very few pardons and communications granted during fiscal years 2002 through 2013 bypassed the normal OPA review process.[64]

---

[61] See *Table 1.1*.

[62] U.S. Sentencing Commission, 2017, p. 11.

[63] Office of the Pardon Attorney, 2018a: "Cases in which clemency was granted to a person who did not file an application with the Office of the Pardon Attorney are counted as 'Petitions Granted' but have not been counted as 'Petitions Pending' or 'Petitions Received' since at least FY 1990."

[64] Though OPA does not specifically report the extent to which grants of clemency are made without a petition having first been processed by OPA in the traditional manner, the extent to which this happens can be inferred by a comparison of the Office's webpages for clemency statistics (which has counts of all pardon grants regardless of how processed) and individual petition status information (which has counts of all pardon grants other than those that did not seek relief through DOJ's codified process). Such a comparison indicates that just one of the 189

Original Scope of This Study

We were requested by BJS to complete the following tasks as part of our research:

- Develop a conceptual model of the deliberative process utilized by OPA for pardon petitions, and include a description of the various stages of decision-making that each petition might progress through until final disposition (i.e., administrative closure by OPA, presidential denial, or presidential grant).
- Draw a sample of petitions that reached final disposition between October 1, 2001, and April 30, 2012, inclusive. During this period, 211 pardon petitions were granted, 2,748 were denied, and 834 were closed administratively. The sample would include all 211 pardons granted during the study period, plus approximately 1,000 petitions that were either denied by the President or administratively closed by OPA.
- Develop a data collection instrument that would be used to code information contained in the case files maintained by OPA. An eyes-on review of the case files for the sample petitions would collect both objective information (e.g., petitioner age, race, ethnicity, sex, the nature of the underlying offense, the sentence imposed) as well as subjective information that captured, to the extent possible, the degree to which the petitioner's request evidenced compliance with established DOJ guidelines for evaluating the merits of pardon petition (such standards are described in detail in *Chapter 2*).
- Analyze the data collected from the sample files with the goals of understanding the pardon decision process and of testing "the primary hypothesis that all other things being equal African Americans and other minorities are less likely to progress in the pardon adjudication process than applicants of other races."[65]
- Produce a final report describing the methodology, data collection, coding, modeling, statistical analyses, and hypothesis testing utilized in the work.

Issues Arising During Our Data Collection

Appendix A presents additional explanation of the approach we employed to address some of the tasks described above, but a discussion here of important issues that arose during the preparation for and the execution of the collection of data from the sample case files will help the reader place the study findings into context.

It should be remembered that the information found in OPA's case files is often not in the public record, includes documents received from the judiciary and the executive branches that were delivered to OPA with the understanding that they would be used for the singular purpose of evaluating the merits of a petition for clemency, contain extremely sensitive details about a petitioner's personal life, and, notably, are considered to be covered by the attorney-client privilege. Staff attorneys at OPA are known as *attorney advisors*, because they are part of a chain

---

pardons granted during the G.W. Bush administration and just four out of 212 petitions granted during the Obama administration bypassed the traditional OPA review. That said, other presidential administrations in the 21st century have had a far larger percentage of all granted petitions result froma non-traditional origin.

[65] Bureau of Justice Statistics, 2012, p. 9.

of counsel that also includes the Pardon Attorney, the Deputy Attorney General, and the White House Counsel who together provide legal advice to the President in regard to his or her decisions related to the exercise of executive clemency. Much of the early days of this project were spent negotiating the terms of access by RAND associates who would be responsible for reviewing case files to develop the coding instruments and subject them to testing and the terms of access for those associates who would actually perform the information abstraction. In addition, a series of in-person and telephonic interviews of OPA staffers began near the start of the project, with the goal of providing RAND with a comprehensive insider view of pardon petition processing. These discussions continued at various points throughout the life of the study and informed the conceptual model of the process described in *Chapter 2*.

After matters related to data security and confidentiality were resolved, we received a copy of a transactional database then maintained by OPA for the purpose of recording summary information about the processing of all petitions disposed of during the study period of October 1, 2001, through April 30, 2012. We used that case management system (CMS) to draw a main sample consisting of all 210 pardons grants plus a randomly selected set of non-grant decisions that was stratified by year of disposition and final action, yielding 778 denied petitions and 224 petitions closed administratively. The total count of 1,212 cases in the main sample differed slightly from what was anticipated in the BJS solicitation because OPA's CMS did not have a record corresponding to one of the 211 clemency grants listed on the OPA website and because of minor rounding issues when drawing the stratified sample of non-grant petitions. Because of the possibility that we might have had to drop and then replace some petitions in the main sample for a variety of reasons (e.g., a missing physical case file), we also drew a backup sample of 198 denials and 60 administrative closures (also randomly selected and stratified by year of disposition) to be called upon as needed. No additional case files related to a pardon grant were available to include in this reserve set, as the main sample already contained all grants identified by the OPA CMS as having been issued during the study time frame. It should be noted that while most of the 1,470 petitions in our main and backup samples involved a conviction in a federal district court identified by the OPA CMS, a handful were related to convictions in military tribunals held by the Army, Navy, Air Force, and Marines. In addition, there were a small number of sample case files where the judicial system and location was not clearly recorded by OPA's CMS at the time (it should be noted that a more sophisticated CMS application was implemented by OPA after the end of our study period, one that more consistently collects a wide range of clemency-related information). In all, 1,155 files in the main sample related to convictions in identified district courts, 48 were the outgrowth of convictions in military tribunals, and 9 had an unidentified sentencing court (corresponding counts for the backup sample were 246 with an identified district court, 8 related to military tribunals, and 4 unidentified).

The list of 1,470 case files of interest was provided to OPA, which began the task of locating the physical records, requesting they be transferred to OPA's offices in Washington, DC (most of the hard copy case files had been archived to the Washington National Records Center facility in Suitland, Maryland), and logging them in anticipation of the eventual review by RAND. BJS funding covered OPA staff time for this purpose.

An extremely important issue that had profound implications for the entire project involved the presence of pre-sentence investigation reports (PSRs) in OPA's case files. These reports are drafted by the United States Probation and Pretrial Services System (a program within the Federal Judiciary and generally known by the acronym USPO due to its historical name of U.S. Probation Office) for the use by the sentencing judge following a conviction for a federal offense.[66] PSRs contain a wealth of information about a convicted defendant's background up to and including conviction, much of it highly sensitive and often including statements elicited from interviews with the defendant and others. The importance of PSRs in OPA's decision-making cannot be overstated as they represent the primary means for the attorney advisors to independently learn about a petitioner's pre-conviction history and to compare that information with what had been asserted by the petitioner as part of his or her application. Access to PSRs by those not a direct party to a criminal prosecution or by those who are not members of the judiciary is restricted by case law and judicial practices.[67]

A related matter concerned the presence of the Statement of Reasons (SOR), a memorandum written by a federal sentencing judge to detail his or her rationale for imposing certain types of sentences upon convicted defendants.[68] The Judicial Conference of the United States (the national policymaking body for the federal courts) has long imposed a policy of restricting public access to SORs, reportedly due in part to concerns about the release of information regarding cooperating witnesses or references indicating that a defendant had provided substantial assistance to the government.[69]

Both BJS and OPA consulted with the Administrative Office of the U.S. Courts (AOUSC), and it was jointly determined that the project would need to reach out to the sentencing judge for each of the petitioners named in our study sample and request their permission to view the PSR if one was present in the case file. Failure to obtain such permission before reviewing a PSR was asserted to constitute a prohibited redisclosure of the report. Though a PSR as described above is not a required part of the sentencing process when an individual is tried by a military court-martial, OPA required that the project also reach out to the Army, Navy, Air Force, and Marines

---

[66] Fed. R. Crim. P. 32.

[67] See, e.g., *United States Department of Justice v. Julian*, 486 U.S. 1, 12 (1988), and *In re Siler*, 571 F.3d 604, 610 (6th Cir. 2009).

[68] 18 U.S.C. § 3553(c).

[69] Judicial Conference of the United States, 2008.

for permission to view its case files, since sensitive information could be included in various materials forwarded to OPA by the branch. It was also felt that the Judicial Conference restrictions on access to the SOR could not be waived, and as such any statement would have to be physically removed from the case file by OPA staff before it was turned over to RAND. OPA determined that any reference within the case file to the information contained in the SOR, even if the SOR had been removed, would have to be redacted by OPA staff prior to RAND access, if such reference originated solely from OPA's own review of the SOR. A similar position was taken in regard to tax documents relating to the petitioner if they were provided to OPA by the IRS. Such information would be removed by OPA staff, and any references within the case file regarding IRS-supplied tax materials would be redacted as well.

Crafting a request to the sentencing judges for each of petitioners proved problematic because the legacy CMS in place at OPA for the case files in our sample did not consistently record the docket number of the underlying conviction, and it rarely included the name of the sentencing judge. A considerable effort was made to utilize other databases employed by BJS for its Federal Justice Statistics data project.to fill in the blanks, but the results were unsatisfactory. The workaround was to send the request to the Chief Judge of the district in the form of a letter from the BJS's then Acting Director, explaining that a study of the exercise of executive clemency was underway, describing the rationale behind the request for access to the PSR, and indicating only the petitioner's name, sentencing date, offense type, and a summary of the sentence. We included the names of all of the petitioners with an identified sentencing district court in the main and backup samples in these letters. The Chief Judge was asked to forward the request to the appropriate judge in his or her court. A somewhat similar request was sent to the service branches.

The initial response was encouraging, though there were still issues to be addressed. We received permission from three service branches to review materials associated with their courts-martial (the fourth never responded to our requests). Of the 91 federal districts contacted (three of the 94 districts in the federal system had no convictions that were part of the study), 66 provided the project with unrestricted access to the PSRs related to sentences in their courts. Eight courts refused to allow any access, and six never responded to our requests. Three courts gave permission for some, but not all, of the petitioners we requested. Finally, eight districts indicated that they could not grant or deny permission until the project provided them with more complete information about the underlying criminal case that included the sentencing judge's name and the docket number. This was an understandable request as many of the convictions dated back to a period before the district courts were fully computerized and as such it was not possible to easily locate information about a specific case essentially using only the name of the defendant and the date of sentencing. Discussions with some of the courts that had denied permission suggested that their reluctance to allow access was in part simply related to an inability to identify the specific judge who would need to make the final decision.

It was decided at this point to move forward with the project using cases originating in the 66 districts and 3 service branches that had granted permission (approximately 825 case files in the main sample were associated with these courts). Because an OPA staff member would eventually be charged with extracting the SOR from every case file before handing it off to RAND as well as performing other administrative tasks, we intended to have that person also review the case files for the eight districts that refused outright, the eight that requested additional information, and the three that had given only partial permission. During that review, the OPA staff member would take note of the identity of the sentencing judge and the docket number in each file. The plan was to make another request of those 19 districts but this time include an enhanced description of the petitioners' convictions in the letters to the Chief Judges. We also planned to have the OPA staff member confirm whether a PSR actually was present in each of the case files for these districts plus those for the six districts that were not responding to the requests. RAND's position was that if a PSR was not present in the file, there would be no reason to seek permission from the sentencing judge to access an OPA case file.

These issues pushed back the point at which RAND project team members had their first chance to review an actual OPA case file to December 2014. Coding instrument design began at that moment, and testing took place during the first part of 2015. By late May of that year, RAND was ready to begin the process of hiring and training coders for an anticipated late-July start of on-site abstraction. BJS supplied OPA with funding for six months of support for a contract paralegal to prepare case files for the RAND review as well as funding for office space to be used by the RAND abstractors. Shortly before launch, OPA informed the project that the hiring of the paralegal was still in progress and that, once hired, it would take a month for training (the paralegal was, in fact, not hired until September). Due to uncertainties as to the start date of the file review, RAND abandoned its original plans to hire recent law graduates and third-year law students for the purpose of abstracting information from case files during the summer law school recess, and instead assigned senior staff members of the RAND Survey Research Group to take on that function.

The tasks OPA assigned to the paralegal were considerable. The contract staff member would have to unpack and alphabetize case files that had been delivered to OPA from archives and then begin the process of removing SORs and IRS-supplied tax information, redacting information arising from any removed documents and cross-checking case file IDs in order to pull together multiple files related to the same petitioner and the same conviction that formed the basis of the request for clemency.

It was not until late October of 2015 that the first case files in the sample were ready to be subjected to eyes-on review. As a matter of convenience, the case files were processed by OPA and made ready for the RAND review in alphabetical order of the sentencing district. Case files related to convictions where the project had not been given explicit permission to view any PSRs were set aside for the moment, with the intent to revisit those files at a later point and provide the

Chief Judges for the conviction districts with more complete information about sentencing judge identity and district court docket number. To the extent that those efforts were not successful, petitions from the reserve sample would eventually be used to replace some or all of the ineligible main sample cases other than those related to pardon grants.

An immediate problem arose at that time due to the fact that the RAND abstractors were able to code cases faster than the OPA paralegal could prepare the case files. At this point, OPA's file preparation rate was about five per day. The process was slowed down even further when the OPA contract paralegal left the position in late December 2015, though arrangements were made by BJS to provide support to OPA to finance the hiring of two replacements. Only one of the replacements was in fact hired by OPA by mid-January of 2016, but file preparation was still at a virtual standstill as the new hire began the four-week training period OPA felt was needed. In mid-February 2016, OPA informed RAND that the most recently hired paralegal was no longer working on the project and, due to resource constraints, OPA had temporarily stopped all processing of case files for the RAND review. RAND was also informed at this time that two replacement contract paralegals would be available by mid-March. By this point, RAND had finished coding about 260 of the anticipated 1,212 case files for the study analysis and would continue the abstraction as soon as new case files were readied by OPA.

The resource issues experienced by OPA during much of the project's life are understandable in light of a major change in DOJ policy announced on April 23, 2014, by then Deputy Attorney General James Cole. A new "Clemency Initiative" was now in place, one that would "prioritize clemency applications from inmates" who met all of the following six factors: (1) Are currently serving a federal sentence in prison and, by operation of law, likely would have received a substantially lower sentence if convicted of the same offenses in a recent trial; (2) are a non-violent, low-level offender without significant ties to organized crime; (3) served at least ten years of their sentence; (4) do not have a significant criminal history; (5) demonstrated good conduct while imprisoned; and (6) have no history of violence prior to or during their current term of imprisonment.[70] Though there were no explicit restrictions on the nature of the offenses that could be included in the clemency initiative at the time of the original announcement (other than excluding crimes of violence as a natural consequence of factors 2 and 6), in practice the initiative's focus was on drug-trafficking offenses.[71] New sentencing standards related to crack cocaine, most notably as a result of the Fair Sentencing Act of 2010, was perhaps the most notable instance of a change in federal criminal law that would result in a markedly lower sentence for the same offense compared to an earlier conviction.[72]

---

[70] Office of Public Affairs, 2014.

[71] U.S. Sentencing Commission, 2017, pp. 9-10.

[72] Pub. L. No. 111–220 (August 3, 2010).

The effect of this initiative on OPA's workload was dramatic. In addition to prioritizing clemency petitions from those who would have received a shorter prison term, DOJ took steps to maximize the number of inmates who would take advantage of the new policy, including arranging for notification of the policy change to be provided to prison populations by the federal Bureau of Prisons and asking non-governmental organizations and federal public defenders to help identify appropriate candidates. Though the annual average number of commutation petitions received by OPA was slightly over 1,300 over the previous nine years (**Table 1.2**), during fiscal years 2014 through 2017 the average increased to about 6,600 per year. There was also enormous pressure upon OPA to complete the processing of this spike in petitions related to the clemency initiative before the end of President Obama's second term.

The effect of the initiative on this project was also dramatic. In March 2016, the newly appointed acting Pardon Attorney informed BJS and RAND that OPA had only the remainder of the year to review and evaluate the clemency petitions of potentially more than 5,000 inmates and did not have sufficient staff at the time to complete the work required by the Clemency Initiative prior to the deadline. Because the training of any new contract paralegals would likely require a considerable investment of time by OPA attorneys and paralegals, the acting Pardon Attorney also indicated that OPA staff would be unable to assist in the RAND study until the clemency initiative was concluded during the then current presidency.

As a result of OPA's position, BJS and RAND agreed to temporarily halt any further data collection requiring the processing of additional pardon files by OPA staff. The assumption at the time was that the hiatus would end at some point in the foreseeable future and RAND would be able to return to OPA to continue the case file abstraction. OPA did agree to allow RAND coders to complete the review for about 15 case files that had been processed prior to the Pardon Attorney's announcement. OPA also agreed to store the case files already retrieved for the study from the Suitland records facility in anticipation of a restart by the end of 2016 or at the beginning of 2017. Once these last remaining cases had been coded, there were 43 grants, 187 denials, and 57 administrative closures in the abstraction database, for a total of 287 records.

By December 2016 it had become apparent that there was no reasonable likelihood OPA would be in a position to facilitate renewal of the abstraction effort within the foreseeable future. As a result, BJS requested that RAND confine the project's statistical analysis of the pardon evaluation process to the set of 287 petitions that had already been coded by March 2016, subject to whatever limitations in explanatory power the reduced size of the sample presented. As we discuss in **Chapter 4**, the cessation of further data collection may have impaired the ability of our analysis to reach a more conclusive understanding of the role of race in the pardon process. That said, **Appendix A** describes how the final analysis dataset we were able to construct compared to what was intended in the original sample design and concludes that the target and coded sets look quite similar in terms of final outcome, year of final action, and the "depth" of OPA's investigation as measured by the level of detail provided with its recommendations. The major

case type categories for the underlying offenses are generally similar and the year of file opening and the year of sentencing are roughly similar. We believe that for the purposes of this report, the 287 records that we were able to create with information from hard copy case files should provide an adequate foundation for the analyses described in *Chapters 3* and *4*. Statistical tests within *Chapter 4* identify instances where the frequencies of fields being examined are too low to allow for generalizable results.

Organization of This Report

Chapter 2 presents a model of the deliberative process employed by OPA in evaluating incoming pardon petitions. *Chapter 3* provides descriptive statistics on measures collected during our abstraction of sample petition files. *Chapter 4* reports on the findings from our statistical analysis intended to identify petitioner and petition characteristics most strongly associated with grants of pardon—with a special emphasis on the effects of race and ethnicity on final actions—and also describes the assumptions and techniques utilized for this work. In *Chapter 5* we discuss what these descriptions and findings may reveal about OPA's pardon petition processing. And finally, *Appendix A* describes certain aspects of our methodological approach with an emphasis on the petition case file abstraction procedures (a copy of the coding instrument used for this purpose can be found in *Appendix B*) as well as presenting the reader with information regarding the degree to which the case file sample we were able to code differed from that originally intended to be utilized for this study.

2. Overview of the Pardon Petition Evaluation Process

Considerations

The following description of the process generally employed by OPA when considering pardon petitions is derived from a number of sources, including discussions with OPA staff; review of DOJ policies, controlling legal authority, general media, and academic articles; reference to materials available on the OPA website; and the review we conducted of petition case files as part of the development of our abstraction instruments. Executive clemency considerations that do not involve pardon evaluations are not included, nor are duties of the Office not directly related to reviewing petitions. Special rules regarding those seeking clemency in light of a sentence of death are not discussed. It does not purport to cover a complete range of possible events that might take place in regard to petition processing, most notably instances where some or all of the procedures OPA ordinarily follows have been skipped or altered as a result of a decision by the President's administration. Importantly, the process presented here is only intended to reflect what was generally in place during the Bush Administration and the first term of the Obama Administration.

For ease of exposition, we employ a number of conventions. The terms *petitioner* and *applicant* are used interchangeably and include legal counsel for an individual seeking clemency if utilized during the process. In reference to pardon decisions, the term *OPAs* refers both to the attorney advisors who are assigned to work on incoming pardon applications and draft proposed recommendations and to the Pardon Attorney who reviews the work of his or her staff attorneys and signs off on the final versions of the proposed recommendations sent to the DAG. The term *White House* includes both White House Counsel and the President.

Though we have taken steps to be precise in our terminology, it can difficult to avoid giving the impression that OPA decides whether a pardon should be granted. As will be described below, OPA has some latitude in deciding whether an incoming petition should be rejected outright or administratively closed for a variety of reasons, but in regard to petitions that survive past that initial scrutiny, OPA's discretion is limited to issuing a proposed recommendation to the DAG as to whether the petition should be granted or denied. It was reported to us that during our study period, from 2001 to 2012, the reportedly rare instances in which the DAG disagreed with a proposed recommendation usually resulted in OPA performing additional investigation and, as a result of such investigation, the recommendation typically matched with whatever final decision the DAG made on the petition after the results of that investigation were complete. Even when OPA's proposed recommendations are forwarded via the DAG to the White House Counsel without alteration from the original versions, the President is under no obligation to follow or even consider the advice. That said, we are given to understand that when the White

House disagreed with a final recommendation provided by the DAG during our study period, typically an effort was made to revisit the case so that OPA's decision conformed with that of the White House (whether such a change ever took place in any of our study petitions is unclear). Except for instances where a President issued a grant of pardon to someone who never had a petition evaluated by OPA, during our study period the end result of these feedback loops between OPA and the DAG and between the DAG and the White House was that an OPA final recommendation on the merits of a petition will generally mirror the President's final decision as well.

Initial Steps

Petition Receipt

Petitions seeking executive clemency in the form of a pardon reach OPA through one of two paths. When the underlying conviction was in a civilian court, the petitioner forwards the completed application to OPA directly. When a military court-martial is the subject of the petition, the petitioner must first file the application with the Secretary of the military department that had original jurisdiction. In turn, the service branch will forward the petition plus various materials related to the underlying conviction to OPA (if a military court-related petition is filed with OPA first, OPA will return the application to the petitioner along with the correct service branch contact information).

Threshold Rejections

At least during our study period of October 2001 through April 2012, it was the Pardon Attorney's policy that if the Office's caseload so required, batches of incoming applications would be subjected to brief scrutiny in order to initially determine whether there were certain types of significant issues with the application that either made it ineligible for consideration or required additional or corrected materials before entering the evaluation pipeline. This check was often performed by the Pardon Attorney rather than a designee within the Office, reportedly as a way to reduce the workload of the attorney advisors on his or her staff by culling out petitions that had little chance of moving forward. Generally, this threshold check was limited to the following areas:

1) Was the underlying conviction in a state court or foreign court?
2) Was the individual for whom the pardon was being sought now deceased?[73]
3) Has less than five years elapsed since the petitioner was last released from any incarceration or have less than five years elapsed since any conviction?[74]

---

[73] "It is the general policy of the Department of Justice that requests for posthumous pardons for federal offenses not be processed for adjudication…" (Office of the Pardon Attorney, 2018c).

[74] 28 C.F.R. 1.2.

4) Is the petitioner still on probation, parole, or supervised release?[75]
5) Is the application lacking required materials or is otherwise incomplete (such as missing the release of information form or three notarized character affidavits as required)?[76]
6) Was the application submitted by a non-resident of the United States?[77]
7) Was the application submitted within two years after a formal denial?[78]

As suggested in the discussion in the previous chapter, only the first of these reasons would be unquestionably fatal to a request for executive clemency, since it runs afoul of Article II, section 2's limitation to "Offenses against the United States." In contrast, the other criteria employed in the threshold check are only ones that have been developed as a result of DOJ regulations or internal policies and in fact present no constitutional bar to a pardon and can be ignored by the President should he or she so choose. The test for whether the petition is for a deceased individual, for example, reflects only a "general policy" adopted internally by DOJ; indeed, Presidents have granted posthumous pardons over the years, albeit infrequently.[79] DOJ administrative regulations set forth restrictions on the consideration of petitions filed before the expiration of five years since either the end of imprisonment or conviction, but our discussions with OPA suggested that the rules were being interpreted to require the conviction to be criminal in nature (rather than just an infraction) and the incarceration to be under color of sentence (rather than just an overnight detention). Regulations adopted by DOJ also discourage the submission of a petition by someone still under federal supervision, though like many of the adopted guidelines discussed herein they are suggestive in nature: "*Generally*, no petition *should* be submitted by a person who is on probation, parole, or supervised release."[80] Our interviews indicated that another informal OPA policy was to waive the federal supervision bar in the extremely rare instance where a petitioner was on lifetime federal parole. Even the test for an incomplete application is only a matter of DOJ policy; the Constitution is silent as to the manner in which a pardon can be requested of the President.[81]

---

[75] 28 C.F.R. 1.2.

[76] 28 C.F.R. 1.2 sets forth DOJ's intent that a request for clemency be made via the execution of a "formal petition…in the form prescribed by the Attorney General."

[77] Office of the Pardon Attorney, 2018d.

[78] Office of the Pardon Attorney, 2018c. It is unclear whether the practice of requiring a two-year hiatus between the issuance of a formal denial of a petition and the submission of a new application for the same underlying offense is one adopted unilaterally by OPA or by the larger Justice Department.

[79] Between 1975 and 2008 three posthumous pardons were granted by a President.

[80] 28 C.F.R. 1.2, emphasis added.

[81] Petitions can come in many forms even if they would not all be accepted for OPA processing. For example, the personal plea to a President by a foreign leader during a meeting can be considered a "petition" (McFadden, 2015). Though not granted, one on-line petition urging President Obama to grant a posthumous pardon to civil rights leader Marcus Garvey reportedly contained over 11,000 signatures (Change.org, undated).

We were informed that when a petition is considered to be defective at this point (and the application does not contain a persuasive request for a waiver), what might be characterized as a "threshold rejection letter" is sent to the submitter to explain why the application was rejected without consideration (as is true for all points in the pardon petition evaluation process, OPA correspondence when related to an application that was submitted with the assistance of legal counsel is in fact sent only to that attorney and not to the person for whom clemency is being sought). When the problem involves an issue that can be addressed (such as notarizing the personal oath section of the petition form) or if additional explanation might provide a basis for a waiver, a resubmission of the amended package is possible.[82] The rejection letter is intended to inform the applicant of that possibility.

At least during our study period, threshold rejections were generally not logged into OPA's case management system and issued a case number, and they were generally not included in any publicly reported counts of new petitions received.[83] Discussions with OPA suggest that workload concerns may have been the primary reason why newly received applications would be subjected to the brief check and possibly treated as a threshold rejection rather than being logged into the system and administratively closed if problematic. Because the OPA CMS at the time did not track these rejections, we cannot say with certainty what proportion of the incoming pardon caseload makes it past this threshold check.

Screening for Technical Compliance

An application that survives a threshold check (if one indeed takes place) is then given a unique case number for tracking in OPA's CMS and assigned to an attorney advisor for further processing. That staff member reviews the application package for completeness and coherence, noting any missing materials. He or she then determines whether an application is to be considered problematic because, in addition to the seven criteria discussed above for threshold rejections, one or more of the following conditions are true:

1) The underlying conviction was in a court of a United States territory or possession for an offense under local law.[84]
2) The underlying conviction was confirmed to have been already expunged under the former Federal Youth Corrections Act.[85]

---

[82] We were informed, for example, that during the study period applications were accepted for processing from petitioners who were residents of Canada. In such instances, the FBI would make a request of the Royal Canadian Mounted Police on behalf of OPA to perform a background investigation similar to those routinely conducted by the FBI.

[83] We have been informed that the current case management application in use at OPA now tracks such rejections even if no case number is assigned.

[84] 28 C.F.R. 1.4.

[85] 18 U.S.C. §§ 5021 – 5026 (repealed Pub. L. 98-473, Oct. 12, 1984). Under the now repealed Federal Youth Corrections Act, youthful offenders released from imprisonment or discharged from probation prior to the expiration of the maximum sentence possible for the offense had their convictions set aside upon the sentencing court's

3) The underlying conviction was for a misdemeanor.[86]

The first two standards in this list are ones in which OPA has little discretion other than to end its consideration of the petition. The President's pardon power does not extend to non-federal law (so criminal offenses against the laws of an overseas territory are outside of the Constitution's grant), and expunged convictions essentially lack any offense to pardon. Misdemeanor convictions, on the other hand, fall into the DOJ "general policy" category of discouraging but not necessarily banning petition submissions, and conceivably a compelling argument for a waiver of the policy could be successful.

After this initial review is completed, a *screening letter* is prepared, notifying the petitioner of the receipt of his or her application and explaining what the process entails going forward. In instances where the petitioner is seeking a pardon based on the assertion of innocence, the screening letter would also indicate that trial transcripts and other supporting documentation may need to be submitted in furtherance of the application, since under DOJ guidelines petitioners "seeking a pardon on grounds of innocence or miscarriage of justice bear a formidable burden of persuasion."[87]

What happens next depends on whether the application was considered problematic (because of the criteria described previously in regard to threshold checks and initial screens) and if so, what OPA chooses to do in response.[88] If no such problems have been noted, the screening letter is sent to the petitioner as described above. If that is not the case, issues considered potentially fixable, requiring additional explanation or clarification by the petitioner, or that can be waived with the receipt of compelling justification will result in the screening letter including an explanation of the deficiency and offering the petitioner an opportunity to address the problems noted by providing the requested information, documentation, or justification within 30 days. Our sense from discussions with OPA staff and our review of case files was that extensions of the 30-day period were not unusual, nor was the sending of one or more reminder letters to the petitioner when no response was received.

---

certification of early release or discharge. If such set-aside occurred and documentation of same was available, there would be no conviction to pardon. Office of the Pardon Attorney, 2018c.

[86] Office of the Pardon Attorney, 2018d.

[87] *United States Attorneys' Manual*, § 9-1-2.112 (described in Offices of the United States Attorneys, 2018). Discussion with OPA staff suggested a strong showing that compelling evidence proving innocence was not available at the trial would generally be required to address this burden, but it was also asserted that the last successful claim of innocence in regard to executive clemency prior to the point where our interviews were conducted occurred in the 1980s.

[88] Note that during our study period, no application already rejected at the threshold check stage will have advanced to this point where it was logged into OPA's case tracking system and then subjected to a technical compliance screen. That said, the criteria we described for the threshold check would continue to apply to applications that were not rejected early on.

A different result takes place when the OPA attorney advisor conducting this screen believes that the issues noted are ones that cannot be successfully cured or waived, or that the chances of the petitioner addressing such problems are far outweighed by the likelihood that the petition will ultimately result in a recommendation of denial. In such instances, the case is administratively closed, the disposition is noted in the OPA CMS, and notification of the fact of administrative closure and the reasons underlying the decision are included in the screening letter sent to the petitioner. At this point, the case is terminated. It was reported to us during our discussions that, should a potentially fixable or explainable problem providing the basis for an administrative closure be cured later by the petitioner's actions after the closure (such as by eventually sending in a requested document), the case can be reopened. When the reopening takes place within the same month as the administrative closure, the same case number would be used. Otherwise a new case number would be assigned to the file.

Administrative closure can also occur after the mailing of the screener letter, and when that happens, the petitioner is also notified by mail. Causes can include the petitioner's failure to adequately and timely respond to the screener letter's notification of a deficiency or other problem in the application, the death of the petitioner during the pendency of the petition, or the petitioner's own request to withdraw from consideration for executive clemency. Such closures can also occur at any time during the pardon evaluation process prior to a formal recommendation of denial or grant if OPA receives information that would have led to a decision to administratively terminate the case. For example, the original petition application asserted that the underlying conviction was in an Alabama federal court, but it was learned months later that the prosecution took actually place in a local court in that same state.

The Formal Review Process

The USPO Request

Once a petition moves past the initial screen point that could lead to an administrative closure, what might be characterized as the *formal review* process begins. We use this term because the typical final action on the part of OPA after the screening letter is sent (and any issues noted in that letter are addressed by the petitioner to OPA's satisfaction) is a decision on the substantive merits of the petition that leads to a recommendation that it be either denied or granted, rather than a decision on technical compliance with regulations and policies developed by DOJ and OPA. In practice, there are exceptions to this particular scenario, but they are not common.

OPA's first step at this point is to learn more about the underlying conviction. For matters involving non-military offenses, the USPO is contacted in order to obtain a copy of its pre-sentence investigation report, copies of the sentencing court's official judgment of conviction and the SOR, and a statement of USPO's views as to the merits of the petition. The request to the

USPO is transmitted at or soon after the time when the petitioner is sent the initial screening letter (in instances where technical issues are identified with the application, the USPO request does not usually go out until the resolution of those issues is complete). The USPO is also asked to utilize its resources to provide any information available to the Office regarding the petitioner's behavior after release from incarceration or supervision following the conviction, as well as any information concerning the petitioner's satisfaction of any ordered restitution or other obligations imposed as part of the sentence. For matters concerning military courts-martial, the service branch has already provided OPA with a factual statement of the offense, prosecution, and the procedural history that followed conviction. For expositional reasons, for the remainder of this report we treat court-martial information from the service branches as if it was information from the USPO about a district court conviction.

It should be noted that in some (though not all) instances where the underlying issues involve tax matters, the Internal Revenue Service (IRS) may be contacted during this phase of the review for additional information. In addition, communication between OPA and the petitioner can continue throughout the petition evaluation process, whether initiated by the petitioner (to ask about the status of the application, for example) or by OPA (for example, to request additional information or clarification about an aspect of the case not apparent at opening).

First Consideration of Merits

Applicable Standards

Information contained in the PSR as well as other materials provided by USPO are of great influence on OPA's evaluations of the petitions it considers. Discussions with OPA staff suggest that what is learned from USPO alone is often sufficient for the Office to determine that the petition is unlikely to merit a grant recommendation. While OPA may also inform its deliberations at this point through the attorney advisors' use of publicly available sources such as Westlaw (for trial court decisions, appellate opinions, or other legal activity related to the petitioner), the federal judiciary's Public Access to Court Electronic Records (PACER) system (for court records concerning the underlying conviction), or Google and other internet search engine (for media articles concerning the petitioner), USPO provides a rich source of verifiable information to use when applying the substantive standards it follows when making clemency recommendations.

Those standards during our study period primarily came from two written sources. The first is the *United States Attorneys' Manual* (*Manual*), a document that DOJ describes as "a quick and ready reference of internal department policies and procedures" (since 2018 the document has been known as the *Justice Manual* and sections have been renumbered and in some instances revised; where the substance of any revisions differ meaningfully from what we describe for the *United States Attorneys' Manual* in effect during our study period, such changes will be noted in

the footnotes).[89] Section 9-1-2.112 of the *Manual* sets forth the standards related to the consideration of pardon petitions, and initially notes that grants are made "on the basis of the petitioner's demonstrated good conduct for a substantial period of time after conviction and service of sentence."[90] It also lists five "principal factors" that are to be taken into account when deciding whether a petitioner should be recommended for a pardon. Below, we set forth those factors, along with selected excerpts from the guidance contained in the DOJ *Manual*:[91]

- **Post-conviction conduct, character, and reputation.**
  - o The "individual's demonstrated ability to lead a responsible and productive life for a significant period after conviction or release from confinement" should be taken into consideration, as well as the "petitioner's financial and employment stability, responsibility toward family, reputation in the community, participation in community service, charitable or other meritorious activities and, if applicable, military record."
- **Seriousness and relative recentness of the offense.**
  - o A "suitable length of time should have elapsed" prior to considering very serious offenses such as "a violent crime, major drug trafficking, breach of public trust, or white-collar fraud involving substantial sums of money."
  - o The "likely effect of a pardon on law enforcement interests or upon the general public should be taken into account" when considering the "case of a prominent individual or notorious crime."
  - o "Victim impact may also be a relevant consideration."
  - o When a petitioner is a suitable candidate, "the equities may weigh more heavily in favor of forgiveness" if the "offense is very old and relatively minor."
- **Acceptance of responsibility, remorse, and atonement.**
  - o Consideration should be made of the "extent to which a petitioner has accepted responsibility for his or her criminal conduct," "made restitution to its victims," and is "genuinely desirous of forgiveness rather than vindication."
  - o A "petitioner's attempt to minimize or rationalize culpability does not advance the case for pardon."
  - o Those petitioning for pardons "on grounds of innocence or miscarriage of justice bear a formidable burden of persuasion."
- **Need for relief.**
  - o "The purpose for which pardon is sought may influence disposition of the petition," and in some instances "may make an otherwise marginal case sufficiently compelling to warrant a grant in aid of the individual's continuing rehabilitation." But "the absence of a specific need" should not be negatively construed, since some petitioners "may understandably be motivated solely by a strong personal desire for a sign of forgiveness."

---

[89] Lee, 2018.

[90] Offices of the United States Attorneys, 2018.

[91] Offices of the United States Attorneys, 2018.

- **Official recommendations and reports.**
  - Input from "concerned and knowledgeable officials," in particular the U.S. Attorney and sentencing judge in the federal district of conviction, are to be "carefully considered."
  - Consideration should be taken of the "likely impact of favorable action in the district or nationally, particularly on current law enforcement priorities."

The other key written source for evaluating petitions comes in the form of internal memorandums from the White House Counsel to DOJ outlining the President's preferences in regard to granting executive clemency. Guidance contained in such memos would be given the strongest of weight in the decisions of OPA's attorney advisors, the Pardon Attorney, and the DAG when assessing whether a petition for clemency merited a recommendation to the President to either grant or deny. Copies of memos issued during the Bush Administration on May 2, 2001, and during the Obama Administration on July 13, 2010, were obtained and made available by *USA Today* in 2015, providing insight as to how pardon evaluation criteria evolves over time.[92]

Though written by different White House Counsel in different presidential administrations, the two memos share a number of similarities. Both assert that the President believes the five principal factors set forth in the *Manual* are appropriate ones for DOJ to use when evaluating petitions for the President's consideration, acknowledge and confirm the need for OPA and the DAG to continue to perform their "traditional advisory functions," and describe various situations in which the likelihood of a presidential pardon would be low.

There are some differences, however, in the specific offenses and petitioner histories that were disfavored. *Table 2.1* lists those contained in the Bush memo (the "President believes there are some offenses for which clemency should rarely be granted," with a "strong presumption against granting a clemency request") and the Obama memo ("The President believes that…there are certain offenses for which a pardon should very rarely, if ever, be granted absent truly extraordinary circumstances"). For example, while the White House Counsel for President Bush listed all convictions involving trafficking in illegal drugs, his counterpart for President Obama limited the President's stated reservations only to convictions that involved large-scale drug trafficking, and then only to instances where the petitioner played a "significant role." Another distinction was the financial fraud crimes mentioned in the Obama Administration memo, a category not included in the Bush Administration directive.

---

[92] Korte, 2015. Copies of the two memos can be found at Gonzales, 2001 and Bauer, 2010.

Table 2.1 Disfavored Situations in Presidential Pardon Memos

Subject Area	Bush Memo May 2001	Obama Memo July 2010
Violence	Violent offense (e.g., murder, rape)	Violent offenses involving serious bodily harm (e.g., murder, rape)
Weapons or Arson	Use of firearms, deadly weapons, or explosives; arson	Use of deadly weapons (e.g., unlawful firearms, explosives); arson
Illegal Drugs	Illegal drug trafficking (i.e., manufacturing, import/export, distribution, sale)	Significant role in large-scale drug trafficking
Minors	Harm to children or sex-related offenses involving minors	Physical harm to children
National Security	Treason, sabotage, espionage, terrorism, damage to national security	Terrorism and other offenses directly impacting national security
Corruption	Public corruption	Public corruption involving significant breaches of public trust
Fraud	Not discussed	Financial fraud harming significant numbers of individuals or substantial loss to federal government
Time Since Conviction	Felony conviction less than ten years old	No fixed rule beyond existing DOJ five-year standard; recentness of offense viewed in context of entire application, including the offense's seriousness
Prior Convictions	Extensive criminal history (e.g., three or more convictions)	Three or more convictions absent "extraordinary post-conviction rehabilitative history"

Source: Gonzales, 2001 and Bauer, 2010.

The memos also describe situations that can be appropriate for a clemency grant. The Bush memo noted that cases involving crimes "committed long ago when the person was very young" or where the petitioner "turned his or her life around by making sustained and significant contributions to the community since a conviction" may merit clemency. The Obama memo emphasized the President's belief that applications are stronger when "more time has passed since conviction or release," in part because there is more opportunity for the petitioner to "establish exemplary post-conviction conduct and demonstrate true acceptance of responsibility, remorse and atonement." Furthermore, crimes that might be considered "aberrational" when "judged by the applicant's otherwise exemplary life" and crimes that were committed "when the applicant was very young" may warrant clemency.

There are other influences on OPA decision-making, albeit not arising from specific guidelines in written form. One can be the clemency decisions that a President makes early in his or her first administration, which one former Pardon Attorney has characterized as sending a

"clear signal" to OPA and DOJ of the types of petitions for which grant recommendations are most likely to be followed.[93] Another is a type of balancing test that weighs potential future expenditures of government resources, including time spent by OPA staff or by federal agencies performing investigations, against the likelihood that further research and evaluation of the application would lead to a positive recommendation. Many of the general policies applied by OPA for restricting incoming petitions are already based on resource considerations, such as those related to posthumous pardon petitions ("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"), misdemeanor petitions ("limited resources of the Office of the Pardon Attorney are best utilized to review and process applications for pardon of federal felony convictions"), and non-resident petitioners (OPA "does not accept pardon petitions from non-residents of the United States because of the difficulty and costs associated with the Federal Bureau of Investigations conducting a thorough background investigation abroad into an applicant's post-conviction life").[94] Our sense from our interviews and case file review was that similar considerations are in play at various points in the evaluation process where a decision to either recommend a denial and terminate the case or seek further information from investigations or the comments of officials must be made. The receipt of the comprehensive USPO report and associated materials advances the petition evaluation process to one such decision point.

Making the Decision

Though it is possible that USPO-derived information could lead to an administrative closure for technical reasons, a more likely scenario is that the Office will either decide to recommend a denial or continue its consideration and investigation of the application.[95] Written denial recommendations (more properly, *proposed* denial recommendations, since they will eventually be offered to the DAG for a final decision) were issued in one of two forms during the study period: a relatively brief *summary denial* or a longer *full denial*.[96] The two versions differ solely

---

[93] Korte, 2015.

