

University of St. Thomas Law Journal

Volume 19
Issue 3 *Clemency in 2022 - The Power of the Pardon*

Article 3

May 2023

Clemency: Redeeming the Soul of America

Cynthia W. Roseberry

Follow this and additional works at: <https://ir.stthomas.edu/ustlj>



Part of the [Constitutional Law Commons](#), [Criminal Law Commons](#), [Law and Politics Commons](#), [Law and Race Commons](#), [Law and Society Commons](#), [Law Enforcement and Corrections Commons](#), and the [President/Executive Department Commons](#)

Recommended Citation

Cynthia W. Roseberry, *Clemency: Redeeming the Soul of America*, 19 U. ST. THOMAS L.J. 525 (2023).
Available at: <https://ir.stthomas.edu/ustlj/vol19/iss3/3>

This Article is brought to you for free and open access by UST Research Online and the University of St. Thomas Law Journal. For more information, please contact lawjournal@stthomas.edu.

SYMPOSIUM REMARKS

CLEMENCY: REDEEMING THE SOUL OF AMERICA

CYNTHIA W. ROSEBERRY*

It's a pleasure to be presenting here on this panel, in this discussion for the exchange of ideas "all for the common good," and it's an honor to be here among these esteemed panelists. My comments come through my experience in this nation as an African American person. I filter my view of clemency through that experience, and so I offer these thoughts from that personal space. I do know that I'm the only chocolate person in the room. So, there's an interesting feel to being that person and lifting up this particular perspective.

Normally, when we think about clemency, we think about granting mercy and recognizing redemption for those who are convicted of crimes.¹ Clemency is also a way for the nation to redeem itself, so clemency should reflect an evolution in our views of the criminal legal system. The power was granted to avoid severity and unfortunate guilt. Otherwise, as Hamilton put it in Federalist Paper 74, "Justice would wear a countenance too sanguinary and cruel."² It was intended to be both a check on, and a separation from, judicial power. And, of course, impeachment is that check back on the power of pardon.³

* Acting Director, Justice Division, American Civil Liberties Union; Co-Convener, Justice Roundtable; Co-Chair, Criminal Justice Working Group, Leadership Conference on Civil and Human Rights. Board Member, Deason Criminal Justice Center; Former Executive Director, Clemency Project 2014; former Member, Charles Colson Congressional Task Force on Federal Corrections; former Executive Director, Federal Defenders of the Middle District of Georgia, Inc.; former Clinical Professor, DePaul University College of Law. Cited in the Merriam-Webster Dictionary under Decarceration. (Decarceration — Definition of Decarceration by Merriam-Webster (merriam-webster.com)) TEDX Speaker, (<http://bit.ly/myfather-myhero>). Thanks to the St. Thomas Law Journal staff, with special acknowledgement to Anna Brekke, Sarah Carpenter, and Robert Rohloff. Thank you to Professor Mark Osler. All opinions and errors should be attributed to the author.

1. See U.S. CONST. art. II, § 3.

2. THE FEDERALIST NO. 74 (Alexander Hamilton).

3. See Library of Congress, *ArtI.S2.C5.1 Overview of Impeachment*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S2-C5-1/ALDE_00000030/ (last visited Mar. 26, 2023).

And I note that Article II Section 2 tracks Hamilton's language in granting the power.⁴ So, the concept of clemency looked to prevent injustice caused by punishment that was too severe. And, of course, Hamilton mentioned in the General Introduction to *The Federalist Papers* that the discussion is to establish a constitution that would focus on the security and preservation of, among other things, liberty.⁵ And so, the irony of a descendant of Africans, who were enslaved at the very moment the Constitution was penned, lifting the concept of liberty as the clarion call to establish the Constitution is not lost on me, in addition to the fact that the Thirteenth Amendment didn't abolish slavery in the context of the criminal legal system.⁶ But the power nevertheless is meant to be broad. As Hamilton wrote, "The benign prerogative of pardoning should be as little as possible fettered or embarrassed."⁷ And, you know, also these powers go back to the English prerogative of mercy of the king.⁸

