

OCTOBER 2024

With the Stroke of a Pen: A Primer on Presidential Clemency

Second chances are a critical part of any serious safety agenda.

As President Biden lays out a vision for the remainder of his presidency, he has an opportunity to use the unique power of executive clemency to address disproportionately long federal sentences, advance racial justice, and safely reduce the federal prison population.

- There are currently **over 158,000 people in federal prison** and efforts to reduce the federal prison population have stalled. After almost 15 years of hard-fought gains, the fight to end mass incarceration is at an inflection point.
- Federal sentences are long. **More than 26,000 people in federal custody are serving sentences over 20 years. Over 20% of the federal prison population is over the age of 50.** Many are past the age of retirement.
- Racial disparities permeate every aspect of the criminal justice system, from arrest to sentencing and reentry. **Black people make up just 14% of the U.S. population, but nearly 40% of the federal prison population.** Black men make up over 50% of the people serving drug sentences of 20 years or more.
- The 2014 Obama Clemency Initiative was a tremendous success, resulting in **almost 1,700 commutations and almost 20,000 years of prison sentences saved in total.** President Biden can continue this legacy to address disproportionately long sentences and safely return people to their families and communities.

There is a long tradition of presidents using the clemency power not only to give people second chances and reunite them with their families and communities, but also to tackle systemic disparities and safely reduce the federal prison population. President Biden must seize this opportunity.

What is clemency?

The Constitution gives the President unilateral authority to grant pardons and to adjust or reduce sentences for federal crimes. Sentence adjustment or reduction is known as “commutation.”

Commutations—unlike pardons, which are generally granted to individuals after they have completed their sentence—are an important tool for safely reducing the federal prison population, addressing outdated, disparate, and excessive sentences, and advancing racial justice and mercy in the criminal justice system. This unique power allows the President to modify federal sentences with the stroke of a pen.

Clemency 101

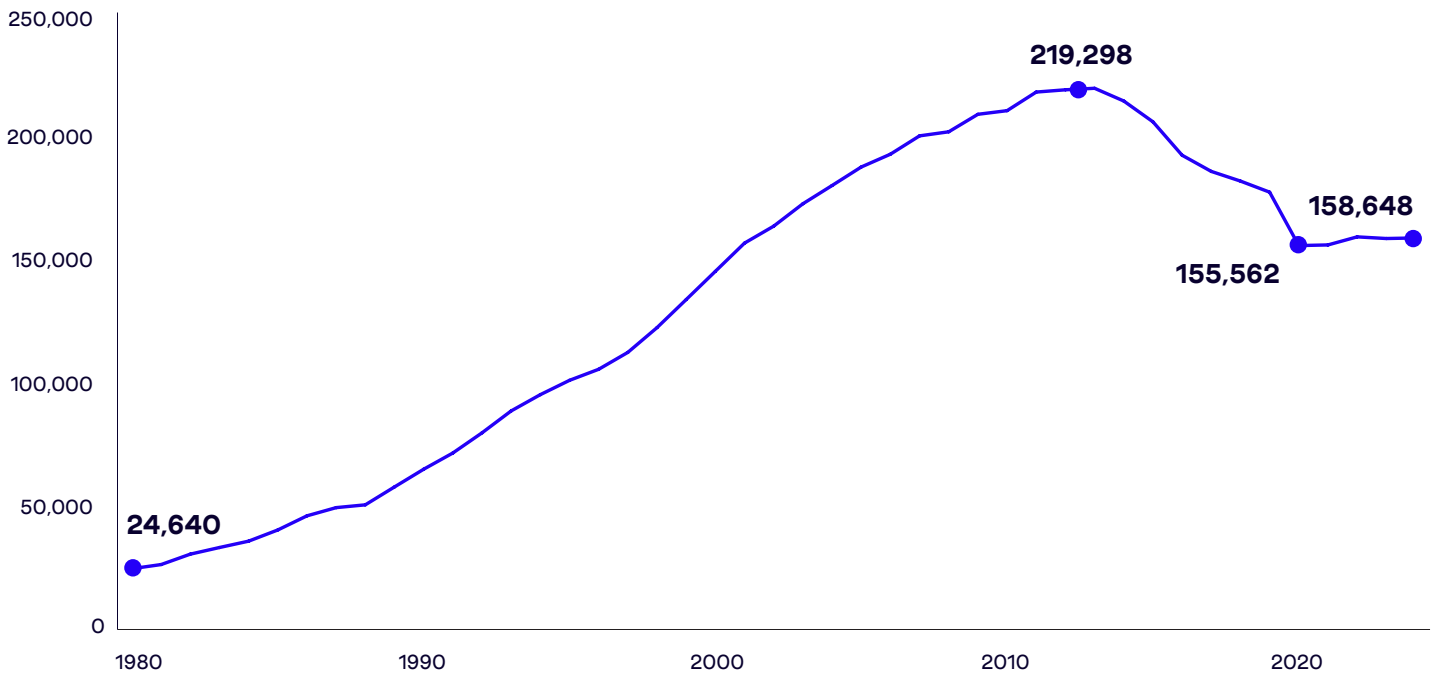
- Article II of the U.S. Constitution vests the President with the executive clemency power:
 - *“The President . . . shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.”*¹
- Commutation gives the President the power to adjust or “commute” an individual’s sentence for a federal crime. A commutation typically results in a reduced term of imprisonment and earlier release from prison. The President may impose conditions on amended sentences, including post-release supervision or enrollment in drug treatment.
- The Office of the Pardon Attorney (OPA) sits within DOJ and is charged with reviewing and investigating executive clemency applications and providing advice and recommendations to the President. As of September 2024, there were approximately 7,500 commutation petitions pending with OPA.² While the President generally confers with the DOJ and OPA, the clemency power rests solely with the President, who may take action unilaterally.