[94] Office of the Pardon Attorney, 2018c; Office of the Pardon Attorney, 2018d.

[95] We have been informed that currently the Office will not administratively close a file solely on the basis of information in the USPO report.

[96] We are given to understand that by the time this report was written, a different means of communicating OPA's recommendations to the DAG and the White House had been adopted. Instead of a narrative form similar to a legal brief, the Office now uses a template divided into sections focusing on a particular aspect of the evaluation, such as a factual summary of the underlying offense and prosecution; the petitioner's pre-conviction biography; the relevant post-conviction history; the petitioner's character; evidence that petitioner has accepted responsibility, expressed remorse, or atoned; the need for relief; how the U.S. Attorney, sentencing judge, and victims viewed the request for clemency; and finally the Office's recommendation. In situations similar to those when summary denials were issued, the Office's recommendations are now submitted in what is referred to as "microsummaries" of 4,000 characters or less.

in the level of detail in the description of facts underlying the case and the reasoning behind OPA's decision. Summary denials that we viewed were about a page in length or less, while full denials could cover five or more pages (grant recommendations, in contrast, could even take booklet form in order to fully describe what OPA learned about the petitioner and why the Office chose to recommend a grant). It was our understanding that a recommendation of denial relatively early in the evaluation process (such as after consideration of a recently received USPO report) would almost certainly take the form of a summary denial, though there have been instances when a longer full denial would result at this point, such as when the petitioner or the underlying offense was particularly well known or notorious or if the decision was especially complex or difficult to make.

Additional Investigation

If OPA decides that after receiving the USPO report further investigation is warranted, a typical next step is to issue a request to the FBI's Special Inquiry and General Background Investigation Unit for an Application for Pardon after Completion of Sentence (APACS) investigation. The investigation sought can be *full* (including, for example, personal background checks, interviews with neighbors and associates, corporate records searches, reviews of FBI internal files, civil and criminal court checks, military records requests, credit and banking history reports, and discussions with local law enforcement agencies) or *limited* to specific areas (such as just an updated criminal history report). The decision to request one level of investigation or the other is typically driven by the specific informational need, desired time frame, and based on our understanding of the evaluation process, weighing the demand on FBI's time and resources for conducting the investigation versus the likely benefit. In a number of instances, especially in matters that are strong candidates for a grant recommendation, there may be a full APACS done early in the case's progress and then a limited APACS done just before drafting the proposed decision, in order to check on any recent events in the petitioner's life.

The results of the FBI investigation, which may take months to complete, provide OPA with a wealth of information about the petitioner's recent history. They also trigger what might be thought of as another key decision point for OPA, since what is learned may in and of itself form the basis for a decision to recommend a denial. If that is in fact OPA's decision, then the process described previously applies here as well, as it would anytime OPA wishes to issue a denial recommendation.

Our sense is that, in typical situations, OPA turns its attention to other petitions before its attorney advisors during the period in which the FBI investigation is underway. Once the FBI report is received and a decision is made to proceed rather than deny, OPA will reach out to a

variety of sources for additional information and input.[97] Some sources, such as the IRS (when tax issues are involved), the Department of Homeland Security (DHS) (typically when immigration status is at issue), and various divisions with DOJ (Antitrust, Tax, and Environmental and Natural Resources) are contacted only if there is a specific subject-matter connection to issues presented in the application. But no matter the nature of the offense, information and input are typically sought from two important sources in instances where the results of an FBI investigation did not directly lead to a denial recommendation: the U.S. Attorney and the original trial judge in the federal district where the petitioner was convicted and sentenced.[98] Section 9-1-2.112 of the *Manual* notes that the comments and recommendations of these two sources need to be "carefully considered" when determining whether clemency is appropriate.[99] In addition to requesting his or her input, the U.S. Attorney is generally asked to solicit the views of the sentencing judge on behalf of OPA (in some instances, OPA will reach out to the sentencing judge independently).

Final Decision

Though there is not any specific event that signals the end of the review process, eventually OPA determines that the time has come to reach a decision as to whether to recommend a grant or denial (it would be extremely unusual for a case to have progressed to the point where an FBI investigation was triggered and requests for input were sent to the U.S. Attorney or other agencies only to result in an administrative closure). It should be noted that once a proposed recommendation is drafted by an OPA attorney advisor, it is not immediately forwarded to the DAG. Instead, the Pardon Attorney reviews his or her staff's initial recommendation and consensus is reached about the decision (communications between the Pardon Attorney and the attorney advisor about any particular petition can transpire at numerous points in the process, not just after an initial recommendation is made). Once the Office is in alignment in regard to the proposed disposition of the case, a *Report & Recommendation* for the petition is finalized. These summarizations of the reasoning behind OPA's decision are grouped with those for other case files and periodically provided to the DAG in batches (we were informed that, typically, no case-

---

[97] Under certain circumstances, OPA may also contact the identifiable victim of the petitioners' offenses to provide notification that clemency has been sought and to solicit the victim's input. See 28 C.F.R. 1.6. While this appears to most likely take place at a late stage in the pardon process in order to limit the need to contact to instances where a recommendation of grant is a realistic possibility, there is no reason why OPA could not reach out to the victim at a much earlier point.

[98] When the underlying conviction resulted from a prosecution brought by a DOJ section such as its Antitrust Division, it would be the Assistant Attorney General (AAG) leading that division who would be asked for information and input rather than the U.S. Attorney. In the discussion that follows, references to the U.S. Attorney include the division AAG when this occurs.

[99] Section 9-1-2.111 of the *Manual* also notes that the views of the U.S. Attorney are given "considerable weight" in DOJ's recommendations to the President.

related communication between DAG and OPA takes place prior to the initial transmission of OPA's proposed recommendation).

The DAG is not bound by OPA's decisions, so there are essentially four actions that can be taken. The first would be to accept the decision as is and forward the Report & Recommendation without change as part of the *Letter of Advice* sent to the White House Counsel. Alternatively, the DAG can accept the recommendation but not the reasoning, and accordingly send the proposed disposition back to OPA and ask that the written rationale for the decision be modified. Another outcome would involve the DAG asking OPA to conduct further investigation before a decision is made. And a final possibility, which we were told happened in less than 5 percent of OPA's initial decisions during our study period, is that the DAG requests that OPA reverse its recommendation and draft a new report that reflects the DAG's wishes (we are informed that in current practice, such a request would no longer be made and instead both the original recommendation by the Pardon Attorney and the recommendation of the DAG are presented to the White House when they differ, with the views of the DAG presumably holding more weight).

When the contents of a Letter of Advice are finalized, OPA prepares it for the signature of the DAG (OPA subsequently forwards the letter to the White House Counsel). What happens after that point is up to the President and his or her advisors. If a grant is made (regardless of whether that was what OPA recommended), OPA will prepare the formal warrant and notify the petitioner. If it is denied (again, independent of the recommendation), OPA will advise the petitioner of the decision and close the case. Alternatively, the White House could request that DOJ reevaluate the merits of the petition and, if need be, conduct additional investigation. And finally, the President could do nothing at all. If in such a case the OPA recommendation was a positive one, the President's decision could be postponed indefinitely, even until the next administration is sworn in. If instead the recommendation was for denial and no action is taken by the President within 30 days after the Letter of Advice is received, regulations provide that DOJ can assume the President concurred in the adverse recommendation and treat the petition as having been denied (we are informed that despite DOJ's ability to take such action, formal denial on the basis of inaction has not occurred in recent memory, and instead the petition is simply treated as pending).[100] That said, our assumption is that there is nothing in the law to block the President from later granting executive clemency to someone whose petition was closed in this manner.

Depending when the attorney advisor's recommendation is eventually transmitted to the DAG, when the DAG sends a block of recommendations to the White House Counsel in the Letter of Advice, and when the President actually reaches a decision, it can be many months between when an OPA attorney advisor initially proposed a recommendation and the actual end of the case.

---

[100] 28 C.F.R. 1.8.

3. Characteristics of Pardon Petitions

Outcomes

We begin by first examining the end point in the process by which a request for executive clemency is reviewed by OPA and, in many instances, by the Deputy Attorney General and the White House as well. Our abstraction team examined 287 case files, of which 57 were closed administratively, 186 ended with the petition denied, and 44 resulted in a presidential pardon (***Table 3.1***).

Table 3.1 Final Outcomes in Weighted Sample – All Case Files

Evaluation Type	N	Outcome	Unweighted Percent of Petitions	Weighted Percent of Petitions
All	287	Administrative closure	19.9	21.0
		Petition denied	64.8	73.4
		Petition granted	15.3	5.6
Formal only	230	Petition denied	80.9	92.9
		Petition granted	19.1	7.1

Notes: Weighted values are by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

We generally present our results in this chapter in terms of weighted values in order to more helpfully describe the business of the Office of the Pardon Attorney for petitions disposed from October 1, 2001, through April 30, 2012. The transactional database utilized by OPA during that period indicated that there were 210 pardon grants, 2,748 petition denials, and 788 administrative closures during this period. The weights we utilized for our analysis dataset result in a distribution that mirrors what actually took place (i.e., 21.0 percent administrative closures, 73.4 percent denials, and 5.6 percent grants). Though the proportion of case files in our data that resulted in presidential pardon grants (15.3 percent) is nearly three times as large what one might expect based on OPA's records, oversampling important but relatively rare events like a grant of pardon was part of our original project design and is adjusted appropriately with the use of weighing. With such weighting, the proportion of all pardon petitions that resulted in a grant of executive clemency (which for the purposes of this report we refer to as the *clemency rate*) was 5.6 percent.

Table 3.1 also provides context for many of the tables that follow. The weighted percentages for petition outcomes can be used as an initial means for identifying whether various petitioner characteristics, application features, or OPA actions (such as age, representation by counsel, or FBI investigation requests) might be associated with an increased or decreased likelihood of a

particular outcome relative to all petitions taken together. For example, *Table 3.19* later in this chapter indicates that pardons were eventually granted to 3.3 percent of all petitioners whose file contained evidence of criminal activity after release from incarceration or federal supervision for the offense that was the subject of their clemency petition. Given that 3.3 percent is lower than the 5.6 percent overall clemency rate shown in *Table 3.1*, post-release criminal activity could *potentially* be associated with a reduced likelihood for executive clemency. Whether that apparent association is actually one of statistical significance is something explored more fully in *Chapter 4*.

Note that the lower portion of *Table 3.1* presents weighted percentages for petition outcomes in which a grant or a denial are the only two options. As discussed in the previous chapter, administrative closures represent a decision by OPA attorney advisors that the application package has failed to meet objective standards set forth in various regulations and policy statements (e.g., that the petitioner should be a resident of the United States). Petitions that survive this initial technical scrutiny are thereafter judged on more subjective criteria (such as whether the petitioner is genuinely desirous of forgiveness), and instead of OPA being the sole decider as to whether to terminate the application, others in the chain of decision-making, including the Deputy Attorney General and the White House, are now involved. Because the outcome of the OPA petition evaluation process at this point is a recommendation to the President, for the purposes of this report we characterize the percentage of cases surviving the administrative closure stage that ultimately result in a pardon grant as the *recommendation rate*. For tables in this chapter where the focus is on outcomes that arise from a formal evaluation of the merits of the petition (in other words, only denials and grants), the 7.1 percent recommendation rate shown in the bottom section of *Table 3.1* should be used as a basis for comparison. As was suggested in the context of clemency rates, comparisons of recommendation rates for various petitioner characteristics, application features, or OPA actions with the overall rate for all petitions proceeding past the administrative closure stage can be quite useful in identifying potential influences on outcomes, but our deeper analysis of any possible relationship can be found in *Chapter 4*.

Petitioner Characteristics

Age, Sex, and Citizenship

As a group, petitioners were usually in their early fifties (as measured by mean and median) when the application package was submitted to OPA, with only minor differences between the averages depending how their cases were eventually decided (*Table 3.2*). For most petitioners, the underlying offense was typically committed during their late thirties or early forties, though the average age of those receiving grants was much lower. *Table 3.17* later in this chapter more

precisely describes the length of time elapsing between the underlying conviction and the seeking of executive clemency.

Table 3.2 Petitioner Age

Years	All Petitions		Closures		Denials		Grants	
	Mean	*Median*	*Mean*	*Median*	*Mean*	*Median*	*Mean*	*Median*
At Application	53.0	52	54.3	50.5	52.5	52	53.8	53
Time of Offense	38.1	37	41.1	38	37.7	37	31.2	29

Notes: N for age at application=284; N for age at offense=287. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

While ***Table 3.3*** appears to suggest that women do not initiate the pardon process to a degree that would be expected given their proportion in the population generally (just 15.0 percent of all petitions were submitted by women), in fact just 13.5 percent of federal defendants charged in U.S. district courts in 2010 were female.[101] As a guide to help interpret ***Table 3.3*** and similar tables in this chapter, the "Percent of Final Action" panel in the table indicates that 11.4 percent of all granted petitions were submitted by women (17.5 percent of all administratively closed petitions and 14.5 percent of all denied petitions were also submitted by women) while the "Percent of Category" panel indicates that 4.3 percent of all petitions submitted by women resulted in a pardon (24.6 percent of all female-submitted petitions resulted in an administrative closure and 71.1 percent of all female-submitted petitions resulted in a denial).

Table 3.3 Petitioner Sex

Sex	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Male	85.0	82.5	85.5	88.6	20.4	73.8	5.8
Female	15.0	17.5	14.5	11.4	24.6	71.1	4.3

Notes: N=287. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Relatively few non-citizens applied for executive clemency (3.5 percent, ***Table 3.4***), but the rate in our sample cases is somewhat similar to what might be expected in the federal defendant population outside of immigration matters. U.S. citizens made up about 56 percent of all defendants in federal district courts in 2010, but of the remainder, 90 percent were identified as

---

[101] Motivans, 2013, p. 18, Table 10.

illegal aliens.[102] Based on our analysis of OPA case management data for petitions disposed during our study period, immigration offenses appear to be very rare subjects of clemency pardon petitions, despite the fact that 28.2 of all defendants in federal district court in 2010 were charged with such offenses. (One possible explanation for the low petition rate is that many of these convictions result in deportation, and DOJ has a stated policy of not accepting petitions from non-residents.)[103] If defendants identified as illegal aliens are excluded from the calculation (on the assumption that the charges in their cases were most likely related to immigration offenses), 7.7 percent of 2010 federal defendants were non-citizens.[104]

Table 3.4 Petitioner Citizenship

Citizenship	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
U.S. citizen - born	92.9	89.1	93.6	97.7	19.6	74.4	5.9
U.S. citizen - naturalized	3.6	5.5	3.2	2.3	30.8	65.7	3.5
Not U.S. citizen	3.5	5.5	3.2	0	31.9	68.1	0

Notes: N=285. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Race and Hispanic Ethnicity

Questions about race or ethnicity are not part of the application package that a would-be petitioner must complete in order to initiate OPA consideration of a clemency petition. But information about these characteristics can nevertheless be found in many case files, particularly ones that have been the subject of closer scrutiny after the initial screening for technical shortcomings. Pre-sentence investigation reports, for example, typically include race as part of a defendant's description, and recent PSRs issued by USPO distinguish ethnicity as well. Petitioners sometimes voluntarily provide race or ethnicity information in various free text fields in the application when answering questions that have nothing to do with race or ethnicity. As described in *Chapter 1*, one of the original motivations behind this work was to examine the possible roles that race and ethnicity might play in OPA's evaluations of petitions, and as part of that investigation, we asked our abstractors to identify any explicit (i.e., clearly documented) sources of race or ethnicity information in each case file they examined. Note that we limited our ethnicity inquiry to whether or not the petitioner was of Hispanic ancestry.

---

[102] Motivans, 2013, p. 18, Table 10.

[103] *Table 3.9*; Motivans, 2013 (p. 19, Table 11).

[104] Motivans, 2013, p. 18, Table 10. This calculation assumes, of course, that being charged with federal offenses related to immigration offenses is essentially the exclusive province of defendants identified as illegal aliens.

Table 3.5 Earliest Point in File Where Race or Hispanic Ethnicity Can Be Determined from Explicit Information

Source	Race (%)	Ethnicity (%)
Could not be determined from explicit information	11.4	23.8
Receipt of application	12.2	10.5
Receipt of pre-sentence report	37.1	32.3
Receipt of FBI investigation report	9.2	5.7
Document other than application, PSR, or FBI report	29.1	26.6
Other source	1.0	1.2

Notes: N=287. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

About 11 percent of the files (weighted) had no documented information about race, and about 24 percent were lacking explicit ethnicity information (***Table 3.5***). But bias in the evaluation of those case files, if it indeed existed, could be linked to an assumption of race or ethnicity inferred from a variety of sources, such as family photographs submitted in support of the petition, first and last names, home addresses, character references, church affiliations, or newspaper articles about the arrest or conviction.[105] Such inferences may not be accurate and they may be made unconsciously, but they could nevertheless affect key decisions made during the evaluation. To mirror what might have taken place during OPA's consideration of the files with missing explicit information, we asked the abstractors to take their "best guess" as to race and ethnicity if they felt comfortable doing so.

Table 3.6 Race and Hispanic Ethnicity Determination

Determination	Race			Ethnicity		
	N	*Pct. of Petitions (Unweighted)*	*Pct. of Petitions (Weighted.)*	*N*	*Pct. of Petitions (Unweighted)*	*Pct. of Petitions (Weighted.)*
Identified through explicit information	257	89.5	88.6	221	77.0	76.2
Not identified through explicit information	30	10.5	11.4	66	23.0	23.8
Could be identified through implicit info	24	8.4	9.2	65	22.6	23.3

---

[105] Removing similar indirect information about race and ethnicity (such as names) from prosecutor case files and court documents has been proposed as a way to reduce unconscious bias in prosecutorial charging decisions. See, e.g., Baughman, Sah, and Robertson, 2015, at pp. 71-72.

Determination	Race			Ethnicity		
	N	*Pct. of Petitions (Unweighted)*	*Pct. of Petitions (Weighted.)*	*N*	*Pct. of Petitions (Unweighted)*	*Pct. of Petitions (Weighted.)*
Never identified	6	2.1	2.3	1	0.3	0.4

Notes: N=287. Weighted percentages were weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

As *Table 3.6* indicates, the abstractors' use of implicit information in the case files resulted in associating race with 24 of the 30 files where race was unknown and 65 of 66 files where Hispanic ethnicity was unknown. It should be kept in mind that our sole goal here was not to precisely determine race or ethnicity for case files lacking explicit information. For such a purpose, advanced indirect estimation methods would have been a far superior approach.[106] Our admittedly imperfect method was also intended to understand what information might have been available to the original OPA staff member charged with evaluating the technical compliance and substantive merits of these applications. In the discussion that follows, race and ethnicity determinations are based on explicit information if available and implicit information if not.

Because race is generally based on physical characteristics and ethnicity is generally based on various cultural aspects, the two concepts are separate and distinct. In order to simplify our analysis, we developed a categorization scheme that merged both concepts. Our combined "race & ethnicity" classification first designated a petitioner as Hispanic if there was any information in the case file that suggested Hispanic ethnicity. In instances where this was not the case, the petitioner was instead designated by whatever decision on race the abstractor made. We originally intended to conduct our analysis by examining each possible combination of race and ethnicity (e.g., non-Hispanic Asians, Hispanic Asians, non-Hispanic whites, Hispanic whites, etc.) separately, but the relatively low number of Hispanics we were able to identify in the study case files would not support such a granulated categorization.[107]

Based on both explicit and implicit information, non-Hispanic whites comprise 78 percent of petitioners in our data, non-Hispanic black petitioners are a distant second with about 15 percent, and Hispanics as a group regardless of race make up about 3 percent (*Table 3.7*; note that all identified Hispanics are included in the first row of the table while the remainder of the rows describe racial categories that exclude Hispanics). In this aspect, the pardon process diverges markedly from the federal criminal justice system as a whole outside of the context of

[106] See, e.g., Elliott, Fremont, Morrison, Pantoja, and Lurie, 2008 (discussing how a Bayesian analysis of both geocoded residence addresses and surnames can be used to estimate race and ethnicity in administrative files in the absence of self-reported information).

[107] Of the eight petitioners identified as Hispanic, six had been identified as white, one as black, and one with race unknown. Other studies have also compared Hispanics of any race to individual non-Hispanic race categories (see, e.g., Centers for Disease Control and Prevention, 2009).

immigration offenses. Returning again to defendants in federal district court in 2010 as our benchmark, non-Hispanic whites comprised 21.5 percent of the total, 17.9 percent were non-Hispanic blacks, and 57.3 percent were Hispanic.[108] If defendants identified as illegal aliens are removed from the total in order to account for the fact that immigration offenses are rarely the subject of a request for pardon, 36.1 percent of federal defendants in 2010 were non-Hispanic whites and 30.1 percent were non-Hispanic blacks.[109] Estimating the percentage of Hispanics who make up the population of defendants in federal district courts who are either U.S. citizens or legal aliens is more problematic because the data available to us require making the highly questionable assumption that all illegal alien defendants are of Hispanic ethnicity. If such an assumption is made, however, Hispanics comprised 25.6 of federal defendants outside of immigration prosecutions. While these simplistic calculations are performed solely for the purpose of obtaining a very rough idea of the makeup of the pool of those potentially seeking federal clemency, they do suggest that whites are markedly overrepresented as pardon petitioners while blacks and Hispanics are markedly underrepresented.

Table 3.7 Petitioner Race and Hispanic Ethnicity

Race & Ethnicity	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Hispanic (any race)	2.8	7.4	1.6	2.3	53.0	42.5	4.6
White (non-Hisp.)	78.3	74.1	78.8	86.4	19.2	74.5	6.3
Black (non-Hisp.)	14.5	13.0	15.2	11.3	18.1	77.4	4.5
Amer. Indian/AK Native (non-Hisp.)	0.4	0	0.5	0	0	100.0	0
Asian (non-Hisp.)	2.8	1.9	3.3	0	13.5	86.5	0
Native HI/Other Pac. Isl. (non-Hisp.)	0.8	3.7	0.0	0	100.0	0	0
Multi. Races not incl. Black (non-Hisp.)	0.4	0	0.5	0	0	100.0	0

Notes: N=282. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

A single petitioner in the data we collected was identified by the abstractors as both black and Hispanic, and accordingly that person was counted in the "Hispanic (any race)" category in *Table 3.7*. Given the relatively low counts for categories other than white, we determined that

---

[108] Motivans, 2013, p. 18, Table 10.

[109] These calculations assume that only an insignificant fraction of non-Hispanic white and non-Hispanic black defendants were identified as illegal aliens and that the terms "federal defendant charged with an immigration offense" and "federal defendant identified as an illegal alien" are essentially synonymous.

our analysis of petition outcome predictors described in ***Chapter 4*** would be strengthened by identifying all black petitioners regardless of ethnicity. ***Table 3.8*** describes the composition of our weighted sample after that single petitioner was reclassified as black and all categories with less than 2.5 percent of the total were collapsed into an "other" category. The analysis in ***Chapter 4*** employs the classification scheme utilized by this table.

Table 3.8 Petitioner Race and Hispanic Ethnicity, Major Categories Only

Race & Ethnicity	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Black (includes Hispanic)	14.9	14.8	15.2	11.4	20.2	75.5	4.4
Hispanic (other than black)	2.5	5.6	1.6	2.3	45.8	48.9	5.3
White (non-Hisp.)	78.3	74.1	78.8	86.4	19.2	74.5	6.3
Asian (non-Hisp.)	2.8	1.9	3.3	0	13.5	86.5	0
Other (non-Hisp.)	1.6	3.7	1.1	0	48.3	51.7	0

Notes: N=282. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

The Underlying Offense

Crime Types

Fraud offenses constitute the largest (24 percent) single category of crimes related to the underlying offenses in the case files we examined (***Table 3.9***). Though "white-collar" crimes as a group constitute a somewhat larger proportion of petitions, such offenses can include a very diverse variety of charges, such as those related to tax violations, money laundering, and bribery. At least in the cases we reviewed, petitions involving a violent crime of any type were rare and none were granted a pardon.

Table 3.9 Specific Crimes Involved in Underlying Offenses

Type	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Violent Crime	**2.7**	**1.8**	**3.2**	**0**	**13.5**	**86.5**	**0**
—Murder	*0*	*0*	*0*	*0*	*0*	*0*	*0*
—Manslaughter	*0.4*	*0*	*0.5*	*0*	*0*	*100.0*	*0*
—Kidnapping/Hostage Taking	*0*	*0*	*0*	*0*	*0*	*0*	*0*
—Sexual Abuse	*0*	*0*	*0*	*0*	*0*	*0*	*0*
—Assault	*1.6*	*0*	*2.2*	*0*	*0*	*100.0*	*0*
—Robbery	*0.8*	*1.8*	*0.5*	*0*	*48.3*	*51.7*	*0*
—Arson	*0*	*0*	*0*	*0*	*0*	*0*	*0*
—Other Violent Crime	*0*	*0*	*0*	*0*	*0*	*0*	*0*
Drugs	**21.6**	**22.8**	**22.0**	**11.4**	**22.2**	**74.9**	**3.0**
—Trafficking	*18.0*	*19.3*	*18.3*	*9.1*	*22.6*	*74.6*	*2.8*
—Communication	*4.5*	*3.5*	*4.8*	*4.6*	*16.3*	*78.1*	*5.6*
—Simple Possession	*9.3*	*10.5*	*9.1*	*6.8*	*23.8*	*72.1*	*4.1*
—Other	*9.5*	*17.5*	*7.0*	*11.4*	*39.0*	*54.2*	*6.7*
Firearms	**10.2**	**15.8**	**9.1**	**2.3**	**32.7**	**66.0**	**1.3**
Burglary/Larceny/Theft	**3.8**	**0**	**4.8**	**4.6**	**0**	**93.3**	**6.7**
—Burglary/Breaking & Entering	*0*	*0*	*0*	*0*	*0*	*0*	*0*
—Auto Theft	*3.4*	*0*	*4.3*	*4.6*	*0*	*92.5*	*7.5*
—Larceny	*0.4*	*0*	*0.5*	*0*	*0*	*100.0*	*0*
—Other Burg./Theft/Larceny	*7.8*	*10.5*	*6.5*	*15.9*	*28.3*	*60.4*	*11.4*
Fraud	**24.3**	**24.6**	**24.2**	**25.0**	**21.30**	**73.0**	**5.8**
White-Collar Crime	**28.1**	**19.3**	**30.1**	**34.1**	**14.5**	**78.7**	**6.8**
—Embezzlement	*7.5*	*7.0*	*8.1*	*2.3*	*19.6*	*78.7*	*1.7*
—Forgery/Counterfeiting	*5.7*	*5.3*	*5.9*	*4.6*	*19.4*	*76.1*	*4.5*
—Bribery	*1.6*	*0*	*2.2*	*0*	*0*	*100.0*	*0*
—Tax	*7.3*	*5.3*	*7.5*	*11.4*	*15.2*	*76.0*	*8.8*
—Money Laundering	*2.0*	*0*	*2.7*	*0*	*0*	*100.0*	*0*
—Other White-Collar	*6.0*	*3.5*	*5.9*	*15.9*	*12.4*	*72.7*	*14.9*
Racketeering/Extortion	**2.4**	**0**	**3.2**	**0**	**0**	**100.0**	**0**
Immigration	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Pornography/ Prostitution/Sexual Exploitation	**1.2**	**0**	**1.6**	**0**	**0**	**100.0**	**0**
—Child Pornography	*0.4*	*0*	*0.5*	*0*	*0*	*100.0*	*0*
—Child Prostitution/Exploitation	*0.4*	*0*	*0.5*	*0*	*0*	*100.0*	*0*
—Non-Child Pornography	*0.8*	*0*	*1.1*	*0*	*0*	*100.0*	*0*
—Non-Child Pros./Exploit.	*0*	*0*	*0*	*0*	*0*	*0*	*0*
—Other Porn./Pros./Exploit.	*0*	*0*	*0*	*0*	*0*	*0*	*0*
Other Crimes	**11.2**	**14.0**	**9.7**	**20.5**	**26.4**	**63.4**	**10.2**

Type	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	Denials	Grants	Closures	Denials	Grants
—Gambling/Lottery	2.5	0	3.2	2.3	0	94.9	5.1
—Civil Rights	0	0	0	0	0	0	0
—Prison Offenses	0	0	0	0	0	0	0
—Admin. of Justice Offenses	0.4	0	0.5	0	0	100.0	0
—Environmental/Wildlife	0.8	1.8	0.5	0	48.3	51.7	0
—National Defense	0	0	0	0	0	0	0
—Antitrust	0.4	0	0.5	0	0	100.0	0
—Food and Drug	3.6	3.5	3.2	9.1	20.4	65.5	14.1
—All Other Offense Types	3.5	8.8	1.6	9.1	52.2	33.4	14.4

Notes: N=287. Crime types are not mutually exclusive; more than one can be associated with the same underlying offense. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

We also asked our abstractors to determine whether the underlying offense was one specifically mentioned in either the Bush or Obama pardon memorandums. Recall from *Chapter 2* that the policy statements issued by the two administration differed somewhat in the precise nature of the crimes for which a grant of pardon would be unlikely, but there were some common themes. *Table 3.10* lists some of the offenses described on one or both of the memorandums, and perhaps not surprisingly, few resulted in a grant of pardon. The exception appears to be in regard to certain drug crimes, which is one area where the Bush and Obama era policy statements clearly diverged. (President Bush was said to disfavor all drug convictions, while President Obama was said to limit his concerns to instances where the petitioner had a significant role in "large scale" trafficking.) One problem with these sorts of categorizations is that the memorandums often described the President's preferences in subjective terms, such as "substantial," "significant," and "large," which in turn adversely impacts the ability of a case file examiner to make consistent decisions about whether an underlying crime actually ran afoul of the guidelines. Nevertheless, we are confident that there were instances where a presidential pardon was in fact granted to a petitioner whose original crime unquestionably failed to meet an explicit policy preference associated with the then current administration.

Table 3.10 "Pardon Memo" Crimes Involved in Underlying Offense

Description	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	Denials	Grants	Closures	Denials	Grants
Fraud w/harm to significant number	5.6	3.6	6.5	2.3	13.2	84.5	2.3
Theft/fraud causing substantial loss to government	7.0	1.8	8.6	4.6	5.3	91.0	3.7
Minor-related sexual offenses	0.4	0	0.5	0	0	100.0	0

Description	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Serious bodily harm to others	0.4	0	0.5	0	0	100.0	0
Physical harm to children	0	0	0	00	0	0	0
Firearms/other deadly weapons	7.0	10.7	6.5	0	31.9	68.1	0
Explosives or arson	0.8	1.8	0.5	0	48.3	51.7	0
Any controlled substances	28.9	32.1	28.0	29.6	23.1	71.2	5.8
Large-scale drug trafficking with significant role	3.4	0	4.3	4.6	0	92.5	7.5
Terrorism, treason, sabotage, espionage, national security	0	0	0	0	0	0	0
Public corruption/abuse of public trust/abuse of public power	6.7	3.6	8.1	0	11.1	88.9	0
Crime type other than above	49.5	53.6	47.3	63.6	22.4	70.3	7.2

Notes: N=286. Crime descriptions are not mutually exclusive. More than one can be associated with the same underlying offense. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Conviction and Sentencing

The *Manual's* guidance for the evaluation of clemency petitions describes a petitioner's acceptance of "responsibility for his or her criminal conduct" as a principal factor in considering whether to recommend a grant. As such, a reasonable hypothesis might be that pardons are more likely when the petitioner pled guilty to the underlying charges and less likely when the government was forced to proceed to a trial on the merits. This assumption seems to hold true in *Table 3.11*, at least for convictions that resulted from guilty pleas and trial verdicts. While nolo contendere pleas, in which the defendant did not contest—but also did not admit to—the charges brought against him or her, exhibit an unusually high clemency rate, only six underlying convictions in our collected data were disposed of in this manner.

Table 3.11 Conviction Method for Underlying Offense

Method	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Guilty Plea	82.4	90.6	80.1	84.1	21.8	72.4	5.8

Method	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Nolo Contendere	1.6	0	1.6	6.8	0	75.6	24.4
Trial Verdict	16.0	9.4	18.3	9.1	11.7	85.1	3.2

Notes: N=283. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Judges can choose from a variety of options when deciding on the sentences to be imposed on the convicted defendants before them. ***Table 3.12*** describes key aspects of the sentences ordered in the underlying convictions for the petitioners in our collected data. The sentence features in the table are not mutually exclusive, and, for example, it is possible for a sentence to include imprisonment, a fine, an order for restitution, and supervised release (a type of mandatory parole ordered by the sentencing judge that would follow the end of a prison term).

Table 3.12 Sentence Features Imposed for the Underlying Conviction

Feature	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Incarceration	58.4	45.6	63.2	43.2	16.5	79.3	4.2
Fine and/or Restitution	69.9	71.9	70.8	50.0	21.7	74.2	4.0
Supervised Release/Parole	49.9	47.4	51.9	34.1	20.0	76.1	3.8
Probation	43.8	49.1	41.1	59.1	23.7	68.7	7.6
Other Feature	3.3	0	4.3	2.3	0	96.1	3.9

Notes: N=286. Sentence features are not mutually exclusive; more than one can be present in a single sentence. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

The relationship between the original sentence and the pardon process outcome may be more apparent in ***Table 3.13***. Most sentences in our case files involved at least some amount of prison time, and the clemency rate for those petitioners (4.2 percent) was somewhat less than the overall clemency rate of 5.6 percent. But when probation was imposed in lieu of incarceration, the clemency rate increased to 7.9 percent. Sentence decision-making can be influenced by the conduct associated with the underlying offense, the defendant's criminal history, and a variety of other factors (e.g., whether the behavior was a marked deviation from the defendant's normal conduct, whether the defendant had a diminished mental capacity at the time of the offense, the specific impact on the victim, etc.), and some of those aspects may loom large as well in the decision whether to recommend a grant of pardon. Given that a sentence primarily involving probation is perhaps the least severe sanction that a convicted defendant might receive, the higher than typical clemency rate in such instances is not surprising.

Table 3.13 Category of Sentence Imposed for the Underlying Conviction

Category	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Incarceration included	58.4	45.6	63.2	43.2	16.5	79.3	4.2
Probation (no incarceration)	38.8	49.1	34.6	54.6	26.8	65.3	7.9
Other sentence type	2.8	5.3	2.2	2.3	39.4	56.1	4.8

Notes: N=286. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

The apparent relationship between sentence severity and pardons can also be seen in ***Table 3.14***, which suggests that clemency grants are associated with relatively fewer days of imprisonment, lower fine and/or restitution amounts, and fewer days on supervised release.

Table 3.14 Sentence Severity

Feature	All Petitions		Closures		Denials		Grants	
	Mean	*Median*	*Mean*	*Median*	*Mean*	*Median*	*Mean*	*Median*
Imprisonment (days)	593	366	783	518	574	366	244	214
Fines/ Restitution ($)	84,490	5,000	131,116	7,037	75,685	5,000	3,641	1,367
Supervision (days)	1,042	1,096	898	792	1,110	1,096	716	730

Notes: N for imprisonment days=159; N for amount of fines/restitution=189; N for supervision days=263. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Post-Conviction Aspects

About 16 percent of the petitions we examined involved an appeal of the underlying conviction (***Table 3.15***). In the federal criminal justice system, appeals following a guilty plea are not unusual,[110] and indeed 16 of the 45 appeals in our data arose from that manner of conviction (the clemency rates for appealed cases did not vary significantly by whether the conviction was due to a plea or a verdict).

---

[110] See., e.g., Fed. R. Crim. P. 11(a)(2); *United States v. Marin*, 961 F.2d 493, 496 (4th Cir. 1992).

Table 3.15 Appeal of Conviction

Appealed?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	83.5	89.3	81.5	88.4	22.4	71.8	5.9
Yes	16.5	10.7	18.5	11.6	13.6	82.5	3.9

Notes: N=283. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Table 3.16 certainly suggests that a petition submitted from someone who was unable to satisfy the terms of his or her sentence would face significant challenges when seeking a grant of pardon. None of the 40 petitioners whose case file reflected evidence of a problem in this regard received a pardon. It should be noted that issues arising during time spent in custody were noted in only 2 of the 40. About half still had unpaid fines and/or restitution at the time of filing the petition, 7 files had evidence of delayed payments, and in 14 there was some negative issue associated with the time spent under federal supervision following incarceration.

Table 3.16 Issues Regarding Petitioner's Behavior While Satisfying Sentence

Issues Reported?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	84.3	91.1	81.2	100.0	22.4	70.9	6.7
Yes	15.7	8.9	18.8	0	11.8	88.2	0

Notes: N=286. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

One theme became apparent right from the start of our initial review of OPA case files: pardon grants seemed to be more likely when a longer time had elapsed from various aspects of the underlying conviction until the petition was first submitted to OPA. *Table 3.17* suggests that those initial impressions held true in our analysis. Regardless of whether measured by the mean or the median, and regardless of whether we measured time beginning with the sentencing date, the date of release from incarceration or federal supervision, or the date that any fine or restitution was finally satisfied, the average number of days that elapsed until the application was received by OPA was markedly higher for granted petitions than for denials. We use the date of application submission as our end point rather than the date of the final decision because the length of time a case remains open in an OPA evaluation is partially a function of the decision itself (see *Table 3.61*).

Table 3.17 Recentness of Sentencing, Release, or Satisfaction

Days to Application from…	All Petitions		Closures		Denials		Grants	
	Mean	*Median*	*Mean*	*Median*	*Mean*	*Median*	*Mean*	*Median*
Sentencing	5,052	4,083	4,533	3,530	4,978	4,143	7,915	7,614
Incarceration	4,526	3,527	3,449	2,172	4,593	3,560	7,368	6,662
Supervision	3,463	2,516	3,374	2,082	3,223	2,505	6,707	5,717
Fines/ Restitution Paid	3,196	2,685	2,745	2,448	3,125	2,685	5,841	5,086
Last Event	3,683	2,516	3,449	2,309	3,489	2,503	7,017	5,797

Notes: N for days from sentencing=278; N for days from incarceration=158; N for days from supervision=253; N for days from fines/restitution payment=117; N for days from last reported event (sentencing, end of incarceration or supervision, or fines/restitution payment)=281. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Petitioner Background

Criminal Activity

Case files where the commission of offenses leading to the underlying conviction appear to be out of character for the petitioner clearly have a better chance for a grant than those with evidence of either prior or subsequent criminal activity (***Table 3.18*** and ***Table 3.19***). Note that such evidence need not document criminal behavior that resulted in a conviction or even an arrest. FBI reports and PSRs often include statements from neighbors, co-workers, family, and others that could be characterized as little more than innuendo, hearsay, or rumor, and it would be up to the OPA attorney advisor to decide how much weight would be given to such statements.

Table 3.18 Indication of Criminal Activity Prior To Underlying Offense

Activity Reported?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	48.5	57.1	44.3	70.5	24.6	67.2	8.2
Yes	51.5	42.9	55.7	29.6	17.3	79.4	3.2

Notes: N=285. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Table 3.19 Indication of Criminal Activity After the Underlying Offense

Activity Reported?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	76.2	80.8	74.2	86.4	20.7	72.8	6.5
Yes	23.8	19.2	25.8	13.6	15.8	81.0	3.3

Notes: N=282. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Marriage and Children

Though about a quarter of all petitioners in the case files we reviewed were divorced at the time of the submission of the application, only a single one of those petitioners received a grant of pardon (***Table 3.20***).

Table 3.20 Marital Status at Time of Application

Status	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Single, never married	7.3	10.7	6.5	4.6	30.8	65.7	4.6
Married	60.9	64.3	57.8	88.6	22.0	69.8	8.2
Living together (not married)	0.8	0	1.1	0	0	100.0	0
Separated	1.5	3.6	1.1	0	48.3	51.7	0
Divorced	25.7	17.9	29.7	2.3	14.5	85.0	0.5
Widowed	3.8	3.6	3.8	4.6	19.7	73.6	6.8

Notes: N=285. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Perhaps related to the possible disfavor shown to divorced petitioners, applications with any evidence of spousal support responsibilities, regardless of whether such payments were made as required, are less likely to result in a grant than those where post-marital support was not ordered (***Table 3.21***).

Table 3.21 Post-conviction Spousal Support Issues

Spousal Support Issues?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Not required to pay support	88.6	92.9	86.9	95.5	22.0	71.9	6.1
Yes	0.8	0	1.2	0	0	100.0	0
No, though support was required	10.6	7.1	12.0	4.6	14.2	83.4	2.5

Notes: N=283. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

While the fact that a petitioner had children at some point prior to submitting the application makes little difference in his or her chances for a grant (***Table 3.22***), a petition claiming that minor children reside in the petitioner's home is associated with a somewhat higher clemency rate than average (***Table 3.23***).

Table 3.22 Petitioner Children at Time of Application

Any Children?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	15.8	16.1	15.6	18.2	21.1	72.5	6.5
Yes	84.2	83.9	84.4	81.8	20.7	73.8	5.5

Notes: N=286. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Table 3.23 Minor Children Living with Petitioner at Time of Application

Minors Living with Petitioner?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	77.1	78.2	77.3	70.5	21.6	73.0	5.4
Yes	22.9	21.8	22.7	29.6	20.3	72.2	7.6

Notes: N=275. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Similar to what was observed for spousal support issues, it is the fact that child support was required at all (rather than whether it was ever in arrears) that is associated with lower-than-average clemency rates (***Table 3.24***).

Table 3.24 Post-conviction Child Support Issues

Child Support Issues?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Not required to pay support	85.0	87.5	83.4	95.5	21.8	71.8	6.5
Yes	3.7	5.4	3.3	2.3	30.8	65.7	3.5
No, though support was required	11.3	7.1	13.3	2.3	13.3	85.5	1.2

Notes: N=281. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Education

Petitioners who have attended a trade or technical school have a better-than-average chance of a pardon, while those who did not receive a high school degree or the equivalent were not as fortunate (***Table 3.25***).