The clemency power has traditionally been used on this case-by-case basis⁹ rather than the categorical approach. In order to be effective, the approach needs to be categorical. You saw during the last administration an extreme example of the case-by-case approach to clemency wherein the grants appeared to be based on celebrity and notoriety.¹⁰ During the Obama administration, we saw a categorical use of clemency and, chiefly, in the way that I propose it should be used.¹¹ One of the criteria of the Clemency Initiative was whether, because of a change in the law, if the person were sentenced today, the sentence would be lower than the original sentence.¹²

The current administration should use a categorical approach for those folks left on death row. The last administration has the dubious distinction of being the first lame duck administration to execute someone in more than a century, especially in view of the use of the death penalty to kill thirteen

4. U.S. CONST. art. II, § 2.

5. See *THE FEDERALIST NOS. 1, 6–9* (Alexander Hamilton), *NOS. 2–5* (John Jay), No. 10 (James Madison).

6. U.S. CONST. amend. XIII.

7. *THE FEDERALIST NO. 74*, *supra* note 2 (Alexander Hamilton).

8. David Malone & Christopher Snell, *The Royal Prerogative of Mercy*, *L. SOC'Y GAZETTE* (Nov. 6, 2015), <https://www.lawgazette.co.uk/practice-points/the-royal-prerogative-of-mercy/5052062.article>.

9. See *Clemency Statistics*, U.S. DEP'T OF JUST., <https://www.justice.gov/pardon/clemency-statistics> (last visited Feb. 10, 2023).

10. See *Pardons Granted by President Donald J. Trump (2017-2021)*, U.S. DEP'T OF JUST., <https://www.justice.gov/pardon/pardons-granted-president-donald-j-trump-2017-2021> (Apr. 28, 2021).

11. See *Obama Administration Clemency Initiative*, U.S. DEP'T OF JUST., <https://www.justice.gov/archives/pardon/obama-administration-clemency-initiative#:~:text=ON%20April%2023%2C%202014%2C%20former,President%20of%20the%20United%20States> (Jan. 12, 2021).

12. *Id.*

people after a nearly two-decade pause.¹³ That was at a time when most of the states combined had executed fewer people. It also was a time when we saw the only Native American on the row executed, and two people who committed offenses as teenagers were executed, despite claims of mental illness.¹⁴ So, a moratorium on the death penalty during the Obama administration didn't save those who were on the row because the next administration just came in and executed them. And that's a way that the clemency power could have been used to reflect an evolution in our thinking, our moral values, and where we are today.

We've seen it used by President Carter, who granted clemency to most of those who evaded the draft as a way to heal the country after the Vietnam conflict.¹⁵ We saw Ford conditionally pardon thousands who deserted during the conflict and pardon without condition those who evaded, as many as 50,000 people.¹⁶ And then, of course, George Washington pardoned participants in the Whiskey Rebellion, which provided a means to heal the country and move forward.¹⁷ He did, moreover, go on to pardon, over Hamilton's objection, people sentenced for treason.¹⁸

So, here is how and why I think the clemency power should be used categorically to reflect an evolution in thinking and in our criminal legal system. Traditionally, the system has been steeped in racism. There is a false narrative of Black-on-Black crime in the face of data that shows us that a majority of the crimes that are committed are interracial.¹⁹ The FBI reported in 2011 that fifty-two percent of murder victims were white, while

13. See Tracy L. Snell, *Capital Punishment, 2020 – Statistical Tables*, BUREAU OF JUST. STAT. (Dec. 2021), <https://bjs.ojp.gov/content/pub/pdf/cp20st.pdf>.