The Stakes Are High

As of August 2024, there were over 158,000 individuals in the federal prison system, making it the largest prison system in the country.³ Indeed, one in eight people in prison in the U.S. is in federal custody.⁴ The current population represents a 2% increase since 2020, reversing a seven-year downward trend.

The downward trend in the federal prison population has stalled since 2020.

Federal Prison Population, 1980–2024

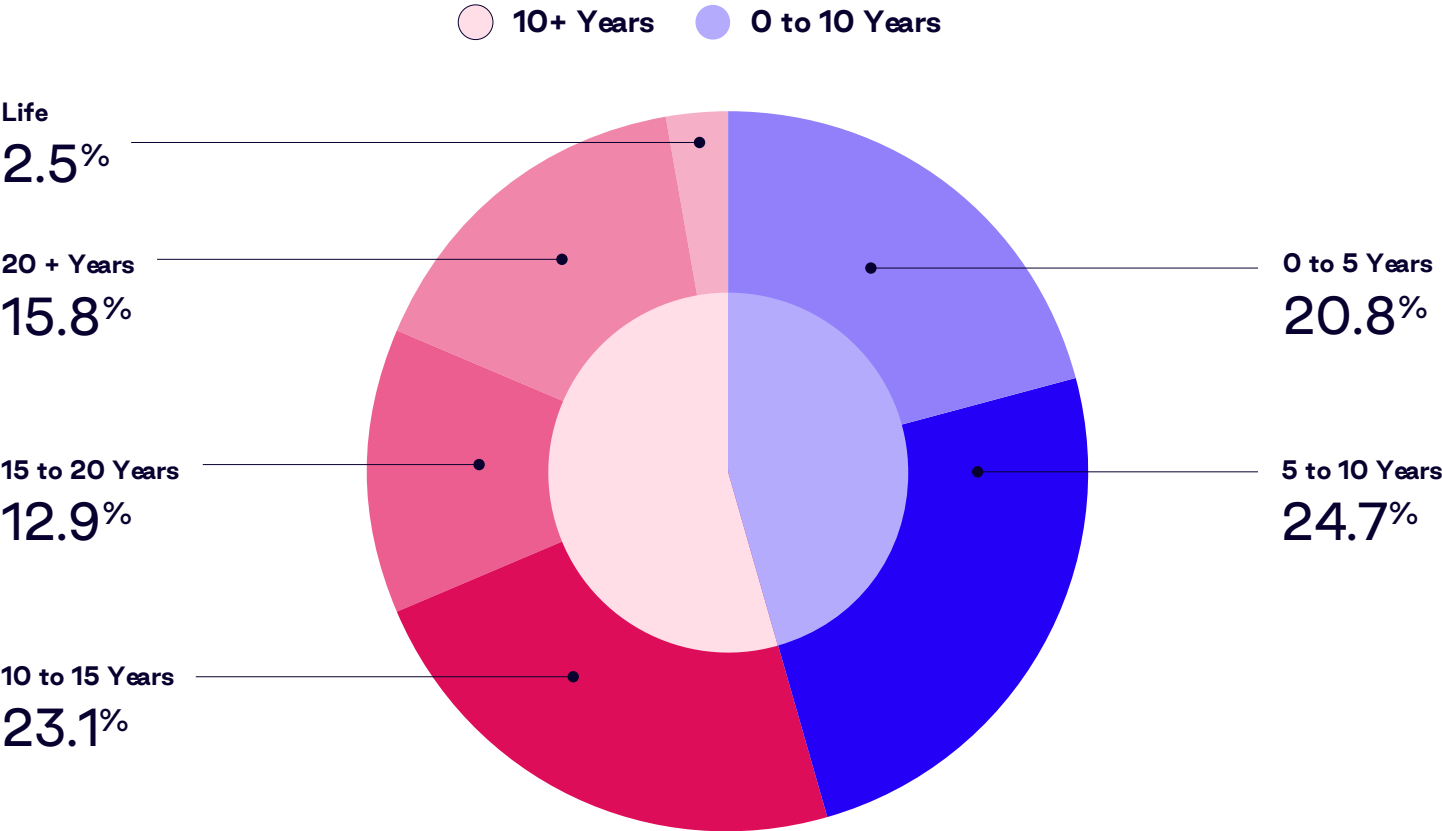


Source: Federal Bureau of Prisons. Population Statistics and Past Inmate Population Totals. Accessed July 11, 2024. https://www.bop.gov/about/statistics/population_statistics.jsp

The U.S. is a global outlier both in the length of prison sentences and the number of long sentences imposed; long sentences have increased in recent decades.⁵ This is especially true in the federal system, where the prison population has been driven in large part by mandatory minimums and lengthy, often disparate, sentence recommendations. Almost 80% of people in federal custody are serving sentences over 5 years, and over half are serving sentences over 10 years. Over 26,000 people in federal custody are serving sentences over 20 years.⁶

Over half of the federal prison population is serving sentences of 10+ years, and almost 80% are serving sentences of 5+ years

Federal Prison Population, July 2024



Source: Federal Bureau of Prisons. Statistics. Accessed July 11, 2024. <https://www.bop.gov/about/statistics/>

Many People in Federal Prison Are Serving Sentences that Would Not Be Handed Down Today