Table 3.25 Education Attainment at Time of Application

Level	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Did not finish high school	8.8	11.4	8.6	2.8	20.7	77.5	1.8
High school or GED	19.0	20.0	18.5	22.2	16.7	76.7	6.6
Some trade or tech school, no degree	7.9	14.3	6.2	13.9	28.7	61.4	9.9
Trade or tech school degree	6.8	8.6	6.2	11.1	19.9	70.9	9.2
Some college, no degree	21.2	8.6	24.1	16.7	6.4	89.2	4.4
Associate degree	5.5	0	6.8	2.8	0	97.2	2.9
Bachelor degree	15.3	17.1	14.8	16.7	17.8	76.1	6.1
Graduate degree	15.6	20.0	14.8	13.9	20.4	74.6	5.0

Notes: N=233. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

What is clear from our data is that efforts to continue the educational process are associated with higher clemency rates. ***Table 3.26*** indicates whether a petitioner's education level changed after the underlying conviction (for example, receiving a post-conviction GED after having failed to graduate from high school prior to the prosecution). The clemency rate was nearly double for those who advanced their education compared to those who did not.

52

Table 3.26 Post-Conviction Educational Advancement

Any Advancement?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	75.6	84.2	74.2	61.4	23.4	72.0	4.6
Yes	24.4	15.8	25.8	38.6	13.6	77.5	8.9

Notes: N=287. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Employment

Though the mean and median ages of petitioners were fairly similar regardless of the outcome of their application (***Table 3.2***), retirees (presumably older than the average petitioner) had a higher clemency rate than those who fell into any other employment status category (***Table 3.27***).

Table 3.27 Employment Status

Status	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Retired	10.2	16.1	8.1	15.9	32.8	58.4	8.8
Homemaker	0	0	0	0	0	0	0
Student	1.2	1.8	1.1	0	31.9	68.1	0
Disabled	5.6	3.6	6.5	2.3	13.2	84.5	2.3
Unemployed	8.4	12.5	7.6	4.6	30.9	66.1	3.1
Working	74.6	66.1	76.8	77.3	18.5	75.7	5.9

Notes: N=285. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Three-quarters of petitioners were working when they submitted their application package to OPA, and within that group, the median number of days employed were longest for those who eventually received a pardon grant (***Table 3.28***).

Table 3.28 Length of Employment at Time of Application

Length	All Petitions		Closures		Denials		Grants	
	Mean	*Median*	*Mean*	*Median*	*Mean*	*Median*	*Mean*	*Median*
Days	3,485	2,282	3,719	2,344	3,398	2,222	3,891	3,120

Notes: N=210. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Though the proportion of case files in which there were indications that the petitioner had been fired from a job at some point after completing the sentence for the underlying conviction

(or had left a job following allegations of misconduct) were relatively small (***Table 3.29***), the clemency rate for such petitions was notably smaller than the overall average.

Table 3.29 Indication of Termination for Cause Post-Sentence

Terminated for Cause?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	93.5	98.2	91.8	97.7	22.1	72.0	6.0
Yes	6.5	1.8	8.2	2.3	5.8	92.3	2.0

Notes: N=283. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Table 3.30 identifies whether there were indications in the case file that the petitioner failed to list arrests or convictions on an application where the information was requested. These applications were for the most part ones related to the seeking of employment. The clemency rate in such instances was markedly lower than for all case files taken together.

Table 3.30 Indication of Any Failure to Report Arrests or Convictions

Failure to Report?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	89.1	91.1	88.0	95.5	21.5	72.4	6.1
Yes	11.0	8.9	12.0	4.6	17.1	80.5	2.4

Notes: N=283. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Alcohol and Substance Abuse

The sample case files were examined for indications that the petitioner had abused alcohol or substances other than illegal drugs either before or after the underlying conviction. Any such abuse was associated with lower-than-average clemency rates (***Table 3.31*** and ***Table 3.32***).

Table 3.31 Indication of Abuse of Alcohol or Legal Substances Prior to Conviction

Indication?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	78.9	78.2	78.5	86.4	20.3	73.6	6.2
Yes	21.1	21.8	21.5	13.6	21.1	75.2	3.7

Notes: N=285. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Table 3.32 Indication of Abuse of Alcohol or Legal Substances Following Conviction

Indication?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	89.0	91.1	88.0	93.2	21.4	72.7	5.9
Yes	11.0	8.9	12.0	6.8	16.9	79.6	3.5

Notes: N=284. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

A similar examination of the case files was made to determine if there were indications of abuse of illegal substances by the petitioner. When any such abuse appeared to involve no more than simple use or possession, the clemency rate was only modestly reduced from the overall average, regardless of whether it took place prior to the conviction (***Table 3.33***) or after (***Table 3.34***). More serious illegal substance abuse (i.e., involving sales, manufacturing, or distribution) was associated with a significantly lower clemency rate when reported to have taking place prior to conviction, though it is possible that such abuse was connected to the offenses that were the subject of the petition. The frequency of case files with indications of post-conviction activity related to illegal substances, regardless of the degree of seriousness, was far lower than what was reported for pre-conviction behavior.

Table 3.33 Indication of Illegal Substance Abuse Prior to Conviction

Indication?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	66.1	72.7	63.4	77.3	22.5	70.9	6.6
Yes – No indication of extent	4.0	7.3	3.2	2.3	37.2	59.6	3.2
Yes – Simple use or possession	15.0	9.1	16.7	13.6	12.4	82.4	5.2
Yes – Sale, mfg., distribution	14.9	10.9	16.7	6.8	14.9	82.5	2.6

Notes: N=285. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Table 3.34 Indication of Illegal Substance Abuse After Conviction

Indication?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	92.7	91.1	93.0	95.5	20.5	73.7	5.8
Yes – No indication of extent	1.6	1.8	1.6	0	23.8	76.2	0
Yes – Simple use or possession	5.4	5.4	5.4	4.6	20.9	74.3	4.8
Yes – Sales, mfg., distribution	0.4	1.8	0	0	100.0	0	0

Notes: N=285. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Case files with indications that the petitioner had been receiving treatment for either alcohol or drug issues were associated with relatively lower clemency rates, regardless of whether the treatment took place before (***Table 3.35***) or after (***Table 3.36***) conviction.

Table 3.35 Evidence of Alcohol or Drug Treatment Program Prior to Conviction

Evidence?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	91.7	91.1	91.4	97.7	20.6	73.4	6.0
Yes	8.3	8.9	8.6	2.3	22.3	76.2	1.5

Notes: N=286. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Table 3.36 Evidence of Alcohol or Drug Treatment Program After Conviction

Evidence?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	80.7	75.0	81.7	88.6	19.3	74.6	6.2
Yes	19.3	25.0	18.3	11.4	26.9	69.8	3.3

Notes: N=286. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Mental Health

Our abstractors looked for evidence in the case files that the petitioner had consulted with a health care provider concerning a mental health-related condition. Consultations following the conviction (***Table 3.38***) were associated with lower-than-average clemency rates, though case

files where the consultation took place prior to conviction resulted in pardon grants at a rate that was similar to petitions generally (*Table 3.37*).

Table 3.37 Mental Health Treatment Prior to Conviction

Evidence?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	87.2	87.5	87.0	88.6	20.9	73.4	5.7
Yes	12.8	12.5	13.0	11.4	20.4	74.6	5.0

Notes: N=285. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Table 3.38 Mental Health Treatment After Conviction

Evidence?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	86.8	85.7	86.4	95.4	20.7	73.2	6.1
Yes	13.2	14.3	13.6	4.7	22.6	75.5	2.0

Notes: N=283. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Finances

It was extremely unusual for a case file in which there was evidence of ongoing financial troubles or debt issues (other than involving tax liens) at the time when the petition was submitted to be associated with a pardon grant (*Table 3.39*). When such issues appeared to have been resolved prior to the seeking of clemency, grants were more likely (*Table 3.40*).

Table 3.39 Financial Issues (Other Than Tax Liens) at Time of Application

Evidence?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	80.1	85.7	77.2	97.7	22.4	70.7	6.9
Yes	19.9	14.3	22.8	2.3	15.0	84.3	0.7

Notes: N=284. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Table 3.40 Financial Issues (Other Than Tax Liens) Prior to Application

Evidence?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	76.8	80.0	75.5	81.8	21.5	72.5	6.1

Evidence?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Yes	23.2	20.0	24.5	18.2	17.8	77.8	4.5

Notes: N=283. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

As with many aspects related to petitioner characteristics and history that we examined, bankruptcy filings taking place prior to conviction (***Table 3.41***) were less likely to be associated with reduced clemency rates than instances where the bankruptcy occurred after conviction (***Table 3.42***).

Table 3.41 Filed for Bankruptcy Prior to Conviction

Evidence?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	93.4	90.9	94.0	95.5	20.1	74.0	5.8
Yes	6.6	9.1	6.0	4.6	28.7	67.4	4.0

Notes: N=282. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Table 3.42 Filed for Bankruptcy After Conviction

Evidence?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	80.1	81.8	78.6	93.0	21.3	72.2	6.5
Yes	19.9	18.2	21.4	7.0	19.0	79.1	2.0

Notes: N=280. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

The filing of tax liens against the petitioner at some point after conviction was another type of financial event that appears to have been viewed unfavorably during OPA's evaluation (***Table 3.43***). We did not review sample case files for evidence of tax liens filed prior to conviction.

Table 3.43 State or Federal Tax Liens After Conviction

Evidence?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	83.1	89.3	80.8	90.9	22.6	71.1	6.3
Yes	16.9	10.7	19.2	9.1	13.4	83.5	3.1

Notes: N=282. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Litigation Experience

Experience as a defendant in a civil suit is one of the few instances we found where ostensibly negative aspects about a petitioner's life taking place prior to conviction (***Table 3.44***) appear to be associated with a clemency rate lower than what was observed for case files where a similar issue arose after conviction (***Table 3.45***).

Table 3.44 Defendant in Civil Litigation Prior to Conviction

Evidence?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	89.6	91.1	88.5	97.7	21.4	72.6	6.1
Yes	10.4	8.9	11.5	2.3	18.0	80.8	1.2

Notes: N=282. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Table 3.45 Defendant in Civil Litigation After Conviction

Evidence?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	86.9	94.6	84.6	88.4	23.0	71.3	5.7
Yes	13.1	5.4	15.4	11.6	8.7	86.4	5.0

Notes: N=281. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Military History

Petitioners who were honorably discharged from military service (or were still serving at the time the application was submitted) had a somewhat higher clemency rate than the overall average (***Table 3.46***). Our hypothesis was that evidence in the case file of a negative separation from the military might be associated with a reduced clemency rate, but the frequency of sample case files where the petitioner had received a bad conduct, general, or "other than honorable" discharge was too low to draw any solid conclusions.

Table 3.46 Military Service

Status	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No military service	67.9	70.9	67.4	62.8	21.8	73.0	5.2

Status	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Bad conduct, general, or other than honorable discharge	3.3	3.6	3.3	2.3	22.8	73.2	3.9
Honorable discharge or still serving	28.8	25.5	29.3	34.9	18.5	74.7	6.8

Notes: N=279. Excludes two case files where petitioner was discharged but type was unknown. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Social Activity & Faith

Nearly nine out of ten case files in our weighted sample included an assertion by the petitioner that he or she had engaged in charitable, community, or civic activities other than (or in addition to) donations of money or items or attendance at a place of worship (*Table 3.47*). Very few petitions where no such claims were made resulted in a grant of pardon.

Table 3.47 Evidence of Charitable, Community, or Civic Activity

Evidence?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	11.7	15.7	11.3	2.3	27.9	70.9	1.2
Yes	88.3	84.3	88.7	97.7	19.8	73.5	6.7

Notes: N=262. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

We asked our abstractors to review the sample case files for any evidence of religiosity or faith. The OPA application form does not include any inquiries into this area, but often the petitioner will mention his or her religion in answers to open-ended questions about charitable or community activities or the reasons for seeking a pardon. Character affidavits may also make reference to religion or faith. Our weighted sample was about evenly split between case files where such evidence was present and those where it was not, with a markedly higher clemency rate for those petitions with indications of religiosity or faith (*Table 3.48*). Nearly all of the petitioners whose case files contained such indications appeared to be associated with Christian beliefs of some kind (about 97 percent of the weighted sample when a small number of faiths or beliefs other than Judaism or Islam are excluded).

Table 3.48 Evidence of Religiosity or Spiritual Faith

Evidence?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	54.3	67.3	51.7	40.9	25.8	69.9	4.3
Yes	45.7	32.7	48.4	59.1	14.9	77.7	7.4

Notes: N=281. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

The abstractors were also requested to assess whether a petitioner actively participated in a professed religion or faith beyond just attendance or a statement of belief. Such participation might include, for example, teaching classes, ministering to others, or regularly volunteering to help in holding faith-based events. About 30 percent of the case files in our weighted sample contained evidence that suggested active participation, and about 8 percent of those files resulted in a pardon (***Table 3.49***).

Table 3.49 Active Participation in Religion or Spiritual Faith

Evidence?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	70.2	76.4	69.6	56.8	22.4	73.0	4.6
Yes	29.8	23.6	30.4	43.2	16.4	75.4	8.3

Notes: N=283. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

The Application

Though most petitions are submitted without the assistance of counsel, those where OPA's files indicate the petitioner was represented by an attorney have a markedly higher clemency rate than the overall average (***Table 3.50***). What is not clear from the data is whether attorney involvement in and of itself enhances the chances of a petition filing resulting in a grant of pardon or whether petitioners who are more likely to engage the services of counsel are also more likely to have a post-conviction life that is perceived by OPA, the DAG, and the White House as being particularly deserving of clemency.

Table 3.50 Represented by Counsel at Any Point

Assisted by Counsel?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	81.6	78.2	83.3	70.5	19.6	75.5	4.9
Yes	18.5	21.8	16.7	29.6	24.2	66.8	9.1

Notes: N=285. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

The application package that can be downloaded from OPA's website contains an open-ended question titled "Reasons for Seeking Pardon." The brief instructions that accompany the question remind the petitioner that "a pardon is ordinarily a sign of forgiveness, not vindication," and so perhaps it is not surprising that about 36 percent of the weighted sample contains an assertion that the petitioner is indeed seeking forgiveness and that such case files exhibit a clemency rate that is higher than the overall average (***Table 3.51***). Restoration of the petitioner's good name, reputation, or standing in the community is also a commonly advanced reason for submission. Though the number of petitioners who stated that they were seeking a pardon in order to address a miscarriage of justice was low, it is perhaps not surprising—given the "formidable burden of persuasion" described in the *Manual* for a claim of innocence or misjustice—that none of their petitions were successful. But of all the rationales given for seeking clemency that were present in at least 5 percent of the weighted case files, it is the desire to have state or federal firearms restrictions lifted that is associated with the highest clemency rate (9.8 percent). As was true for many of the results described in this chapter, our data does not provide an obvious answer as to whether the removal of controls upon firearms possession or use is perceived by those in the pardon decision-making chain as an especially compelling reason for a grant.

Table 3.51 Reasons Stated for Submitting Petition

Category	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Restore good name, reputation, standing in community, etc.	42.2	47.3	40.3	47.7	22.9	70.7	6.4
Address miscarriage of justice	4.3	3.6	4.8	0	0.7	82.8	0
Seeking forgiveness	36.2	38.2	35.0	45.5	21.6	71.3	7.1
Seeking closure	19.5	21.8	18.8	20.5	22.9	71.2	5.9
Remove barriers to contracting with the government	1.0	1.8	0.5	4.6	36.2	38.7	25.0
Restore right to vote	11.7	10.9	11.8	13.6	19.0	74.4	6.6
Restore ability to sit on juries	1.6	0	1.6	6.8	0	75.6	24.4

Category	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Remove state or federal firearms restrictions	31.5	14.6	34.4	54.6	9.5	80.8	9.8
Immigration issues	1.9	3.6	1.6	0	38.4	61.6	0
Enlist in armed forces	0.8	0	1.1	0	0	100.0	0
Obtain or restore professional licenses	12.4	12.7	12.9	4.6	21.0	76.9	2.1
Specific employment-related reason other than licensing	17.2	16.4	17.2	20.5	19.4	73.9	6.7
Increase general employability or obtain promotion	27.7	25.5	28.5	25.0	18.8	76.1	5.1
Obtain or restore private pilot's license	0.5	0	0.5	2.3	0	75.6	24.4
Holding federal office	2.9	0	3.2	9.1	0	82.3	17.7
Restoration of other civil rights	5.4	3.6	5.9	4.6	13.8	81.4	4.8
Other reason given	13.1	16.4	12.4	11.4	25.5	69.6	4.9

Notes: N=285. Reasons are not mutually exclusive; more than one can be associated with the same petition. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Applications that include character affidavits from individuals associated with the justice system (e.g., law enforcement officers, prosecutors, judges), who have a government connection outside of the justice system (e.g., elected officials, agency administrators), or who are current or former employers or supervisors of the petitioner have better-than-average clemency rates (***Table 3.52***). Affidavits submitted by acquaintances, which are found in eight out of ten case files in our weighted sample, are associated with a clemency rate that mirrors the overall average, as are affidavits from those with whom the petitioner socializes in the context of the practice of religious or spiritual beliefs (21 percent of weighted case files).

Table 3.52 Sources of Character References in Application

Sources	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Relatives and family	6.2	8.0	6.0	2.3	24.8	73.0	2.1
Law enforcement, prosecutors, judges	30.9	22.0	32.6	38.6	13.6	79.2	7.3
Government (non-law enf./non-court)	13.9	16.0	13.0	18.2	22.0	70.4	7.6
Current or former employers or supervisors	33.0	28.0	33.7	40.9	16.2	76.6	7.2
Religious associates	21.4	14.0	23.4	20.5	12.5	82.0	5.5
Acquaintances	81.3	88.0	79.9	77.3	20.7	73.8	5.5
Other sources or source not identified	8.9	4.0	10.3	6.8	8.6	87.0	4.4

Notes: N=278. Character reference sources are not mutually exclusive; more than one can be associated with the same petition. Excludes small number of petitions where character references not found in case file. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

The Evaluation Process

Initial Intake

A somewhat surprising finding was that about eight out of ten application packages in the weighted sample were identified by OPA staff as lacking at least some required materials, containing one or more answers thought not to be fully responsive, or incomplete in some other aspect (***Table 3.53***). None of these issues were necessarily fatal to the petitioner's case, and in most instances, they could be cured by submitting missing materials or by clarifying or expanding upon one or more answers provided in the original application. The nature of the deficiencies and the need for the petitioner to address the shortcomings were described in the screening letter that acknowledged receipt of the petition. Interestingly, case files in which the petitioner took steps to correct the issues noted in the screening letter were associated with a clemency rate higher than the overall average.

Table 3.53 Application Deficiencies Noted in OPA Screener Letter to Petitioner

Deficiencies Noted?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
None	18.6	35.7	14.4	9.1	40.7	56.5	2.8
Yes – Petitioner subsequently supplied all requested items	70.8	19.6	84.0	90.9	5.9	86.8	7.4
Yes – Petitioner did not supply all requested items	10.7	44.6	1.7	0	88.6	11.4	0

Notes: N=281. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

More serious issues were found in about 10 percent of the case files in the weighted sample. These applications exhibited what we characterize as a "rejectable" problem, in other words, an issue (other than an incomplete application) that arose in regard to one of the objective standards adopted by DOJ generally or by OPA in particular for screening incoming applications (***Table 3.54***). Submission of a petition within five years of sentencing or conviction for the underlying offenses was a commonly cited problem. But as the table suggests, some of these case files survived the administrative closure stage (presumably because the defect was either waived by OPA or cured by the petitioner), though ultimately all resulted in a recommendation of denial. It should be noted that we have no information regarding the petitions received by OPA that were subjected to a threshold rejection as the result of an ad hoc check of the application for various deficiencies. Petitions that are rejected in this manner were never logged into the case management system utilized by OPA during the study period and as such were not included in the sampling frame for our data collection.

Table 3.54 Rejectable Problems Noted Other Than Lacking Materials

Problems Noted?	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
No	89.6	54.4	98.9	100.0	12.8	81.0	6.3
Yes	10.4	45.6	1.1	0	92.4	7.6	0

Notes: N=287. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Materials and Input from External Sources

<u>Type</u>

  Table 3.55 describes the type and frequency of materials and input formally sought by OPA from DOJ divisions, other federal agencies, U.S. Attorneys, the courts, and other external sources.[111] The most common source was the USPO, as requesting the pre-sentence investigation report was a routine initial step for most incoming applications that were not administratively closed. FBI investigations and the input of the U.S. Attorney in the district where the underlying conviction took place are the next two most common sources utilized by OPA staffers to inform the evaluation process. The clemency rates shown in the table are somewhat misleading because it is the likelihood that a case file might result in a grant of pardon that often drives the decision to request a particular type of document or input. For example, the clemency rate for case files with U.S. Attorney input is a very high 33 percent, perhaps leading one to conclude that such input often helps convince an OPA attorney advisor to recommend that the President grant the petition. In fact, of the case files in our weighted sample that have received materials from the U.S. Attorney in the district of conviction, only about 10 percent contain statements from the U.S. Attorney that can be characterized as recommending the petition be granted (see ***Table 3.56***). In actuality, U.S. Attorney input is only sought when the OPA evaluation has proceeded to the point where administrative closure is highly unlikely (though not impossible) and where any subsequent recommendation of denial would likewise be highly unlikely to be based on aspects of the petition that would have already been addressed by the PSR or other information supplied by the USPO. Thus, a request for U.S. Attorney input is made only when a pardon grant is far more likely than it was when the petition was first received.

Table 3.55 Materials Sought or Received by OPA

Materials	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
Limited FBI investigation	15.3	7.0	12.9	77.3	9.7	62.0	28.4
Full FBI investigation	24.4	8.8	23.7	93.2	7.6	71.1	21.4
Any FBI investigation	32.6	12.3	33.3	100.0	7.9	74.9	17.2
IRS input or investigation	2.6	0	3.2	4.6	0	90.3	9.7

---

[111] The title of this table uses the phrase "sought or received," because some case files we examined contained a report or letter from an external source without documenting if and when the materials were actually requested by OPA.

Materials	Percent of Petitions	Percent of Final Action			Percent of Category		
		Closures	*Denials*	*Grants*	*Closures*	*Denials*	*Grants*
DHS input or investigation	0.8	0	1.1	0	0	100.0	0
USPO input or materials	82.6	47.4	91.4	100.0	12.1	81.2	6.8
U.S. Attorney input	17.0	5.3	14.0	100.0	6.5	60.4	33.0
Sentencing judge input	8.3	3.5	7.0	43.2	8.9	61.9	29.2
Victim input or information	0.3	0	0	4.6	00	0	100.0
DOJ Antitrust Division input	0.9	0	1.1	2.3	0	86.1	13.9
DOJ Tax Division input	0.5	0	0.5	2.3	0	75.6	24.4

Notes: N=287. Materials sought or received are not mutually exclusive; more than one can be associated with the same petition. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Recommendations

As suggested above, a definitive recommendation on the part of the U.S. Attorney that a petition be granted is not a common result of an OPA request for input from this source (***Table 3.56***; note that unlike the previous tables in this chapter, this table and the two that follow only consider petitions that resulted in a formal OPA recommendation and as such exclude administrative closures). When such a recommendation is received, or if the response is a less assertive (but not overtly negative) "no objection," the petition is about twice as likely as all case files with U.S. Attorney input to result in a recommendation to grant. Note, however, that despite DOJ guidance that the "views of the United States Attorney…are given considerable weight in determining what recommendations the Department should make to the President," about three out of ten U.S. Attorney grant recommendations or no-objection statements ultimately result in an OPA recommendation to deny in those petitions that have survived administrative closure. Indeed, there were some instances where the U.S. Attorney's explicit advice to deny the petition was present in the file but unheeded.

Table 3.56 U.S. Attorney Recommendations in Granted and Denied Cases

Recommendation	Percent of Petitions	Percent of OPA Recommendations		Percent of Category	
		Denials	*Grants*	*Denials*	*Grants*
Grant	9.5	4.2	19.1	27.9	72.1
No objection	26.9	12.5	52.4	29.7	70.3
No opinion/comment	11.3	8.3	16.7	46.9	53.1

Recommendation	Percent of Petitions	Percent of OPA Recommendations		Percent of Category	
		Denials	Grants	Denials	Grants
Deny	52.2	75.0	11.9	91.8	8.2
All Grants and Denials with U.S. Atty. Input	*100.0*	*100.0*	*100.0*	*63.9*	*36.1*

Notes: N=66. Petitions disposed of by administrative closure are not included. Only includes case files where the U.S. Attorney provided a recommendation on the merits of the petition or expressly declined to do so. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Our case file sample contained relatively few examples of OPA receiving the input of the sentencing judge, and so our ability to draw conclusions from what was observed is limited as well. More than six out of ten of the case files in our weighted sample with such input reflected a judicial preference to either grant or at least have no objection to a positive result (***Table 3.57***). If what we see for the 29 case files in the table hold true for the larger population, the opinion of the sentencing judge may have an effect on the ultimate outcome of the petition, but it is certainly not dispositive.

Table 3.57 Judge Recommendations in Granted and Denied Cases

Recommendation	Percent of Petitions	Percent of OPA Recommendations		Percent of Category	
		Denials	Grants	Denials	Grants
Grant	23.4	18.2	33.3	50.8	49.2
No objection	41.3	45.5	33.3	72.1	27.9
No position/comment	29.4	27.3	33.3	60.8	39.3
Deny	6.0	9.1	0	100.0	0
All Grants and Denials with Judge Input	*100.0*	*100.0*	*100.0*	*65.4*	*34.6*

Notes: N=29. Petitions disposed of by administrative closure are not included. Only includes case files where the sentencing judge provided a recommendation on the merits of the petition or expressly declined to do so. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

A PSR and other information from the USPO is requested for almost every petition that reaches a stage where the outcome of that petition is an OPA recommendation to the President either to grant or deny. ***Table 3.58***, however, considers only those case files where the USPO also provided a recommendation on the merits of the petition or expressly declined to do so. In this table, an OPA recommendation to deny occurred in every case file where we observed an earlier USPO recommendation to deny. In contrast, USPO grant recommendations were found in less than one in five case files that eventually received a pardon.

Table 3.58 USPO Recommendations in Granted and Denied Cases

Recommendation	Percent of Petitions	Percent of OPA Recommendations		Percent of Category	
		Denials	*Grants*	*Denials*	*Grants*
Grant	15.4	13.6	38.5	82.3	17.7
No objection	17.4	17.3	19.2	92.2	7.8
No position/comment	47.8	48.2	42.3	93.7	6.3
Deny	19.4	20.9	0	100.0	0
All Grants and Denials with USPO Input	*100.0*	*100.0*	*100.0*	*92.9*	*7.1*

Notes: N=136. Petitions disposed of by administrative closure are not included. Only includes case files where the USPO provided a recommendation on the merits of the petition or expressly declined to do so. Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Timing

Table 3.59 presents the average number of days that elapsed from the point at which the petition had been received by OPA and logged into its case management system to when the Office made a request for information, materials, or input. The table is sorted in order of the median, which is affected less by outliers than would be the mean, and it provides a rough timeline of an OPA evaluation. The median values for the days elapsed from case intake to a PSR request to the USPO and for a request for additional information from the petitioner (presumably as part of the initial screening letter) are nearly the same, suggesting that the two events take place roughly about the same time and within two months of OPA's receipt of the petition. A full FBI investigation is typically requested about eight and a half months out, and we are given to understand that the request is not made until the USPO materials have been received and considered. If the contents of the received FBI report do not immediately trigger a recommendation to deny, OPA's next step is to seek the input of the sentencing judge and the U.S. Attorney in the conviction district, a step that might occur nearly 17 months from when OPA first opened the case. Case files where OPA is leaning towards a grant recommendation may be the subject of a limited FBI investigation as a final check in order to identify any issues that might have arisen in the petitioner's life subsequent to the original FBI report. The request for such a check typically occurred some 22 months from case opening. It should be noted that some of the case files we reviewed had more than one limited FBI inquiry. We intended the abstractors to use the date of the most recent request if multiple inquiries were triggered, but it is possible that our data sometimes reflects what was true for an earlier request.

Table 3.59 Days from Initial OPA Screen to Request for Materials or Input

Event	N	Mean	Median
Request additional information from petitioner	215	127	50
Request USPO input	211	98	49
Request IRS info	7	171	166
Request full FBI investigation	85	323	264
Request DHS investigation	2	342	342
Request sentencing judge input	26	648	509
Request U.S. Attorney input	70	721	589
Request DOJ Antitrust input	2	670	670
Request limited FBI investigation	59	803	673
Request DOJ Tax input	2	853	709

Notes: Mean days weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Informed by the information presented in *Table 3.59*, *Table 3.60* provides what we think is important insight into the overall length of time a petition is subject to the OPA evaluation process (the table is also sorted in order of the median number of days). USPO information is typically received by OPA about one month after the request was made, which the previous table suggested typically occurred just under two months after case opening. While adding median values is not a particularly precise way to calculate total time arising from sequential events, it does suggest that the PSR and related information is typically received from USPO about three months from case opening. *Table 3.59* indicates that full FBI reports are typically requested about eight and a half months from case opening, which suggests that OPA usually takes about five months to consider the contents of the PSR and then decide to bring FBI resources into the evaluation.

Once that decision is made, the evaluation essentially goes dormant for quite some time, given that full FBI investigations can typically take about a year to complete. Another information source that is regularly requested is the U.S. Attorney, who our data indicates took a median of roughly a month and a half before sending his or her input back to OPA. Limited FBI investigations are, as the term indicates, limited in scope, but our data indicates that a median of about 4.3 months elapsed until the report was completed. Given that many of these limited investigations may not involve much more than updating a petitioner's criminal records history, and given that multiple limited investigations might be requested for the same petitioner, we suspect that the length of time reported in the table may be the influenced by a practice where some of our abstractors used the request date for the first limited investigation and the receipt date for the last. Because we no longer have access to the hard copy case files, we cannot confirm whether our suspicions are valid ones.

Table 3.60 Days from OPA Information Request to Receipt

Event	N	Mean	Median
Receive DOJ Antitrust input	2	21	21
Receive USPO input	229	65	28
Receive sentencing judge input	24	43	37
Receive U.S. Attorney input	70	87	42
Receive DOJ Tax input	2	48	53
Receive DHS investigation	2	107	107
Receive limited FBI investigation	60	162	134
Receive full FBI investigation	88	385	359

Notes: Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

Final Actions

The first panel in ***Table 3.61*** presents, for all of our sample case files together, the average number of days elapsing from the date the case was opened in the OPA system to key stages in the case's life. We were initially surprised about the typical length of time required to administratively close a case (median of 338 days) because administrative closures generally do not trigger extensive investigations or requests for FBI reports. Review of the distribution of open days for cases closed administratively indicates that while a quarter of such cases have a life of 43 days or less (about a third are less than 100 days), many appear to go into a sort of hibernation as the Office waits for a petitioner to supply missing or incomplete information or materials. It appears that in many such instances, the petitioner never responds to the request, and since the case is not active and not requiring any expenditure of OPA resources, there is little incentive for OPA to do anything further, at least until it is decided to clear dormant records from case management system and perform whatever steps are needed to close the case and archive the file.

The date OPA issues its recommendation memo to the DAG arguably represents the date of disposition for its evaluation of the pardon petition for matters that are not administratively closed. It is at this point the ball is essentially in the hands of DOJ administration and subsequently the White House. While OPA certainly has ongoing responsibilities in regard to these recommendations—especially if later tasked with additional investigation or if asked to reconsider its initial decisions—at least until advised otherwise, it can stand down and move on to other matters. Overall, about 16 months (499 days) elapse from intake to this point. The second panel focuses only on denial recommendations, and because denials make up almost all of the petitions that move beyond the administrative closure stage, the median days from intake to the memo to the DAG (478 days, not shown in the table) is fairly close to that for all recommendations taken together. But because the petitioner is only informed of a denial when

the President actually makes the final decision (which is typically performed on batches of OPA recommendations at one time), the effective resolution of the request for executive clemency from the petitioner's perspective comes about two and a half years (958 days) after petition submission.

The big jump is in the third panel of the table, which looks only at petitions that result in a grant of pardon. The extra investigation, the additional care and internal discussion taking place within OPA that might accompany a potential recommendation for executive clemency, and enhanced levels of feedback from the DAG all serve to push the median days from 16 months to about three and a half years. It is possible, however, that the date used in the file for the OPA memo transmission to the DAG reflects a decision to bundle groups of petitions together so that a single memo includes multiple grant recommendations that actually may have been drafted and finalized by OPA many months prior. The relatively similar length of median time for the point where the Letter of Advice is sent to the White House Counsel suggests that the DAG had reviewed and considered the potential advice to the President prior to officially receiving the memo from OPA on his or her desk. Add the time spent by the White House in scheduling the grant announcements at times most beneficial to the Administration, and it might be over four years (1,587 days) after the petition was first filed with OPA that a grant is announced to the public.

Table 3.61 Days from Initial OPA Screen to Final Events

All Dispositions			
Event	N	Mean	Median
Administrative closure	55	528	338
OPA disposition (adm. closure or memo to DAG)	281	646	475
OPA memo to DAG	226	676	499
DAG recommendation to White House Counsel	222	852	714
Presidential decision	215	1,143	985
OPA case file closure	277	1,016	925

Denial Recommendations			
Event	N	Mean	Median
OPA memo to DAG	184	632	478
DAG recommendation to White House Counsel	179	811	661
Presidential decision	172	1,110	958
OPA case file closure	179	1,117	984

Grant Recommendations			
Event	N	Mean	Median
OPA memo to DAG	42	1,277	1,328
DAG recommendation to White House Counsel	43	1,371	1,363

Grant Recommendations			
Event	N	Mean	Median
Presidential decision	43	1,545	1,587
OPA case file closure	43	1,516	1,566

Notes: Weighted by OPA final action for petitions disposed Oct. 1, 2001, to April 30, 2012.

4. Outcome Predictors

This chapter focuses on identifying characteristics described in the OPA case files we examined that most strongly predict a petition's outcome after entering the presidential pardon evaluation process. By "characteristics" we refer to information about the petitioner's identity (e.g., age, sex, race), personal history (e.g., highest level of education attained, military service, marital status, bankruptcy filings), and criminal justice-related aspects (e.g., nature of the conviction that was the subject of the pardon, behavior during incarceration, evidence of criminal behavior post-release), as well as information about the petition process (e.g., the length of time between release from incarceration and the filing of the petition, the particular policy guidelines in place during the evaluation, the nature of the recommendations received from external sources).

We start by detailing how we identify various stages of the evaluation process, and then we discuss how we condensed the large set of petitioner and case characteristics in our data into a smaller number of variables that could be used in the analyses. Due to the differences in the nature of the information considered at the various stages of the pardon process, we separately examine the decision to administratively close a case from the decision to recommend that the President grant or deny a pardon. For the cases that are administratively closed, we detail the specific reason OPA cited for terminating the case at that point and discuss the potential discretion OPA may have in making these decisions. The remainder of the chapter considers only the cases that were not administratively closed and uses regression analyses to identify predictors of whether a petitioner will reach each successive stage in the evaluation process and what the ultimate outcome of his or her petition might be. We also include a discussion of the racial differences in the likelihood of receiving a pardon and of moving through various stages in the OPA evaluation, and we explain how these results compare with prior research reported by *ProPublica*.

A Conceptual Model of Pardon Petition Evaluations

We first describe the conceptual model of the presidential pardon evaluation process used for our outcome analysis. ***Figure 4.1*** presents key stages of the evaluation process. For ease of exposition, we denote these as *Stage 1* through *Stage 4*, although this terminology is our own. It should be understood that this conceptual model is only intended to describe the process the vast majority of petitions undergo, as not every petition evaluation will fit perfectly into the model. Nor does this model describe all of the activities that OPA might conduct in its evaluation. ***Figure 4.1*** only describes selected events that reflect what we believe to be key points in the process evidencing OPA's continuing interest in collecting additional information to help guide its decision-making. Stage 1 represents the point at which OPA initially reviews the incoming pardon petition and accompanying materials. Many petitions are administratively closed after this initial review and proceed no further. Such administrative closures are triggered when OPA's initial review determines that the petitioner's submission did not meet certain threshold requirements for OPA to consider a pardon petition or that the application package was defective in some way. Those that are not administratively closed reach Stage 2 and enter what might be characterized as OPA's "formal review" cycle, as it will be the merits of the petition on subjective aspects such as acceptance of responsibility, conduct, and the need for relief that form the basis of the recommendation from that point forward, rather than on technical criteria established by DOJ to filter out non-standard clemency claims. Stage 2 petitions typically trigger a request to the USPO for information about the petitioner's underlying conviction as well as about the petitioner's life prior to sentencing. Once such USPO materials have been received and evaluated, the petition either results in a recommendation of denial or a progression to Stage 3, where the FBI is asked to conduct a background investigation. That FBI report may lead to a recommendation of denial or lead to the petition reaching Stage 4, where additional requests for input from various sources are made. After such information is considered, a recommendation to grant or deny results.

Figure 4.1 Flowchart of Presidential Pardon Evaluations
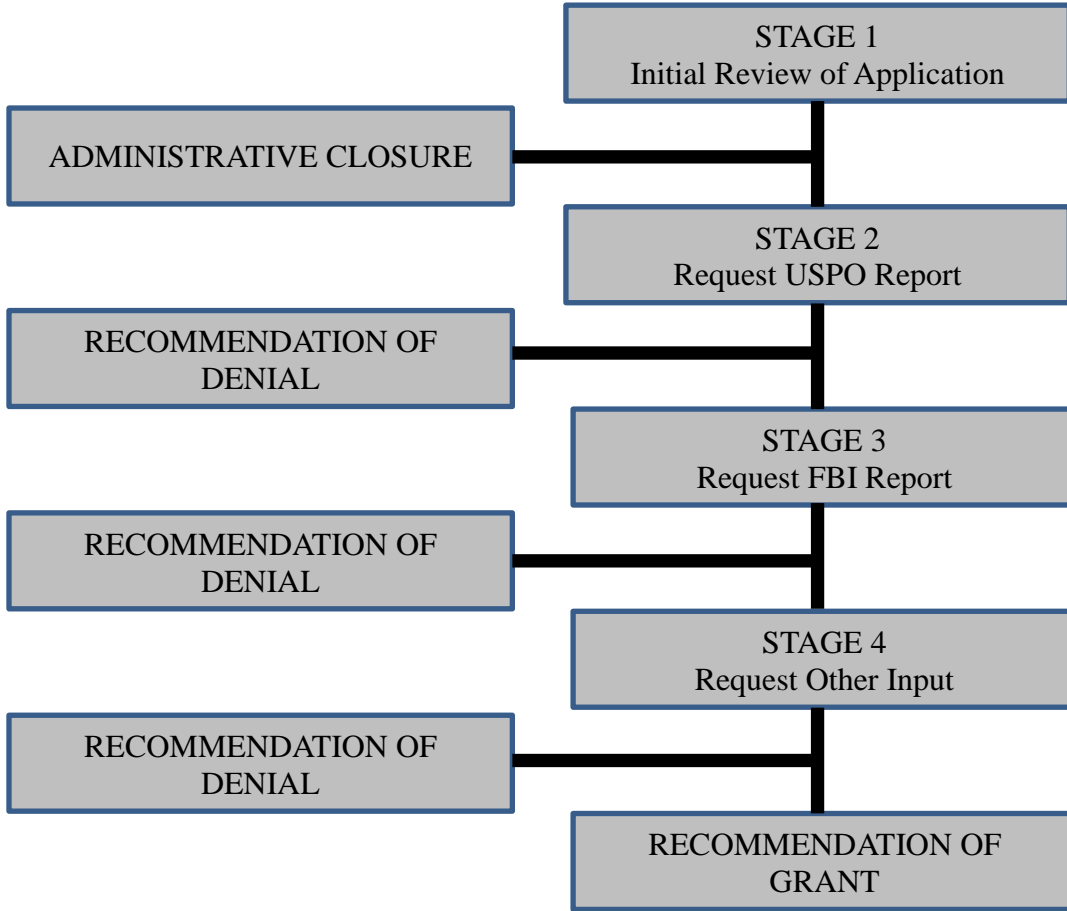
Figure 4.1 must be viewed in light of the fact that while our data clearly indicates whether someone was granted a pardon, had their case denied, or received an administrative closure, we must infer how far a case makes it in the process by examining OPA's information requests. First, we characterized cases that had not been administratively closed as making it to Stage 4 if OPA requested information from certain key sources, such as a U.S. Attorney's Office, the sentencing judge, a victim, the IRS (note that IRS inquiries are occasionally initiated earlier in the process), the DHS, DOJ's Antitrust Division, DOJ's Tax Division, or DOJ's Environmental or Natural Resources Division. In our background review of hundreds of petition files and from our discussions with OPA staff, we found that it would be highly unusual for such a request to be made prior to OPA receiving (and presumably considering) the results of at least a preliminary FBI investigation. That same background review also indicated that at least for the petitions that we reviewed, all recommendations for a grant of pardon took place after one or more "Stage 4 sources" were consulted by OPA, at least for those petitions that followed the usual evaluation process. The remaining cases (i.e., those that were not administratively closed and not classified

as reaching Stage 4) were classified as reaching Stage 3 if OPA requested an FBI background check but as only reaching Stage 2 if no such check was requested.[112]

To aid in understanding the flow of petitions through the evaluation process, *Table 4.1* presents both unweighted and weighted percentages of petitions reaching each of the key stages of represented in *Figure 4.1*. In the discussion that follows, we will focus on weighted percentages in order to conform to the actual throughput at OPA during the study period. As can be seen in *Table 4.1*, 21 percent of petitions are closed administratively by OPA after a new case is opened, with the remainder moving on to Stage 2.