14. See DEATH PENALTY INFO. CTR., *State Execution Rates (through 2020)*, <https://deathpenaltyinfo.org/stories/state-execution-rates> (last visited Mar. 26, 2023); Ed Pilkington, *Trump Administration has Executed More Americans than All States Combined, Report Finds*, GUARDIAN (Dec. 16, 2020, 2:12 PM), <https://www.theguardian.com/us-news/2020/dec/15/trump-administration-us-death-penalty-executions>.

15. *Vietnam War Era Pardon Instructions*, U.S. DEP'T OF JUST., <https://www.justice.gov/pardon/vietnam-war-era-pardon-instructions> (Mar. 27, 2023).

16. *Clemency Statistics*, *supra* note 9; Press Release, Off. of the White House Press Sec'y, Proclamation 4483: Granting Pardon for Violations of the Selective Service Act (Jan. 21, 1977), <https://www.justice.gov/pardon/proclamation-4483-granting-pardon-violations-selective-service-act>.

17. See Erin Blakemore, *The Contentious History of U.S. Presidential Pardons — From the Whiskey Rebellion to Watergate*, NAT'L GEOGRAPHIC (Jan. 7, 2021), <https://www.nationalgeographic.com/history/article/controversial-history-presidential-pardons-from-watergate-to-whiskey-rebellion/#:~:text=AS%20it%20turned%20out%2C%20the%20first%20presidential%20pardons,it%20took%20a%20militia%20of%2013%2C000%20to%20quell>.

18. Carrie Hagen, *The First Presidential Pardon Pitted Alexander Hamilton Against George Washington*, SMITHSONIAN MAG. (Aug. 29, 2017), <https://www.smithsonianmag.com/history/first-presidential-pardon-pitted-hamilton-against-george-washington-180964659/>.

19. RACHEL E. MORGAN, RACE AND HISPANIC ORIGIN OF VICTIMS AND OFFENDERS, 2012–15, (Oct. 2017), <https://bjs.ojp.gov/content/pub/pdf/rhovo1215.pdf>.

forty-four percent were Black.²⁰ Ninety-one percent of those who committed murders against Black people were Black.²¹ Eighty-three percent of those who committed murders against white people were white.²² The narrow narrative of Black-on-Black crime is a unique and distinct narrative that's kicked out and lifted up as part of this racist system.

Many of you are too young to remember Willie Horton, an African American who was furloughed and became the center of the 1988 presidential campaign.²³ Former Massachusetts Governor Mike Dukakis, who had embraced rehabilitation as one of the pillars of our criminal legal system, was defeated.²⁴ I believe part of that defeat can be attributed to the racial dog whistle — the invocation of Willie Horton — who committed crimes after that furlough. Fear of the Black man, and by extension, Black people, was the message of the dog whistle.

I must bring to light and uplift the unbroken line from the origins of policing in America, as the slave patrol created to capture and return African Americans to chattel slavery, to over-policing in Black and Brown communities, since, of course, we are here where the specter of Derek Chauvin publicly executing George Floyd originated.²⁵

Even more, over-policed communities tend to be high crime areas because police are in these communities. There's more policing, so there are more arrests, so there's more crime.²⁶ In 2012, Black people were 3.23 times more likely than whites to be killed by police.²⁷ And the infiltration of white nationalists into police departments is well-documented,²⁸ and so too is the school-to-prison pipeline, where even schools in Black and Brown communities are over-policed.²⁹ The courts have not been able to

20. See FBI: Uniform Crime Reporting Program, *Expanded Homicide Data Table 6*, CRIME IN THE U.S. 2011, <https://ucr.fbi.gov/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/expanded-homicide-data-table-6>.

21. See *id.*

22. See *id.*

23. Doug Criss, *This Is the 30-Year-Old Willie Horton Ad Everybody Is Talking About Today*, CNN (Nov. 1, 2018, 6:17 PM), <https://www.cnn.com/2018/11/01/politics/willie-horton-ad-1988-explainer-trnd/index.html>.