There are thousands of people—fathers, mothers, sons, and daughters—serving federal sentences for crimes that would result in a shorter sentence if they were convicted today because of changes in sentencing law and practice, with many having spent decades in prison and nearing or past the age when many Americans retire.

For example, in 2018 Congress passed the **First Step Act**, which, among other things, narrowed certain sentence enhancements for people convicted of multiple drug offenses. The First Step Act, however, failed to make the changes retroactive, meaning that there are currently over 3,500 people serving an average sentence of 21 years (excluding people serving life sentences) who would likely receive significantly lower sentences today. Indeed, the U.S. Sentencing Commission estimated that retroactive application of these changes would reduce sentences by approximately 7 years for people serving life in prison and 5 years for people serving an average of 21-year sentences, saving over 20,000 years of prison sentences in total.⁷

Similarly, in 2010, Congress took steps to address the **crack-powder sentencing disparity** by reducing the disparity from 100:1 to 18:1.⁸ This change, however, did not go far enough: the 18:1 sentencing disparity continues to drive lengthy prison sentences. The U.S. Sentencing Commission estimates that if the disparity were to be eliminated and the change were to be applied retroactively, more than 7,500 people could potentially receive a reduced sentence, shortening the average sentence from almost 14.5 years to just over 8 years—saving over 46,000 years in prison sentences in total.⁹

Without legislative or executive action, these people will remain behind bars, serving disproportionately long sentences.

Racial disparities are present at virtually every stage of the criminal justice system.