Table 4.1 Procedural Progress for Petitions Included in the Study

Point in the Evaluation Process	N	Percent of All Petitions		Percent of Previous Stage	
		Unweighted	Weighted	Unweighted	Weighted
Stage 1 (initial review)	**287**	**100.0**	**100.0**	**n/a**	**n/a**
Administrative closure between Stages 1 & 2	57	*19.9*	*21.0*	*19.9*	*21.0*
Stage 2 (USPO request)	**230**	**80.1**	**79.0**	**80.1**	**79.0**
Denial between Stages 2 & 3	112	*39.0*	*44.2*	*48.7*	*55.9*
Stage 3 (FBI request)	**118**	**41.1**	**34.8**	**51.3**	**44.1**
Denial between Stages 3 & 4	39	*13.6*	*15.4*	*33.1*	*44.2*
Stage 4 (other source request)	**79**	**27.5**	**19.4**	**66.9**	**55.8**
Denial after Stage 4	35	*12.2*	*13.8*	*44.3*	*71.1*
Grant Recommendation	**44**	**15.3**	**5.6**	**55.7**	**28.9**

Note: Weighted values reflect all OPA petition decisions made during the study period of October 1, 2001, through April 30, 2012.

As seen in *Table 4.1*, the decision point where the largest single block of petitions is disposed is between Stages 2 and 3, where 44 percent of all petitions are denied. About 35 percent of all petitions reach Stage 3, where FBI background investigations are requested. Another 15 percent of all petitions result in a recommendation of denial after this point. Viewed in a different way, the information in an FBI report triggers an immediate denial recommendation in about 44 percent of the petitions where the investigation was requested. About 19 percent of all petitions

---

[112] A main concern with using information requests to determine how far an application progressed through the evaluation process is that it is possible that OPA requested information but documentation of such a request was missing from the pardon file. If so, our assumptions would result in characterizing petitioners as having dropped out of the process earlier than they actually did. However, for the most part, this coding scheme produced internally consistent results as all the cases where pardons were granted came from cases that were coded as making it to Stage 4. The one anomaly in this coding scheme was that 12 of the cases that we coded as making it to Stage 4 did not have an FBI background check request present in the file. As it is highly likely that this FBI check was in fact completed but documentation of same was missing from the pardon file, we left these 12 cases (which all resulted in denials) coded as having made it to Stage 4. However, any relative ambiguity in where to code these twelve cases should be taken into account when interpreting the results described in *Table 4.1*.

reach Stage 4, where OPA requests information from one or more additional sources. Of those cases, 71 percent result in recommendation of denial, while 29 percent are considered to be worthy of a presidential grant.

It is important to note once again that the key points in the evaluation process shown in *Figure 4.1* in which OPA formally recommends either a pardon denial or grant represents the final results of a decision-making process that includes input from OPA, the DAG, and the White House. The pardon files do record the official recommendation of each of the three parties, and there are a few instances where there is documentation in the pardon file that makes it clear that the DAG asked OPA to revisit their original recommendation. However, it is also possible that OPA's final recommendation (as well as OPA's decision as to what stage a formal denial will be issued) is influenced by informal communications with either the DAG or the White House that we do not observe. Due to the infrequent instances where we observe differences in the decisions initially made by OPA and DAG for the same petition, we assume our data cannot identify the distinct recommendations of OPA, the DAG, and the President during our study period, and we thus only look at the final decisions made and do not attempt to examine the ultimate decision-making process of OPA separately from that of the DAG and the President.[113] It should be noted that the CMS used by the Office records, and thus preserves, any differences between the recommendations of OPA and the DAG.

Overview of the Potential Predictor Variables

Definitions and Summary Statistics

In general, the goal of the analyses in this chapter is to identify the individual factors that predict whether a petitioner will receive a pardon. Although the data that was collected mirrors as closely as practical the totality of information present in a petitioner's file, we found it necessary to collapse this information into a smaller set of variables before any regression analyses could be done. For example, our analysis dataset contains information on five different ways an individual may have had financial problems at some point, which correspond to seven

---

[113] There was only one case in our study data where DAG and the President have different final recommendations/decisions listed (in this instance the case file indicated that OPA recommended a pardon be granted, DAG recommended a denial, and the President ultimately granted a pardon). There were six other cases in our study data where there was documentation in the pardon file indicating that the DAG asked OPA to revise their recommendation: In four of these cases OPA likely revised their final recommendation from granting a pardon to a denial, and in the other two cases OPA likely revised their final recommendation from a denial to granting a pardon. All of these cases were coded as making it to Stage 4, which is to be expected as petitions moving through the typical evaluation process are unlikely to result in a pardon recommendation by OPA or the DAG without Stage 4 information as a final check. Our assumption is that if OPA was leaning towards recommending a denial at an early stage in the process (perhaps immediately after receipt of the USPO report) but the DAG disagreed with the initial decision, it is likely that the next step taken by OPA would be to request additional background checks or input from others (such as the U.S. Attorney in the sentencing district).

separate questions asked on our data collection form, with 25 total answers possible. Due to the relatively small sample size we have, as well as the potential for high correlation between such data fields, we would be unable to identify the separate impact of information gathered by each of these questions, and as such, we collapsed all of these variables into a single indicator of any post-conviction financial difficulties. We performed similar exercises for other key petitioner or case dimensions that we had information for, although the way in which we collapsed variables differed by the nature of the questions and the answers observed and was informed by our background research into the pardon process. We refer to the resulting analysis fields as *potential predictor variables*.

Table 4.2 presents unweighted descriptive statistics on the resulting potential predictor variables (note that the tables in **Chapter 3** only presented weighted values). The first results column ("Sample Size") presents the number of cases in our analysis data for which information was available in regard to the characteristic or event captured by the potential predictor variable. For variables that flag whether a characteristic or event is true (such as *Male* or *Married and Never Divorced*), the "Overall" column presents the proportion of the complete petitioner sample for a true condition. For variables that describe time, the Overall column presents the mean number of years. The next three columns also present proportions or mean years but only for subsets of the analysis sample characterized by one of the three OPA final actions: administrative closures, denial recommendations, and pardon recommendations. For example, 85 percent of all of the petitioners in our sample were male, as were 83 percent of those who received administrative closures, 86 percent of those who received denials, and 89 percent of those who received pardons. Note that all of the proportions and means shown in the table are unweighted. The last column presents the *p*-value from a test of whether the proportion of the population or the mean years for that particular characteristic is significantly different among those that receive a pardon versus those that receive a denial (issues related to whether a pardon application was closed administratively or whether it proceeded to Stage 2 and the formal review process are discussed elsewhere in this chapter). Commonly employed rules of thumb for initial interpretations of *p*-values are that values between 0.05 and 0.1 provide weak evidence of statistical significance, values between 0.01 and 0.05 provide moderately strong evidence, and values that are under 0.01 provide strong evidence. It should be noted that these suggested *p*-value thresholds are arbitrary and an arguably more helpful way to utilize such tests is to compare across a set of variables to identify those with results evidencing relatively stronger or weaker significance.

Table 4.2 Summary Statistics for Potential Predictor Variables

Petitioner and Case Characteristics	Sample Size	Overall	Administrative Closures	Denials	Grants	*p*-value for Denials v. Grants
Petitioner Characteristics						
Male	287	0.854	0.825	0.855	0.886	0.5888
White	282	0.791	0.741	0.788	0.864	0.2597
Black	282	0.145	0.148	0.152	0.114	0.5161
Hispanic	282	0.025	0.056	0.016	0.023	0.7719
Asian	282	0.025	0.019	0.033	0.000	0.2266
Age (mean years)	284	53.1	54.3	52.5	53.8	0.5266
Married and Never Divorced	285	0.400	0.375	0.384	0.500	0.1597
Military Positive	284	0.250	0.25	0.234	0.318	0.2469
Charitable Actions	259	0.849	0.857	0.826	0.930	0.0918
Religious	281	0.470	0.327	0.484	0.591	0.2027
Pre-Conviction Crime	285	0.491	0.429	0.557	0.295	0.0017
Conviction Characteristics						
WHC Memo Crime	287	0.321	0.386	0.339	0.159	0.0198
Incarcerated	286	0.566	0.456	0.632	0.432	0.0148
Post-Conviction Activity						
Post-Conviction Crime	282	0.227	0.192	0.258	0.136	0.0875
Low Employment	277	0.051	0.056	0.061	0.000	0.0925
Adverse Employment	282	0.135	0.089	0.165	0.068	0.1042
Drug/Alcohol Issues	284	0.236	0.286	0.245	0.136	0.1229
Financial Difficulties	282	0.397	0.304	0.467	0.227	0.0037
Civil Litigation	282	0.135	0.071	0.158	0.116	0.4884
Application Characteristics						
Pardon Reason Important	286	0.517	0.536	0.511	0.523	0.8870
Mean Years Since Conv./Incarc.	280	13.8	11.5	12.6	21.4	0.0000
0-10 years	280	0.475	0.574	0.511	0.205	0.0002
10-20 years	280	0.318	0.296	0.330	0.295	0.6649
20 plus years	280	0.207	0.130	0.159	0.500	0.0000
Government Support	286	0.178	0.179	0.156	0.273	0.0692
Attorney	285	0.196	0.218	0.167	0.295	0.0511
Obama Era	287	0.366	0.509	0.366	0.182	0.0197
Agency Feedback						
USPO Feedback: *none*	287	0.481	0.772	0.409	0.409	0.9953
negative	287	0.105	0.000	0.161	0.000	0.0041
neutral	287	0.202	0.105	0.231	0.205	0.7055
positive	287	0.213	0.123	0.199	0.386	0.0082
Oth. Agency Feedback: *none*	287	0.732	0.912	0.849	0.000	0.0000
all positive	287	0.077	0.000	0.011	0.455	0.0000
any negative	287	0.115	0.070	0.129	0.114	0.7832
neutral/mixed positive	287	0.077	0.018	0.011	0.432	0.0000

Note: Year values are means. All values are unweighted. Includes all administrative closures, denial recommendations, and grant recommendations.

Below, we discuss how we defined certain **Table 4.2** variables with meanings that may not be obvious. The first set of variables presented in **Table 4.2** measure the petitioner's personal characteristics. The variables for *Black*, *Hispanic*, and *Asian* are set when there was explicit evidence in the file of the petitioner's race or ethnicity, but in those instances where such evidence was not present, we rely on the coder's best guess.[114] It should be noted that in the analysis presented in this chapter, we define *Black* as any petitioner whose race had been identified by the coder as black, regardless of Hispanic ethnicity, and *Hispanic* as any non-black petitioner whose ethnicity had been identified by the coder as Hispanic (other racial categories in this chapter's analysis, such as Asians and whites, exclude petitioners of Hispanic ethnicity). The indicator variable *Military Positive* is set if a petitioner was ever in the military, was honorably discharged, and there was no indication of a court-martial or non-judicial punishment. *Charitable Actions* is an indicator for whether the petitioner engaged in charitable, community, or civic activities post-conviction. *Religious* is an indicator for whether there was any evidence that the petitioner was religious (both *Charitable Actions* and *Religious* are largely based on information self-reported by the petitioner). *Pre-Conviction Crime* is an indicator for whether the petitioner had any arrests, charges filed, or convictions prior to the conviction for which he or she sought a pardon.

The two variables measuring conviction characteristics reflect the seriousness of the original crime for which the petitioner is seeking a pardon. *WHC Memo Crime* is an indicator for whether the crime was included in one of the two memos the respective White House Counsels for President Bush and President Obama provided to the Deputy Attorney General at the time that listed offenses and petitioner histories for which clemency would rarely be granted. Because the list of disfavored situations differ slightly on the two memos, we coded *WHC Memo Crime* according to the memo that was controlling authority when the petitioner's case reached the final action stage.[115] Instead of creating numerous controls for the different crime types, we decided a more succinct approach would be to classify crimes by whether they were on the applicable memo or not.[116] The variable *Incarcerated* is an indicator for whether the sentence for the conviction for which the petitioner was seeking a pardon resulted in incarceration.

---

[114] The classification approach used here for race and ethnicity determinations mirrors that employed for the frequencies presented in **Table 3.8**, though **Table 4.2** is not weighted.

[115] Note that there are 18 cases we refer to as being in an intermittent period—these are cases between when President Obama came into office (January 20, 2009) and when his White House Counsel provided the DAG with instructions as to which offenses should rarely receive pardons (July 13, 2010). As these cases were all administrative closures, and OPA does not seem to have been given any new instructions during this period, we coded these according to the offenses listed on President Bush's memo. Note that *WHC Memo Crime* for case files that reached the stages where OPA would make either a formal recommendation for denial or grant during the Obama Administration reflect the criteria listed in the July 2010 memo.

[116] Depending on date of the memo, the list of offenses can include convictions that involve violent crimes; use of firearms, arson, or deadly explosives; trafficking in illegal drugs; harm to children; public corruption; terrorism-related offenses; and financial fraud involving harm to a large number of individuals or a substantial loss to the

The next set of variables measure the post-conviction activities of the petitioner (we use the terms "post-conviction" or "after conviction" to refer to the period following release for petitioners who were incarcerated and for those who were not, to the period following sentencing). *Post-Conviction Crime* is an indicator for whether the petitioner had any subsequent arrests, charges filed, or convictions after the conviction for the offenses that were the subject of the petition. *Adverse Employment* is set to true when there was any indication that a petitioner was involuntarily terminated from a job for cause or failed to list arrests or convictions on any application (employment or otherwise) where the information was requested. *Drug/Alcohol Issues* reflects any indication of post-conviction issues with alcohol, substance abuse, or illegal drug use, or whether the petitioner was ever in an alcohol or drug treatment program or facility post-conviction. *Financial Difficulties* indicates whether the petitioner had any post-conviction financial troubles, debt issues, tax liens, bankruptcy filings, or payment issues with child support or spousal support. *Civil Litigation* is an indicator for whether a petitioner was involved in a civil case (such as a lawsuit) during the time of the OPA review or named as a defendant in a civil case post-conviction.

Another set of variables in *Table 4.2* describe various aspects regarding the petition itself. The petition form requires petitioners to state their reasons for seeking a pardon, and some of the explanations can cover multiple handwritten pages. We initially attempted to code cases into a binary indicator (*Pardon Reason Important*) for whether we felt OPA would view the case as having a relatively more important reason for wanting a pardon, such as whether the pardon was needed for employment purposes, was necessary to avoid deportation, or because the petitioner wanted to become a foster or adoptive parent. *Years Since Conviction/Incarceration* measures the number of years from the date of sentencing if the individual was not incarcerated, and the number of years from the date of release if the individual was incarcerated. *Government Support* is an indicator for whether a person in government (other than in law enforcement or in the judiciary) supplied a character reference for the petitioner, endorsed their support for the petition, or contacted OPA to check on the status of the application. In a number of instances, the person providing government support in some manner was a member of the U.S. Senate or House of Representatives. *Attorney* is an indicator for whether the petitioner was represented by counsel at any point during the pardon application process. *Obama Era* is an indicator for whether the final

---

government. It should be noted that while we know whether an individual had any criminal activity either prior to or after their conviction, we do not observe the total number of convictions they had. The memos to the DAG provided by the administrations of both President Bush and President Obama note that pardons should very rarely be granted to individuals with three or more criminal convictions. Unfortunately, our data cannot identify this variable, although we do control separately for criminal activity both prior to and post-conviction.

decision on the petitioner's pardon took place during a period of time when OPA had been advised of President Obama's preferences in regard to executive clemency decisions.[117]

The final set of variables in *Table 4.2* correspond to the feedback OPA received from the USPO, as well as feedback from various agencies and other sources of information contacted in Stage 4. We coded *USPO Feedback* to reflect the nature of what we found in the file: Negative feedback, neutral feedback, positive feedback, or no feedback found (separate indicator variables were also created for each of these categories). It is important to note that a sizeable fraction of the individuals that move into the formal pardon process (i.e. Stage 2 or later) do not have USPO feedback in their pardon file. The USPO does not indefinitely retain records on defendants they investigated as part of the sentencing process (individual USPO offices appear to differ in their retention policies in regard to length of time), and as such OPA's files often lack USPO input for those petitioners with convictions dating back many decades. Another reason for the lack of USPO feedback in so many cases is that many USPO offices have policies against providing clemency recommendations. *Other Agency Feedback* summarizes the feedback that OPA requested from agencies other than from the FBI and the USPO regarding petitioners who made it to the last stage of the process, with the U.S. Attorney's Office in the federal district where the conviction took place constituting the most common source of such input. As there was sometimes feedback from more than one non-FBI/non-USPO agency in the file, *Other Agency Feedback* consists of four separate indicator variables: Positive feedback from all non-FBI/non-USPO agencies, any negative feedback from any agency, neutral or a mix of neutral and positive feedback, or no feedback found in the file.

Issues Regarding How Information Was Abstracted from Case Files

The manner in which the information presented in *Table 4.2* was collected needs to be considered in order to properly interpret the results of our analysis. The pardon application requires each petitioner to self-report essentially all of the *Table 4.2* information, except for matters related to race, ethnicity, and religion unless the petitioner voluntarily provides such information (free text answers are permitted for certain questions—such as in regard to charitable activities—and present an opportunity for the petitioner to report on aspects outside of the scope of the petition form). Study case files for those petitions that were administratively closed contain little information about the petitioner or the underlying conviction other than what was in the original application and supporting materials, and as a result records in our analysis dataset for those case files rely almost exclusively on what the petitioner self-reported to OPA. Those petitions that moved on to Stage 2 will usually contain information from the USPO, often in the form of a comprehensive pre-sentence investigation report that describes much about the

---

[117] Although President Obama took office on January 20, 2009, the first petition in our data set that resulted in an OPA final action other than an administrative closure was disposed of on October 11, 2010. Notably, this disposition occurs after the White House Counsel for his administration issued a pardon policy memo on July 13, 2010.

petitioner at the time of the underlying conviction. Because the USPO's responsibilities for the most part end when a convicted defendant is initially incarcerated or released from probation (depending on the sentence), information we collected about the petitioner's post-release life for those who never reached Stage 3 is also largely based on self-reporting. Petitions that reached Stage 3 are likely to result in an FBI investigation report. These reports provided our data collection abstractors with a wealth of personal information about each petitioner, including aspects about the petitioner's life from the point of conviction through the point that OPA requested the investigation as well as race and ethnicity information.

Because the OPA case files we examined differ in the types of documents they contained, a specific type of information of interest, such as pre-conviction criminal history, might be found only in the application, both in the application and the USPO response, both in the application and the FBI investigation report, or in the application, the USPO response, and the FBI report as well. Our data collection process did not separately collect information by source. Instead, our data collectors were instructed to initially utilize the application when abstracting information from the case file, but when such information conflicted with what was later reported in the USPO response or the FBI report, they were to assume that these two government sources contained the most accurate data, with priority given to the FBI report if it conflicted with what was available in the USPO response. Later in this chapter we will discuss the impact our data collection approach may have on our regression results.

While race is never an explicit area of inquiry for the pardon application, it is typically included on the USPO pre-sentence investigation report, and thus will be observable to OPA staff members for the majority of petitioners who reached Stage 2 (note that not all case files, including those that result in a pardon, contain a PSR due to a variety of reasons). FBI investigations generally include race as part of the report submitted to OPA, so Stage 3 case files will almost certainly have this information. However, we also find that race is also observable for a relatively high fraction of cases that are administratively closed, which can happen either because OPA requests USPO information on a small fraction of cases that it eventually closed administratively, or because the petitioner voluntarily includes other information in the initial application (either through questions allowing free text answers or by the submission of supporting documents or photographs) that would make his or her race clear to an OPA attorney advisor. Nevertheless, there were 30 petitioners in our sample of 287 case files where race was not explicitly reported in any of the materials we were able to examine. Of these 30 petitioners, 16 had their cases administratively closed. In order to minimize the number of missing observations regarding this important topic, our data coders were asked to provide their best guess as to the race of these 30 petitioners if they felt comfortable doing so. For petitioners who had their cases administratively closed (and thus only went through the first stage of the process), only 5 percent had race missing when both explicit information and abstractor interpretation are utilized, and thus we view race as a type of petitioner characteristic that would have been

potentially visible to OPA staff members at essentially all stages of the pardon evaluation process. The analysis that follows defined race variables on the basis of both explicit and interpretative information, but it should be noted that our central results would have been quite similar had we only categorized the race of the petitioner when it was explicitly identified in the case files.

Note that there are many variables that we collected during examination of the study case files that we opted not to include in the set of potential predictor variables shown in ***Table 4.2***. Some of these variables that turned out to effectively exhibit little variation, such as the petitioner's specific religion when reported (92.5 percent identified as Christian), citizenship (96.8 percent were U.S. citizens), or whether they were convicted in military court (the case files we were able to examine turned out to only involve federal district court convictions). We also excluded other variables that, based on our review of literature related to executive clemency actions and our discussions with OPA staff, appeared to be given less weight in the evaluation process. These variables include, for example, whether petitioners had children, the specific military branch in which they had served (if any), whether they sought treatment for a mental health issue, whether they had outstanding fines and/or restitution from their underlying convictions, their education level, and whether they had submitted applications previously. We also did not consider some variables corresponding to the petitioner's pre-conviction behavior (including their drug and alcohol use, financial issues, and involvement in civil litigation, as well as whether the conviction was the result of a plea versus a verdict at trial) as the standards for receiving a pardon explicitly state that the general focus of the evaluation is on the post-conviction conduct of the petitioner.[118] The major exception related to prior conduct that we do include in our set of potential predictor variables was a measure of the petitioner's criminal activity before the conviction for which they are seeking a pardon. Generally, we only included pre-conviction indicator variables if they flagged conditions that had been cited by OPA as a reason for denial in at least 5 percent of all denials or had been cited as a reason for closure in at least 5 percent of all administrative closures

Examining the last column of ***Table 4.2***, variables that have a *p*-value less than 0.1 provide some indication that the proportion of individuals with that characteristic may differ significantly among those who are denied versus those who are granted a pardon. However, because these variables can be highly correlated with each other, some may only *seem* to be important because they are correlated with other variables that actually *are* important. To really understand whether a particular variable influences the likelihood of getting a pardon, it is necessary to examine the impact that variable has after holding other variables constant. This is precisely what multiple regression analysis will allow us to do, as we describe later in this chapter.

---

[118] "In general, a pardon is granted on the basis of the petitioner's demonstrated good conduct for a substantial period of time after conviction and service of sentence" (U.S. Department of Justice, 2018, Section 9-1-2.112).

Analysis of Information Considered in the Petition Evaluation Process

While previous sections in this chapter have described some of the information that OPA can potentially consider in their decision to grant a pardon, this section will attempt to empirically identify the specific information that appears to have been most central to the decision-making process. Because one of the primary motivators behind this study was a concern about racial disparities in petition evaluations, we start with a description of how potential predictor variables break out in term of white and black petitioners. Such discussion provides a foundation for understanding some of the analyses that follows. We then turn to a general examination of the variables that appear to be most strongly predictive of receiving a pardon overall. As the nature of the information examined at Stage 1 (whether to administratively close the case) is different from the nature of the information considered once the petitioner makes it to Stage 2 and beyond (whether to recommend that the petition be denied or granted), we separately consider these natural divisions in the pardon evaluation process. Finally, we then take a close look at the variables that are most predictive of a petitioner progressing through various stages of the evaluation process.

Background on Predictor Variables and Race

The key goals of our analyses later in this chapter are to identify the variables that most strongly predict whether a petitioner receives a pardon and to identify whether there are racial disparities in those outcomes. As such, it is useful to examine up front how the characteristics of pardon petitioners from different racial groups compare to each other. Since we have relatively few Hispanic and Asian petitioners in our data, our analyses focusing on racial differences will only compare white petitioners with black petitioners. ***Table 4.3*** examines how blacks and whites compare to each other in terms of the proportion of each group meeting the tests for the same potential predictor variables that were presented in ***Table 4.2*** (the exceptions are *Age* and *Years Since Conviction or Incarceration*, which describes average years for each of the two groups). The last column presents the *p*-value from the hypothesis test of whether a value shown for mean (for year variables) or proportion (for all other variables) for whites exhibits a statistically significant difference from the corresponding value for blacks. For the most part, black and white pardon petitioners are relatively similar in terms of those characteristics. The key areas they differ in are that black petitioners are less likely to be male, more likely to have evidence of religious beliefs in their case files, more likely to have had evidence of adverse employment issues, and are more likely to assert arguably more compelling reasons for seeking a pardon.

Table 4.3 How the Predictor Variables Vary by Petitioner Race

Petitioner and Case Characteristics	Whites	Blacks	*p*-value for Whites vs. Blacks
Petitioner Characteristics			
Male	0.883	0.732	0.010
Age (mean years)	54.2	49.1	0.014
Married and Never Divorced	0.401	0.375	0.759
Military Positive	0.275	0.225	0.514
Charitable Actions	0.851	0.838	0.832
Religious	0.429	0.718	0.001
Pre-Conviction Crime	0.480	0.610	0.127
Conviction Characteristics			
WHC Memo Crime	0.300	0.415	0.150
Incarcerated	0.572	0.585	0.875
Post-Conviction Activity			
Criminal Activity	0.231	0.211	0.785
Employment Low	0.056	0.000	0.127
Adverse Employment	0.110	0.250	0.016
Drug/Alcohol Issues	0.249	0.200	0.508
Financial Difficulties	0.374	0.500	0.136
Civil Litigation	0.150	0.075	0.208
Application Characteristics			
Pardon Reason Important	0.475	0.675	0.020
Mean Years Since Conv./Incarc.:	14.1	12.3	0.318
Government Support	0.206	0.100	0.116
Attorney	0.206	0.175	0.651
Obama Era	0.345	0.390	0.581
Agency Feedback			
USPO Feedback: *none*	0.484	0.512	0.744
negative	0.103	0.122	0.720
neutral	0.197	0.195	0.974
positive	0.215	0.171	0.521
Other Agency Feedback: *none*	0.670	0.805	0.171
all positive	0.076	0.098	0.644
any negative feedback	0.130	0.073	0.307
neutral/mixed	0.094	0.024	0.1384

Note: All values are unweighted. Includes all administrative closures, denial recommendations, and grant recommendations with either a white or black petitioner (223 whites and 41 blacks).

Table 4.4 shows the weighted proportion of blacks and whites who are granted a pardon, as well as the proportion that drop out at each of the earlier stages. While black petitioners are about two percentage points less likely to receive a pardon, this overall difference is not statistically

significant. Discussion later in this chapter will expand on this analysis by examining the racial disparity in the granting of pardons when some of the key predictor variables are controlled for in cases that have survived the administrative closure screening. It is important to note that the sample of black petitioners is relatively small (41); later in this chapter we discuss the potential implications sample size may have on our results.

Table 4.4 How the Outcome Variables Vary by Petitioner Race

Outcome	Whites	Blacks	*p*-value for Whites vs. Blacks
Administrative Closure	0.192	0.202	0.891
Stage 2 Denial	0.431	0.485	0.542
Stage 3 Denial	0.180	0.081	0.061
Stage 4 Denial	0.134	0.189	0.422
Pardon Granted	0.063	0.044	0.388

Note: All values are weighted. Includes all administrative closures, denial recommendations, and grant recommendations with either a white or black petitioner (223 whites and 41 blacks).

Administrative Closures

As indicated in ***Chapter 2***, administrative closures refer to situations where OPA has accepted the petition application as a new case but subsequently rejects it as a result of various technical or fundamental shortcomings. These are typically cases which do not meet the standards enumerated in DOJ regulations and internal policies for the minimum requirements to even be considered for a pardon. That said, OPA has essentially independent decision-making power to determine whether a submitted application is in compliance with those requirements and if not, whether to reject the petition outright or instead provide the petitioner with an opportunity to correct technical problems or submit justification for a waiver of the rules. The decision to terminate the petition evaluation process at this point for any individual petitioner is not reported to or reviewed by the DAG, the White House Counsel, or the President. If OPA does decide to administratively close a case, the reasons for doing so will be entered into the pardon case file. ***Table 4.5*** summarizes the specific reasons OPA noted for each of the administratively closed cases in our sample.[119] The first column presents these results for all administratively closed cases, and the second and third columns repeats this analysis for whites and blacks, respectively. The first four reasons listed in the table are situations where OPA has

---

[119] If multiple reasons were noted for why a case was administratively closed, we selected the one reflecting the least amount of discretion available to OPA (for example, OPA would have little choice but to administratively close a case if the petitioner requested that they do so, but might have considerable discretion in regard to overlooking paperwork issues). The order in which reasons are listed in ***Table 4.5*** reflects our interpretation of where each lay on the "discretion continuum."

no real discretion. These reasons correspond to OPA closing the case at the request of the petitioner, because the conviction did not involve a federal crime, because the petitioner was deceased, or because the conviction was already expunged by the Federal Youth Corrections Act. However, for the next four reasons listed in the table, OPA has some discretion over whether to close or to move on to Stage 2. As most of the cases closed for potentially discretionary reasons are dropped due to the time since conviction or release from incarceration being less than five years or because the petitioner's paperwork is incomplete, we discuss the potential use of discretion for these two situations in more detail below.[120] Note that we do not present *p*-values to as indicators of statistical significance in regard to the differences in the respective proportions of whites and blacks for any of the reasons listed in **Table 4.5** because of the low count of black petitioners in these categories.

Table 4.5 Reasons Cited for Administrative Closure

Reason	Overall	Whites	Blacks
Petitioner Request	0.088	0.100	0.000
No Federal Conviction	0.053	0.000	0.250
Deceased	0.088	0.100	0.000
Federal Youth Corrections Act	0.018	0.025	0.000
Doesn't Reside in U.S.	0.035	0.050	0.000
Misdemeanor	0.018	0.000	0.000
Less than Five Years	0.246	0.300	0.125
Improper Paperwork	0.421	0.400	0.625
Reason Missing	0.035	0.025	0.000
Sample Size	57	40	8

Note: Includes only cases that were administratively closed.

The pardon application form clearly states that a five-year waiting period is necessary (from either the sentencing date if not incarcerated as a result of the underlying conviction or the release date if incarcerated), but that petitioners may make a written request for a waiver of this requirement.[121] Thus, some petitioners who wait less than five years before applying may be allowed to move past Stage 1 if there are circumstances presented in their requests that satisfy the OPA screeners. There are 23 cases in our sample where the petitioner applied within the five-

---

[120] While some discretion exists in regard to applications from non-residents and those involving misdemeanor convictions, the counts associated with petitions closed for such reasons are too low to analyze differences between blacks and whites.

[121] "You may make a written request for a waiver of this requirement. However, waiver of any portion of the waiting period is rarely granted and then only in the most exceptional circumstances. In order to request a waiver, you must complete the pardon application form and submit it with a cover letter explaining why you believe the waiting period should be waived in your case." (U.S. Department of Justice, 2016).

year period—16 of these applications were later administratively closed and seven were allowed to go on in the process. Of the seven individuals for whom exceptions were made, our case file abstractors only identified a single petitioner who explicitly requested a waiver with their application, although our coding instrument was not designed to capture the specific reasons stated for that request. This suggests that some petitioners may communicate with OPA in ways that we do not observe to request a waiver of this requirement, or that OPA may view other meritorious information on their application and choose to waive the requirement independently. Because the sample is so small here, and because we do not observe the reasons individuals stated for needing a waiver, it is difficult to identify the specific criteria OPA used in determining which cases were allowed to move on.[122] Thus, while it is reasonable to conclude that OPA does use discretion here, unfortunately we cannot identify the specific factors they take into account when they decide on waiving the requirement.

The major other area where OPA potentially has some discretion over administratively closing cases is for improper paperwork. If a petitioner submits an incomplete application, OPA will typically follow up with the petitioner and request that they submit the missing materials, answer any mandatory question that were skipped, or correct some other type of deficiency. However, OPA may have discretion with respect to how many times they follow up with the petitioner, the length of time OPA will wait before administratively closing the case, and whether they will allow somewhat incomplete applications to move forward in the process. Since our data collection did not independently assess the completeness of the paperwork for all petitioners, and because our data collection instruments did not capture whether OPA communicated with the petitioner more than once, it is difficult for our study to assess the level of discretion utilized by OPA.[123] Because OPA observes all of the information on the pardon application when they make this decision of whether to close the case for improper paperwork, it is possible that the extent to which they follow up with candidates may depend on how likely they think it is that the candidate would receive a pardon as a result of other factors presented in the initial application.[124]

One of the key concerns with OPA having wide discretion in administratively closing cases is that there is greater potential for a characteristic of questionable importance (such as race) to

---

[122] Note that all seven of the cases where the petitioners applied before the five-year waiting period was completed but nevertheless made it to Stage 2 eventually had their petitions denied.

[123] In all of the cases that OPA eventually closed for having incomplete paperwork, there is evidence in the pardon file that OPA contacted each of these petitioners at least once regarding this problem and requested that they correct the shortcoming.

[124] In exploratory analyses not shown, we assigned all of the 24 individuals who were dropped for paperwork reasons as having "incomplete" paperwork, and assigned all 230 petitioners who continued on to Stage 2 as having "complete" paperwork. There were only a few variables in *Table 4.2* that were systematically different between the two groups: those in the "complete" group were more likely to be male, and more likely to be married and never divorced. It is not possible to say whether OPA took this information into account in their decision-making.

be taken into account without a paper trail to document the specific reasons for the decision. It might be possible, for example, that while no evidence of systematic racial discrimination is observed when examining the formal decision to grant or formally deny a pardon, administrative closures may be more sensitive to race bias. But while our sample of black petitioners is relatively small, there is no indication in our data that any potential OPA discretion at this stage resulted in adverse outcomes associated with race. Of the four black petitioners who applied within the 5-year theoretical minimum, three (75 percent) of them were allowed to move on to Stage 2, while only four (24 percent) of the 17 white petitioners who applied within five years moved on to Stage 2. Our analyses also provided no compelling evidence that black petitioners were significantly more likely than white petitioners to have their case closed due to having incomplete paperwork. About 13 percent of black petitioners who did not have their case closed for any other reason listed in *Table 4.5* had their case closed for submitting incomplete paperwork. The corresponding percentage of white petitioners was 8 percent, but the resulting *p*-value was .3111, indicating that the differences observed were not of statistical significance.

The Formal Pardon Process

Justifications for Recommending Pardon Denials

The analyses presented in the remainder of this chapter drop all cases that were administratively closed in order to more closely examine what factors seem to predict whether a petitioner has their pardon petition granted rather than formally denied (thus our focus from this point forward is on the *recommendation rate* for matters surviving the administrative closure stage, rather than on the *clemency rate* for all petitions). As we discussed earlier, we cannot separately identify the decisions of OPA, the DAG, and the President, and thus we consider all three to jointly be the decision-maker at this stage.

Whenever OPA decides to recommend that a pardon petition be granted or denied, a memorandum to the DAG is drafted to document the specific reasons for the recommendation. The DAG reviews this memorandum and either approves of the recommendation and reasoning, asks that additional investigation be conducted before the decision is made, or requests that the recommendation and/or the language in the memorandum be modified. The memorandum is eventually finalized and formally transmitted to the DAG, who in turns composes a formal Letter of Advice to the White House Counsel for the President to consider. Because of the feedback that takes place at different stages in the process, the final versions of the OPA and DAG letters are essentially identical in terms of both the recommendations and the reasoning, and as a matter of convenience we jointly refer to both as the "decision letters." Using information from these decision letters for those cases that resulted in a denial, *Table 4.6* shows the proportion of denials that are attributed to the most commonly reported reasons, though it should be noted that there

typically are multiple reasons cited in each recommendation.[125] For example, 48 percent of the cases formally denied had a decision letter citing that the candidate showed insufficient remorse for the crime or failed to accept responsibility for it.

Table 4.6 Reasons Cited for Denial Recommendations

Reason	Proportion of Denials
No Remorse/Failure to Accept Responsibility	0.484
Lack of Candor or Falsehoods to OPA	0.398
Time Since Conviction Too Short[126]	0.339
Nature of Offense	0.326
Crime Type (e.g., listed on WHC memo)	0.258
Pre-conviction Criminal Activity	0.183
Financial Difficulties	0.183
Insufficient Need for Pardon	0.140
Post-conviction Criminal Activity	0.097
Drug/Alcohol Issues	0.097
Lack of Charitable Service	0.097
Employment Instability	0.086
Unfavorable Input from other Federal Agencies	0.070
Questionable Reputation in Community	0.065
Lack of Candor/Falsehoods to Other Agencies (not OPA)	0.059

Note: The sample includes all 186 cases that had their cases formally denied. *Nature of the Offense* measures whether the denial notes that the conviction involved an abuse of power or if the seriousness of the offense was cited in the reasoning.

Issues Regarding Our Regression Analysis

Unlike the situation with administrative closures where any of the reasons listed in *Table 4.5* in the previous section can be considered an automatic trigger for rejecting the petition due to technical shortcomings, once a petitioner makes it to Stage 2 and beyond there are no relatively inflexible disqualifiers. Put another way, once the formal pardon evaluation process has begun, decision-makers have liberal discretion with respect to whether a recommendation of denial should result regardless of whether a petition file evidences any of the criteria listed in *Table 4.6*. Moreover, the justification described for a recommendation in a decision letter may not always

---

[125] *Table 4.6* only includes reasons mentioned in at least 5 percent of denied cases. It should be noted that weighting is irrelevant for *Table 4.6* because the weighing approach we utilize has only three different values: one for cases that were administratively closed, one for those with recommendations of denial, and one for grant recommendations. Because the cases in *Table 4.6* are all denied petitions, each record has the same weight.

[126] Recommendations of denial on the basis of insufficient time elapsed since conviction or end of incarceration can apply to any application reaching Stage 2 or beyond, regardless of whether the petition was submitted within the five-year window.

document all of the reasons truly underlying the respective decisions of the OPA attorney advisor, the Pardon Attorney, the DAG, the White House Counsel, or the President in regard to that particular petitioner. This implies that in order to understand whether a characteristic predicts the likelihood of getting a pardon, one needs to examine whether a petitioner who has that characteristic is more likely to get a pardon than someone who does not. Thus, any analysis will naturally want to consider all of the information that decision-makers have access to, as opposed to just the reasons they cite for denial. *Table 4.6* primary importance in this regard is that it provides information on the list of potential predictor variables that should be taken into account in any analysis of the relationship between petitioner and case characteristics and pardon evaluation outcomes.

Because decision-makers are supposed to simultaneously consider all of the characteristics germane to DOJ guidelines for evaluating the merits of pardon petitions, and because many of these characteristics might be correlated with each other, our core analysis uses a regression framework whereby the indicator variable of whether a pardon granted is regressed on petitioner and case characteristics. A multivariate regression analysis should identify the impact a control variable has on the likelihood a petitioner will receive a pardon, holding the other variables controlled for in the model constant. These impacts can be considered causal if two main requirements are satisfied: (1) All relevant control variables are included in the model; and (2) A large enough sample is used to accurately estimate these relationships. Unfortunately, as we discuss in detail below, we ran into problems on both of these fronts, and accordingly we describe how our results should be interpreted in light of these issues.

There are two reasons why our analysis was unable to control for *all* relevant control variables. First, *Table 4.6* includes some reasons OPA uses for justifying a denial recommendation that are based upon information that we simply do not observe. These include whether a petitioner has adequately shown remorse or fully accepts responsibility (which is inherently difficult to objectively code), as well as whether the candidate failed to fully disclose required information or stated falsehoods in the pardon application package.[127] Second, our sample size is too low to effectively include all of the predictor variables we do observe (listed in *Table 4.1*), and thus we decided to narrow the variables further at this point. As it would be particularly difficult to identify the impact of a predictor variable that has very low variation, we made the decision to drop those with an incident rate in our sample of less than 20 percent or over 80 percent —this includes *Male*, *Charitable Actions*, *Low Employment*, *Adverse Employment*, and *Civil Litigation*. Despite the fact that both *Black* (an indicator for whether the petitioner was African American) and *Government Support* fall in this category, we made a

---

[127] Note that OPA can identify many instances when a petitioner has made material misstatements or failed to disclose required facts because the FBI's investigation generally includes confirming many types of information the individual provided in his or her petition and supporting materials. Further, materials obtained from the USPO will provide an official account of the petitioner's initial conviction that can differ from the petitioner's assertions.

decision to include these variables since previous research (Linzer and LaFleur, 2011; and Linzer, 2011) on the pardon process suggested their particular importance (we take into account the sensitivity of these results when we interpret them). As a petitioner's age could be highly correlated with the length of time from conviction or incarceration to petition submission, we dropped *Age* from the analysis (in any event, *Age* was not correlated with the likelihood of receiving a pardon, at least not in the sample we examined). Because we omit variables, it is possible that the control variables we do include in our regression models are correlated with these unobservable variables and will pick up their impact, potentially resulting in our regression coefficients overstating the true importance of a given variable. We thus interpret our results as being able to identify the variables within our subset of control variables that are the *strongest predictors* of whether a petitioner receives a pardon, with the understanding that such an identification does not necessarily reflect a *causal relationship*.[128]

The other estimation issue our analysis encountered is that our smaller-than-anticipated sample size makes it difficult to accurately estimate the coefficients on the variables we do include in the model. The variable restrictions discussed above leaves us with 15 control variables. For models with a binary dependent variable as we have here, simulation studies have led to recommendations that one have at least five events (in this study, five pardons) per control variable included (see Vittinghoff and McCulloch, 2007), although some studies recommend an *event-per-variable* (EPV) ratio of at least 10 (Peduzzi, 1995). Despite the fact that we purposefully oversampled petitioners who have a pardon granted, we still only have 43 cases in our sample where a pardon was granted, which results in an EPV ratio below conventional recommendations.[129] The key issue that can arise with having a low EPV ratio is that the regression model can overfit our sample, and thus find some strong idiosyncratic relationships between control variables and grants of pardons that happen to be present in our sample, but would not be present in the larger population. The intuitive reason for why this occurs, discussed in Babyak (2004), is that regression models with a low EPV ratio will produce regression coefficients with high variance, with coefficient estimates fluctuating considerably over repeated samples. This increases the likelihood that, in the given sample we have drawn here, the model will estimate a coefficient that differs from the true population coefficient.[130] Low EPV ratios

---

[128] Note that our original collapsing of the variables discussed at the outset of this chapter can potentially harm our ability to identify the true drivers of a pardon being granted, as we may have collapsed questions that have high influence on the decision with questions that have low influence.