24. *Id.*

25. Evan Hill, Aınara Tiefenthaler, Christiaan Triebert, Drew Jordan, Haley Willis & Robin Stein, *How George Floyd Was Killed in Police Custody*, N.Y. TIMES (June 2, 2020), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html>.

26. See generally ANGELA DAVIS, *POLICING THE BLACK MAN: ARREST, PROSECUTION, AND IMPRISONMENT* (2017).

27. Gabriel L. Schwartz & Jaquelyn L. Jahn, *Mapping Fatal Police Violence Across U.S. Metropolitan Areas: Overall Rates and Racial/Ethnic Inequities, 2013–2017*, 15 PLoS ONE, no. 6, June 2020, at 1, 5, <https://doi.org/10.1371/journal.pone.0229686>.

28. See, e.g., FED. BUREAU OF INVESTIGATION, COUNTERTERRORISM DIV., *WHITE SUPREMACIST INFILTRATION OF LAW ENFORCEMENT* (Oct. 17, 2006), <https://nsarchive.gwu.edu/document/24350-fbi-warned-white-supremacists-law-enforcement-15-years-ago-fbi-counterterrorism>.

29. See, e.g., *School-to-Prison Pipeline [Infographic]*, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/school-prison-pipeline-infographic> (last visited Jan. 4, 2023).

rectify this racism in the system. We learned in *McCleskey v. Kemp*³⁰ that there's a requirement to show deliberate intent, which, in fact, immunizes the criminal legal system from judicial scrutiny on the basis of racism.

And we also know that this racism from policing hasn't left the system. When we look at who's incarcerated in our nation, of course, America leads the world in incarceration.³¹ Particularly, the Black community is over-represented. We all know that a Black boy born today has a one-in-three chance of incarceration.³² Despite comprising roughly only thirteen percent of the population, Black people comprise thirty-eight percent of the prison population.³³

So, what do these statistics say about how the power to grant pardon and commutation should be used? I say, it calls us to either admit that America's criminal legal system is steeped in racism and must be redeemed, or that we must admit that we believe Black people are more criminal. If we come to terms with the racism and white supremacy of the criminal legal system, then clemency is a tool that can be used to begin this remedy. I want to be clear, I'm not speaking in terms of reparations here. This is a redemption of America, and that might not be clear to everyone.

I recently had discussions after the case against the men who murdered Ahmaud Arbery.³⁴ Many of you saw that case from Georgia. Four of the lawyers who tried that case and I have been close friends for decades, but there was harm caused by some of the ways that folks were represented in that case. And it became clear that there were blinders about the experience of African Americans in this country and what certain words mean and how we use those words. I think James Baldwin tells us best in *The Fire Next Time*, in the letters to his nephews:

You were born where you were born and faced the future that you faced because you were black and for no other reason. The limits of your ambition were, thus, expected to be set forever. You were born into a society which spelled out with brutal clarity, and in as many ways as possible, that you were a worthless human being. You were not expected to aspire to excellence: you were expected to make peace with mediocrity.³⁵

30. *McCleskey v. Kemp*, 481 U.S. 279 (1987).

31. See ROY WALMSLEY, WORLD PRISON POPULATION LIST (ELEVENTH EDITION), INST. FOR CRIM. POL'Y RSCH. (2015), https://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_11th_edition_0.pdf.

32. *Criminal Justice Fact Sheet*, NAACP, <https://naacp.org/resources/criminal-justice-fact-sheet> (last visited Feb. 11, 2023).

33. *Racial Disparities in Sentencing in the United States*, AM. CIV. LIBERTIES UNION & SENT'G PROJECT (July 14, 2022), https://www.sentencingproject.org/app/uploads/2022/10/07-14-2022_CERD-Shadow-Report-Draft_with-endnotes.pdf; *Criminal Justice Fact Sheet*, *supra* note 32.