Black people make up less than 14% of the U.S. population, yet they represent more than 27% of those arrested, 31% of those under community supervision, and over 32% of the prison population nationally.¹⁰ Moreover, Black individuals are 4.5 times more likely to be incarcerated than their white counterparts.¹¹ These disparities are even more pronounced within the federal prison system, where nearly 40% of the incarcerated population is Black.¹²

Sentencing for drug offenses, which make up the top crime of conviction for 44% of people in the federal prison system, compound these disparities.¹³ Thirty-two percent of people in federal prison for drug offenses are Black, and 53% of men in federal prison serving drug sentences of 20 years or more are Black.¹⁴ The much criticized crack-powder cocaine sentencing disparity plays an outsized role in these outcomes: Black men convicted of crack cocaine offenses account for 1 in 3 men sentenced to 20 years or more for a federal drug offense.¹⁵ Furthermore, research shows that federal prosecutors are 65% more likely to charge Black men with offenses that carry mandatory minimum sentences than similarly situated white men.¹⁶

Racial Disparities in the Federal System by the Numbers

Black people are

14%

of the
US population

Black men are

65%

more likely to be charged with offenses that carry mandatory minimums by federal prosecutors than comparable white men

Black people are

39%

of the people in federal prisons

Black people are

32%

of people in federal prison for drug offenses

Black men are

53%

of men serving sentences of 20+ years for drug offenses in federal prison

Black men receive sentences that are

13%

longer than their white counterparts

The Federal Prison Population by the Numbers

Federal Prison Population, July 2024

Federal Prison Population

158,648

In Federal Prison and Over 50 Years Old

31,572

In Federal Prison for Drug Offenses

64,424

In Federal Prison and Female

10,516

Hispanic people are also disproportionately imprisoned in the federal system. Hispanic people make up 20% of the U.S. population, but represent 29% of people in federal prison and 39% of people in federal prison for drug offenses.¹⁷ Hispanic men are 27% less likely to receive a probationary sentence than white men and Hispanic women are 30% less likely than white women. And Hispanic people also receive longer sentences overall than their white counterparts: Hispanic men receive sentences that are 11% longer than white men and Hispanic women receive sentences that are 28% longer than white women.¹⁸

Specific Populations

WOMEN

There are over 10,000 women incarcerated in the federal prison system.¹⁹ In FY 2023, 44% of women sentenced to federal prison were convicted of drug trafficking, 15% for fraud, and 61% had the lowest possible level of criminal history.²⁰ Despite this, women were slightly more likely than men to be convicted of an offense carrying a mandatory minimum (29.8% compared to 28.9%).²¹

AGING PEOPLE

Given the prevalence of lengthy sentences and the absence of parole in the federal system, the prison population is also growing older. Over 31,000 people in federal prison are over the age of 50, driving increased medical costs and despite the overwhelming research that people are far less likely to recidivate at older ages.²²

The Historical Precedent

In modern history, President Franklin D. Roosevelt made more clemency grants than any other president, including 2,819 pardons and 488 sentence commutations. In contrast, President George H.W. Bush made the fewest grants, with 74 pardons and only 3 sentence commutations. Presidents Bill Clinton and George W. Bush granted 61 and 11 sentence commutations, respectively, reflecting the “tough on crime” politics of that era.²³

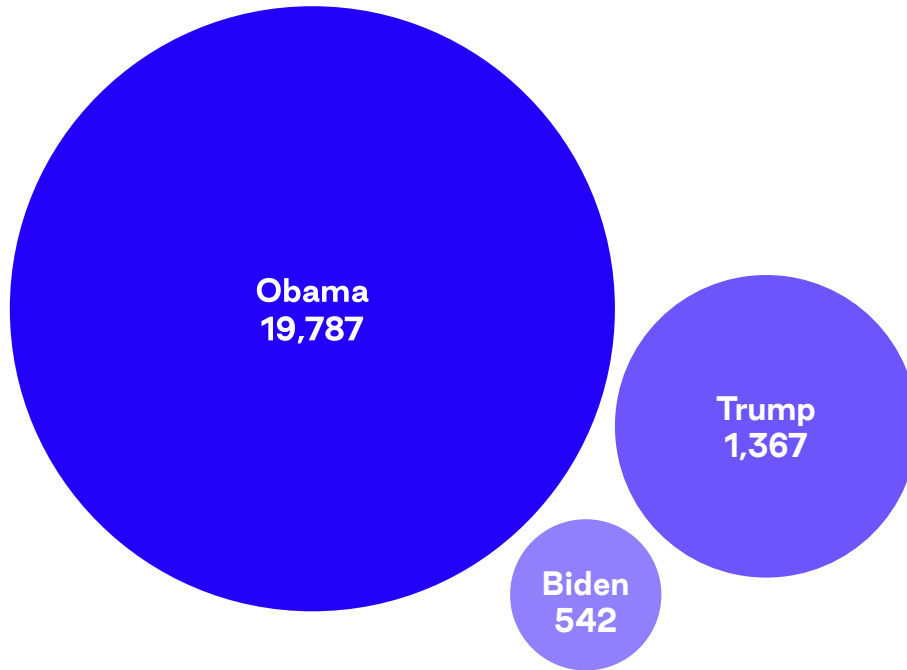
President Obama set the current benchmark with a clemency initiative launched in 2014 that, by the end of his presidency, resulted in 1,696 sentence commutations, with an average sentence reduction of 140 months and almost 20,000 years of prison sentences saved in total.²⁴ By the time Obama left office, he had granted a total of 1,715 commutations, marking the most clemency grants since Harry Truman. The initiative emerged during a period when America was beginning to confront the harsh realities of mass incarceration, reflecting a growing bipartisan consensus on the need for criminal justice reform.