[129] Note that for binary models, total sample size is not what is most relevant, but rather the frequency of the rarer of the two outcomes in the dependent variable (Babyak, 2004). In our model, being granted a pardon (versus being denied) is the rarer of the two events, and thus the number of pardons in any particular subset of our sample is a key limitation in regard to estimating coefficients.

[130] In a situation where it is relatively likely to draw a sample coefficient that is far from the population coefficient, the confidence interval of the coefficient will also be wide, reflecting the fact that the population value might vary far from the value drawn in the sample. However, as noted in Peduzzi (1995), when the EPV ratio is low, the confidence intervals calculated may be invalid. This occurs because the properties necessary for computed

also result in decreased power to detect significant effects (Peduzzi, 1995; Babyak, 2004), meaning there will be some variables that will show up as being an unimportant predictor of receiving a pardon in our sample, but actually do have an impact in the population. While we will still utilize conventional regressions in our analysis (using both logit and OLS estimation), the results should be interpreted with caution due to the issues described above.

In addition to using traditional regression models, we also estimate the model using a LASSO regression. LASSO regression, which has become more common in empirical work in recent years, has been proposed as a potential solution to the overfitting problem that occurs in standard regressions when the EPV ratio is low (see Tibshirani, 1996; Pavlou et al., 2015; and DeVine, undated). As discussed above, overfitting will lead to inflated coefficients, but LASSO regressions apply a shrinkage algorithm to the regression coefficients that have been shown in simulations to reduce the magnitude of the inflated coefficients to a point closer to the population values, thereby helping with the overfitting problem (DeVine, undated).[131,132] The LASSO method will set the coefficients on some variables to zero, so it is also considered a way to remove control variables with low predictive power from the model. The LASSO estimator is a biased estimator and thus standard errors will not have the typical interpretation for LASSO estimates that they do for conventional regression coefficients (Goeman, Meijer, and Chaturvedi, 2016) and accordingly we do not report them here.[133] One downside to the LASSO is that statistical inference on the coefficients is still an area that is being actively studied, and thus there

confidence intervals to be valid are asymptotic and may not work well in small samples. Thus, one cannot simply look at the confidence interval (or conduct a t-test) to understand the nature of the relationship in the population.

[131] The LASSO regression aims to fit the same model as a standard regression, but uses a different estimation procedure, as it will minimize the sum of squared residuals subject to a constraint on the sum of the absolute value of the coefficients (see Hastie, Tibshirani, and Friedman, 2001, for an in-depth discussion of the LASSO method). This effectively constrains the size of the estimated coefficients so that they cannot become overly inflated, helping with the overfitting problem. The nature of the constraint on the coefficients can cause some of the coefficients to be exactly zero. As the coefficient constraint can be an arbitrary choice that will impact the resulting estimates, the R routine we utilized estimated this constraint using 10-fold cross-validation. The sample was split into ten roughly equal groups, and the model was estimated for a given constraint value on nine of the groups. The prediction error was then calculated on the removed subset as the sum of the squared differences between the actual value of the dependent variable and the predicted value. This process was then repeated, each time leaving out a different one of the ten subsets as the validation sample. The average error over all ten folds was computed by summing up these squared prediction errors across the ten leave-out samples and then dividing by the sample size. Each potential constraint value was then identified with an average error, and our estimation procedure choose the constraint that generated the lowest average error. This optimal constraint value was then used to identify the LASSO estimates using the entire sample.

[132] While the LASSO is a biased estimator, simulations indicate it tends to have a smaller variance than OLS (which is unbiased) in small sample situations (DeVine, undated). This allows the LASSO to do a better job than OLS in estimating a coefficient that is closer to the true population coefficient when the sample is small.

[133] While one could technically estimate standard errors using bootstrap methodology, because the LASSO is a biased estimator the standard errors would not have the typical interpretation, and could not be used to generate confidence intervals or conduct hypothesis testing as they are used in traditional regression methods. Because the standard errors are not very meaningful for biased estimates such as the LASSO, many statistical packages deliberately do not provide them (Goeman, Meijer, and Chaturvedi, 2016).

is currently no well-agreed-upon way to conduct inference (see Lee, 2016; and Van Dusen, undated). Due to these issues, we will not interpret the coefficients on any of the estimation methods too literally, but will rather use them as helpful indicators to identify which of the variables considered seem to predict the likelihood of receiving a pardon most strongly.

Analysis of Overall Pardon Recommendation Rates

The results of our regression analyses are presented in *Table 4.7*. It should be kept in mind that the dependent variable in the regressions is always an indicator for whether the petitioner had his or her pardon granted, the case files examined include all petitions surviving the administrative closure stage, and the control variables are a subset of those defined in *Table 4.2*. Our control for the time since conviction/incarceration tests whether 20 or more years elapsed until petition filing, which creates a time variable with a non-linear relationship with likelihood of receiving a pardon. A control for the USPO's feedback is not used in Columns 1, 2, and 3 but is added as a control in Columns 4, 5, and 6. We explain shortly why we ran separate specifications excluding and including this control. Columns 1 and 4 present the results from estimating this regression using OLS, varying the results depending on whether USPO feedback was included; Columns 2 and 5 similarly present the average partial effects from a logit regression; and Columns 3 and 6 similarly present the results from the LASSO regression.[134],[135] We restrict the sample tested to petitioners who were either white or black as we want to examine race effects (as discussed previously there are very few petitioners who fall outside of these two racial groups). It will be recalled that *Table 4.2* indicated some control variables had a small number of missing values. While we drop cases where *Years 20 Plus* had missing values, we set the missing values on the other control variables to zero in order to maximize observations when practical.[136] All regression models were run with weights that account for the choice-based sampling scheme used.[137]

---

[134] While the OLS estimator may be biased in situations where the dependent variable is binary (see Horrace and Oaxaca, 2006), in practice the results often do not differ much. We thus present results from both specifications. While logit coefficients are not easily interpreted, the average partial effects shown here for the logit estimation have a similar interpretation to the OLS coefficients.

[135] The LASSO regression was estimated in R using the "glmnet" package (a statistical routine that fits a generalized linear model via penalized maximum likelihood). We fit a linear model (as opposed to a logistic one) so the results would be more easily interpretable.

[136] These sample restrictions resulted in 18 additional cases being dropped: 14 cases because their petitioners were neither white nor black, and four because *Years 20 Plus* was missing. Note that cases that were administratively closed are not included in these analyses.

[137] As noted in Solon, Haider, and Wooldridge (2015), the regression coefficient estimators will be inconsistent if there is choice-based sampling and weights are not used to account for this. We weighted sample observations by the inverse probability of selection from the population.

Table 4.7 Impact of Predictor Variables on the Likelihood of Pardon Grants

Petitioner and Case Characteristics	USPO Feedback Not Included			USPO Feedback Included		
	OLS (1)	Logit (2)	LASSO (3)	OLS (4)	Logit (5)	LASSO (6)
Black	-0.00749	-0.0180		-0.000537	-0.0216	
	(0.0337)	(0.0348)		(0.0339)	(0.0372)	
Married and Never Divorced	0.0473*	0.0413	0.0387	0.0461	0.0428*	0.0287
	(0.0278)	(0.0258)		(0.0281)	(0.0251)	
Military Positive	-0.0427	-0.0385	-0.0283	-0.0404	-0.0413	-0.0102
	(0.0371)	(0.0305)		(0.0372)	(0.0304)	
Religious	0.0241	0.0277	0.0170	0.0149	0.0114	0.0037
	(0.0277)	(0.0243)		(0.0273)	(0.0244)	
Pre-Conviction Crime	-0.0559*	-0.0542**	-0.0507	-0.0546*	-0.0587**	-.0433
	(0.0284)	(0.0269)		(0.0289)	(0.0274)	
WHC Memo Crime	-0.0257	-0.0217	-0.0212	-0.0188	-0.0123	-0.0100
	(0.0253)	(0.0319)		(0.0255)	(0.0308)	
Incarcerated	-0.0290	-0.0174	-0.0250	-0.0195	-0.00839	-0.0135
	(0.0314)	(0.0282)		(0.0315)	(0.0270)	
Post-Conviction Crime	-0.0710**	-0.0809**	-0.0592	-0.0810***	-0.0796**	-0.0566
	(0.0281)	(0.0358)		(0.0296)	(0.0337)	
Drug/Alcohol Issues	0.0187	0.0136	0.0054	0.0204	0.00230	
	(0.0281)	(0.0341)		(0.0285)	(0.0319)	
Financial Difficulties	-0.0328	-0.0463	-0.0301	-0.0169	-0.0258	-0.0127
	(0.0246)	(0.0301)		(0.0246)	(0.0290)	
Pardon Reason Important	0.0308	0.0269		0.0313	0.0278	0.0127
	(0.0279)	(0.0242)		(0.0281)	(0.0231)	
Years 20 Plus	0.192***	0.145***	0.1771	0.215***	0.172***	0.1807
	(0.0511)	(0.0293)		(0.0517)	(0.0311)	
Government Support	0.0518	0.0275	0.0405	0.0496	0.0148	0.0256
	(0.0449)	(0.0303)		(0.0451)	(0.0332)	
Obama Era	0.0798***	-0.0733**	-0.0704	-0.0822***	-0.0737**	-0.0623
	(0.0278)	(0.0296)		(0.0284)	(0.0288)	
USPO Feedback Positive	---	---	---	0.0992**	0.0876***	0.0854
	---	---	---	(0.0403)	(0.0287)	
Constant	0.110***		0.1101	0.0765*		0.0806
	(0.0395)			(0.0403)		
Sample size	212	212	212	212	212	212
R-squared	0.132			0.152		

Note: Includes all cases not administratively closed, have a white or black petitioner, and where *Years 20 Plus* is not missing. All estimates are weighted. Average partial effects shown for the logit specification. Heteroskedasticity-robust standard errors are included in parentheses for OLS and logit specifications; *, **, and *** indicate a coefficient is statistically significant at the 10%, 5%, and 1% levels, respectively. The LASSO specification is run using a linear model. Blank coefficients in the LASSO specification indicate the LASSO estimation method dropped those variables from the model due to their low predictive power.

Although we used three different estimation methods, **Table 4.7** shows these methods produce results that are relatively similar. Note that the LASSO drops variables from the model that have low predictive power, which is why some of the entries are blank in Columns 3 and 6. Predictor variables *Pre-Conviction Crime*, *Post-Conviction Crime*, *Years 20 Plus*, *Obama Era*, and *USPO Feedback Positive* are ones for which both OLS and logit estimations showed that the coefficients were statistically significant, and the LASSO estimator had a coefficient above .04. In general, other variables in **Table 4.7** have coefficients that are much smaller, and thus these five variables seem to be the ones among those we considered that most strongly predict whether a petitioner receives a pardon.

There are two reasons why the first set of specifications run (Columns 1-3) do not include the variable measuring USPO feedback. First, this variable may itself be highly correlated with the other control variables already included in the model if the USPO takes that information into account when providing their feedback. Including this control would then mask the individual impacts of the other control variables. As second reason is that any feedback variable is inherently subjective and thus can reflect prejudice on the part of the agency. Thus, if the USPO exhibited racial or ethnic prejudice in some way and tended to give minority petitioners worse feedback than white petitioners as a result, including the USPO feedback variable would explain away any potential racial disparities, as it would make it seem like any difference in recommendation rates was justified by the information OPA considered. Nevertheless, the USPO report to OPA is an important component of the evaluation, and accordingly we repeated the earlier specifications by including a control for whether the USPO provided a positive recommendation (*USPO Feedback Positive*) with the results presented in Columns 4-6. The fact that the coefficients on the other variables are largely unchanged when this control is added indicates that the issues described above do not seem to be occurring. We thus primarily focus on the interpretation of Columns 4-6 in our discussion below. Note that we cannot control for the feedback of the other agencies in this regression (specifically the *Other Agency Feedback* control described in **Table 4.2**), as this variable is not defined for a sufficiently large fraction of the sample. The impact of this variable will be examined later in the section that follows when we conduct stage-by-stage analysis.

As indicated previously, *Pre-Conviction Crime*, *Post-Conviction Crime*, *Years 20 Plus*, *Obama Era*, and *USPO Feedback Positive* are ones that we considered most strongly predict whether a petitioner will receive a pardon. Interpreting the results from Column 6, the coefficient on *Years 20 Plus* implies that if we look among petitioners who wait 20 or more years since incarceration/conviction before applying, they have a likelihood of receiving a pardon that is roughly 18 percentage points greater than petitioners who wait less than 20 years, holding the other variables controlled for in the table constant (note that all estimation methods produce coefficients that have exactly the same interpretation, although the estimates will naturally vary slightly). As we noted earlier, we are not able to control for all relevant variables and thus we do

not want to conclude this is a causal effect. Further, as our discussions above noted coefficient estimates can potentially overfit the sample, we do not want to interpret the magnitude of the estimates too literally, but instead just discuss in more general terms the variables that seem to predict the likelihood of receiving a pardon. The other variable that seemed to predict a higher likelihood of receiving a pardon was whether the USPO provided a positive review. Variables that predicted a lower chance of receiving a pardon include having a criminal record prior to the underlying conviction, having a criminal record after the underlying conviction, and having a pardon petition decided by the Obama Administration during our study period.

The results in *Table 4.7* are also interesting in that they identify variables that do not seem to impact whether the petitioner receives a pardon, including whether the crime a pardon is sought for is listed on the WHC memo of crimes that should rarely receive pardons, the reasons why the petitioner was seeking a pardon, and whether they had any drug or alcohol issues or financial difficulties post-conviction. While admittedly our model has low power, and thus some of these variables could have been identified as having significant impacts if the sample size had been larger, these variables do not seem to be as important as the five we have singled out.

Differences Between the Bush and Obama Administrations in Overall Pardon Rates. The results from Column 6 of *Table 4.7* indicate that presidential pardons were six percentage points less likely to be granted to a petition advancing past the administrative closure stage under the Obama Administration than those considered by the Bush Administration. This result is consistent with previous literature which noted that up to the time the authors had examined the question, President Obama appeared to have a lower pardon granting rate than his recent predecessors (see Linzer, 2012; and Korte, 2015). However, as noted earlier, this does not necessarily indicate that pardon granting policies were stricter under President Obama, as it could be that petitioner and case characteristics associated with the petitions OPA considered during that period were relatively weaker in terms of satisfying the principal factors set forth in long standing DOJ guidelines for evaluating pardon petitions. Indeed, there were just 22 pardons granted by President Obama during the approximately 39 months of his administration that were within our study period. But over the ensuing 57 months until January 17, 2017, he granted 190.

Table 4.8 examines how the cases decided by OPA during the Bush and Obama Administrations differed with respect to the control variables used in *Table 4.7*. The results indicate that the pardon petitions ultimately presented to and decided upon by the Obama Administration less likely to evidence post-conviction criminal activity or support from a person in government, compared to those considered by the Bush Administration, with the differences reflecting moderate statistical significance.

While we control for these observable differences in petitioners in *Table 4.7*, the results suggest that there might be unobservable differences in petitioners that we cannot control for. Thus, while the rate at which pardons were granted under President Obama is indeed lower than under President Bush, our results cannot identify the underlying cause.

Table 4.8 Comparison of Petition Recommendations Considered by President Bush and President Obama

Petitioner and Case Characteristics	Bush Administration	Obama Administration	*p*-value
Petitioner Characteristics			
Black	0.154	0.159	0.9170
Married and Never Divorced	0.371	0.464	0.1966
Military Positive	0.259	0.261	0.9737
Religious	0.483	0.536	0.4660
Pre-Conviction Crime	0.483	0.536	0.4660
Conviction Characteristics			
WHC Memo Crime	0.336	0.232	0.1242
Incarcerated	0.580	0.638	0.4278
Post-Conviction Activity			
Post-Conviction Crime	0.287	0.130	0.0119
Drug/Alcohol Issues	0.238	0.174	0.2928
Financial Difficulties	0.399	0.420	0.7645
Application Characteristics			
Pardon Reason Important	0.490	0.493	0.9649
Years 20 Plus	0.217	0.261	0.4779
Government Support	0.217	0.116	0.0764
Attorney	0.201	0.174	0.6360
USPO Feedback Positive	0.196	0.174	0.7043
Sample size	143	69	

Note: Includes all cases not administratively closed, have a white or black petitioner, and where *Years 20 Plus* is not missing. All proportions are unweighted. The last column presents the *p*-value from the hypothesis test of whether the proportions for the characteristic in question for cases decided during the Bush Administration are statistically different from the proportion among cases decided during the Obama Administration.

Racial Differences in Overall Pardon Recommendation Rates. Consistently, in both *Table 4.4* (which used no controls) and *Table 4.7* (which includes controls), our results do not find statistically significant evidence that there are racial differences in the rates at which black and white petitioners receive pardon recommendations. This result differs markedly from the study conducted by *ProPublica* (Linzer and LaFleur, 2011) which found that white petitioners were nearly four times as likely to be granted pardons as minorities. Note that the *ProPublica* study examined petitions that were either granted or denied by the President, and thus do not include those administratively closed.

While the variables used in the models differ slightly, the root cause of the difference in the findings between our study and *ProPublica*'s is likely to be due to the fact that both studies

utilized relatively small samples of pardons granted.[138] This makes it more likely for different random samples chosen from the population of pardons granted to have reasonably different proportions of black petitioners among them. Linzer and LaFleur (2011) assert that under President Bush, 3.7 percent of all pardons granted went to black petitioners (seven out of 189). Because both the *ProPublica* study and ours are based upon a small random sample of all pardons granted, it is likely that the proportions of black grantees in the two samples drawn will differ from 3.7 percent. This is indeed what we find: The *ProPublica* study drew a sample of 47 pardons granted by President Bush and found that none went to black petitioners, while our study drew a sample of 36 pardons granted by President Bush and found that 11 percent of these went to black petitioners. If in fact the *ProPublica* estimate of seven black clemency recipients during the Bush Administration reflects the actual count, then our sample contained four of those grantees. The *ProPublica* sample thus has relatively fewer black petitioners granted pardons than would be expected (0 percent), and our sample has significantly more (11 percent). This is what likely leads their study to find evidence that blacks are pardoned at a lower rate, and for our study to find that there are no statistically significant racial differences. Note that the race variable has low variation overall, and that our general policy in this study is to drop such variables with low variation precisely because of the noisiness involved in estimating coefficients for these variables.[139]

While the above discussion explains why the two studies could produce different results, it is more difficult to identify the true state of racial disparities in recommendation rates from the information these two samples provide. The *ProPublica* study drew a sample that seems to overstate the raw racial gap, and does not include enough control variables to understand why any racial disparity exists. Our study drew a sample that seems to understate the raw racial gap and, while it includes more control variables than the *ProPublica* study, still it does not control for every possible influence on the decision-making process. Linzer and LaFleur (2011) report findings that suggest the pardon recommendation rate for blacks during the Bush Administration was about 2.9 percent, and using information from both our study and Linzer and LaFleur's, a

---

[138] While we include many of the same controls as the *ProPublica* study, we also include controls for whether the petitioner showed signs of being religious, their pre-conviction criminal activity, whether their reason for seeking a pardon was important, whether they had drug or alcohol issues post-conviction, and whether the feedback from the USPO was positive. While both of our samples cover the eight years of President Bush's presidency, our study also examines petitions formally decided upon by President Obama in his first term.

[139] When a variable has low sample variation, it will result in the variance of the coefficient estimate being larger, thus making it easier to draw a more extreme value. This is why our model focused on identifying coefficients for variables that exhibited larger sample variation. This may also explain why the *ProPublica* study found that having support from someone in the government significantly increased the likelihood of receiving a pardon, while we did not find a statistically significant increase. As we noted, *Government Support* also had low variation and was only included for the purposes of comparing the results with the *ProPublica* study.

reasonable estimate of the recommendation rate for whites was about 11.3 percent.[140] Thus it does seem like there are *raw* racial differences in the likelihood obtaining a pardon, but the extent to which these disparities would diminish if all relevant control variables were properly controlled for is not clear.

In order to more accurately identify this raw racial gap, and understand the extent to which petitioner and case characteristics can explain this gap, we would recommend collecting a significantly larger data set which includes detailed petitioner controls. This would include all of the control variables collected in our study, as well as variables such as whether the petitioner provided false statements to OPA. Note that our original plan of collecting information on all 210 pardons granted by President Bush and President Obama between October 1, 2001, and April 30, 2012, as well as a random sample of 778 denied petitions and 224 administrative closures during that same period would have likely resulted in a sample sufficiently large enough to fully evaluate this question.

Analysis of Key Decision Points by Stage

While the analysis in the preceding section described the variables that appear to be most strongly predictive of receiving a pardon overall, the remainder of this chapter looks at the variables that are predictive of a petitioner progressing through various stages of the evaluation process. These analyses can help to determine if the variables that are identified as predicting pardons are correlated with decisions made by OPA prior to the final grant-or-deny recommendation. It can also identify whether some of the variables that were not predictive of receiving a pardon overall may, in fact, predict whether an individual advances through various stages in the process. *Table 4.9* presents the results from regressions conducted at each stage of the process (conditional on the case not being administratively closed). In Columns 1-3 the dependent variable is whether an FBI check was completed, with the sample mirroring the one underlying *Table 4.7*. In Columns 4-6 the dependent variable is whether additional agency checks (i.e., consultations with Stage 4 information sources) were completed, but the sample only includes petitioners who had an FBI check completed. In Columns 7-9 the dependent variable is whether a pardon was granted, though here the sample only includes petitioners who

---

[140] Linzer and LaFleur (2011) concluded that there were 62 blacks in their total sample of 494 petitions (12.6 percent). Applying this rate to the 1,918 petitioners with petition recommendations during the Bush Administration, an estimated 241 of the total could have been black. Given Linzer and LaFleur's conclusion that a total of seven pardons were granted to blacks during that period, the black recommendation rate would have been 2.9 percent (241/1,918). Because Linzer and LaFleur (2011) did not present parallel information for white petitioners, we use the numbers in our sample to help fill in the gaps. In our sample about 81 percent of petitioners with petitions decided during the Bush Administration were white, which suggests that out of the 1,918 total, 1,553 were white. Linzer and LaFleur also assert that 176 of pardons granted under the Bush Administration went to whites, resulting in an estimated pardon recommendation rate for whites during that time of 11.3 percent (176/1,553).

had additional agency checks completed.[141] The predictor variables included in Columns 1-6 are the same as before, although for simplicity we only show the results from the specification that includes a control for USPO positive feedback. Columns 7-9 also include a control for whether all of the feedback provided by the additional agencies contacted in the previous stage (including the U.S. Attorney and sentencing judge) was positive.

For each of the three models, we use the same three estimation methods as before: OLS, logit (where average partial effects are shown), and LASSO. In regard to predicting whether an FBI investigation is requested (Columns 1-3), *Married and Never Divorced*, *Pre-Conviction Crime*, *Financial Difficulties*, Y*ears 20 Plus*, *Obama Era*, and *USPO Feedback Positive* are variables that show up as being statistically significant in OLS and logit specifications, and had a coefficient of at least .04 in the LASSO specification. Similar results for predicting whether additional sources (such as the U.S. Attorney) will be consulted for information (Columns 4-6) are present for variables *Black*, *Married and Never Divorced*, *Post-Conviction Crime*, *Financial Difficulties*, and *Government Support*. For actual grants of pardons (Columns 7-9) the important variables are Y*ears 20 Plus*, *Obama Era*, and *Other Agency Feedback Positive* (note that for *Black*, statistical significance is shown only with the logit estimation method, but not the OLS as well). For brevity, we do not show the standard errors of the OLS and logit coefficients.

---

[141] Note that Columns 7-9 in *Table 4.9* do not match the results in *Table 4.7* because Columns 7 through 9 only apply to those who received additional agency checks while *Table 4.7* applies to every case that moved past the administrative closure stage.

Table 4.9 Impact of Predictor Variables by Petition Evaluation Stage

Petitioner and Case Characteristics	Receive an FBI check			Receive Additional Agency Checks			Pardon Granted		
	OLS (1)	Logit (2)	LASSO (3)	OLS (4)	Logit (5)	LASSO (6)	OLS (7)	Logit (8)	LASSO (9)
Black	-0.0239	-0.0294		0.226*	0.244**	0.161	-0.157	-0.292**	-0.0890
Married and Never Divorced	0.165**	0.159**	0.114	0.186*	0.171*	0.122	0.00164	0.0163	---
Military Positive	-0.0299	-0.0270	---	0.0791	0.0845	0.0143	-0.0834	-0.162	-0.0034
Religious	0.0132	0.0245	---	0.0920	0.0948	0.0535	0.0623	0.0715	---
Pre-Conviction Crime	-0.180**	-0.174**	-0.143	0.0967	0.123	---	-0.0938	-0.0638	-0.0240
WHC Memo Crime	0.0166	0.0140	---	0.117	0.172	0.0657	-0.132	-0.141	-0.0957
Incarcerated	-0.0281	-0.0263	-0.0093	-0.0707	-0.107	-0.0012	-0.0112	0.0431	---
Post-Conviction Crime	0.0368	0.0298	0.0120	-0.313***	-0.329***	-0.244	-0.101	-0.112	---
Drug/Alcohol Issues	0.00767	0.000280	---	0.186	0.201*	0.0722	0.0616	0.0368	---
Financial Difficulties	0.123*	0.130*	0.0678	-0.242**	-0.235***	-0.1764	0.0290	0.0839	---
Pardon Reason Imp.	0.0703	0.0744	0.0267	-0.0212	-0.0227		0.0421	0.0222	
Years 20 Plus	0.409***	0.392***	0.330	-0.154	-0.178*	-0.145	0.613***	0.570***	0.512
Government Support	0.0655	0.0727	0.0200	0.249*	0.301**	0.201	-0.0187	-0.0137	---
Obama Era	-0.136*	-0.141**	-0.0969	-0.0640	-0.0634	-0.0013	-0.200**	-0.180*	-0.0924
USPO Feedback Pos.	0.392***	0.360***	0.337	0.0100	-0.0133	---	0.0646	0.0909	---
Oth. Agcy. FB. Pos.	---	---	---	---	---	---	0.484***	0.380***	0.443
Constant	0.286***	---	0.348	0.510***	---	0.559	0.231	---	0.225
Sample	212	212	212	112	112	112	75	75	75
R-squared	0.233			0.328			0.568		

Note: Includes all cases not administratively closed, have a white or black petitioner, and where *Years 20 Plus* is not missing. All estimates are weighted. *, **, and *** indicate a coefficient is statistically significant at the 10%, 5%, and 1% level, respectively. Average partial effects shown for the logit specification. The LASSO specification is run using a linear model. Blank coefficients in the LASSO specification indicate the LASSO estimation method dropped those variables from the model due to their low predictive power.

Before examining the results in ***Table 4.9***, it is important to consider two caveats. First, for some of these regressions the sample size is smaller than for our specification in ***Table 4.7***. However, the main limiting factor of our sample is the number of rare events we observe in the dependent variable, and in the regressions utilized to produce ***Table 4.9*** the rare event counts are relatively similar to and in some cases larger than in those in ***Table 4.7*** (particularly with respect to receiving an FBI investigation given that roughly half the sample receives one). Second, the manner in which our data was collected likely impacts the validity of the first specification which uses whether the petitioner received an FBI check as a dependent variable (shown in Columns 1-3). Specifically, as we noted earlier, we only collected the latest and presumably the most trustworthy information from the case file in regard to petitioner and case characteristics. Because the FBI information collected likely layers over the information individuals seeking pardons originally provided on their applications, the most comprehensive evaluation of the factors potentially impacting the likelihood of a petitioner to become the target of an FBI investigation would require that we observe the values of these variables *before* the investigation results were added to the case file. Only being able to observe the variables afterwards is problematic, because it might make possibly derogatory information in the original application seem less important if individuals provided misstatements at the time (even if unintentional) since we only capture the (presumably) corrected information. For example, suppose an individual had post-conviction criminal activity that he or she did not describe on the application but was later identified in the FBI check. When OPA decided to conduct an FBI check they did under the assumption that petitioner had no post-conviction criminal activity. Our model, however, will nevertheless interpret OPA as triggering the FBI check as if post-conviction criminal activity was a known issue for the petitioner. Such blurring of what was known and not known at the time OPA decides whether to move forward to the next stage or terminate the clemency evaluation process can thus understate the impact of these variables.[142]

In light of the above caveats, we explain how the results in ***Table 4.9*** compare with our earlier results in ***Table 4.7*** in more general terms. The findings indicate that prior convictions and positive feedback from the USPO, which are both variables shown to matter overall in ***Table 4.7***, also seem to matter early on, but are less important later. In contrast, the variables *Years 20 Plus* and *Obama Era* seem to matter throughout the process. Being married and never divorced, which was not identified as an important predictor in ***Table 4.7***, seems to be predictive of moving on to subsequent stages in the process early on. Conditional on making it to the final stage, having positive feedback from other agencies seems to be very predictive of receiving a

---

[142] Note that we do not expect the fact that we only observe the final values of control variables to impact our regression models in ***Table 4.7***. Those regressions examine how well control variables predict whether a petitioner gets a pardon overall and do not consider how far the petitioner advanced in the evaluation process. When examining the impact a variable has on the decision to deny a petition, we need to observe the value of the variable at the time they were denied. This is precisely what is in our data.

pardon. Interestingly, the specifications in Columns 4-6 are the only ones where in regard to the relationship between race and the evaluation process, OLS and logit both show statistical significance with LASSO at .04 or above. There is evidence that, given they have received FBI scrutiny, blacks may be more likely than whites to move past the point where a denial would result primarily on the basis of information contained in that report. However, once additional information is received from various sources such as the U.S. Attorney following the OPA request, blacks do appear to be less likely than whites to receive a pardon, suggesting that whatever benefit they may receive in the previous stage might get them further in the process, but does not impact their overall likelihood of receiving a pardon (it should be noted that the difference in recommendation rates for blacks to receive a pardon after Stage 4 sources were consulted was not statistically significant across all specifications).

Discussion

The main goal of the analyses presented in this chapter is to identify the petitioner and case characteristics that most strongly predict a petitioner's final case outcome in a presidential pardon evaluation, with a special emphasis on examining the role race plays in the process. Throughout the chapter we have discussed the motivation for the research design used as well as any drawbacks associated with it, and we try to briefly summarize the main conclusions and caveats here. Our analyses on administrative closures detailed the key reasons OPA cited for administratively closing cases, and noted that the factors that are most commonly cited (such as not completing the five-year waiting period or having improper paperwork) are also ones where OPA can potentially have liberal discretion in closing the case. However, because we do not observe all the information OPA has available to its attorney advisors at the time they make the decision to close the case administratively, we cannot determine the exact role discretion plays nor can we determine what factors impact OPA's decision to waive certain requirements.

Our regression analyses examining the decision to grant versus deny a pardon (after the administrative closure stage) indicated that the factors that are most strongly predictive of a petitioner receiving a pardon in our sample are as follows:

- Waiting more than twenty years since incarceration/conviction before applying
- Receiving a positive review from the USPO
- Not having a criminal record prior to the underlying conviction
- Not having a criminal record after the underlying conviction
- Having the pardon decision made during the Bush Administration (as opposed to the Obama Administration, based on presidential decisions through April 30, 2012).

Note however that while it is reasonable to conclude individuals with these factors were more likely to receive a pardon (holding constant the other factors explicitly controlled for in the regression), it is possible that not all of these findings represent a causal relationship. In

particular, there were several potentially important petitioner and case characteristics we were forced to omit either because the information was not collected or because the sample size was too small to include all collected variables in the analysis. This implies that we likely have not identified all of the factors that impact the pardon decision, and that the predictive relationships we do identify here might overstate the causal relationship.

Our analysis looking at the impact race has on the overall decision to recommend or deny a petition was inconclusive. While we found no evidence that was consistently statistically significant for racial disparities in the overall recommendation rates for the sample of cases we analyzed, our essentially random sample had relatively more black pardons than would have been expected and thus it is difficult to make definitive statements with respect to what racial differences existed in OPA decision-making for the larger population once petitioner and case characteristics are controlled for. This issue arose because our data collection effort was terminated prematurely, resulting in an insufficiently large sample of pardons granted to guarantee that the characteristics of those in our analysis data would be reflective of the entire population of pardons granted. Further, because we could not control for all relevant variables considered, even if we found blacks were less likely to receive a pardon, it would not necessarily imply that was due to discrimination, intentional or otherwise. In order to more accurately determine the raw racial gap in pardoning, as well as understand the extent to which petitioner and case characteristics can and cannot explain this gap, we would recommend collecting a significantly larger data set which includes additional petitioner controls, such as whether there is evidence that the petitioner has made misstatements to a federal agency during the pardon process. Because pardons are such a rare event, we would recommend collecting information on all pardons granted within the particular study period used, and then selecting a random sample of denials and administrative closures. Such an approach was a key component of the original project design and it should be repeated for any future inquiries into this issue. A data set of this design and scope should provide a more conclusive understanding of the role of race in the pardon process, as well as facilitate better identification of the specific petitioner and case characteristics that have a causal relationship with petition outcomes.

5. Conclusions

A Formidable Task

> *It was the custom of Mr. Lincoln, during the later years of the Rebellion, to hear petitions at certain hours of the day from all who chose to present them to him...*
>
> *All day long President Lincoln had received petitioners, and still they came. He could hear the murmur of voices in the outer rooms, as they were anxious to be admitted; yet, he must rest for a few moments.*
>
> *The petitioners came and went until far into the night. Their pleadings were the same heard thousands of times before. To each one the petition was new and all-absorbing; to the President, only the echoes of the vast army already gone.*[143]

Over a 12-month period ending June 30, 2017, 6,542 petitions seeking executive clemency were submitted for the consideration of the President.[144] Of these, 742 petitioners sought a pardon that would remove or mitigate some of the consequences of a prior conviction while 5,800 requested a commutation so that the punishment they were currently receiving be ended or reduced. It would certainly be possible for a modern President to emulate the example of Abraham Lincoln described above and personally consider the merits of each of these petitions, but to do so he or she would need to spend 12 hours a day, five days a week over the entire year for the review, allocating no more than an average of 30 minutes of presidential attention to each. This assumes, of course, that the President could comfortably ignore all other duties of his or her office while focused on the careful evaluation of each clemency request, essentially forgoing responsibilities such as serving as commander-in-chief of the armed forces, implementing legislation passed by Congress, and setting the foreign policy of the United States.

The Office of the Pardon Attorney assists the President in taking on this formidable task by performing a form of triage on incoming petitions. It first eliminates those in which federal executive clemency is not constitutionally possible, such as relief sought for a criminal conviction under state law. It then screens out petitions that fail to meet certain technical requirements, such as a mandate that the intended subject of the relief be a living person. These technical requirements are not found in the Constitution, but instead have been developed by the Department of Justice over decades and memorialized in agency regulations, policy manuals, internal practices, and instructions given to prospective petitioners. As DOJ is part of an Executive Branch that is led by the President and administered by his or her appointees, the

---

[143] Putnam's Magazine, 1870, pp. 527, 535.

[144] Office of the Pardon Attorney, 2018a.

logical assumption is that the President is aware of and implicitly approves both the substance of these DOJ guidelines and the manner in which they are applied. Finally, OPA investigates the merits of the remaining petitions on the President's behalf, summarizes salient facts about the petitioner's current and past background and behavior as well as about the conviction that led to the clemency request, and issues a recommendation as to whether the petition should be granted or denied. This recommendation is advisory only, and the President is free to ignore the advice offered by OPA. Most of the 6,542 federal clemency petitions received during the year, as well as any materials submitted in support of those petitions plus the results of the extensive OPA investigation, will eventually be reduced to a brief discussion (ranging in size from a couple of terse paragraphs to usually no more than a few pages) for the President's consideration at a time and place of his or her choosing. OPA's efforts in this regard serve to turn a responsibility that would be impossible for a President in the 21st Century to personally accomplish without severely disrupting the workings of the federal government into what is essentially a routine business process.

But OPA is not simply a filtering mechanism. Though its own website characterizes its work simply as a "written process" without the use of hearings and assures potential petitioners that every request for executive clemency not closed administratively is ultimately "decided by the President" alone, in outward appearances at least, the Office performs an adjudicatory function.[145] OPA's own documents use terms such as "case" and "petition," the evaluations are made by attorneys, the Office is a part of the Department of Justice, a petitioner's case can be advanced with the assistance of counsel, what amounts to testimony provided by knowledgeable parties (e.g., judges, U.S. Attorneys, federal probation officers) is reviewed, and the matters of concern involve the outcomes of prosecutions conducted in federal military and district courts. Most importantly, each OPA recommendation is a judgment based on consideration of the facts and the application of formally promulgated regulations and officially sanctioned agency policies. Such features are not unlike traditional administrative adjudications, though the aspect of an OPA evaluation where the decision-maker personally conducts the fact-finding investigation mirrors to some degree the inquisitorial system utilized in civil law countries.

Does Systematic Racial or Ethnic Bias Exist?

From the perspective of a petitioner, however, such theoretical discussions as to whether OPA's evaluations of clemency requests technically constitute quasi-judicial proceedings are of little importance. For these individuals, the filing of a petition is just the final step in a lengthy process within the criminal justice system that might have begun decades ago with an arrest, and as such the consideration of a plea for clemency by the President and his or her administration differs in no meaningful way from the earlier consideration of the arguments of the defense by a

---

[145] Office of the Pardon Attorney, 2018c.

jury and trial judge or of a subsequent appeal by a higher court. It is a reasonable assumption that Americans generally expect all such key decision-makers within the criminal justice system to adhere to the rule of law, provide due process to those who are the subjects of their deliberations, and render their decisions impartially and without bias. A systematic pattern and practice of racial or ethnic bias found in the actions and recommendations that arise from OPA petition evaluations would violate those expectations.

This study did not find statistically significant evidence of such patterns and practices. We were hampered in our examination by the unplanned termination of data collection efforts, and as a result our analysis is based upon about 24 percent of the case files we originally intended to review. Nevertheless, we believe that the petition files we were able to review constituted a reasonably random selection of the business of the Office of the Pardon Attorney over a ten-and-a-half-year period ending in April 2012. There is no question that non-Hispanic white petitioners as a group were more likely to receive a pardon than did black petitioners, but to the extent that we were able to control for petitioner and case characteristics, any difference in the recommendation rate we observed did not meet the thresholds we employed for a persuasive signal of statistical significance.

Does this mean that racial or ethnic bias never enters into a decision by OPA to reject an incoming petition for failing to meet threshold requirements, the recommendation that it develops for the consideration of the President, or the summarization of the underlying facts surrounding the petition and the results of its investigation that it provides along with the recommendations? Of course not. There may well be specific instances, both within our study time frame and without, where conscious or unconscious bias on the part of a member of OPA's staff influenced the ultimate outcome of a petition, either for or against a grant of pardon. The same could well be true for decision-makers at other points in the pardon evaluation process, including the Deputy Attorney General, the White House Counsel, and the President. In addition, we have no way to account for racial or ethnic bias in what might be characterized as upstream discretionary judgment in the criminal justice system, such as the original pre-sentence investigation report drafted by the USPO, the FBI investigation conducted at the behest of OPA, or the recommendation provided by the U.S. Attorney. Any of those information sources might serve to influence OPA's decision-making in a specific case in an inappropriate way. But this study was designed to look for systemic bias, not bias in the evaluation of an individual petition. Investigations into particular executive clemency decisions and their possible influences require a very different research approach. But while such investigations are of course quite useful and important, they cannot answer the question of whether the outcomes of the OPA evaluation process *generally* reflect inappropriate bias.[146] This study was intended to accomplish that very goal.

---

[146] For an example of such an investigation, see Office of the Inspector General, 2012.

Nor do our findings mean that the pardon process is one where every petitioner has the same chance of receiving a grant of clemency. While if that were true concerns about possible bias would essentially be moot, OPA does not administer a lottery. Instead, it conducts an evaluation, one that is generally designed to result in recommendations that give great weight to DOJ guidelines and presidential preferences and are intended to identify petitioners who have evidenced "exemplary post-conviction conduct," lack "extensive criminal history," and have made "sustained and significant contributions to the community" or were involved in a crime only when they were "very young." The result, as illustrated by **Table 5.1**, is that those petitioners who are more likely to receive a grant of pardon look very different from those who are less likely to receive one, and often look very different from petitioners generally. We caution the reader to consider that this table simply presents an informal summarization of what was described in **Chapter 3**, identifying petitioner and case characteristics that our descriptive statistics indicated were associated with relatively high or low clemency rates, focusing on those characteristics that often appeared in our sample cases.[147] Our sole goal here is to point out observed differences in the overall likelihood of receiving a pardon, not to precisely describe the type of people who received the most pardons or were denied most of the time.[148] No attempt was made to test the results for statistical significance, so any of the assertions listed in the table may be due to chance in the sample selection. Because the limited purpose of **Table 5.1** is illustrative rather than a definitive summation of the granted and not-granted populations, the reader is urged to consult **Chapter 3** for a more detailed description of the incident rates of each of these characteristics and their frequency.[149] Moreover, no predictor variables controls have been included as we did in our regression-based analyses presented in the previous chapter, so the entries reflect only what is observed for each characteristic alone without holding others constant.