34. See *State v. McMichael*, 624 S.E.2d 212 (Ga. Ct. App. 2005).

35. JAMES BALDWIN, *THE FIRE NEXT TIME* 7 (Vintage International 1993).

For those of you who are unfamiliar with *The Fire Next Time*, you may be familiar with Ta-Nehisi Coates's *Between the World and Me*,³⁶ which was seen as a continuation, at least by Toni Morrison, who said she'd been wondering who would fill the intellectual void that plagued her after Baldwin died.³⁷ Both works were framed as letters to nephews and a signal to members of the African American community what the plight was and how racism, so systemic in America, affects us all and the expectations that we should have around it.

I think about how in my discussions after the trial of those who murdered Ahmaud Arbery, we talked about how it is my duty, I think, to appear in white spaces. And I think in many instances, it is your privilege not to have to appear in Black spaces. This privilege means that sometimes there's a disconnect, so when you hear Black people rise up and say "America is unequal and cruel," the disconnect comes from not having been steeped in Black spaces.

I think about Frederick Douglass, when he was asked to speak about the Fourth of July to the Anti-Slavery Society in Rochester, New York. And this was, you know, long after the U.S. Constitution was ratified. He said:

What, to the American slave, is your 4th of July? I answer; a day that reveals to him, more than all other days in the year, the gross injustice and cruelty to which he is the constant victim. To him, your celebration is a sham; your boasted liberty, an unholy license; your national greatness, swelling vanity; your sounds of rejoicing are empty and heartless; your denunciation of tyrants, brass fronted impudence; your shout of liberty and equality, hollow mockery; your prayers and hymns, your sermons and thanksgivings, with all your religious parades and solemnity, are, to Him, mere bombast, fraud, deception, impiety, and hypocrisy—a thin veil to cover up crimes which would disgrace a nation of savages. There is not a nation on the earth guilty of practices more shocking and bloody than are the people of the United States, at this very hour.³⁸

It's amazing how that rings true here, as we sit after we saw what happened to George Floyd. It's not always implicit. We know that Nixon's aide, Ehrlichman, confessed that Nixon understood that he couldn't make it illegal to be poor or Black in the United States, but he could criminalize it.³⁹ And

36. TA-NEHISI COATES, *BETWEEN THE WORLD AND ME* (2015).

37. See, e.g., Michael Eric Dyson, *Between the World and Me: Baldwin's Heir?*, ATLANTIC (July 23, 2015), <https://www.theatlantic.com/politics/archive/2015/07/james-baldwin-tanehisi-coates/399413/>.

38. Frederick Douglass's, "What to the Slave Is the Fourth of July?", EDSITEMENT, <https://edsitement.neh.gov/student-activities/frederick-douglass-what-slave-fourth-july> (last visited Jan. 4, 2023).

39. *Nixon Adviser Admits War on Drugs Was Designed to Criminalize Black People*, EQUAL JUST. INITIATIVE (Mar. 25, 2016), <https://eji.org/news/nixon-war-on-drugs-designed-to-criminalize-black-people/>.

he could criminalize the communities by associating Black people with drugs, and then criminalizing drugs heavily.⁴⁰ He could arrest Black leaders, raid Black homes, break up Black movement meetings, and vilify Black people on the evening news, all the while knowing that he was lying.⁴¹

So, James Baldwin reminds us that if any white man in the world says, “Give me liberty or give me death,” the entire world applauds.⁴² We see this right now with Ukraine fighting for its liberty. But when a Black man says exactly the same thing, word for word, he’s judged as a criminal and treated like one, and everything possible is done to make an example of this bad “nigga” so that there won’t be any more like him.⁴³

Racism in our criminal legal system comes from every corner of society. The carceral system is sort of the hub in the wheel, and the spokes include, inter alia, poverty, health, and education. You see the poverty spoke in fines and fees, the loss of employment from incarceration and exclusion from employment because of criminal history.⁴⁴ In health, the cost of healthcare and resistance to Medicaid expansion, particularly in the South, seems to mirror the resistance to expanding public education after *Brown*.⁴⁵ And then in education itself, funding, access to funding, and test score differences.⁴⁶ All pillars of the successful community that have been eroded. All of these spokes converge at the hub, so we know that racism permeates.