President Trump granted just 94 commutations, the vast majority at the very end of his term, (though these resulted in a significant average sentence reduction of 180 months).²⁵

During his 2020 campaign, President Biden pledged to continue and expand President Obama’s clemency efforts. As of October 2024, President Biden had granted 25 pardons and 132 commutations (excluding the blanket marijuana pardon), marking the highest number of clemency grants at this stage of a presidential term compared to the past five presidents.²⁶ Notably, however, 88 of these commutations were for individuals who had already been released to home confinement, so they did not result in early release from federal prison.²⁷ Now that Biden is nearing the end of his presidency, he has the opportunity to build on the legacy and success of the Obama Clemency Initiative.

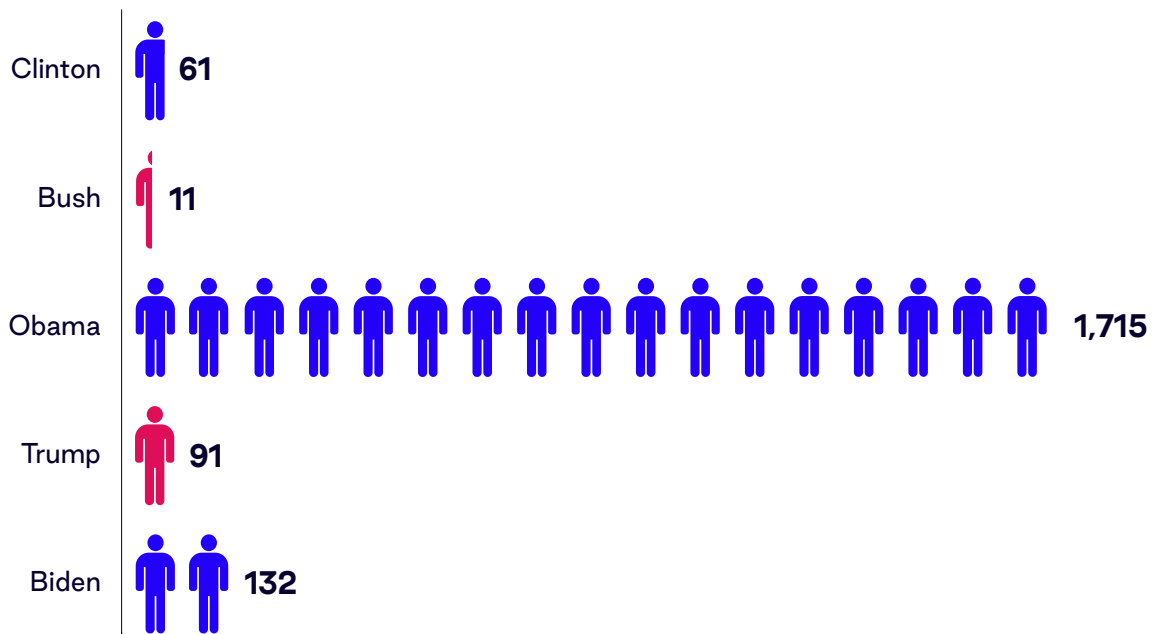
Obama's clemency initiative resulted in almost 20,000 years spent in communities and with families that would otherwise have been spent under a federal prison sentence.