---

[147] We primarily used a comparison of clemency rates for classifying characteristics as either more likely or less likely to be associated with a grant of pardon. Because some petitions are administratively closed and because the proportion of petitions that close in this way vary by characteristic, it is possible that a characteristic with the lowest clemency rate among others in a comparison group would not have the highest rate of denials. Continuous values (such as dollars or time) were handled in a different manner, and represent the median values for all petitions taken together, for petitions resulting a grant of pardon, and for petitions resulting in a recommendation of denial for the columns "Typical Petitioner," "More Likely to be Granted," and "Less Likely to be Granted," respectively.

[148] For example, about 85 percent of our weighted sample were males (**Table 3.3**). As such, most of the petitioners were males, most of the grantees were males, and most of the denied petitioners were males. But while 5.3 percent of male petitioners received a pardon, the corresponding rate for females was just 4.3 percent. As our intent was to highlight characteristics that differ from one another in terms of clemency rates, we describe males as "more likely to be granted" and females as "less likely to be granted."

[149] The table reflects only characteristics that were present in at least 5 percent of weighted petitions in our analysis sample. Characteristics primarily described as "other" or some other non-specific categorization were not included.

Table 5.1 Likelihood of Receiving a Pardon, by Characteristics of Petitioner

Characteristic	Typical Petitioner	More Likely to be Granted	Less Likely to be Granted
Age at application	52 years	53 years	52 years
Age at offense	37 years	29 years	37 years
Sex	Male	Male	Female
Citizenship	U.S.-born	U.S.-born	Not U.S.-born
Race & ethnicity	Non-Hispanic White	Non-Hispanic White	Non-Hispanic Black
Crime type	White-collar crime	White-collar crime	Firearms
Conviction method	Guilty plea	Guilty plea	Trial verdict
Primary sentence component	Incarceration	Probation only	Incarceration
Length of incarceration	12 months	7.0 months	12 months
Fine and/or restitution	$5,000	$1,367	$5,000
Length of supervised release	36.0 months	24.0 months	36.0 months
Appealed conviction?	No	No	Yes
Behavioral issues during satisfaction of sentence	None	None	Yes
Time from sentencing	11.2 years	20.9 years	11.4 years
Time from incarceration	9.7 years	18.3 years	9.8 years
Criminal activity prior to offense	Yes	No	Yes
Criminal activity after offense	No	No	Yes
Marital status	Married	Married	Divorced
Spousal support responsibilities	No	No	Yes
Children, any age	Yes	No	Yes
Minor children at home	No	Yes	No
Child support responsibilities	No	No	Yes
Highest education level at time of application	At least some college	At least some trade or tech school	No high school diploma or GED
Advanced to higher education level after conviction?	No	Yes	No
Employment	Working	Retired	Disabled or unemployed
Time currently employed	6.3 years	8.5 years	6.1 years
Fired from job after conviction	No	No	Yes
Failed to report criminal history	No	No	Yes
Alcohol or legal substance abuse after conviction	No	No	Yes
Illegal substance abuse after conviction	No	No	Yes

Characteristic	Typical Petitioner	More Likely to be Granted	Less Likely to be Granted
Alcohol, drug, or mental health treatment after conviction	No	No	Yes
Financial troubles, bankruptcies, or tax liens after conviction	No	No	Yes
Defendant in civil suit after conviction	No	No	Yes
Military service	None	Honorably discharged	None
Charitable, community, or civil activities	Yes	Yes	No
Religious or spiritual beliefs	No	Yes	No
Actively participating in faith	No	Yes	No
Represented by counsel	No	Yes	No
Reason for seeking pardon	Seeking forgiveness	Remove firearm restrictions	Obtain or restore professional licenses
Character references	Acquaintances	Government or law enforcement	Relatives & family
U.S. Attorney recommendation	Deny	Other than deny	Deny
U.S. Probation Office recommendation	No position	Grant	Deny

Notes: Time and money values are expressed as medians.

If one had to describe a petitioner in our analysis case files more likely to receive a presidential grant of pardon than others, *Table 5.1* suggests it would have been a non-Hispanic white male who was a U.S.-born citizen and was in his late twenties when the underlying offense (a white-collar crime such those involving tax violations, embezzlement, forgeries, or counterfeiting) was committed. There was no indication in his case file of any criminal activity before or after the conviction. He pled guilty (with no subsequent appeal of the conviction) and was likely to receive only probation. About 21 years elapsed between when he was sentenced for the underlying offense and when clemency was sought. If he was sentenced to serve jail time, he was out in seven months, and if he paid a fine or restitution, it was no more than $1,400. The sentence was served without incident, and any court-ordered responsibilities (such as restitution) were satisfied as required. He was married, and if he had any children at all, they were minors living with him at the time of the application filing. He had no spousal or child support obligations of any kind. He had at least some trade or technical school training after high school and after conviction took active steps to advance his pre-conviction education level. He was most likely to be retired when he filed the petition, but if he was still working, it was after at least eight years of steady employment. After conviction he was never fired from a job; never failed to report his criminal background when asked to do so; never was an alcohol or substance (legal or

illegal) abuser; never received alcohol, drug, or mental health treatment; never had financial troubles, bankruptcies, or tax liens; and never was a defendant in civil suit. He served his country in the military and was honorably discharged at the end of his service. He professed that he engaged in charitable, community, or civil activities, held religious or spiritual beliefs, and actively participated in his faith. His petition was guided through the OPA process by his legal counsel; he likely sought clemency for the purpose of removing any state or federal restrictions on his right to own, possess, or use firearms; and at least some of the character references he submitted in support of his petition came from government officials or members of law enforcement. When asked their opinions as to whether executive clemency would be appropriate for this former defendant with whom they had contact as part of a criminal justice prosecution, the USPO recommended that the pardon be granted and the U.S. Attorney did not object. While no single case file in our data in which a pardon was granted reflected all of these petitioner and evaluation process characteristics, the takeaway here is that a petition has the best chance for success when the petitioner has led a fairly ordinary life other than in regard to a single brush with the law, received only modest sanctions when sentenced and served it without incident, never experienced financial or behavioral troubles, had a stable family and employment history, waited decades before seeking executive clemency, and had a criminal justice experience benign enough so that those who prosecuted his case or were responsible for his pretrial evaluation had little concern over a grant of pardon.

What sort of petitioner was least likely to be pardoned? Here *Table 5.1* suggests it would have been a non-Hispanic black female who was not a U.S. citizen by birth and was in her late thirties when the underlying offense (a firearms-related crime) was committed. There were indications in her case file of criminal activity both before and after the conviction. She was found guilty as a result of a trial verdict (which was subsequently appealed), and was sentenced to serve jail time (out in about a year), and if a fine or restitution was assessed, it was about $5,000. About 11 years have elapsed since she was sentenced for the underlying offense. There were problems with the service of the sentence (perhaps less than good behavior while incarcerated or a failure to fully and timely pay fines or restitution). She was divorced and had children, but no children who were living with her at the time of application were minors. She was likely to have had spousal or child support obligations (or both) at some point. She did not finish high school or receive a GED, and never was able to advance her education after conviction. She was most likely unemployed or disabled when the petition was filed, but if she was still working, it was after six years of steady employment. After the conviction, she had been fired from a job; had failed to report her criminal background when asked to do so; had been an alcohol or substance abuser; had received alcohol, drug, or mental health treatment; had financial troubles, bankruptcies, or tax liens; and had been a defendant in civil suit. She did not serve her country in the military. She professed no engagement in charitable, community, or civil activities, nor did her case file show evidence of religious or spiritual beliefs. Her petition was filed without benefit of counsel, she was likely seeking clemency for the purpose of obtaining or

restoring a professional license, and many of the character references she submitted in support of her petition came from members of her family. When asked their opinions as to whether executive clemency would be appropriate for this former defendant with whom they had contact as part of a criminal justice prosecution, both the USPO and the U.S. Attorney recommended that it be denied. While no single case file in our data in which a pardon was denied reflected all of these petitioner and evaluation process characteristics, the takeaway here is that a petition has the worst chance for success when the petitioner has led a life in which there are indications of criminal activity in addition to the underlying offense, received sanctions that were relatively more serious than those meted out to grantees when sentenced and was unable to serve that sentence without some sort of incident, had experienced financial or behavioral troubles on occasion, had a spotty employment history, and whose criminal justice experience was serious enough that those who prosecuted her case or were responsible for her pretrial evaluation voiced their concerns over a possible grant of pardon.

These simplistic caricatures of successful and unsuccessful petitioners described above suggest that the life experiences of those seeking executive clemency can differ markedly. The question that naturally arises is whether characteristics that seem to be associated with an increased or decreased likelihood of a grant are ones that are more or less likely to be associated with various demographic groups in the larger population as well. For example, *Table 3.27* indicated that the clemency rate for petitioners who were unemployed at the time of application submission was 3.1 percent, while for those who were employed it was nearly double (5.9 percent). The 2016 unemployment rate for blacks in the United States was nearly double the rate for whites (8.4 percent versus 4.3 percent).[150] Even under the assumption that the apparent disfavor OPA shows for petitioners who are unemployed but still in the labor force is race neutral, incoming caseloads that reflect national averages for unemployment status by race may result in outcomes that show a strong relationship to race as well. Unfortunately, our reduced sample size prevented analysis at this level of granularity.

Other Issues

While solid evidence of systematic bias may not be present in our data, our examination of the OPA evaluation process suggested that there are other areas that may merit a closer look by policymakers.

Threshold Rejections

During the study period that ended in April 2012, it was not unusual for some incoming petitions to receive an initial cursory review by OPA staff in order to identify whether there were

---

[150] U.S. Department of Labor, 2017.

ostensibly fatal defects in the application package that would likely result in an administrative closure (for example, a situation where the petitioner was still incarcerated or on probation, parole, or supervised release). When a petition was so identified, the usual practice was to return it to the submitter along with a letter describing the problem (or problems), but no new case record was opened in the case management system employed by OPA at the time (petitioners who received such rejection letters faced no bar to resubmitting the application package at a later point). The practice was intended to focus the attention (and the time) of the attorney advisors on application packages that merited scrutiny for at least at the administrative closure level. When we asked OPA staff how often these rejections occurred during our study period, what sorts of defects were found in the reviews, and what was known about the petitions that were returned to submitter (such as the type of underlying offense), the Office was unable to provide answers with confidence. It was reported to us that records were not consistently kept for these threshold checks, in part because the intent was to move defective case files out of the Office as quickly as possible and with minimum effort.

Our concern here is that distinction between the types of petitions triggering threshold rejections and those that reach the administrative closure stage and are disposed of at that point is not always a bright line. For example, some administratively closed cases in our data were terminated because no federal conviction was involved, which is exactly the sort of fatal flaw that would conceivably trigger a threshold rejection. Our sense is that the criteria applied for the threshold check was somewhat flexible, with the list of rejectable problems increasing or decreasing in number depending on how busy the Office might be. Thus, our analysis of administrative closures may not actually reflect the actual population of petitions with issues that prevent them from reaching the stage where OPA will issue a recommendation to the President to grant or deny a petition.

We are informed that better records are now kept for threshold rejections, though not every application package is logged into the current case management system as a new petition and given a unique case number. We think that the more transparent and open practice would be to treat each petition to the President of the United States that comes through the Office door in the same manner in terms of tracking, even if the request for clemency seeks relief that is not permissible under the Constitution. The current case management system appears to be a robust one, with fields for collecting many types of information that would be of considerable use in the future by researchers examining issues related to race and ethnic bias, the petitioner population, office practices, or any other area of concern. Moreover, OPA appears to be far along in its efforts to move towards primary reliance on electronic case files, and at a minimum the application package for each threshold rejection should be saved in digital form in order to allow future researchers the option of examining these case files to ensure that there is no evidence of systematic bias at this early rejection stage. The caseload statistics currently reported by OPA on its website are very useful, but they completely ignore the volume of petitions that are rejected

outright. These reported frequencies should better describe the true caseload demand upon the Office, and the fact that rejections are not reported now does not mean that they cannot be reported in the future (prior to the Carter Administration, for example, administrative closures were simply lumped into the denied category). Indeed, summary counts of rejected or administratively closed petitions that describe the reasons why these requests for clemency failed technical requirements may serve to heighten awareness among prospective petitioners of the key pitfalls to avoid.

Underrepresented Populations

During a 12 month period ending in 1901, President William McKinley received 162 pardon petitions.[151] About a century later, with the population of the United States about 3.7 times the size it was in President McKinley's time, President George W. Bush received five fewer pardon petitions during a 12 month period ending in 2002.[152] Though the incoming pardon petitions count over the past decade has increased to the point where in most years 200 to 450 application packages were received (with spikes of 555, 742, and 997), the count is still fairly modest compared to the more than one million individuals in the United States who could conceivably apply for executive clemency in the form of a pardon (see *Chapter 1*).

If the characteristics of the population of pardon filers mirrored the characteristics of those one million plus individuals who have past federal convictions (but are no longer in federal custody or under federal supervision), the annual petition count might be of no more than passing interest. But the discussion accompanying *Table 3.7* in *Chapter 3* describes evidence suggesting that when it comes to petitioners, whites are overrepresented (2.2 times the national average for whites who could potentially seek a pardon) while blacks (about half the national average) and Hispanics (about 12 percent of the national average) are underrepresented.[153] Even if clemency rates were exactly the same for each of these three groups, whites would continue to receive more pardons each year that would be expected in light of our estimates of the larger former federal defendant population.

How can this imbalance be addressed? Though as this report is written issues related to the granting of presidential pardons have become an increasingly discussed topic in the news, it may not be apparent to the public at large that any former federal defendant can apply for one. One way to get the word out might be to encourage federal criminal defense attorneys to inform their clients at the end of the representation that a presidential pardon could be sought at some point in

---

[151] Office of the Pardon Attorney, 2018b.

[152] Hobbs and Stoops, 2002, p. 11; Office of the Pardon Attorney, 2018b.

[153] Non-Hispanic white, non-Hispanic black, and Hispanic petitioners comprised 78, 15, and 3 percent respectively of our weighted sample. We also estimated that non-Hispanic white, non-Hispanic black, and Hispanic defendants comprised 36.1, 30.1, and 25.6 percent respectively of all defendants in federal court in 2010 other than those charged with immigration offenses.

the future, much as they do now in regard to explaining the possible future collateral consequences of a conviction.[154]

Another way to address the imbalance might be to provide assistance to those seeking pardons. In actuality, finding out what is needed to submit an application package does not appear to be an especially onerous task. The OPA website is well designed, contains a wealth of information about the process and standards for consideration, and offers prospective petitioners an editable PDF form that can be filled out, saved, and directly transmitted to the Office electronically.[155] But the information that one needs to review in order to better understand what how best to advance the claim (webpages titled "*Frequently Asked Questions*," "*Legal Authority Governing Clemency*," "*Policies*," and "*Standards for Consideration of Clemency Petitions*") comprise approximately 22 pages of text when we reviewed the materials in 2018, some of which is written in the language of administrative regulations and internal agency jargon. To drill down to the point where it is possible to access the current application package (another 21 pages in length), the petitioner has to review three more webpages. As a result, while submitting a petition is not technically difficult, the amount of information that one must absorb in order to craft an application package with the best chance possible of surviving threshold rejection checks and the administrative closure screen and of receiving a positive recommendation once OPA has completed its investigation may seem overwhelming for some. Help in wading through the paperwork required might open up the pardon process markedly. Some law schools have established programs where its students assist former defendants through free clemency clinics, rewarding participating students with an opportunity for hands on training in problem solving, client contact, and dealing with bureaucratic requirements.[156] Similar programs are offered by some local community groups.[157] The massive effort undertaken by thousands of members of the federal criminal defense bar in response to the need for expediting commutation petitions for participation in President Obama's clemency initiative, described as "one of the largest pro bono efforts in the history of the legal profession in the United States," provides a recent and notable example.[158] Expanding such programs, especially in geographic areas with high concentrations of demographic groups currently underrepresented in the petitioner population, may help.

---

[154] See, e.g., *Padilla v. Kentucky*, 509 U.S. 356 (2010).

[155] The petitioner's personal oath and the character affidavits must be notarized, so those materials would have to be transmitted separately in scanned or hardcopy form.

[156] See, e.g., University of St. Thomas (Minnesota), 2018 (describing a law school class that would assist inmates seeking federal commutations).

[157] See, e.g., Philadelphia Reentry Coalition, 2018 (describing clinics held by the X-Offenders for Community Empowerment community group for the purpose of seeking clemency from the governor of Pennsylvania).

[158] Horwitz, 2017.

OPA Resources and Workload

A cursory review of the clemency statistics published on OPA's website reveals that there can be great variation in the incoming caseload from year to year. This is most true for commutation requests (a jump from 3,000 filed in one year to 11,000 in the next being the most notable example), but annual pardon case openings also rise and fall markedly. Some swings could be related to a change in presidential administration, with some potential petitioners now motivated to apply under the belief that a more receptive ear currently resides in the White House. Another cause might be changes in the law that eliminate or reduce criminal sanctions for certain types of behavior, leading some of those convicted under the earlier version to believe that they now have a more compelling argument for executive clemency. The passage of the Fair Sentencing Act of 2010, for example, where the amount of crack cocaine needed to trigger a five-year mandatory minimum sentence was increased from five grams to 28 grams, might have been the motivation for a jump in commutation requests in fiscal year 2010. And finally, announced changes in clemency policies and practices can also lead to volatility in incoming caseloads, with the most famous recent example arguably being the April 2014 launch of President Obama's clemency initiative. Regardless of the reasons behind year to year swings, staff levels at OPA remained relatively static during our study period. The number of authorized attorney positions in FY 2001 was six, was increased to seven in FY 2011, and remained at that level through FY 2014.[159]

Despite a sharp jump in authorized attorney positions in the first fiscal year after the clemency initiative announcement, OPA appears to be having increased difficulty in keeping up with the incoming pardon caseload. As of the beginning of June 2018, over 2,000 pardon petitions were classified as pending, but for most years prior to 2016, the pending caseload was no more than half that amount. The increase in the pardon evaluation backlog was in part due to a notable spike in incoming pardon petitions during the last full fiscal year of the Obama Administration, in which the count of new applications was more than triple the previous 12 months.[160] Moreover, the all-hands-on-deck reaction to the 2014 clemency initiative in which OPA's resources were essentially channeled exclusively into processing the influx of new commutation petitions played an important role as well.[161] The lesson here is that adjusting OPA resources in advance of anticipated changes in administrations, laws, and DOJ policies that are likely to trigger increased demand makes more sense than it does to wait until the flood of new petitions hit full force and staff must work processing incoming cases while at the same time

---

[159] Justice Management Division, 2018; Justice Management Division, 2016.

[160] Office of the Pardon Attorney, 2018c.

[161] Office of the Inspector General, 2018, p. 10: "We also found that, due to OPA's limited resources and a desire to prioritize commutation petitions, Department leadership directed former Pardon Attorney Deborah Leff to prioritize commutation petitions over pardon petitions and, for about 14 months during the Initiative, the Department suspended pardon work altogether."

trying to train new hires and temporary assistants. We saw firsthand the effects of this type of imbalance between Office resources and caseload pressures upon our data collection efforts, but more importantly it also has implications for a petitioner's reasonable expectations that his or her clemency request will be processed in a timely manner. Petitioners are told at the outset that the "executive clemency process can be lengthy," but in reality "long and drawn out' might be a more appropriate description. Even if only the petitions included in our analyses are considered (ones with final actions taken by OPA during a time of relative calm in the clemency system), it typically took 16 months in a denied case for OPA to send a Report & Recommendation to the DAG (*Table 3.61*). Much of that time was the result of waiting for a full FBI investigation that might take a year to complete (*Table 3.60*), but it not difficult to imagine that the 16-month time span would increase markedly if OPA's attorney advisors could not find adequate time to give each petition their full attention.

Appendix A: Methodological Issues and Data Collection Approach

This appendix describes two important aspects of the research we conducted for our statistical analysis of presidential pardons. It assumes that the reader is familiar with the detailed overview of the project presented in the section entitled ***Issues Arising During Our Data Collection*** found in ***Chapter 1***. We first examine how the case files we were able to abstract before the termination of the data collection match up to what we believed to be true about the intended sample. Second, we describe the process that the RAND abstraction team employed during the data collection phase.

Sample Comparison

Background

As described in ***Chapter 1***, RAND planned to abstract detailed information from over 1,000 pardon petition files in accordance with the approach outlined in the original project proposal. A total of 1,470 hardcopy casefiles had been pulled from the federal archives in Suitland, Maryland prior to the start of the abstraction. As originally envisioned, a target of 1,212 casefiles drawn from all petitions closed between October 1, 2001, and April 30, 2012, would be subject to the abstraction, of which 210 files would contain all petitions granted by the President during this period, while the remaining files would consist of a stratified sample of 778 denied petitions and 224 administratively closed petitions from the same time span. Another 228 files (all with non-grant outcomes) were also pulled from the archives to serve as replacement cases if needed.

During the early stages of the project, an issue arose regarding RAND access to the pre-sentence investigation reports (PSRs) contained in many, though not all, of the OPA hardcopy casefiles. PSRs are produced by federal probation officers following a defendant's conviction to help inform federal judges when making sentencing decisions. The reports are subject to certain restrictions related to outsider access that have been imposed by the federal judiciary. To address such concerns, a decision was made to request permission from the sentencing judge (or the Chief Judge in each district when, for example, the sentencing judge's identity was not immediately available) for RAND to view the reports. Because much of OPA's decision-making process is based on the information contained in a PSR (when available), it was agreed that any petition file in which permission was not obtained but that nevertheless contained a PSR would be dropped from the data collection (if possible, we would replace that file with one of the replacement cases). It should be noted that the files for petitions that (1) involved much older convictions in federal district court, (2) involved military court convictions, or (3) were administratively closed by OPA soon after receipt usually did not contain PSRs. Indeed, about 40

percent of casefiles examined by RAND coders by the time the abstraction was halted did not include a PSR.

Letters were sent to the Chief Judge in each federal district that had been identified as the sentencing district for the petitioners in the full 1,470 file sample (including both the main target group of 1,212 petitions as well as the 228 replacement petitions). Most responding districts agreed to the request without condition, and so we had unrestricted access to 944 petitions (64 percent of the target group). There were districts that declined the request entirely, which meant that we would be denied access to 137 of the main target petition files (9 percent, assuming that all such case files actually contained PSRs). The situation was less clear for the 389 petition files where the underlying conviction was believed to be in a district that did not either grant RAND unconditional access to relevant PSRs or issued a blanket refusal:

1) Additional information about 177 petitioners was requested by some judges before they would make a final decision either way (often the information desired was simply the date of sentencing or the court's docket number in the underlying case);
2) Permission would be granted for 35 petitions if it could be confirmed that the petitioners were in fact sentenced in the district receiving the RAND request (we sometimes had only the petitioner's best guess as to the trial court location, and in some instances that guess was clearly incorrect);
3) 17 petitions had no sentencing district identified at all and as such no request for permission could be made based on information available to us from OPA's legacy case management system (CMS); and
4) No response to our requests was ever received from district courts believed to have been located in the sentencing districts for the remaining 160 petitions.

Because the status for many of these 389 "neither yes nor no" petitions could be easily resolved by a very brief examination of the hardcopy file by someone already authorized to view PSRs, it was agreed that OPA's pre-coding processing of the files would include searching for and recording information needed to respond to judicial inquiries. In addition, OPA would also confirm whether a PSR actually existed in any file outside of the 944 petitions where RAND already had unrestricted access (without a PSR, all concerns about judicial restrictions regarding RAND access to the reports are eliminated, and the file could be treated as one with unlimited access). These tasks (looking for missing information and performing a "quick peek" of case files to confirm the presence of a PSR) would be performed only when OPA had completed its processing of all other eligible case files in the main sample and made them available for RAND's review.

Because of the PSR access issue, it was important to work through the processed case files in batches that corresponded to the presumed sentencing district. The files were first divided up by sentencing district, then the district batches were grouped by (1) whether we already had complete permission from the district to review any PSRs in those files, (2) whether the judges in a district that had neither granted nor denied PSR permission had requested additional

information about the case (e.g., docket number, sentencing judge name, etc.), and (3) whether it was a district where the judges had clearly denied permission, which meant that the files would need to be quickly inspected to confirm the presence or absence of a PSR. Within each grouping the districts were generally sorted in alphabetical order, but it should be noted that OPA case processing and the subsequent RAND abstraction did not always follow this order precisely.

How the Samples Match Up

A total of 287 casefiles were examined by RAND staff prior to the cessation of all on-site coding activities. This represented about 24 percent of the original coding target. It should be kept in mind that the order in which OPA processed cases for RAND was never based on an assumption that the coding effort might be halted before all 1,212 target cases had been abstracted. If we had realized that there might be a possibility we would not be able to abstract the original target set (including any replacement files), we would have made arrangements with OPA to organize and prepare the files in random order, perhaps prioritizing by granted petitions.

We drew the original sample using information from the CMS in use at OPA during study time frame. By the time we began the study, OPA had replaced the system with an updated version. The legacy system we would use, however, was quite rudimentary, and though many potentially useful information fields were ostensibly available, only a few were consistently populated. As this CMS data constituted the sole source of information available to us for the sample cases files that had been pulled from archives but not yet processed, we have only limited insight into the characteristics of the petitioners, the underlying convictions, or the OPA assessment process for the target sample. Age, for example, was never consistently collected. That said, there were a few quality fields that can offer some insight as to the degree to which the target group and the coded group are similar or differ.

The distribution of coded cases by final decision was remarkably similar to that of the original target group (***Table A.1***), with the three outcomes varying by only a percentage point or two. The tables in this Appendix present unweighted results from our abstraction.

Table A.1 Final Outcomes in Target and Coded Samples

Outcome	Target		Coded	
	N	**%**	**N**	**%**
Denial	778	64.2	187	65.2
Grant	210	17.3	43	15.0
No Action	224	18.5	57	19.9
Total	**1,212**	**---**	**287**	**---**

Year of the OPA final decision was a key criterion used for drawing the target sample. Our coded cases and the target cases match up here as well (2006 being an exception), particularly for years that were at least 6 percent of the total (**Table A.2**).

Table A.2 Year of Final Action in Target and Coded Samples

Year	Target		Coded	
	N	**%**	**N**	**%**
2001	49	4.0	12	4.2
2002	135	11.1	32	11.2
2003	20	1.7	7	2.4
2004	51	4.2	11	3.8
2005	76	6.3	16	5.6
2006	140	11.6	25	8.7
2007	78	6.4	17	5.9
2008	229	18.9	57	19.9
2009	66	5.5	17	5.9
2010	86	7.1	23	8.0
2011	279	23.0	69	24.0
2012	3	0.3	1	0.4
Total	**1,212**	**---**	**287**	**---**

What does not match up well is the distribution of petitions by the sentencing district indicated for the target sample by OPA's CMS (**Table A.3**). This is to be expected given that OPA was proceeding, more or less, in alphabetical order within district grouping when conducting its file processing. Only those districts where unrestricted access to the PSRs had been granted to RAND by the judges in the sentencing courts are shown in the table, and as can be seen there were essentially no coded cases from districts with location names ranging from North Dakota to Wyoming. The three service branches that had clearly agreed to allow any information they provided to OPA to be viewed by the RAND coders were to be the sources of the last set of petitions to be abstracted, and as a result we have no military court convictions in our analysis data. Note that the order the cases were processed did not precisely follow the order shown in the table (for example, only six of Maryland's ten cases were processed for RAND's use by the time the data collection was terminated). The primary need for file organization was to make sure that only permission-granted districts were the subject of the initial processing by OPA and abstraction by RAND, and accordingly the order in which files were pulled within that group were of no importance. For example, a few of the California-Central cases might be processed, then a few of the Alabama-Middle cases, then a few more of the California-Central set, etc. Had the data collection continued as planned, all of the 804 cases in the permission-granted group would have eventually been coded, and then steps were to be taken to deal with

123

remaining PSR issues in order to open up more cases for the abstraction, followed by adding replacement cases if needed.

Table A.3 Sentencing District in Target and Coded Samples

District	Target		Coded	
	N	%	N	%
Alaska	5	0.6	5	1.7
Alabama, Middle	10	1.2	8	2.8
Arkansas, East	14	1.7	13	4.5
Arkansas, West	7	0.9	7	2.4
Arizona	14	1.7	12	4.2
California, Central	24	3.0	19	6.6
California, East	7	0.9	7	2.4
Connecticut	7	0.9	7	2.4
Delaware	4	0.5	3	1.0
Georgia, Middle	12	1.5	12	4.2
Georgia, North	19	2.4	17	5.9
Guam	1	0.1		
Hawaii	5	0.6	4	1.4
Iowa, South	7	0.9	7	2.4
Idaho	6	0.8	6	2.0
Illinois, Central	11	1.4	9	3.1
Illinois, South	8	1.0	6	2.1
Indiana, North	11	1.4	10	3.5
Indiana, South	2	0.3	2	0.7
Kansas	11	1.4	9	3.1
Kentucky, East	20	2.5	13	4.5
Kentucky, West	11	1.4	10	3.5
Louisiana, East	15	1.9	13	4.5
Louisiana, West	20	2.5	20	7.0
Maryland	10	1.2	6	2.1
Maine	2	0.3	1	0.4
Michigan, West	12	1.5	10	3.5
Minnesota	18	2.2	18	6.3
Missouri, East	8	1.0	4	1.4
Missouri, West	12	1.5	10	3.5
Mississippi, North	6	0.8	6	2.1
Montana	7	0.9	1	0.4
North Carolina, East	15	1.9	7	2.4
North Carolina, West	12	1.5	1	0.4

District	Target		Coded	
	N	**%**	**N**	**%**
North Dakota	7	0.9		
Nebraska	21	2.6		
New Hampshire	5	0.6		
New Jersey	11	1.4		
New York, East	18	2.2		
New York, North	6	0.8		
New York, West	7	0.9		
Ohio, South	12	1.5		
Oklahoma, East	9	1.1		
Oklahoma, West	3	0.4		
Oregon	7	0.9		
Pennsylvania, East	12	1.5		
Pennsylvania, Middle	11	1.4		
Pennsylvania, West	11	1.4	2	0.7
Puerto Rico	5	0.6		
Rhode Island	5	0.6	1	0.4
South Carolina	45	5.7		
South Dakota	15	1.9		
Tennessee, East	11	1.4		
Tennessee, Middle	12	1.5		
Tennessee, West	10	1.2		
Texas, East	15	1.9		
Texas, North	54	6.7		
Texas, West	42	5.2		
Utah	9	1.1		
Virginia, West	5	0.6	1	0.4
Washington, East	6	0.8		
Washington, West	13	1.6		
Wisconsin, East	15	1.9		
Wisconsin, West	7	0.9		
West Virginia, South	6	0.8		
Wyoming	9	1.1		
Air Force	14	1.7		
Marine Corps	6	0.8		
Navy	7	0.9		
Total	**804**	**---**	**287**	**---**

OPA's offense classification scheme utilized in their legacy CMS was relatively granulated, so we would expect that many categories found in the target sample would not show up at all in

the partially completed set of coded cases. But in fact the percentages are roughly similar for both sets for most categories that exceeded about 2 percent in the target (*Table A.4*).

Table A.4 CMS Offense Types in Target and Coded Samples

Type	Target		Coded	
	N	%	N	%
Unknown	3	0.3		
Alien	17	1.4		
Antitrust	3	0.3	2	0.7
Arson	1	0.1		
Assault	19	1.6	4	1.4
Bail jumping	1	0.1		
Bank robbery	9	0.7	3	1.1
Bankruptcy	3	0.3		
Bank fraud	53	4.4	10	3.5
Bribery	16	1.3	3	1.1
Burglary	1	0.1		
Civil rights	7	0.6	1	0.4
Counterfeiting	27	2.2	8	2.8
Contempt	1	0.1		
Customs	11	0.9	1	0.4
Damage	1	0.1		
Draft	2	0.2		
Embezzlement	43	3.6	18	6.3
Environment	13	1.1	2	0.7
Escape	2	0.2		
Explosion	3	0.3	1	0.4
Extort	7	0.6	1	0.4
False statements	68	5.6	17	5.9
Firearms	80	6.6	21	7.3
Fraud	198	16.3	45	15.7
Gambling	16	1.3	4	1.4
Labor law	1	0.1		
Laundering of money	19	1.6	4	1.4
Liquor	7	0.6		
Mail	16	1.3	5	1.7
Medical fraud	7	0.6	1	0.4
Military	7	0.6		
Manslaughter	2	0.2		
Misprision	19	1.6	2	0.7

Type	Target		Coded	
	N	%	N	%
Murder	3	0.3	1	0.4
Narcotics	282	23.3	73	25.4
Obstruction of justice	9	0.7	1	0.4
Other	36	2.9	9	3.1
Perjury	6	0.5	2	0.7
Pornography	6	0.5	2	0.7
Rape	11	0.9		
Racketeering	11	0.9	4	1.4
Robbery	5	0.4		
Security	3	0.3		
Taxes	69	5.7	18	6.3
Theft	87	7.2	23	8.0
Weapons	1	0.1	1	0.4
Total	**1,212**	**---**	**287**	**---**

OPA's disposition field in its legacy CMS reflected the degree to which the Office argued for or against a presidential grant of pardon, which usually reflects the level of investigation performed. Recommendations for a grant ("favorable" in the table below) get the most scrutiny, while those that recommend a denial either get minimum investigation and write-up ("Averse-Summary") or an extensive check and write-up ("Adverse-Full"). Disposition is similar for both sets (*Table A.5*).

Table A.5 CMS Disposition Levels in Target and Coded Samples

Level	Target		Coded	
	N	%	N	%
Administrative Closure	224	18.5	57	19.9
Adverse-Full	66	5.5	17	5.9
Adverse-Summary	712	58.8	170	59.2
Favorable	210	17.3	43	15.0
Total	**1,212**	**---**	**287**	**---**

The distributions for when OPA originally opened a new file record for the incoming petition show more variance at the individual year level, but some of the noise could be reduced if the entries were collapsed into three year sets (*Table A.6*).

Table A.6 Year of OPA File Opening in Target and Coded Samples

Year	Target		Coded	
	N	%	N	%
1994	4	0.3	1	0.4
1995	6	0.5	1	0.4
1996	16	1.3	2	0.7
1997	38	3.1	9	3.1
1998	38	3.1	10	3.5
1999	64	5.3	12	4.2
2000	125	10.3	32	11.2
2001	53	4.4	14	4.9
2002	67	5.5	17	5.9
2003	61	5.0	12	4.2
2004	108	8.9	23	8.0
2005	51	4.2	12	4.2
2006	90	7.4	23	8.0
2007	108	8.9	30	10.5
2008	210	17.3	47	16.4
2009	101	8.3	27	9.4
2010	46	3.8	8	2.8
2011	26	2.2	7	2.4
Total	**1,212**	**---**	**287**	**---**

The year that a petitioner was originally sentenced is an important field, because as described in *Chapters 3* and *4*, older convictions appear to have a better chance of a favorable recommendation than relatively more recent ones. There is variation here (*Table A.7*), though a better comparison might group sentencing year (perhaps in three year clusters prior to 1995) or use years from conviction to OPA case file opening.

Table A.7 Sentencing Year in Target and Coded Samples

Year	Target		Coded	
	N	%	N	%
Unknown	28	2.3	6	2.1
1946	1	0.1	1	0.4
1947	2	0.2	2	0.7
1950	2	0.		
1954	1	0.1	1	0.4
1955	1	0.1	1	0.4

Year	Target		Coded	
	N	**%**	**N**	**%**
1956	1	0.1		
1957	2	0.2		
1958	4	0.3	1	0.4
1959	3	0.3		
1960	1	0.1	1	0.4
1962	7	0.6	3	1.0
1963	5	0.4		
1964	2	0.2	1	0.4
1965	2	0.2		
1966	1	0.1		
1967	3	0.3		
1968	4	0.3	2	0.7
1969	4	0.3	1	0.4
1970	3	0.3	1	0.4
1971	7	0.4	3	1.1
1972	8	0.7	1	0.4
1973	11	0.9	2	0.7
1974	6	0.5		
1975	13	1.1	2	0.7
1976	11	0.9	4	1.4
1977	12	1.0	3	1.1
1978	12	1.0	3	1.1
1979	13	1.1	3	1.1
1980	17	1.4	4	1.4
1981	15	1.2	5	1.7
1982	19	1.6	4	1.4
1983	24	2.0	5	1.8
1984	38	3.1	9	3.1
1985	28	2.3	6	2.1
1986	31	2.6	5	1.7
1987	35	2.9	12	4.2
1988	44	3.6	13	4.5
1989	44	3.6	11	3.8
1990	39	3.2	9	3.1
1991	57	4.7	8	2.8
1992	82	6.8	22	7.7
1993	57	4.7	21	7.3
1994	58	4.8	13	4.5
1995	49	4.0	10	3.5

Year	Target		Coded	
	N	%	N	%
1996	66	5.5	12	4.2
1997	45	3.7	8	2.8
1998	49	4.0	11	3.8
1999	41	3.4	8	2.8
2000	41	3.4	5	1.7
2001	41	3.4	14	4.9
2002	34	2.8	8	2.8
2003	35	2.9	10	3.5
2004	18	1.5	2	0.7
2005	14	1.2	3	1.1
2006	9	0.7	2	0.8
2007	8	0.7	5	1.7
2008	4	0.3		
Total	**1,212**	**---**	**287**	**---**

Conclusion

We were limited in the information available to us for the purpose of comparing the original target group with the case files abstracted before the termination of data collection. The current CMS in use at OPA would have allowed a much richer comparison, but in practice the legacy system was, in many ways, used for little more than capturing some basic information about a newly received petition and generating a unique case number. It was the hardcopy case file, with notes scribbled on the file jacket and various forms and documents stuffed inside, that essentially served as OPA's primary recordkeeping system at the time.

But what we are able compare suggests that despite our inability to abstract case files where the conviction was in many districts, the target and coded sets look quite similar in terms of final outcome, year of final action, and the "depth" of OPA's investigation as measured by the level of detail provided with its recommendations. The major case type categories in the granulated taxonomy utilized in the legacy CMS, which we define as at least 2 percent of the total in either the target or coded sets (bank fraud, counterfeiting, false statements, firearms, narcotics, other, taxes, and theft), are similar, with embezzlement being the exception. The year of file opening and the year of sentencing are roughly similar, though the level of granularity makes a closer match unlikely.

It would have been our strong preference to have be allowed to complete the abstraction for the target set. No researcher likes to work with what is essentially a sample of a sample. But we understood the logistical issues that were in play at OPA during President Obama's clemency initiative campaign, and our choices were limited. That said, we believe that for the purposes of

this report, the 287 records that we were able to create with information from hard copy case files should provide an adequate foundation for the analyses described in **Chapters 3** and **4**. Statistical tests within **Chapter 4** identify instances where the frequencies of fields being examined are too low to allow for generalizable results.

Case File Abstraction Procedures

Introduction

RAND's Survey Research Group (SRG) led the document abstraction effort for this analysis. Starting in September 2015 and ending in March 2016, SRG coded a total of 287 pardon applications: 43 grants of pardon, 187 denials, and 57 applications that were determined to have been administratively closed.

All document abstraction was conducted at the Office of the Pardon Attorney by a team of three SRG staff members. The discussion that follows provides details about the hiring and training of coders as well as details about the data abstraction, data entry, and quality control process.

Staffing

The original project plan was for RAND to hire a group of coders comprised of third-year law students and recent law school graduates to abstract information about of the hard copy case files maintained by OPA for the pardon applications selected for the sample. These coders were anticipated to work during the summer 2015 and would review the approximately 1,200 case files in the sample over what we estimated to be a two or three-month period.

In preparation for the date chosen by OPA and RAND for beginning the abstraction effort, SRG reviewed applications, conducted telephone interviews, and held in-person group interviews for approximately 20 potential coders. After the interviews were completed and coders selected, OPA informed RAND that the anticipated start date would need to be cancelled and a revised timeline adopted due to its decision to subject each case file to an eyes-on review by a single OPA staff member before releasing to RAND in batches of about a dozen case files at a time. Because the rate at which the OPA internal file reviewer could process case files would be greatly exceeded by the rate that the RAND coding team could abstract information from those same files (thus raising the specter of considerable dead time), and because of the uncertainty of the revised start date, a decision was made to use internal RAND staff on an as-needed basis rather than commencing full time abstraction with the coding team. A team of three SRG staff members, along with the senior survey director, subsequently undertook all coding, data entry, and quality assurance efforts related to the case file abstraction.

Training

Before the main abstraction effort began, the senior survey director and survey coordinator received a draft data abstraction instrument from project researchers and using that draft as a guide, reviewed about 20 pardon application files. Findings from these reviews helped to refine the data abstraction instrument. After the instrument was formatted by SRG and was subjected to final edits (see ***Appendix B***: Coding Form Used for the Case File Abstraction for a copy of this document), the results of the sample case file reviews helped to create various training documents, such as an annotated data collection form (with notes and tips about each question as well as describing the most likely source needed to answer), an overview of each of the documents commonly found in pardon application case files, and a set of example completed questionnaires.

The survey coordinator reviewed these training documents with the coders, first at the RAND office, and then utilizing hard copy pardon applications while on site at OPA. The coders first observed a case being coded, then completed two cases together as a group, then finally completed two cases independently while the survey coordinator observed. The survey coordinator validated the first five cases completed by each coder by comparing their completed instrument against the documents contained in the pardon application case file. Any discrepancies were discussed as a group before a coder completed any additional cases.