I was reminded of the pervasiveness of racism from incarceration when I boarded my flight on the way here. You know, they call first class first, and then they call diamond and platinum and gold, and you know, I’m probably rock class. Consider the racial disparity in the classes and think about the fact that you get to be diamond class by accumulating points. People who have been employed in jobs that allow them to travel gain those points.⁴⁷ People with criminal histories are denied employment as a collat-

40. *Id.*

41. *Id.*

42. Ellen Gutoskey, *Watch James Baldwin Discuss Racism on the Dick Cavett Show in 1969*, MENTAL FLOSS (July 31, 2020), <https://www.mentalfloss.com/article/627055/james-baldwin-talks-racism-dick-cavett-show>.

43. *Id.*

44. Rebecca Vallas, Sharon Dietrich & Beth Avery, *A Criminal Record Shouldn’t Be a Life Sentence to Poverty*, CTR. FOR AM. PROGRESS (May 28, 2021), <https://www.americanprogress.org/article/criminal-record-shouldnt-life-sentence-poverty-2/>.

45. *The Southern Manifesto and “Massive Resistance” to Brown*, LEGAL DEF. FUND, <https://www.naacpldf.org/brown-vs-board/southern-manifesto-massive-resistance-brown/> (last visited Jan. 4, 2023).

46. See, e.g., Michael Couch II, Marquisha Frost, J. Santiago & Adriel Hilton, *Rethinking Standardized Testing From an Access, Equity and Achievement Perspective: Has Anything Changed for African American Students?*, 5 J. RSCH. INITIATIVES, no. 3, Sept. 2021, at 1.

47. Elizabeth Aldrich, *I Earned Over 1 Million Airline Miles and Hotel Points While Traveling for Work by Using 9 Strategies to Maximize Rewards*, PERS. FIN. (May 14, 2021, 12:58 PM), <https://www.businessinsider.com/personal-finance/maximize-airline-miles-hotel-points-work-travel-strategy>.

eral consequence of a conviction.⁴⁸ The influences of racism in our carceral system just continue to show themselves every day in many ways.

So, although it's no panacea, clemency can be used as a first step in addressing the harms from the systemic racism in our carceral system. Many people who sit in prison today convicted, for example, of marijuana distribution, sit there even as Congress prepares to examine the SAFE Banking Act,⁴⁹ which will allow people engaging in the legal marijuana industry to use our banking systems before the Senate version of the MORE Act⁵⁰ will get a floor vote. The MORE Act was introduced by Vice President Kamala Harris when she was a senator and would both decriminalize marijuana and provide some social reformation—expungement for those who received a marijuana conviction, and SBA loans, and the like—so that people can get involved in the industry.⁵¹ There are people still sitting in prison despite the fact that the folks who are legally allowed to be involved have more power and have expanded power to do this. So categorical clemency, for example, for those convicted of marijuana distribution, would be a good step in addressing the harms from the War on Drugs, which we know was particularly aimed at Black communities and was based on falsehoods.⁵²

Abolition of the federal parole board means that there are certain people sitting in the federal system who have no means of being released.⁵³ These so-called “old law prisoners” were convicted before November of ‘87.⁵⁴ There are about 150 of them, and they’re among the oldest and most vulnerable people in prison.⁵⁵ Surely now our moral compass guides us to see them come home. Folks who were released early under the CARES Act at the beginning of COVID-19 who performed well, who reunited with their families, who’ve shown that they can be trusted in the community.⁵⁶ Clem-

48. MARINA DUANE, NANCY LA VIGNE, MATHEW LYNCH & EMILY REIMAL, *CRIMINAL BACKGROUND CHECKS: IMPACT ON EMPLOYMENT AND RECIDIVISM*, URB. INST. 10 (Mar. 2, 2017), https://www.urban.org/sites/default/files/publication/88621/2001174_criminal_background_checks_impact_on_employment_and_recidivism_2.pdf.