Number of Years Saved by Presidential Commutations



Source: Department of Justice and White House reports and statements as of October 4, 2024. Obama administration years saved are calculated using the average number of years saved per person by Obama's Clemency Initiative (11.6); they do not include other commutations outside of the initiative. These numbers represent reductions in prison sentences, not necessarily the amount of time saved compared to what would have been served without commutations.

Number of Sentences Commuted by Presidential Administration



Source: Department of Justice and White House reports and statements as of October 4, 2024.

Reducing Lengthy Federal Prison Sentences and Advancing Public Safety

Efforts like the Obama Clemency Initiative, retroactive applications of changes to the Federal Sentencing Guidelines, the First Step Act, and the CARES Act Home Confinement program have proven successful at reducing the prison population without compromising public safety. [Evaluations of recent policies reducing federal sentences](#) have consistently found no difference in the recidivism rate of people released early from prison after having received a reduced sentence and people who served their full sentence.²⁸

Public Support for Clemency

There is substantial public backing for clemency and broader criminal justice reforms. According to [a recent poll by FWD.us](#), nearly three quarters of likely voters believe it is important to reduce the jail and prison population in the U.S., including over 60% of Republicans, 84% of Democrats, and large majorities of Americans of color, particularly Black voters. There is similar support for increasing the number of commutations through executive clemency: regardless of which presidential candidate they prefer, overwhelming majorities of voters support them increasing the number of commutations through clemency.

Conclusion

Between 2009 and 2022, the U.S. prison population decreased by 24% and the Black imprisonment rate nearly halved.²⁹ Black men are now more likely to graduate from college than go to prison, a reversal from a decade ago.³⁰ In the last decade, 45 states simultaneously reduced both imprisonment *and* crime rates, with these states experiencing crime rate reductions twice as fast as the five states that increased imprisonment rates.³¹ After almost 15 years of hard-fought gains, the fight to end mass incarceration is at an inflection point. We must not let this progress slip away.

At the end of September 2024, there were over 7,500 petitions for commutations pending with the Office of the Pardon Attorney.³² Many people are serving lengthy sentences for offenses that would result in far shorter sentences today. With the stroke of a pen, President Biden can harness the unique power of the presidency and continue the legacy of the 2014 Obama Clemency Initiative by undertaking a bold clemency effort focused on reducing disproportionately long sentences. Ambitious and principled use of the clemency power will not only reduce the prison population and help address racial disparities, but will reunite individuals with their families, giving them a chance to rebuild their lives, support their loved ones, and positively impact their communities and the economy.