Data Abstraction

Prior to beginning the abstraction of a pardon application, the coder first removed and reorganized the documents in the case file into the following order:

- The OPA petition file jacket (in addition to holding various materials in place, the file jacket's exterior contains information about key dates and events in the OPA's evaluation)
- OPA communications with the petitioner (e.g., a copy of the letter sent to the application informing him or her of the final decision on the petition)
- The original application and petition, including any supplemental materials supplied by petitioner
- The Pre-Sentence Investigation Report produced by the USPO (if available)
- The FBI investigation report (if available)
- OPA's "Blue Sheet" log of internal notes
- DAG-related materials, such as copies of memos, letters, or emails between OPA and the DAG
- White House-related materials, such as copies of memos, letters, or emails between the White House Counsel and OPA or the DAG

- Communication to and from the USPO, FBI, the U.S. Attorney's Office, elected officials, or other government agencies
- The USPO Judgment on Conviction (if available)
- All official documents related to a grant of pardon, including the Warrant of Pardon, Executive Grant of Clemency certificate, and the memorandum from OPA to the DOJ Office of Public Affairs
- Any other forms or material contained in the case file not listed above

After each of the documents within the categories described above were organized by date, the coder reviewed all of the materials in the case file and began to complete the abstraction instrument. The coder initially used the most complete or most recent version of the application form and associated materials to complete questions 1 to 63. The coder then filled in any missing or incomplete responses using information present in the FBI investigation report and the Pre-Sentence Report, if available. Next, the coder read through the "blue sheet" log, file jacket, any communication between OPA and the petitioner (or the petitioner's attorney) to answer questions 64 to 68. The coder then entered relevant information about certain commonly found documents in the case file to answer questions 69 to 80 and 82 to 87. The coder subsequently reviewed communication between OPA, the DAG, and the White House in order to answer question 81. Questions involving race and ethnicity were answered using any information present in the case file. Finally, the coders were asked review their existing answers to questions 1 through 63 on the basis of information learned from materials in the case file other than the original application package, and to modify as needed if sources other than the petitioner suggested than the answers were incorrect or inaccurate.

Many of the questions on the abstraction form have a bracketed suggestion box for the materials that should be used as sources. The documents that are underlined on the abstraction form were to be considered the most reliable sources in case of conflicts. The coders were instructed to assume that the information in the petitioner's application is correct unless it was specifically contradicted by some other document in the file. Such contradictions had to be affirmative if a change was to be made. For example, a statement in an FBI report that simply said the investigator could find no evidence that the petitioner did something that was claimed was not considered a contradiction requiring modification of an answer.

Once an abstraction form was completed, the coders made another pass through the documents in the case file, and returned to the form to amend answers as needed. The completed form was then returned to the survey coordinator for review.

Quality Control

The survey coordinator reviewed every abstraction form for completeness and sanity (in other words, performed initial data quality validations). If any response was missing or seemed

implausible or unusual, the case was returned to the coder for further review against the original application case file.

As noted above, the survey coordinator validated the first five cases completed by each coder by comparing their completed instrument against the materials in the application case file. After the first five cases were completed, the survey coordinator then validated every fifth case completed by each coder. One of the coders also validated every fifth case completed by the survey coordinator. Any differing responses were discussed and compared to the documents included in the pardon application.

The team held weekly meetings, along with additional ad hoc meetings on site, in order to discuss any problems or questions that arose during the week. The annotated data collection form was periodically reviewed as a team at these meetings, and updated based on common themes found in the case files and frequently asked questions by coders.

Notes About Specific Questions

During the data abstraction, the SRG team discussed several specific questions with the project team. The decisions made for these specific questions are as follows:

- *Questions 24a and 24b* –Traffic citations were not included in the coding of this question. For example, if a petitioner had only a speeding ticket, it was coded as "no other criminal activity indicated." Any charges of DWI (Driving While Intoxicated) or DUI (Driving Under the Influence) were included in the coding of this question.
- *Questions 32, 33, and 34*– Adult children were included in the coding of question 32, but not questions 33 or 34. Minor children were defined as those who were under the age of 18 when the application was initially submitted.
- *Question 43* – Petitioners who reported drinking only socially or occasionally were not coded as exhibiting an "indication of alcohol or substance abuse"
- *Question 63* – Friends, coworkers, and those who say they know the petitioner "both personally and professionally" were coded as "acquaintances" for this question.
- *Questions 69, 72, and 74* – If there is more than one date present, the coders used the latest, or most recent, date.
- *Questions 89, 90, 93, and 94* – When race or ethnicity was determined "on official form other than PSR or FBI report", this almost always refers to the SENTRY report.

Data Entry

The Office of the Pardon Attorney chose not to grant the RAND team internet access to the DOJ visitor network while on site. For this reason, all abstraction forms would be completed on paper.

The abstraction instrument was programmed into a web entry form, using the CASES WebQA software. The web entry form was hosted on a secure virtual server on the intranet dedicated to this task.

To ensure accuracy, every case was data-entered twice by two different members of the SRG team, both of whom did not complete the original abstraction form. Any discrepancies between the two data sets were reviewed against the original hard copy form and adjudicated by a different member of the SRG team.

Appendix B: Coding Form Used for the Case File Abstraction

Case ID: _____

Coder Name:_____

Date started: _____ Date completed: _____

Time started: _____ Time completed: _____

<table>
<tr><td colspan="2">Case Resolution:</td></tr>
<tr><td>☐</td><td>Denial</td></tr>
<tr><td>☐</td><td>No Action</td></tr>
<tr><td>☐</td><td>Pardon Granted</td></tr>
</table>

Document	In file?	Comments
1. Petitioner's application package	Y / N	
2. Pre-Sentence Report (PSR)	Y / N	
3. Judgment of Conviction and/or Amended Judgment	Y / N	
4. OPA letters to petitioner/petitioner's attorney	Y / N	
5. OPA memo to DAG	Y / N	
6. DAG memo to White House	Y / N	
7. OPA "Blue Sheet" internal notes	Y / N	
8. FBI report	Y / N	
9. US Attorney Response	Y / N	
10. US Probation Office Response	Y / N	
11. Bureau of Prisons report (including SENTRY report)	Y / N	
12. District Judge Response	Y / N	
13. Military Branch Court Documents	Y / N	
14. Response of DOJ or other federal agencies to OPA request (IRS, ICE, etc.)	Y / N	

Instructions

- Answer <u>all</u> the questions by checking the box to the left.
- If you are unable to determine the response to a question based on the materials provided, check the "Could not be determined" box
- Select <u>one</u> response to each question unless it specifies "Select ALL that apply"

- For questions that specify "Select ALL that apply":
    - o   If you select "Not applicable", do not select any other options
    - o   If you select "Could not be determined", do not select any other options
    - o   In some cases, it may be appropriate to select "Other" along with other responses

- Do not guess if you cannot find the exact response, unless the question specifically directs you to estimate or use your best judgment

- Unless otherwise stated, "Current" always refers to the date the petitioner applied for pardon. This date can be found on the file jacket.

- Pay close attention to the dates listed in each file, and the information called for in each question. Many questions specifically refer to time <u>prior</u> to or <u>following</u> the underlying conviction.
- Most of the questions have a bracketed suggestion box for the materials you should use as sources. The documents that are <u>underlined</u> should be considered the most reliable sources. The application should be considered the least reliable. All other document types can be considered somewhere between the application and the underlined item in terms of reliability.
- Assume that the information in the application is correct UNLESS it is specifically contradicted by some other document in the file. The contradiction should be affirmative. A statement in an FBI report that simply said the investigator could find no evidence that the Petitioner did something that was claimed should not be considered a contradiction.
- The source reference "Judgment" includes original judgments of conviction, amended judgments, and similar documents stating the official decision of the court related to military courts-martial.
- Note that in some instances, the information you are seeking will be in a document not listed in the source suggestions.

Section One: Petitioner Information

Characteristics and Prior Applications

> 1. Date of birth is the preferred response. Only use age at time of petition submission if you are unable to locate the petitioner's date of birth.

1. Age or date of birth   *[sources: App. Q.1, FBI report]*

  1 Month of Birth)MM/YYYY):

  _____

  2 Age at time of petition submission:

  _____

  3 Could not be determined

  4 Other:_____

  _____

2. Sex   *[sources: App. Q.1]*

  1 Male

  2 Female

  3 Could not be determined

  4 Other:_____

  _____

> 3. If response 2 or 3 is selected, you must also select A or B

3. Citizenship   *[sources: App. Q.1, FBI report]*

  1 U.S. Citizen – Natural born

  2 U.S. Citizen – Naturalized

  A   Country of birth: _____

  B   Country of birth unknown

  3 Non-citizen

  A   Country of citizenship: _____

  B   Country of citizenship unknown

  4 Could not be determined

  5 Other: _____

  _____

> 4-5. These questions refer only to **presidential** pardon, not to state level pardons. This is not asked about in older versions of the application; for these cases, assume the petitioner has *not* applied in the past unless evidence suggests otherwise (such as an additional file jacket).
>
> If there is an additional file jacket included with the file, the petitioner likely applied in the past. Carefully review the dates of the documents to determine the resolution to the earlier application and the type of application (pardon or commutation).

4. Is there any indication that Petitioner applied for pardon or commutation in the past?   *[sources: App. Q.1; outer file jacket]*
  [Choose first answer in list if more than one is applicable]

  1 No – No indication of a prior application

  2 Yes – Previously granted

  3 Yes – Previously received threshold rejection ("Rejectable" problem or incomplete application not remedied)

  4 Yes – Previously withdrew application

  5 Yes – Previously denied

  6 Yes – Outcome is unknown

  7 Could not be determined

  8 Other:_____

> 5. The difference between a commutation and a pardon is that a commutation completely or partially reduces a sentence that is still being served. A pardon occurs a significant period of time after the conviction or completion of the sentence.

5. Were previous OPA applications for pardons or commutations?   *[sources: App. Q.1; outer file jacket]*

  1 Not Applicable – No indication of any prior application

  2 Pardon(s) only

  3 Commutation(s) only

  4 Both pardon(s) and commutation(s)

  5 Could not be determined

  6 Other:_____

  _____

Underlying Conviction

> 6. If the petitioner pled "not guilty", then the response to this question will be "found guilty after trial".

6. Manner of conviction for the charges that are the subject of the petition: *[sources: App. Q.2, PSR, FBI report, Judgment]*

    1 Guilty plea

    2 Pled *nolo contendere*

    3 Found guilty after trial

    4 Could not be determined

    5 Other: _____ _____

> 7. If the district includes a state, then the underlying conviction was in Federal District Court.

7. Underlying conviction was in: *[sources: App. Q.2, PSR, FBI report, Judgment]*

    1 Federal District Court

    2 Military Branch Court

    3 Could not be determined

    4 Other:_____

8. Date when sentenced for underlying conviction: *[sources: App. Q. 2, FBI rpt.; Judgment]*

    1 Date of conviction: _____ (MM/DD/YYYY)

    2 Could not be determined

    3 Other: _____

---

9.   For this question, we are only looking for the *petitioner's response* to Question 2 in the pardon application.

---

9. One line description of offense <u>according to petitioner</u>: *[sources: App. Q.2]*

    1 Description:_____

    2 Nothing entered in petition

    3 Other: _____

> 10. A detailed list of crimes included in each category is found in Appendix A. Read all options carefully and select all that apply. Remember, this question is only about the underlying conviction, not any other offenses committed by the petitioner. If the underlying conviction had only one charge or crime, the responses to Questions 10 and 11 will be the same.

10. Offense Categories (Check **all** that apply):   *[sources: App. Q.2, PSR, FBI report, Judgment]*

SEE APPENDIX A FOR A LIST OF OFFENSES THAT BELONG IN EACH CATEGORY
Choose the letter codes that best fit the offenses, not the numbered categories

1 Violent Crime
- A   Murder
- B   Manslaughter
- C   Kidnapping/Hostage Taking
- D   Sexual Abuse
- E   Assault
- F   Robbery
- G   Arson
- H   Other Violent Crime

2 Drugs
- A   Drugs - Trafficking
- B   Drugs - Communication Facility
- C   Drugs - Simple Possession
- D   Other Drugs

3 Firearms
- A   Any Firearm-related offense

4 Burglary/Theft/Larceny
- A   Burglary/Breaking & Entering
- B   Auto Theft
- C   Larceny
- D   Other Burglary/Theft/Larceny

5 Fraud
- A   Any Fraud-related offense

6 Non-Fraud White-Collar Crime
- A   Embezzlement
- B   Forgery/Counterfeiting
- C   Bribery
- D   Tax
- E   Money Laundering
- F   Other Non-Fraud White-Collar

7 Racketeering or Extortion
- A   Any Racketeering/Extortion-related offense

8 Immigration
- A   Any Immigration-related offense

9 Pornography/Prostitution/Sexual Exploitation
- A   Child Pornography
- B   Child Prostitution/Exploitation
- C   Non-Child Pornography
- D   Non-Child Prostitution/Exploitation
- E   Other Porn/Prostitution/Exploitation

10 Other Offenses
- A   Gambling/Lottery
- B   Civil Rights
- C   Prison Offenses
- D   Administration of Justice Offenses
- E   Environmental/Wildlife
- F   National Defense
- G   Antitrust
- H   Food and Drug
- I   Other Miscellaneous Offenses

11 Problem with Categorization
- A Could not be determined

11. Primary offense category (Choose **only one** for **most serious offense**):   *[sources: App. Q.2, PSR, FBI report, Judgment]*

SEE APPENDIX A FOR A LIST OF OFFENSES THAT BELONG IN EACH CATEGORY
Choose the letter code that best fits the offense, not the numbered category

1 Violent Crime

    A Murder

    B Manslaughter

    C Kidnapping/Hostage Taking

    D Sexual Abuse

    E Assault

    F Robbery

    G Arson

    H Other Violent Crime

2 Drugs

    A Drugs - Trafficking

    B Drugs - Communication Facility

    C Drugs - Simple Possession

    D Other Drugs

3 Firearms

    A Any Firearm-related offense

4 Burglary/Theft/Larceny

    A Burglary/Breaking & Entering

    B Auto Theft

    C Larceny

    D Other Burglary/Theft/Larceny

5 Fraud

    A Any Fraud-related offense

6 Non-Fraud White-Collar Crime

    A Embezzlement

    B Forgery/Counterfeiting

    C Bribery

    D Tax

    E Money Laundering

    F Other Non-Fraud White-Collar

7 Racketeering or Extortion

    A Any Racketeering/Extortion-related offense

8 Immigration

    A Any Immigration-related offense

9 Pornography/Prostitution/Sexual Exploitation

    A Child Pornography

    B Child Prostitution/Exploitation

    C Non-Child Pornography

    D Non-Child Prostitution/Exploitation

    E Other Porn/Prostitution/Exploitation

10 Other Offenses

    A Gambling/Lottery

    B Civil Rights

    C Prison Offenses

    D Administration of Justice Offenses

    E Environmental/Wildlife

    F National Defense

    G Antitrust

    H Food and Drug

    I Other Miscellaneous Offenses (Anything that does not fit above)

11 Problem with Categorization

    A Could not be determined

> 12-13. These questions are similar and may seem repetitive – that is okay. These questions are asking about the underlying offense(s) *only*. Do not consider other crimes or activities by the petitioner before and/or after the underlying offense(s).

12. Additional aspects of underlying offense. <u>Check all that apply.</u>   *[Sources: App. Q.6, <u>PSR</u>, FBI report]*

Drug Type

1 Crack Cocaine

2 Powder Cocaine

3 Heroin

4 Methamphetamine

5 Marijuana

6 Other

7 Unknown

Weapons

8 Use of Firearms or Other Weapons in Commission of a Crime (even if not charged)

Physical/Mental Injuries

9 Intentional Physical or Mental Harm Inflicted

10 Vulnerable Victims Involved

11 Minors

12 Elderly

13 Disabled

14 Undocumented Immigrants

15 Other Minority or Special populations:

_____

_____

Crimes Against Government or While in Public Service

16 Theft from Government

17 Public Corruption/Abuse of Public Trust/Abuse of Public Power

18 Bribery of Government Official or Employee

19 Committed While in Role of Law Enforcement

Position of Private Responsibility

20 Abuse of Private Power (e.g., union officer, surgeon, attorney)

Interference With Government Activities or Falsehoods to Gvt.

21 Lying/Misstatements/Perjury Under Oath or Sworn Statement

22 Obstruction of Justice

Other

23 None of the above

24 Could not be determined

13. Specific types or natures of underlying offense. <u>Check all that apply.</u> Offense involved: *[Sources: App. Q.6, <u>PSR</u>, FBI report]*

    1 Fraud resulting in financial harm to significant number of individuals

    2 Theft from or fraud on government causing substantial loss to the government or its programs (other than just tax issues)

    3 Minor-related sexual offense, including obscene materials

    4 Serious bodily harm to others, such as murder or rape

    5 Physical harm to children

    6 The use of firearms or other deadly weapons

    7 Any explosives or arson

    8 Any controlled substances (including trafficking, manufacturing, import, export, distribution, or sale)

    9 Large-scale drug trafficking in which petitioner had significant role

    10 Terrorism, treason, sabotage, espionage, or other damage to national security

    11 Public corruption/abuse of public trust/abuse of public power

    12 None of the above

    13 Could not be determined

Punishment

14. Record all aspects of sentence. "Other" could include community service, meetings or remediation with victims or members of the community, or mandatory drug or alcohol rehab. Be sure to include these.

14. Sentence for the underlying conviction involved (Check <u>all</u> that apply): *[sources: App. Q.2, PSR, FBI report, <u>Judgment</u>]*

    1 Incarceration

    2 Fine and/or restitution

    3 Supervised release/parole

    4 Probation

    5 Could not be determined

    6 Other:_____

       _____

15. Total amount of fine or restitution imposed (even if not paid): *[sources: App. Q.2, PSR, FBI report, <u>Judgment</u>]*

    1 Fine or restitution not part of sentence for underlying conviction

    2 Amount: $_____ (use whole dollars)

    3 Could not be determined

    4 Other:_____

      _____

16. Age at time offense was committed: *[sources: App. Q.2, <u>PSR</u>, FBI report]*

    1 Age: _____ (Years)

    2 Could not be determined

    3 Other: _____

17-18. These questions are concerned with the **underlying conviction only**. Note that these questions do NOT apply to probation, parole, or supervised release.

17. Date when released from <u>incarceration</u> for underlying conviction: *[sources: App. Q.3, FBI rpt.; BOP report, <u>USPO letter</u>]*

    1 Never incarcerated for underlying conviction

2 Still incarcerated for underlying conviction

3 Date of Release: _____ (MM/DD/YYYY)

4 Could not be determined

5 Other:_____

18. Total time spent <u>incarcerated</u> for underlying conviction: *[sources: App. Q.3, FBI report; BOP report, USPO letter]*

   1 Never incarcerated for underlying conviction

   2 Still incarcerated for underlying conviction (do <u>NOT</u> select if current incarceration is for another reason)

   3 Time Incarcerated:

     _____ Years and _____ Months

   4 Could not be determined

   5 Other:_____

> 19-20. These questions are concerned with the **underlying conviction only**. Note that these questions do NOT apply to **incarceration**.

19. Date released from <u>federal supervision</u> (probation, parole, supervised release) for underlying conviction:
      [sources: App. Q.3, FBI report, BOP report, USPO letter]

   1 No federal supervision imposed

   2 Federal supervision is ongoing

   3 Date of release from supervision:

     _____ (MM/DD/YYYY)

   4 Could not be determined

   5 Other:_____
       _____

20. Total time spent under <u>federal supervision</u> (probation, parole, supervised release) for underlying conviction (if ongoing, use time spent through submission of petition):
      [sources: App. Q.3, FBI report, BOP report, USPO letter]

   1 No federal supervision imposed

   2 Time under supervision:

     _____ Years and _____ Months

   3 Could not be determined

   4 Other:_____
       _____

21. Was the conviction appealed?
      [sources: App. Q.3, Q.5, letter from US Atty.; OPA research; FBI report, BOP report, USPO letter]

   1 No (including no evidence in file)

   2 Yes

   3 Could not be determined

   4 Other:_____
       _____

22. Date when fine or restitution finally paid for underlying conviction: *[sources: App. Q.4, BOP report, USPO letter]*

   1 Fine or restitution not part of sentence for underlying conviction

   2 Fine or restitution still outstanding

   3 Date of final payment:

     _____
       (MM/DD/YYYY)

   4 Could not be determined

   5 Other:_____
       _____

> 23. This question only refers to *negative* issues or problems. The response will almost always be found in a document that is

23. Issues regarding petitioner's behavior in serving sentence. <u>Check all that apply.</u>
    [Sources: BOP materials; US Probation Office report, FBI report]

   1 None indicated

   2 Less than good conduct during incarceration

   3 Less than good conduct while under federal supervision

4 Currently outstanding fines and/or restitutions

5 Delays in paying fines and/or restitutions

6 Could not be determined

7 Other:_____

Criminal History

24. Is there any indication of **other criminal activity**…   *[sources: App. Q.7, PSR, FBI report]*

a. prior to the underlying offense?

1 No other criminal activity indicated

2 Conviction on misdemeanor charges only

3 Conviction on felony charges *(regardless of misdemeanor charges)*

4 Conviction, unsure if misdemeanor or felony

5 No conviction, but charged with felony or misdemeanor offenses

6 No conviction and no charges, but review notes likelihood of criminal activity *(other than minor drug use)* prior to offense that is the subject of the petition (include arrests that never led to formal charges)

7 No conviction and no charges, but review notes likelihood of minor drug use prior to offense that is the subject of the petition *(with no other suspected criminal activity)* (include arrests that never led to formal charges)

8 Could not be determined

9 Other:_____
_____

b. following release from incarceration on the underlying offense (or conviction if never incarcerated)?

1 No other criminal activity indicated

2 Conviction on misdemeanor charges only

3 Conviction on felony charges *(regardless of misdemeanor charges)*

4 Conviction, unsure if misdemeanor or felony

5 No conviction, but charged with felony or misdemeanor offenses

6 No conviction and no charges, but review notes likelihood of criminal activity *(other than minor drug use)* following offense that is the subject of the petition (include arrests that never led to formal charges)

7 No conviction and no charges, but review notes likelihood of minor drug use following offense that is the subject of the petition *(with no other suspected criminal activity)* (include arrests that never led to formal charges)

8 Could not be determined

9 Other:_____
_____

25. Rate the **relative seriousness** of other criminal activity…   *[sources: App. Q.7, PSR, FBI report]*

a. prior to offense that is the subject of the petition.

1 No other criminal activity indicated

2 Earlier criminal activity was less serious than the offense that is the subject of the petition

3 Earlier criminal activity was about the same level of seriousness as the offense that is the subject of the petition

4 Earlier criminal activity was more serious than the offense that is the subject of the petition

5 Could not be determined

6 Other:_____
_____

b. following release on the underlying offense (or conviction if never incarcerated).

1 No other criminal activity indicated

2 Post-release criminal activity was more serious than the offense related to the underlying conviction

3 Post-release criminal activity was about the same level of seriousness as the offense related to the underlying conviction

4 Post-release criminal activity was less serious than the offense related to the underlying conviction

5 Could not be determined

6 Other:_____
_____

26. Is there any indication of subsequent incarceration <u>following</u> release on the underlying offense (or conviction if never incarcerated), even if not current? *(Do not include pre-sentence detention)*   *[sources: App. Q.7, <u>FBI report</u>]*

1 No indication of incarceration

2 Incarcerated on immigration holds (not immigration criminal charges)

3 Incarcerated as a result of a criminal conviction

4 Incarcerated on both immigration holds and criminal convictions

5 Could not be determined

6 Other: _____

27. Is the petitioner <u>currently</u> incarcerated? *(May be federal, state, or local)*
[sources: App. Q.7, <u>FBI report,</u> "Blue Sheet", internal OPA memos, communication from petitioner]

1 No indication of current incarceration

2 Incarcerated on immigration charges/holds (not immigration criminal charges)

3 Incarcerated while waiting for trial or sentencing *or* as a result of a criminal conviction

4 Incarcerated on both immigration holds *and* criminal pre-trial/pre-sentencing/post-conviction detention

5 Could not be determined

6 Other: _____

28. Is the petitioner currently under correctional supervision (federal, state, or local)?
[sources: App. Q.7, <u>FBI report</u>; "Blue Sheet", internal OPA memos, communication from petitioner]

1 No indication of current correctional supervision (e.g., probation, parole, supervised release, work release, community service, location monitoring, required mental health/substance abuse treatment)

2 Yes, Petitioner is under current supervision but not incarcerated

3 Could not be determined

4 Other: _____

Marital Status and Children

29. Current marital status: *[sources: App. Q.8, <u>FBI report</u>]*

1 Single and never married

2 Married

3 Living together but not married

4 Separated

5 Divorced

6 Widowed

7 Could not be determined

8 Other:_____

_____

30. Was petitioner previously divorced or widowed (<u>besides</u> any relationship detailed in previous question)?
Check <u>all</u> that apply.   *[sources: App. Q.8, <u>FBI report</u>]*

1 No

2 Divorced

3 Widowed

4 Could not be determined

5 Other:_____

_____

31. Any indication of <u>spousal</u> support issues (delinquency, partial payment, etc.) <u>following</u> conviction for underlying offense?   *[sources: <u>FBI report</u>]*

1 Not applicable, no indication that petitioner was required to pay spousal support post-conviction

2 Yes, spousal support issues indicated (**<u>including</u>** payment periods while incarcerated)

3 Yes, spousal support issues indicated (**not** including payment periods while incarcerated)

4 No indication of post-conviction spousal support issues

5 Could not be determined

6 Other:_____

_____

32. Does the petitioner have any children?

[sources: App. Q.9, FBI report]

1 No children reported

2 One

3 Two

4 Three or more

5 Could not be determined

6 Other:_____

_____

33. You will need to calculate if any of the petitioner's children were under age 18 at the time the pardon application was submitted. Select "zero" if the petitioner has adult children, or the petitioner has minor children who do not live with him or her.

If the petitioner had minor children at the time the application was submitted and does not indicate otherwise, assume the children live with him/her.

33. Number of minor children currently living with petitioner: *[sources: App. Q.9, FBI report]*

1 Not Applicable – No minor children reported

2 Zero

3 One

4 Two

5 Three or more

6 Could not be determined

7 Other:_____

_____

34. Number of minor children the petitioner is currently is paying child support for: *[sources: App. Q.9, FBI report]*

1 Not Applicable – No minor children reported

2 No indication that Petitioner is paying child support

3 One

4 Two

5 Three or more

6 Could not be determined

7 Other:_____

_____

35. Indication of compliance problems with child support orders following conviction for underlying offense?:

[sources: FBI report]

1 Not Applicable – no indication that petitioner was required to pay child support post-conviction

2 Yes, child support issues indicated (**including** payment periods while incarcerated)

3 Yes, child support issues indicated (**not** including payment periods while incarcerated)

4 No indication of post-conviction child support issues

5 Could not be determined

6 Other:_____

_____

Education

37a. Education prior to conviction is not explicitly asked in the application, and will likely need to be located in the FBI report or the PSR. If neither report was collected by OPA, you may not be able to answer this question.

36. Highest **grade completed or degree obtained**…

a. prior to conviction for the underlying offense:

[sources: FBI report, PSR]

1 Did not finish high school

2 High school degree or GED

3 Some trade or technical school, no degree

4 Trade or technical school degree

5 Some college, no degree

6 Associate degree

7 Bachelor degree

8 Post-graduate degree

9 Could not be determined

10 Other:_____

_____

b. after conviction for the underlying offense:

[sources: App. Q.10, FBI report]

1 No education completed after conviction

2 Did not finish high school

3 High school degree or GED

4 Some trade or technical school, no degree

5 Trade or technical school degree

6 Some college, no degree

7 Associate degree

8 Bachelor degree

9 Post-graduate degree

10 Could not be determined

11 Other:_____

_____

Employment

37. Current Employment Status:

[sources: App. Q.12, FBI report]

1 Retired

2 Homemaker

3 Not working because of school

4 Not working because of disability

5 Not working other than for above reasons

6 Working

7 Could not be determined

8 Other:_____

_____

----
38. Calculate this as the date the current job started through the date the application was received.
----

38. Length of current employment:

[sources: App. Q.12, FBI report]

1 Not employed (is unemployed, student, retired, homemaker, or disabled)

2 _____ Years and _____ Months

3 Could not be determined

4 Other:_____

_____

----
39. Calculate this as the date the most recent job ended through the date the application was received.
----

39. Length of current unemployment:

[sources: App. Q.12, FBI report]

1 Not applicable – Petitioner is employed

2 Not applicable – Petitioner is student, retired, homemaker, or disabled

3 _____ Years and _____ Months

4 Could not be determined

5 Other:_____

40. Is there any indication of involuntarily termination for cause (or left job following allegations of misconduct or other negative issues) during post-release employment history?   *[sources: App. Q.12, FBI report]*

   1 No Indication

   2 Not Applicable – Petitioner never worked following release

   3 Yes

   4 Could not be determined

   5 Other: _____

41. Is there any indication that Petitioner failed to list arrests or convictions on any application (employment or otherwise) where the information was requested?   *[sources: App. Q.12, FBI report]*

   1 No indication

   2 Yes

   3 Could not be determined

   4 Other: _____

42. Coder assessment of overall post-release employment history   *[sources: App. Q.12, FBI report]*

   1 Petitioner employed more than half of the time since release for underlying conviction, excepting periods of retirement, homemaker duties, school, or disability

   2 Petitioner employed less than half of time when potentially available to work

   3 Could not be determined

   4 Other: _____

Drugs/Substance Abuse/Alcohol

> 43-44. Pay attention to dates and whether the question is asking about the petitioner's experience <u>prior</u> to or <u>following</u> conviction for the underlying offense.
>
> For questions that ask about substance abuse, we mean abuse of a legal substance such as prescription painkillers. Do not include abuse of any illegal drugs, including marijuana, in these questions. The petitioner may mention occasional or social alcohol use – this does not necessarily count as *abuse*.
>
> Questions that ask about *illegal* drugs refer to marijuana, cocaine, heroin, methamphetamines, etc. Do not include abuse of alcohol or legal drugs such as prescription painkillers.

43. Any indication of **alcohol or substance abuse** (<u>not</u> illegal drug use) issues…   *[sources: App. Q.13; FBI report; PSR]*

a. <u>prior</u> to conviction for the underlying offense?	**b. <u>following</u> conviction for the underlying offense?**
1 No indication of **pre**-conviction alcohol or substance abuse	1 No – No indication of **post**-conviction alcohol or substance abuse
2 Yes – **Pre**-conviction alcohol or substance abuse indicated	2 Yes - **Post**-conviction alcohol or substance abuse indicated
3 Could not be determined	3 Could not be determined
4 Other:_____ _____	4 Other:_____ _____

44. Any indication of **illegal drug** issues…   *[sources: App. Q.13; FBI report; PSR]*

a. <u>prior to</u> conviction for the underlying offense, regardless of whether the petitioner was arrested or convicted?

1 No – No indication of **pre-**conviction illegal drug issues

2 Yes – Illegal drug issues **pre**-conviction but no indication of extent

3 Yes – Illegal drug issues **pre**-conviction but only simple illegal drug use or possession

4 Yes – Illegal drug issues **pre**-conviction **and** includes sales, manufacturing, or distribution

5 Could not be determined

6 Other:_____
_____

b. <u>following</u> the conviction for underlying offense, regardless of whether the petitioner was arrested or convicted?

1 No – No indication of **post**-conviction illegal drug issues

2 Yes – Illegal drug issues **post**-conviction but no indication of extent

3 Yes – Illegal drug issues **post**-conviction but only simple illegal drug use or possession

4 Yes – Illegal drug issues **post**-conviction **and** includes sales, manufacturing, or distribution

5 Could not be determined

6 Other:_____
_____

45. Was the petitioner ever in an **alcohol or drug treatment program or facility**…   *[sources: App. Q.13, FBI report; PSR]*

a. <u>prior to</u> conviction for the underlying offense?

1 No – No indication of **pre**-conviction drug or alcohol treatment, program, or facility

2 Yes – **Pre**-conviction alcohol or drug treatment, program, or facility

3 Could not be determined

4 Other:_____
_____

b. <u>following</u> conviction for the underlying offense?

1 No – No indication of **post**-conviction drug or alcohol treatment, program, or facility

2 Yes – **Post**-conviction alcohol or drug treatment, program, or facility

3 Could not be determined

4 Other:_____
_____

Mental Health

46. Did the petitioner ever consult with a health care provider concerning a **mental health-related condition**…

[sources: App. Q.13, FBI report; PSR]

a. <u>prior to</u> conviction for the underlying offense?

1 No – No indication of **pre**-conviction consultation regarding mental health-related condition

2 Yes – **Pre**-conviction consultation regarding mental health-related condition

3 Could not be determined

4 Other:_____
_____

b. <u>following</u> conviction for the underlying offense?

1 No – No indication of **post**-conviction consultation regarding mental health-related condition

2 Yes – **Post**-conviction consultation regarding mental health-related condition

3 Could not be determined

4 Other:_____
_____

47. Any indication of <u>current</u> financial troubles or debt issues (delinquency, default, etc.) other than tax liens?

[sources: App. Q.14, FBI report]

    1 No indication of **current** financial troubles or debt issues

    2 Yes – **Current** financial troubles or debt issues indicated

    3 Could not be determined

    4 Other: _____

---

48. This question refers to the time <u>after</u> the conviction for the underlying offense but <u>before</u> the petitioner submitted the application for pardon. If it is not in the FBI report, the petitioner would have to volunteer that the financial troubles/debt issues had been resolved by the time of application.

---

48. Any indication of financial troubles or debt issues (delinquency, default, etc.) other than tax liens <u>following</u> conviction for the underlying offense <u>but not currently</u>?

[sources: App. Q.14; FBI report]

    1 No indication of **post**-conviction (but non-current) financial troubles or debt issues

    2 Yes – **Post**-conviction (but non-current) financial troubles or debt issues indicated

    3 Could not be determined

    4 Other: _____

49. Any indication of state or federal tax liens <u>following</u> conviction for the underlying offense?

[sources: App. Q.14, IRS report, FBI report]

    1 No indication of **post**-conviction state or federal tax liens

    2 Yes – **Post**-conviction state or federal tax liens indicated

    3 Could not be determined

    4 Other: _____

---

50. Only respond "yes" to this question if the petitioner was a *defendant* in civil litigation, not if he or she was involved in a civil case in any other capacity.

---

50. Was the petitioner ever a **defendant in civil litigation**…

[sources: App. Q.14, FBI report; PSR]

a. <u>prior to</u> conviction for the underlying offense? Do not include domestic relations cases or habeas corpus cases.

    1 No indication of **pre**-conviction civil litigation as defendant

    2 Yes – **Pre**-conviction civil litigation as a defendant

    3 Could not be determined

    4 Other:_____

    _____

b. <u>following their</u> conviction for the underlying offense? Do not include domestic relations cases or habeas corpus cases.

    1 No indication of **post**-conviction civil litigation as a defendant

    2 Yes – **Post**-conviction civil litigation as a defendant

    3 Could not be determined

    4 Other:_____

    _____

---

51. If Q50a or Q50b = 2 (No indication of pre-conviction civil litigation as a defendant), the response to the corresponding part to this question must be Not Applicable

---

51. What was the outcome if the petitioner was ever a defendant in civil litigation…

[sources: App. Q.14, FBI report; PSR]

a. <u>prior to</u> conviction for the underlying offense?

    1 Not Applicable – no indication of status as civil law defendant **pre-**conviction

    2 Never found liable in (or settled) any **pre**-conviction civil action

    3 Was found liable in (or settled) at least one **pre**-conviction civil action

4 Could not be determined

5 Other:_____

_____

b. following conviction for the underlying offense?

1 Not Applicable – no indication of status as civil law defendants **post**-conviction

2 Never found liable in (or settled) any **post**-conviction civil action

3 Was found liable in (or settled) at least one **post**-conviction civil action

4 Could not be determined

5 Other:_____

_____

52. Did the petitioner ever **file for bankruptcy**…

[sources: App. Q.14, FBI report; PSR]

a. prior to conviction for the underlying offense?

1 No indication of **pre**-conviction bankruptcy

2 Yes – **Pre**-conviction Bankruptcy

3 Could not be determined

4 Other:_____

_____

b. following conviction for the underlying offense?

1 No indication of **post**-conviction bankruptcy

2 Yes – **Post**-conviction bankruptcy

3 Could not be determined

4 Other:_____

_____

53. Any <u>current</u> pending civil judicial or administrative proceedings?   *[sources: App. Q.14, FBI report]*

1 No Indication of **current** civil judicial or administrative proceedings

2 Yes – **current** civil judicial or administrative proceedings

3 Could not be determined

4 Other: _____

Military

54. Military service status: *[sources: App. Q.15, PSR; FBI report]*

1 No reported military service

2 Was in service, discharge type unknown, indication of adverse reasons

3 Was in service, discharge type unknown, no indication of adverse reasons

4 Was in service, honorably discharged

5 Was in service, general discharge

6 Was in service, "other than honorable" discharge

7 Was in service, bad conduct discharge

8 Was in service, dishonorable discharge

9 Currently serving (must be active duty)

10 Could not be determined

11 Other: _____

55. Any indication of court-martial or non-judicial punishment received during service?

[sources: App. Q.15, PSR; FBI report; Military branch materials]

1 No reported military service

2 None indicated

3 Yes, court-martialed (even if not convicted)

4 Yes, but non-judicial punishment only

5 Could not be determined

6 Other: _____

56. Military Service Branch: *[sources: App. Q.15, FBI report]*

    1 No reported military service

    2 Army

    3 Air Force

    4 Navy

    5 Marines

    6 Coast Guard

    7 Could not be determined

    8 Other: _____

Occupational Licensing

57. Is there any indication that any type of **business or professional licensing** was denied, revoked, or not reinstated…

[sources: App. Q.18; FBI report; PSR]

a. prior to conviction for the underlying offense?	**b. following the conviction for underlying offense?**
1 No – None indicated **prior** to conviction	
2 Yes	1 No – None indicated **following** conviction
3 Could not be determined	2 Yes
4 Other:_____ _____	3 Could not be determined
	4 Other:_____ _____

Charitable, Community, and Civic Activities

> 58. An older version of the pardon application does not ask about charitable/community/civic activities. If that is the case and the petitioner does not volunteer the information, you may not be able to answer this question.

58. Years of charitable/community/civic activities? Exclude donations of money or items, exclude religious attendance.

NOTE: (1) Any activity in a year counts as one year; (2) Two or more activities of different types in the same year count as one year; (3) A partial year counts as one year (e.g., 8/2009 – 3/2010 is "2 years"); (4) Enter "0" if no claim is made.

[sources: App. Q.19, FBI report]

    1 _____ Years

    2 Charitable/community/civic indicated, but cannot calculate number of years

    3 Could not be determined

    4 Other: _____

59. Was there any evidence of the petitioner's religiosity or spiritual faith (e.g. church attendance, discussions of spiritual journeys or personal faith)?   *[sources: App. Q.19, FBI report]*

    1 No

    2 Yes

3 Could not be determined

4 Other: _____

60. Which religion or spiritual faith was indicated?

1 Not applicable – no evidence of religiosity/spiritual faith

2 Christian

3 Jewish

4 Muslim

5 Hindu

6 Buddhist

7 Idiosyncratic/Personal

8 Other religion not listed – Explain:_____ _____

9 Could not be determined

10 Other:_____

61. Was there any evidence of the petitioner's <u>active participation</u> (e.g., teaching classes, ministering to others, regularly volunteering for faith-based events) in religious or spiritual faith beyond mere attendance or belief?   *[sources: App. Q.19, <u>FBI report</u>]*

1 No

2 Yes

3 Could not be determined

4 Other:_____

Motivation for Seeking Pardon

62. What are the petitioner's reasons for seeking pardon? <u>Check all that apply</u>.   *[sources: App. Q.20]*

1 Restore good name, reputation, standing in community, etc.

2 Address miscarriage of justice (i.e., claimed not guilty of underlying offense, prosecutorial conduct tainted case, newly discovered evidence, etc.)

3 Seeking forgiveness

4 Seeking closure

5 Remove barriers (disbarment/bans) to contracting with the government

6 Restore right to vote

7 Restore ability to sit on juries

8 Remove state or federal restrictions on owning/possessing/etc. firearms or ammunition

9 Prevent or challenge deportation or other immigration reason

10 Enlist in armed forces

11 Obtain or restore professional licenses *(includes state bar, custom brokers, export-import, merchant marine, SEC, etc.)*

12 Any other specific employment-related reason other than professional licensing

13 Increase general employability or obtain promotion now made difficult due to conviction

14 Obtain or restore private pilot's license

15 Obtain or restore private radio operator license

16 Holding federal office

17 Restoration of other federal benefits

18 Restoration of other civil rights

19 Could not be determined

20 Other: _____

Character References

> 63. The application does not explicitly ask for the relationship between the petitioner and the author of the character reference. If the person seems like a friend, or they say they know the petitioner in a personal and/or professional capacity, mark it as "Acquaintances references". If you are unable to determine the relationship, include them under "source of reference could not be identified"

63. Number of character references in application: (*count each affidavit only once; if falls under multiple categories, assign only to lowest value number*)   *[sources: End of Appl. package; FBI report (for IDing the affiants)]*

   1 None present in file

   2 _____ Relatives/family references

   3 _____ Law enforcement/prosecutor/judge references

   4 _____ Non-LEO/non-court governmental references

   5 _____ Current/former employer/supervisor references

   6 _____ Religious references

   7 _____ Acquaintances references

   8 _____ Other references that do not fit above

   9 _____ Number of references where source of reference could not be identified

   10 Could not be determined

   11 Other: _____

Section Two: Communication Between OPA and Petitioner

> 64. To determine the response to this question, look for letters between OPA and the petitioner as well as additional copies of the petitioner's application. Information submitted later might be stapled to the back of a copy of the application.

64. Did initial application package lack required materials, fully responsive answers, or was otherwise incomplete?
   [sources: initial application, correspondence between OPA and Petitioner, "Blue Sheet"]

   1 No, OPA letter to petitioner acknowledging receipt of application did not ask for additional materials, supplements to answers, etc.