49. SAFE Banking Act of 2021, H.R. 1996, 117th Cong. (2021).

50. MORE Act of 2020, H.R. 3884, 116 Cong. (2020).

51. Amanda Becker, *Harris Introduces Senate Bill to Decriminalize Marijuana, Expunge Convictions*, REUTERS (July 23, 2019), <https://www.reuters.com/article/us-usa-election-harris/harris-introduces-senate-bill-to-decriminalize-marijuana-expunge-convictions-idUSKCN1UI130>.

52. Graham Boyd, *The Drug War Is the New Jim Crow*, AM. CIV. LIBERTIES UNION (July/Aug. 2001), <https://www.aclu.org/other/drug-war-new-jim-crow>.

53. Douglas A. Berman, *Reflecting on Parole's Abolition in the Federal Sentencing System*, 81(2) FED. PROB. 18, 18–22 (Sept. 2017), https://www.uscourts.gov/sites/default/files/FederalProbation-Sept2017-508_0.pdf.

54. Carrie Johnson, *Forgetting and Forgotten: Older Prisoners Seek Release but Fall Through the Cracks*, NPR (May 11, 2021, 5:00 AM), <https://www.npr.org/2021/05/11/994273368/forgetting-and-forgotten-older-prisoners-seek-release-but-fall-through-the-crack>.

55. *Id.*

56. Press Release, U.S. Dep't of Just., Off. of Pub. Affs., Statement by Attorney General Merrick B. Garland (Dec. 21, 2021), <https://www.justice.gov/opa/pr/statement-attorney-general-merrick-b-garland-0>.

ency for these folks can be a way to begin to redeem our nation from the harm caused by the criminal legal system.

Mandatory minimum sentences also provide an opportunity to have clemency reflect an evolution in our thinking and a readjustment of our moral compass. And I'll just say that these mandatory minimums are triggered by criminal history. If you think about the fact that criminal history is triggered by over-policing, we still get back to the origin of racism in the system. Despite the fact that politicians have their "tough on crime" rhetoric across the nation — the ACLU has discovered that we don't believe this anymore.⁵⁷ We don't believe we need to be tough on crime or on people.⁵⁸ We believe we need to be smart on crime.⁵⁹

We did a poll in 2020 and found that sixty-two percent of voters believe that reducing the prison population would strengthen communities by reuniting families and saving tax dollars that could be reinvested in the communities.⁶⁰ And this is irrespective of political ideology. Eighty-six percent of Democrats, eighty-one percent of Independents, and seventy-three percent of Republicans support prison reduction.⁶¹ And a majority of voters nationally, specifically sixty-three, favor granting relief to those temporarily released through COVID-19.⁶² So, our hearts have moved, and our thinking has evolved. If we are to redeem our nation, then we must demand that clemency be used to bring us into alignment with what our hearts and minds tell us is the moral thing to do to redeem our nation.

57. Udi Ofer, *ACLU Poll Finds Americans Reject Trump's Tough-on-Crime Approach*, AM. CIV. LIBERTIES UNION (Nov. 16, 2017), <https://www.aclu.org/news/smart-justice/aclu-poll-finds-americans-reject-trumps-tough-crime-approach>.

58. *Id.*

59. *Id.*

60. Memorandum from Danny Franklin, Jessica Reis & Bully Pulpit Interactive on Majority of Voters in the United States Support Clemency, AM. CIV. LIBERTIES UNION 3 (Aug. 2020), https://www.aclu.org/sites/default/files/field_document/majority_of_voters_in_the_united_states_support_clemency.pdf.

61. *Id.* at 1.

62. *Id.* at 4.