Notes

1. U.S. Const. art. II, available at <https://constitution.congress.gov/constitution/article-2/#:~:text=The%20President%2C%20Vice%20President%20and,other%20high%20Crimes%20and%20Misdemeanors.>
2. Office of the Pardon Attorney, "Case Statistics," <https://www.justice.gov/pardon>.
3. Federal prison population characteristics and data may be found on the Bureau of Prisons website. BOP does not specify if the prison population and population characteristics includes or excludes individuals on home confinement or in "other" facilities, percentage breakdowns may not add up to gross total due to missing data: Population Statistics: https://www.bop.gov/about/statistics/population_statistics.jsp, Inmate Statistics: https://www.bop.gov/about/statistics/statistics_inmate_age.jsp
4. Bureau of Justice Statistics, "Prisoners in 2022 – Statistical Tables," November 2023, <https://bjs.ojp.gov/library/publications/prisoners-2022-statistical-tables>
5. Lila Kazemian, "Long Sentences: An International Perspective," Council on Criminal Justice, December 2022, <https://counciloncj.foleon.com/tfls/long-sentences-by-the-numbers/an-international-perspective>. For example, from 1992 to 2016, the number of people serving life without possibility of parole sentences (LWOP) in the U.S. increased by 320% and the U.S. incarcerates 40% of people sentenced to life and 83% percent of people sentenced to LWOP worldwide, despite making up 4 percent of the world's total population.
6. See note 3 above.
7. The years in sentences saved represent reductions in prison sentences, not necessarily the amount of time saved compared to what would have been served without reforms/commutations. U.S. Sentencing Commission, "Estimate of the Impact of Selected Sections of S. 1014, The First Step Act Implementation Act of 2021," https://www.ussc.gov/sites/default/files/pdf/research-and-publications/prison-and-sentencing-impact-assessments/October_2021_Impact_Analysis_for_CBO.pdf. Number eligible and potential years saved are from 2021 for the FSIA and 2022 for the EQUAL Act. The current number of eligible people may be lower today, as some individuals have been released either due to sentence expiration or through early release mechanisms, such as compassionate release.
8. U.S. Sentencing Commission, "2015 Report to the Congress: Impact of the Fair Sentencing Act of 2010," August 2015, <https://www.ussc.gov/research/congressional-reports/2015-report-congress-impact-fair-sentencing-act-2010>.
9. U.S. Sentencing Commission, "Estimate of the Impact of H.R. 1693, The Equal Act of 2021," January 2022, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/prison-and-sentencing-impact-assessments/January_2022_Impact_Analysis_for_CBO.pdf.
10. FWD.us, "Black Voters Want More Safety and More Justice," March 2024, <https://www.fwd.us/news/black-voters-want-more-safety-and-more-justice/>
11. Bureau of Justice Statistics, "Correctional Populations in the United States, 2022 – Statistical Tables," May 2024, <https://bjs.ojp.gov/library/publications/correctional-populations-united-states-2022-statistical-tables>
12. See note 3 above.
13. Id.
14. See note 4 above; Bureau of Justice Statistics, "Sentencing Decisions for Persons in Federal Prison for Drug Offenses, 2013–2018," p.4, July 2023, <https://bjs.ojp.gov/document/sdpfpdo1318.pdf>
15. Bureau of Justice Statistics, "Sentencing Decisions for Persons in Federal Prison for Drug Offenses, 2013–2018," p.4, July 2023.
16. M. Marit Rehavi and Sonja B. Starr, "Racial Disparity in Federal Criminal Sentences," Journal of Political Economy, 2014, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2413&context=articles>
17. United States Census Bureau, "Quick Facts," <https://www.census.gov/quickfacts/fact/table/US/PST045221>; BOP, Population Statistics; Bureau of Justice Statistics, "Prisoners in 2022 – Statistical Tables."
18. U.S. Sentencing Commission, "2023 Demographic Differences in Federal Sentencing," November 2023, <https://www.ussc.gov/research/research-reports/2023-demographic-differences-federal-sentencing>
19. See note 3 above.
20. U.S. Sentencing Commission, Interactive Data Analyzer, Accessed August 2024, <https://ida.ussc.gov/analytics/saw.dll?Dashboard>

21. U.S. Sentencing Commission, "Quick Facts: Women in the Federal Offender Population – FY2022," https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Female_Offenders_FY22.pdf.
22. Emily Widra, "The aging prison population: Causes, costs, and consequences," Prison Policy Initiative, August 2023, <https://www.prisonpolicy.org/blog/2023/08/02/aging/>
23. See note 2 above.
24. These numbers represent reductions in prison sentences, not necessarily the amount of time saved compared to what would have been served without commutations. U.S. Sentencing Commission, "An Analysis of the Implementation of the 2014 Clemency Initiative," September 2017, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170901_clemency.pdf.
25. Office of the Pardon Attorney, "Commutations granted by President Donald J. Trump (2017 – 2021)," <https://www.justice.gov/pardon/commutations-granted-president-donald-j-trump-2017-2021>
26. See note 2 above.
27. Office of the Pardon Attorney, "Commutations Granted by President Joseph Biden (2021–Present)," <https://www.justice.gov/pardon/commutations-granted-president-joseph-biden-2021-present>
28. See, e.g., U.S. Sentencing Commission, "Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment," p.3, May 2014, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527_Recidivism_2007_Crack_Cocaine_Amendment.pdf; U.S. Sentencing Commission, "Retroactivity & Recidivism: The Drugs Minus Two Amendment," p.5, July 2020, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200708_Recidivism-Drugs-Minus-Two.pdf; Federal Bureau of Prisons, "CARES Act: Analysis of Recidivism," March 2024, https://www.bop.gov/resources/research_projects/published_reports/recidivism/202403-cares-act-white-paper.pdf
29. FWD.us, "Turning the Tide on Mass Incarceration," May 2024, <https://www.fwd.us/news/turning-the-tide-on-mass-incarceration/>. The Black imprisonment rate decline was measured starting in 2008 rather than 2009.
30. Id.
31. Id.
32. See note 2 above.