   2 Yes, OPA letter to petitioner asked for additional materials, supplements to answers, etc., <u>and</u> petitioner supplied same (or resubmitted application)

   3 Yes, OPA letter to petitioner asked for additional materials, supplements to answers, etc., <u>but</u> petitioner <u>did not</u> fully comply with request

   4 Could not be determined

   5 Other: _____

65. "Rejectable" problem (other than lacking required materials) noted with application? <u>Check all that apply.</u>

[sources: initial application, correspondence between OPA and Petitioner, <u>"Blue Sheet"</u>]

    1 None reported

    2 Conviction pardon is requested for is not federal (e.g., state conviction, US possession conviction of a local law offense)

    3 The underlying federal conviction involved impeachment

    4 Less than five years post-release (if incarcerated) from any prior conviction

    5 Less than five years post-sentencing (if not incarcerated) from any prior conviction

    6 Petitioner no longer alive

    7 Still on probation, parole, or supervised release

    8 Other: _____

66. Did Petitioner explicitly request waiver of "Rejectable" problem with application (e.g., not federal conviction, less than five years, etc.)? *[sources: initial application, <u>correspondence between OPA and Petitioner</u>]*

    1 Not Applicable (no "Rejectable" problem noted)

    2 No

    3 Yes

    4 Other: _____

67. Was any "Rejectable" problem with application waived by OPA? *[sources: <u>"Blue Sheet"</u>, internal OPA memos]*

    1 Not Applicable (no "Rejectable" problem noted)

    2 No

    3 Yes, pending deportation waives issues related to waiting period

    4 Yes, reason other than deportation

    5 Other: _____

68. Was Petitioner represented by counsel at any point in the pardon application process? *[sources: file jacket; <u>various communication from petitioner's attorney to OPA</u>]*

    1 No evidence of representation in file

    2 Yes

    3 Could not be determined

    4 Other: _____

Section Three: Internal OPA, DAG, And White House Documents

Actions

69. Indicate key events in OPA review. <u>Check all that apply.</u> If it is not clear that the event happened, do not check the box.

1 Initial OPA screen performed (first letter, first Blue Sheet notation, or first indication of activity)
    A Not performed
    B Date:_____
    C Date unknown

2 Requested additional information or materials from petitioner
    A Not requested
    B Date: _____
    C Date unknown

3 Request for <u>limited</u> FBI investigation made
    A Not requested
    B Date: _____
    C Date unknown

4 Receipt of <u>limited</u> FBI investigation report (last doc.)
    A Not received
    B Date: _____
    C Date unknown

5 Request for <u>full</u> FBI investigation made
    A Not requested
    B Date: _____
    C Date unknown

6 Receipt of <u>full</u> FBI investigation report (last doc.)
    A Not received
    B Date: _____
    C Date unknown

7 Requested IRS input/information
    A Not requested
    B Date: _____
    C Date unknown

8 Receipt of IRS input/investigation
    A Not received
    B Date: _____
    C Date unknown

9 Requested DHS investigation
    A Not requested
    B Date: _____
    C Date unknown

10 Receipt of DHS input
    A Not received
    B Date: _____
    C Date unknown

11 Requested US Probation Office input
    A Not requested
    B Date: _____
    C Date unknown

12 Receipt of US Probation Office input
    A Not received
    B Date: _____
    C Date unknown

13 Requested US Attorney input
    A Not requested
    B Date: _____
    C Date unknown

14 Receipt of US Attorney input
    A Not received
    B Date: _____
    C Date unknown

15 Requested sentencing judge input (may be through US Attorney)

      A Not requested

      B Date: _____

      C Date unknown

16 Receipt of sentencing judge input

      A Not received

      B Date: _____

      C Date unknown

17 Requested victim input/information (may be through US Attorney)

      A Not requested

      B Date: _____

      C Date unknown

18 Receipt of victim input/information

      A Not received

      B Date: _____

      C Date unknown

19 Requested DOJ Antitrust division input

      A Not requested

      B Date: _____

      C Date unknown

20 Receipt of DOJ Antitrust division input

      A Not received

      B Date: _____

      C Date unknown

21 Requested DOJ Tax Division input

      A Not requested

      B Date: _____

      C Date unknown

22 Receipt of DOJ Tax Division input

      A Not received

      B Date: _____

      C Date unknown

23 Requested DOJ Environmental or Natural Resources Division input

      A Not requested

      B Date:_____

      C Date unknown

24 Receipt of DOJ Environmental or Natural Resources input

      A Not received

      B Date: _____

      C Date unknown

70. Is there any indication that OPA did any of the following? Check all that apply.   *[sources: printouts in file; Blue Sheet]*

    1 Searched Westlaw or other online legal resources for legal information

    2 Searched SSA death records

    3 Searched PACER for any conviction court information

    4 Searched for media articles (via Google, Westlaw, etc.)

    5 No such activities noted

    6 Other: _____

Disposition

71. OPA final action.   *[sources: memo from OPA to DAG; file cover]*

    1 Administrative closure without recommendation

    2 "Summary" recommendation that pardon be denied (*usually* one page or less)

    3 "Full" recommendation that pardon be denied (*usually* more than one page)

    4 Recommended that pardon be granted

    5 Could not be determined

    6 Other: _____

72. Date of OPA final action: *[sources: memo from OPA to DAG, Letter to Petitioner announcing decision, file cover]*

    1 Date: _____ (MM/DD/YYYY)

    2 Could not be determined

    3 Other: _____

73. DAG recommendation to WH ("Letter of Advice")   *[sources: letter from ODAG to WH; file cover]*

    1 No recommendation to WH from DAG (e.g., administrative closure)

    2 "Summary" recommendation that pardon be denied (*usually* one page or less)

    3 "Full" recommendation that pardon be denied (*usually* more than one page)

    4 Recommended that pardon be granted

    5 Could not be determined

    6 Other: _____

74. Date of DAG recommendation to WH: *[sources: letter from ODAG to WH; file cover]*

    1 No recommendation to WH from DAG (e.g., administrative closure)

    2 Date: _____ (MM/DD/YYYY)

    3 Date unavailable but DAG recommendation is present in record

    4 Could not be determined

    5 Other: _____

75. Presidential Decision.   *[sources: letter from ODAG to WH; WH documents in file; file cover]*

    1 Not Applicable (e.g., administrative closure – no DAG recommendation)

    2 Granted Pardon petition

3 Denied Pardon petition

4 Was provided with a DAG recommendation of denial, but took no formal action and concurrence is assumed as a matter of policy (*extremely rare – confirm with supervisor before coding*)

5 Was provided with a DAG recommendation, but took no formal action before leaving White House and matter is still pending (*extremely rare – confirm with supervisor before coding*)

6 Could not be determined

7 Other: _____

76. Date of presidential decision: *[sources: letter from ODAG to WH; WH documents in file; file cover]*

1 Not Applicable - No date because President took no formal action on DAG Recommendation, matter is still pending, or case was administrative closure

2 Date: _____ (MM/DD/YYYY)

3 Date not available but presidential decision is present in record

4 Could not be determined

5 Other: _____

77. Any indication that OPA final action changed or investigation influenced by DAG?
                    [Source: Correspondence between OPA and DAG]

1 Not Applicable (i.e. administrative closure – no DAG recommendation)

2 Yes, OPA asked to do additional investigation

3 Yes, OPA asked to modify language in recommendation without changing result

4 Yes, OPA asked to revise recommendation

5 No indication

6 Could not be determined

7 Other: _____

78. Any indication that DAG recommendation changed as a result of WH influence?
                    [Source: Memos or other correspondence between WH and DAG]

1 Not Applicable (i.e. administrative closure – no DAG recommendation)

2 Yes: _____

3 No, no evidence

4 Could not be determined

5 Other: _____

Basis for OPA Final Action

79. Reason for Administrative Closure. Check all that apply.

1 Not applicable — not an administrative closure

2 Petitioner requested petition be withdrawn

3 No federal conviction (e.g., state conviction, US possession conviction based on local law)

4 Underlying conviction involved impeachment

5 Less than five years post-release (if incarcerated) for any offense

6 Less than five years post-sentence (if never incarcerated) for any offense

7 Two years or less from last denial

8 Petition file lacked required materials, fully responsive answers, or was otherwise incomplete (include instances where petitioner failed to respond to OPA request for additional materials/info/documentation)

9 Petitioner no longer alive

10 Could not be determined

11 Other: _____

80. Problems with insufficient application used as basis for administrative closure. <u>Check all that apply.</u>

1 Not applicable — not an administrative closure

2 Not applicable — closure not based on missing material/answers/other incomplete information

3 Missing signed petition

4 Missing signed release of information form

5 Missing three notarized character affidavits

6 Missing trial transcript

7 Other missing document or signature

8 Incomplete or missing answer(s)

9 Could not be determined

10 Other: _____

81. Reasons given by OPA for recommending denial of petition. <u>Check all that apply.</u> *Note: If communication from OPA to DAG on this subject is missing, use the DAG to WH letter of advice.* [sources: <u>memo from OPA to DAG</u>]

Major Categories to Select From:

- *Not Applicable or Other*
- *Motivation*
- *Candor/Falsehoods/Misstatements To the Office of the Pardon Attorney*
- *Candor/Falsehoods/Misstatements To Others*
- *Pre-Conviction Criminal Record*
- *Underlying Offense - Type*
- *Underlying Offense - Nature*
- *Underlying Offense - Petitioner's Characterization*

- *Underlying Prosecution*
- *Incarceration/Probation/Other Punishment*
- *Petitioner's Status*
- *Post-Release Criminal Behavior*
- *Employment*
- *Financial*
- *Post-Release Problems*
- *Post-Release Activities*
- *External Input*
- *Timing*

Not Applicable or Other

1 Not Applicable – OPA did not recommend denial

2 No reasons stated or implied

3 Could not be determined

4 Other reasons not listed: _____
_____
_____

Motivation

5 No compelling need for pardon

6 Grant of federal pardon would not remove/resolve issues/civil disabilities for petitioner

7 Desires vindication rather than forgiveness

8 Offenses were misdemeanors or equivalent, and no consequences exist

9 No demonstration of remorse or atonement for criminal behavior

Candor/Falsehoods/Misstatements To the Office of the Pardon Attorney

10 Lack of candor/failure to disclose criminal record to OPA

11 Lack of candor/failure to disclose illegal activity (even if never detected/arrested) to OPA

12 Lack of candor/failure to disclose marriages or other intimate relationships to OPA

13 Lack of candor/failure to disclose non-intimate friendships or other personal relationships or knowledge of others to OPA

14 Lack of candor/failure to disclose own children to OPA

15 Lack of candor/failure to disclose employment issues or status TO OPA

16 Lack of candor/failure to disclose financial issues or status TO OPA

17 Lack of candor/failure to disclose current issues with alcohol or substances TO OPA

18 Lack of candor/failure to disclose other facts (not described above) TO OPA

Candor/Falsehoods/Misstatements To Others

19 Lack of candor/failure to disclose material facts in official or sworn documents (e.g., failed to mention conviction on state gun license application)

20 Lack of candor/failure to disclose material facts in other settings (e.g., failed to mention prior involuntary termination on an employment application)

Pre-Conviction Criminal Record

21 Significant prior record

22 Has multiple state convictions

23 Has multiple federal convictions

→ **QUESTION CONTINUES ON NEXT PAGE**

24 Has three or more criminal convictions

25 Criminal behavior prior to federal conviction

Underlying Offense - Type

26 Offense involved any fraud

27 Offense involved fraud resulting in financial harm to significant number of individuals

28 Offense involved any theft from or fraud on government (other than just tax issues)

29 Offense involved theft from or fraud on government causing substantial loss to the government or its programs (other than just tax issues)

30 Offense involved tax issues

31 Offense involved obscene material

32 Offense involved any sexual offense (other than just obscene materials)

33 Offense involved minor-related sexual offense, including obscene materials

34 Offense involved any violent acts, serious or not

35 Offense involved serious bodily harm to others, such as murder or rape

36 Offense involved physical harm to children

37 Offense involved firearms or other weapons, including simple possession or trafficking

38 Offense involved the use of firearms or other deadly weapons

39 Offense involved any explosives or arson

40 Offense involved controlled substances (including trafficking, manufacturing, import, export, distribution, or sale)

41 Offense specifically involved large-scale drug trafficking in which petitioner had significant role

42 Offense involved terrorism, treason, sabotage, espionage, or other damage or threat to national security

Underlying Offense - Nature

43 Offense involved any public corruption/abuse of public trust/abuse of public power

44 Offense involved significant public corruption/abuse of public trust/abuse of public power

45 Offense involved abuse of private power (e.g., union officer)

46 Offense was "notorious", "famous", "widely-reported"

47 Seriousness/nature of offense

48 Offense had negative implications for taxpayers/government

49 Offense had especially negative implications for victim (other than taxpayers/government)

50 Offense was performed at time employed in position of trust

51 Offense was performed at time employed in position of law enforcement

52 Offense characterized by greed

53 Conviction involved sophisticated/complex scheme requiring extensive planning and knowledge

54 Criminal activity for underlying offense took place over extensive period of time

55 Managerial role in offenses constituting underlying conviction

Underlying Offense – Petitioner's Characterization

56 Minimization of offense conduct (i.e., "What I did wasn't so bad")

57 Minimization of culpability (i.e., "I wasn't really the one responsible for committing the crime")

58 Failure to fully accept responsibility for underlying conviction (i.e., "I was young," "I didn't know it was illegal," "I just did what I was told," "I was high/drunk", "I was forced to participate", "I had no choice")

Underlying Prosecution

59 Failure to support claims of miscarriage of justice

60 Failure to support claims of vindictive prosecution

61 Failure to support claims of ineffective assistance of counsel

Incarceration/Probation/Other Punishment

62 Failed to make full financial restitution despite sufficient financial resources

Petitioner's status

63 Petitioner was prominent person

Post-Release Criminal Behavior

64 Post-conviction criminal arrest

65 Recent federal or state conviction

66 Repeated any of the aspects of the underlying conviction, even if never caught or prosecuted

67 Post-conviction criminal behavior, even if never caught or prosecuted

→ **QUESTION CONTINUES ON NEXT PAGE**

Employment

68 Prolonged period of unemployment without credible explanation

69 Ongoing credit issues

70 Employment instability

Financial

71 Continuing financial instability

72 Problems with tax filings after criminal conviction

73 Accrual of debts following bankruptcy discharge

74 Living beyond means without apparent resources

Post-Release Problems

75 Failure to pay child support

76 Failure to pay spousal support

77 Lengthy history of substance abuse

78 Long history of substance abuse

79 Current abuse of drugs

80 Current abuse of alcohol

81 Drug use was heavy

82 Former heavy substance abuse

83 In possession of a firearm despite earlier conviction

84 Failure to comply with court orders

85 Engaged in extensive/vexation civil litigation

86 Evidence of bias or prejudice

87 Questionable character of associates

88 Questionable loyalty to U.S. Government

Post-Release Activities

89 Absence of community and/or charitable service

90 Questionable reputation in the community

91 Insufficient time since release/discharge to demonstrate rehabilitation

92 No notable charitable or community contribution since conviction/release

External Input

93 Pardon viewed unfavorably by victim

94 Pardon viewed unfavorably by US Attorney in district

95 Pardon viewed unfavorably by sentencing judge
Pardon viewed unfavorably by probation officer

96 Pardon viewed unfavorably by Bureau of Prisons or other corrections

97 Pardon viewed unfavorably by others in DOJ (must be an independent reason like DOJ tax unit, not request of ODAG)

98 Pardon viewed unfavorably by other federal agency

99 Pardon viewed unfavorably by other than any of the above

Timing

100 Recent discharge from court supervision

101 Recent denial of pardon application

102 Recentness of conviction/additional time necessary

103 Felony conviction was less than 10 years old

Section Four: External Recommendation

---

82 - 86. "No objection" means that the agency agreed with OPA's recommendation. "Took no position" or "declined to give recommendation" means that a representative from that agency replied to an OPA request stating that they could not or would not give a recommendation to deny or grant pardon. If there is no indication of any response from the agency, do not select this option – instead, select "Not applicable (no indication of recommendation)".

---

82. US Attorney's opinion on petition: *[sources: letter from U.S. Attorney to OPA; OPA memo to DAG; DAG letter to WH]*

1 Not applicable (no indication of US Attorney recommendation)

2 Had "no objection" (or equivalent); overall tone of comments was neutral or very mixed (or no comments at all)

3 Had "no objection" (or equivalent); overall tone of comments was generally favorable

4 Had "no objection" (or equivalent); overall tone of comments was generally negative

5 Took "no position" or specifically declined to give recommendation (or equivalent); overall tone of comments was neutral or very mixed (or no comments at all)

6 Took "no position" or specifically declined to give recommendation (or equivalent); overall tone of comments was generally favorable

7 Took "no position" or specifically declined to give recommendation (or equivalent); overall tone of comments was generally negative

8 Recommended pardon be granted

9 Recommended pardon be denied

10 Other: _____

83. Sentencing judge's opinion on petition: *[sources: letter from judge to OPA; OPA memo to DAG; DAG letter to WH]*

1 Not applicable (no indication of judge recommendation)

2 Had "no objection" (or equivalent); overall tone of comments was neutral or very mixed (or no comments at all)

3 Had "no objection" (or equivalent); overall tone of comments was generally favorable

4 Had "no objection" (or equivalent); overall tone of comments was generally negative

5 Took "no position" or specifically declined to give recommendation (or equivalent); overall tone of comments was neutral or very mixed (or no comments at all)

6 Took "no position" or specifically declined to give recommendation (or equivalent); overall tone of comments was generally favorable

7 Took "no position" or specifically declined to give recommendation (or equivalent); overall tone of comments was generally negative

8 Recommended pardon be granted

9 Recommended pardon be denied

10 Other: _____

84. US Probation Office's opinion on petition: *[sources: letter from USPO to OPA; OPA memo to DAG; DAG letter to WH]*

1 Not applicable (no indication of USPO recommendation)

2 Had "no objection" (or equivalent); overall tone of comments was neutral or very mixed (or no comments at all)

3 Had "no objection" (or equivalent); overall tone of comments was generally favorable

4 Had "no objection" (or equivalent); overall tone of comments was generally negative

5 Took "no position" or specifically declined to give recommendation (or equivalent); overall tone of comments was neutral or very mixed (or no comments at all)

6 Took "no position" or specifically declined to give recommendation (or equivalent); overall tone of comments was generally favorable

7 Took "no position" or specifically declined to give recommendation (or equivalent); overall tone of comments was generally negative

8 Recommended pardon be granted

9 Recommended pardon be denied

10 Other: _____

85. Other federal agency or DOJ division opinion on petition

NOTE: If multiple agency/DOJ opinions in file, choose answers #3 or higher if all opinions essentially fall into the same category; if there are significant differences, choose answer # 2

[sources: Agency/DOJ letter to OPA; OPA memo to DAG; DAG letter to WH]

1 Not applicable (no indication of other agency or DOJ department recommendation)

2 Multiple agency/DOJ opinions in file; recommendations/opinions significantly differed

3 Had "no objection" (or equivalent); overall tone of comments was neutral or very mixed (or no comments at all)

4 Had "no objection" (or equivalent); overall tone of comments was generally favorable

5 Had "no objection" (or equivalent); overall tone of comments was generally negative

6 Took "no position" or specifically declined to give recommendation (or equivalent); overall tone of comments was neutral or very mixed (or no comments at all)

7 Took "no position" or specifically declined to give recommendation (or equivalent); overall tone of comments was generally favorable

8 Took "no position" or specifically declined to give recommendation (or equivalent); overall tone of comments was generally negative

9 Recommended pardon be granted

10 Recommended pardon be denied

11 Other: _____

86. Victim's opinion on petition   *[sources: U.S. Attorney letter to OPA; OPA memo to DAG; DAG letter to WH]*

1 Not applicable (no indication of victim recommendation)

2 Had "no objection" (or equivalent); overall tone of comments was neutral or very mixed (or no comments at all)

3 Had "no objection" (or equivalent); overall tone of comments was generally favorable

4 Had "no objection" (or equivalent); overall tone of comments was generally negative

5 Took "no position" or specifically declined to give recommendation (or equivalent); overall tone of comments was neutral or very mixed (or no comments at all)

6 Took "no position" or specifically declined to give recommendation (or equivalent); overall tone of comments was generally favorable

7 Took "no position" or specifically declined to give recommendation (or equivalent); overall tone of comments was generally negative

8 Recommended pardon be granted

9 Recommended pardon be denied

10 Other: _____

87. Are there any other opinions on the petition, other than petitioner-supplied references or FBI interviews? If so, describe who submitted opinion/input and what that opinion/input constituted.

[sources: OPA memo to DAG; DAG letter to WH]

1 Yes - Describe who submitted opinion and what it constituted:

_____
_____
_____
_____
_____

2 No

3 Other: _____

Section Five: Race and Ethnicity

88. Petitioner's Race: *[Sources: Application Package; PSR; FBI report]*

    1 White

    2 Black/African American

    3 American Indian/Alaskan Native

    4 Asian

    5 Native Hawaiian/Other Pacific Islander

    6 Multiple Races <u>including</u> Black/African American

    7 Multiple Races <u>not</u> including Black/African American

    8 Multiple Races, unable to determine whether Black/African American is included

    9 Could not be determined

    10 Other: _____

89. How was race indicated in file? <u>Check all that apply</u>.   *[Sources: Application Package; PSR; FBI report]*

    1 No indication in file

    2 Indicated in Pre-Sentence Report

    3 Indicated in FBI report

    4 Indicated on official form OTHER than PSR or FBI Report

    5 Indicated in communication from petitioner (including statements in application package)

    6 Indicated in document other than PSR, FBI report, other official form, or petitioner communication

    7 Photograph in file

    8 Other: _____

90. If race can be determined, what was the earliest point at which OPA would have been aware?

    1 Not Applicable – Race could not be determined

    2 With receipt of the application package

    3 With receipt of the PSR

    4 With receipt of the FBI report

    5 In some other document besides the application package, PSR, or FBI report

    6 Other: _____

91. If race could <u>not</u> be reliably determined, what would be your best guess based on what you saw in file? This guess can be based on the name of the Petitioner, the circumstances of the offense, geography or other factors.

  1 Race was determined – See answer in ***Q.88***

  2 White

  3 Black/African American

  4 American Indian/Alaskan Native

  5 Asian

  6 Native Hawaiian/Other Pacific Islander

  7 Multiple Races <u>including</u> Black/African American

  8 Multiple Races <u>not</u> including Black/African American

  9 Multiple Races, unable to determine whether Black/African American is included

  10 No information available even to make a guess

  11 Other:_____

92. Petitioner's Hispanic Ethnicity   *[Sources: Application Package; PSR; FBI report]*

  1 Spanish/Hispanic/Latino

  2 <u>Not</u> Spanish/Hispanic/Latino

  3 Could not be determined

  4 Other:_____

93. How was Hispanic ethnicity indicated in file? <u>Check all that apply</u>.   *[Sources: Application Package; PSR; FBI report]*

  1 No indication in file

  2 Indicated in Pre-Sentence Report

  3 Indicated in FBI report

  4 Indicated on official form OTHER than PSR or FBI Report

  5 Indicated in communication from petitioner (including statements in application package)

  6 Indicated in document other than PSR, FBI report, other official form, or petitioner communication

  7 Photograph in file

  8 Other:_____

94. If Hispanic ethnicity can be determined, what was the earliest point at which OPA would have been aware?

  1 Not Applicable – Hispanic ethnicity could not be determined

  2 With receipt of the application package

  3 With receipt of the PSR

  4 With receipt of the FBI report

  5 In some other document besides the application package, PSR, or FBI report

  6 Other: _____

95. If Hispanic ethnicity could <u>not</u> be reliably determined, what would be your best guess based on what you saw in file? This guess can be based on the name of the Petitioner, the circumstances of the offense, geography or other factors.

   1 Hispanic ethnicity was determined – See answer in *Q.92*

   2 Spanish/Hispanic/Latino

   3 <u>Not</u> Spanish/Hispanic/Latino

   4 No information available even to make a guess

   5 Other:_____

REVIEW OF APPLICATION-RELATED QUESTIONS

Please review your answers to questions 1 through *63* based on the information you learned from documents <u>other</u> than the petitioner's application. You need not verify that the information contained in the petitioner's submission was correct in every instance, but if there were indications in the file that the application was incorrect or inaccurate in some way, change your original answers as needed.

Closing Questions

96. Do you want this questionnaire to be reviewed by a supervisor?

   1 Yes, I would like a review based on the questions or issues I described below

   2 No (NOTE: it's OK to add questions or comments below even if you do not request review)

97. Any additional comments or questions:

_____

_____

_____

_____

_____

References

Centers for Disease Control and Prevention, "Differences in Prevalence of Obesity Among Black, White, and Hispanic Adults—United States, 2006–2008," *Morbidity and Mortality Weekly Report*, Vol. 58, No. 27, pp. 740-744. As of July 12, 2018: https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5827a2.htm

Change.org, *Presidential Pardon for Marcus Garvey*, undated. As of March 1, 2018: https://www.change.org/p/barack-obama-presidential-pardon-for-marcus-garvey

Babyak, Michael A, "What You See May Not Be What You Get: A Brief, Nontechnical Introduction to Overfitting in Regression-Type Models," *Psychosomatic Medicine*, Vol. 66, Iss. 3, pp. 411-421 (2004).

Bauer, Robert F., *Executive Clemency Policy (Memorandum for the Acting Attorney General)*, July 13, 2010. As of December 14, 2017: https://www.documentcloud.org/documents/2069403-president-obamas-policy-on-executive-clemency.html

Baughman, Shima, Sunita Sah, and Christopher T. Robertson, "Blinding Prosecutors to Defendants' Race: A Policy Proposal to Reduce Unconscious Bias in the Criminal Justice System," *Behavioral Science & Policy*, Vol. 1, Iss. 2, pp. 69–76 (2015).

Beckett, Lois and Robin Respaut, "Racial Disparity in Presidential Pardons: What Can Be Done?," *ProPublica*, December 9, 2011. As of October 3, 2017: https://www.propublica.org/article/racial-disparity-in-presidential-pardons-what-can-be-done

Brodersept, John M., "12 Imprisoned Puerto Ricans Accept Clemency Conditions," *The New York Times*, September 8, 1999. As of January 23, 2018: https://www.nytimes.com/1999/09/08/us/12-imprisoned-puerto-ricans-accept-clemency-conditions.html

Bureau of Justice Statistics, U.S. Department of Justice, *FY 2012 Statistical Examination of Presidential Pardons*, June 27, 2012. As of October 26, 2017: https://www.bjs.gov/content/pub/pdf/sepp_sol12.pdf

DeVine, David, *Model Selection and Shrinkage: A Project in Linear Modeling*, undated. As of April 20: https://www.whitman.edu/Documents/Academics/Mathematics/DeVine.pdf

Duker, William F., "The President's Power to Pardon: A Constitutional History," *William & Mary Law Review*, Vol. 18, Iss. 3, pp. 475-538, Spring 1977.

Elliott, Marc N., Allen Fremont, Peter A. Morrison, Philip Pantoja, and Nicole Lurie, "A New Method for Estimating Race/Ethnicity and Associated Disparities Where Administrative Records Lack Self-Reported Race/Ethnicity," *Health Services Research*, Vol. 43, No. 5, pp. 1722-1736, October 2008.

Goeman, Jelle, Rosa Meijer, and Nimisha Chaturvedi, *L1 and L2 Penalized Regression Models*, May 27, 2016. As of April 19, 2018: https://cran.r-project.org/web/packages/penalized/vignettes/penalized.pdf

Goldstein, Amy and Susan Schmidt, "Clinton's Last-Day Clemency Benefits 176," *The Washington Post*, January 21, 2001. As of January 3, 2018: https://www.washingtonpost.com/archive/politics/2001/01/21/clintons-last-day-clemency-benefits-176/d7e3ed9b-853f-4cdd-a5d4-4f9037f832c3/?utm_term=.b882d4e7fce9

Gonzales, Alberto R., *Policy on Executive Clemency (Memorandum for the Honorable John D. Ashcroft, Attorney General)*, May 2, 2001. As of December 16, 2017: https://www.documentcloud.org/documents/2069405-president-george-w-bushs-policy-on-executive.html

Grimaldi, James V. and Dan Eggen, "House Panel Expands Probe of Rich Pardon," *The Washington Post*, February 16, 2001. As of December 16, 2017: https://www.washingtonpost.com/archive/politics/2001/02/16/house-panel-expands-probe-of-rich-pardon/5139faec-01c8-40b3-8d0e-a4b061e47ce9/?utm_term=.a8b7a94d98f4

Grupp, Stanley, "Some Historical Aspects of the Pardon in England," *The American Journal of Legal History*, Vol. 7, No. 1, pp. 51-62, January 1963.

Hamilton, Alexander, *The Federalist No. 74*, 1788. As of December 3, 2017: https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-74.

Hastie, Trevor, Robert Tibshirani, and Jerome Friedman, *The Elements of Statistical Learning*, Springer Science+Business Media, New York, 2001.

Hobbs, Frank and Nicole Stoops, *Demographic Trends in the 20th Century: Census 2000 Special Reports*, U.S. Census Bureau, U.S. Department of Commerce, November 2002. As of May 15, 2018: https://www.census.gov/prod/2002pubs/censr-4.pdf

Horrace, William C. and Ronald L. Oaxaca, "Results on the Bias and Inconsistency of Ordinary Least Squares for the Linear Probability Model," *Economics Letters*, Vol. 90, Iss. 3, pp. 321-327, March 2006.

Horwitz, Sari, "Obama to Commute Hundreds of Federal Drug Sentences in Final Grants of Clemency," *The Washington Post*, January 16, 2017. As of March 3, 2018: https://www.washingtonpost.com/world/national-security/obama-to-commute-hundreds-of-

federal-drug-sentences-in-final-grants-of-clemency/2017/01/16/c99b4ba6-da5e-11e6-b8b2-cb5164beba6b_story.html?utm_term=.9f3bfcdd395c

Johnston, David, "Bush Pardons 6 in Iran Affair, Aborting a Weinberger Trial; Prosecutor Assails 'Cover-Up'," *The New York Times*, December 25, 1992.

Judicial Conference of the United States, *Judicial Conference Policy on Privacy and Public Access to Electronic Case Files*, March 2008. As of November 2, 2018: http://www.uscourts.gov/rules-policies/judiciary-policies/privacy-policy-electronic-case-files

Justice Management Division, U.S. Department of Justice, *FY 2011 Budget and Performance Summary: Administrative Review and Appeals - Office of the Pardon Attorney (OPA)*, March 1, 2018. As of July 9, 2018: https://www.justice.gov/sites/default/files/jmd/legacy/2013/09/12/fy11-opa-bud-summary.pdf

Justice Management Division, U.S. Department of Justice, *FY 2017 Budget and Performance Summary: Administrative Review and Appeals - Office of the Pardon Attorney (OPA)*, August 29, 2016. As of July 12, 2018: https://www.justice.gov/jmd/file/821966/download

Kalt, Brian C., "Pardon Me?: The Constitutional Case against Presidential Self-Pardons," *Yale Law Journal*, Vol. 106, No. 3, pp. 779-809 (1996).

Korte, Gregory, "White House Memos Show Obama's Caution on Pardons," *USA Today*, April 30, 2015. As of February 2, 2018: https://www.usatoday.com/story/news/politics/2015/04/30/leaked-obama-pardon-memos-executive-clemency-policy/26117251/

LaFleur, Jennifer and Krista Kjellman Schmidt, "Parsing Presidential Pardons," *ProPublica*, December 4, 2011: As of November 15, 2014: https://www.propublica.org/article/parsing-presidential-pardons

LaFleur, Jennifer, "How ProPublica Analyzed Pardon Data," *ProPublica*, December 3, 2011. As of November 18, 2014: https://www.propublica.org/article/how-propublica-analyzed-pardon-data

Lee, Jason D., Dennis L. Sun, Yuekai Sun, and Jonathan E. Taylor, "Exact Post-Selection Inference, with Application to the Lasso," *Annals of Statistics* Vol. 44, No. 3, 907-927 (2016).

Lee, Tracy, "Department of Justice Removes 'Press Freedom' Language in Manual for Federal Prosecutors," Newsweek, April 30, 2018. As of May 5, 2018: http://www.newsweek.com/department-justice-takes-out-press-freedom-905976

Linzer, Dafna and Jennifer LaFleur, "A Racial Gap for Criminals Seeking Mercy," *The Washington Post*, December 4, 2011, p. A1 (2011).

Linzer, Dafna, "A Lawmaker's Good Word Improves the Odds," *The Washington Post*, December 5, 2011, p. A1 (2011a).

Linzer, Dafna, "Contrasting Colors, Contrasting Results," *ProPublica*, December 3, 2011b. As of November 2, 2017: https://www.propublica.org/article/contrasting-colors-contrasting-results

Linzer, Dafna, "Obama Has Granted Clemency More Rarely Than Any Modern President," *ProPublica*, November 2, 2012. As of February 2, 2018: https://www.propublica.org/article/obama-has-granted-clemency-more-rarely-than-any-modern-president

Linzer, Dafna, "Pardon Applicants Benefit From Friends in High Places," *ProPublica*, December 4, 2011c. As of November 5, 2014: https://www.propublica.org/article/pardon-applicants-benefit-from-friends-in-high-places

Love, Margaret Colgate, "The Twilight of the Pardon Power," *Journal of Criminal Law and Criminology*, Vol. 100, Iss. 3, pp. 1169-1212 (2010).

McFadden, David, "Jamaica Asks Obama to Exonerate Black Nationalist Leader," The San Diego Union-Tribune, April 9, 2015. As of January 3, 2018: http://www.sandiegouniontribune.com/sdut-jamaica-asks-obama-to-exonerate-black-nationalist-2015apr09-story.html

McLaughlin, Jenna, "Emails Reveal DOJ Would Have 'Very Little Involvement' If Trump Tweeted a Pardon," *CNN*, March 29, 2018. As of April 7, 2018: https://www.cnn.com/2018/03/28/politics/doj-emails-trump-pardon/index.html

Meyer, Josh and Tom Hamburger, "Eric Holder Pushed for Controversial Clemency," *Los Angeles Times*, January 9, 2009. As of February 23, 2018: http://articles.latimes.com/2009/jan/09/nation/na-holder9

Motivans, Mark, *Federal Justice Statistics, 2010*, Bureau of Justice Statistics, U.S. Department of Justice, Report NCJ 239913, December 2013. As of April 3, 2018: https://www.bjs.gov/content/pub/pdf/fjs10.pdf

Motivans, Mark, *Federal Justice Statistics, 2014 - Statistical Tables*, Bureau of Justice Statistics, U.S. Department of Justice, Report NCJ 250183, March 2017. As of March 23, 2018: https://www.bjs.gov/content/pub/pdf/fjs14st.pdf

Office of Public Affairs, U.S. Department of Justice, *Announcing New Clemency Initiative, Deputy Attorney General James M. Cole Details Broad New Criteria for Applicants*, April 23, 2014. As of December 17, 2017: https://www.justice.gov/opa/pr/announcing-new-clemency-initiative-deputy-attorney-general-james-m-cole-details-broad-new

Office of the Inspector General, U.S. Department of Justice, *A Review of the Pardon Attorney's Reconsideration of Clarence Aaron's Petition for Clemency*, December 12, 2012. As of April 2, 2018: https://oig.justice.gov/reports/2012/s1212.pdf

Office of the Inspector General, U.S. Department of Justice, *Review of the Department's Clemency Initiative*, August 2018. As of August 31, 2018: https://oig.justice.gov/reports/2018/e1804.pdf

Office of the Pardon Attorney, U.S. Department of Justice, *Clemency Statistics*, April 3, 2018a. As of April 25, 2018: https://www.justice.gov/pardon/clemency-statistics

Office of the Pardon Attorney, U.S. Department of Justice, *Clemency Statistics*, June 8, 2018b. As of June 22, 2018: https://www.justice.gov/pardon/clemency-statistics

Office of the Pardon Attorney, U.S. Department of Justice, *Frequently Asked Questions*, March 8, 2018c. As of March 21, 2018: https://www.justice.gov/pardon/frequently-asked-questions

Office of the Pardon Attorney, U.S. Department of Justice, *Pardon Information and Instructions*, October 12, 2017. As of January 3, 2018: https://www.justice.gov/pardon/pardon-information-and-instructions

Office of the Pardon Attorney, U.S. Department of Justice, *Petition for Pardon After Completion of Sentence*, July 2016. As of January 3, 2018: https://www.justice.gov/pardon/file/960581/download

Office of the Pardon Attorney, U.S. Department of Justice, *Policies*, February 22, 2018d. As of March 26, 2018: https://www.justice.gov/pardon/policies

Offices of the United States Attorneys, U.S. Department of Justice, *United States Attorneys' Manual*, 2018. As of May 12, 2018: https://www.justice.gov/usam/usam-9-140000-pardon-attorney

Pavlou, Menelaos, Gareth Ambler, Shaun R. Seaman, Oliver Guttmann, Perry Elliott, Michael King, and Rumana Z., "How to Develop a More Accurate Risk Prediction Model When There Are Few Events," *BMJ*, 351:h3868 (2015). As of April 29, 2018: https://www.bmj.com/content/351/bmj.h3868

Pear, Robert, "President Reagan Pardons 2 Ex-F.B.I. Officials in 1970's Break-Ins," *The New York Times*, April 16, 1981. As of February 1, 2018: https://www.nytimes.com/1981/04/16/us/president-reagan-pardons-2-ex-fbi-officials-in-1970-s-break-ins.html

Peduzzi, Peter, John Concato, Alvan R. Feinstein, and Theodore R. Holford, "Importance of Events per Independent Variable in Proportional Hazards Regression Analysis II: Accuracy and Precision of Regression Estimates," *Journal of Clinical Epidemiology*, Vol. 48, Iss. 12, pp. 1503-1510, December 1995.

Philadelphia Reentry Coalition, *Pardon Me Clinics 2018*, February 9, 2018. As of May 28, 2018: https://www.philadelphiareentrycoalition.org/single-post/2018/02/09/Pardon-Me-Clinics-2018

ProPublica, "How We Analyzed Pardons," *ProPublica*, December 3, 2011. As of November 9, 2017: https://www.propublica.org/article/how-we-analyzed-pardons

Putnam's Magazine, "Mr. Lincoln and the Petitioners: A Record from the Executive Chamber," *Original Papers - Literature, Science, Art, and National Interests - New Series*, Vol. 6, pp. 527-536, November 1870. As of June 3, 2018: https://archive.org/details/mrlincolnpetitio00unse

Reynolds, Dean, "President Reagan Wednesday Pardoned W. Mark Felt and Edward...," *UPI*, April 15, 1981. As of January 13, 2018: https://www.upi.com/Archives/1981/04/15/President-Reagan-Wednesday-pardoned-W-Mark-Felt-and-Edward/8359867530018/

Rizer, Arthur L., III, "Lawyering Wars: Failing Leadership, Risk Aversion, and Lawyer Creep—Should We Expect More *Lone Survivors*?," *Indiana Law Journal*, Vol. 90, Iss. 3, pp. 935-974, Summer 2015.

Rozell, Mark J., "President Ford's Pardon of Richard M. Nixon: Constitutional and Political Considerations," *Presidential Studies Quarterly*, Vol. 24, No. 1, pp. 121-137 (1994).

Schroeder-Lein, Glenna R. and Richard Zuczek, *Andrew Johnson: A Biographical Companion,* ABC-CLIO, 2001.

Shichor, David and Donald R. Ranish, "President Carter's Vietnam Amnesty: An Analysis of a Public Policy Decision," *Presidential Studies Quarterly*, Vol. 10, No. 3, pp. 443-450, Summer 1980.

Solon, Gary, Steven J. Haider, and Jeffrey M. Wooldridge, "What Are We Weighting For?," *Journal of Human Resources*, Vol. 50, No. 2, pp. 301-316, Spring 2015.

Steiger, Paul and Stephen Engelberg, "The Kind of Journalism That Demands Action," *ProPublica*, December 3, 2011. As of January 3, 2018: https://www.propublica.org/article/the-kind-of-journalism-that-demands-action

Tibshirani, Robert, "Regression Shrinkage and Selection via the Lasso," *Journal of the Royal Statistical Society. Series B (Methodological)*, Vol. 58, no. 1, pp. 267-288 (1996).

University of St. Thomas (Minnesota), Federal *Commutations Clinic*, 2018. As of June 3, 2018: https://www.stthomas.edu/ipc/clinic/fedcom/

U.S. Department of Labor, *Unemployment Rate and Employment-Population Ratio Vary by Race and Ethnicity*, Report FPCD-76-64, January 13, 2017. As of April 28, 2018:

https://www.bls.gov/opub/ted/2017/unemployment-rate-and-employment-population-ratio-vary-by-race-and-ethnicity.htm

U.S. General Accounting Office, *The Clemency Program of 1974*, Report FPCD-76-64, January 7, 1977. As of February 6, 2018: https://www.gao.gov/assets/120/117627.pdf

U.S. Sentencing Commission, *An Analysis of the Implementation of the 2014 Clemency Initiative*, September 2017. As of March 3, 2018: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170901_clemency.pdf

Van Dusen, Chris, *Methods to Prevent Overfitting and Solve Ill-Posed Problems in Statistics: Ridge Regression and LASSO*, undated. As of April 29, 2018: https://www.overleaf.com/articles/methods-to-prevent-overfitting-and-solve-ill-posed-problems-in-statistics-ridge-regression-and-lasso/yspmzmkhgkws#.WvCmHogvy9I

Vittinghoff, Eric and Charles E. McCulloch, "Relaxing the Rule of Ten Events per Variable in Logistic and Cox Regression," *American Journal of Epidemiology*, Vol. *165, No.* 6, pp. 710-718 (2007).

Wiener, Jon, "Largest Mass Execution in US History: 150 Years Ago Today," *The Nation*, December 26, 2012. As of February 5, 2018: https://www.thenation.com/article/largest-mass-execution-us-history-150-years-ago-today/