

Presidential Pardons for DACA Recipients

- President Obama has the broad authority to pardon individuals for offenses against the United States, including civil immigration violations.¹ Before he leaves office, the President should exercise this authority and grant pardons to all young people who received deferred action pursuant to the Deferred Action for Childhood Arrivals (DACA) program.
 - When President Obama created the DACA program, he asked hundreds of thousands of young people to come out of the shadows and register with the government. He asked them to trust him with their lives. In response, nearly 700,000 young people, handed their names, addresses and other identifying information over to the Department of Homeland Security.
 - Now all of that identifying information will be in the hands of a Trump Administration that has vowed to undo all of the President's executive actions, and deport millions of immigrants from our country.
 - We implore the President to take action so that these young are not subject to expulsion and banishment.
- President Obama can grant pardons for civil immigration violations. The Constitution grants the President broad pardon powers with regards to both criminal and civil offenses. The President has the power to “grant reprieves and pardons for offenses against the United States.” U.S. CONST., art II, § 2.
 - The Constitution clearly states that the pardon power is not simply limited to “crimes” but can be applied to *all offenses*.
 - The Supreme Court has held that the pardon power is not limited to only criminal offenses.²
- While the pardon power is often used for individual cases, Presidents have previously used the pardon power to pardon the offenses of a group of individuals. The purpose of these categorical pardons was to heal divisions, or to further the national interest.
 - Jimmy Carter pardoned a half a million men who had violated draft laws to avoid military service in Vietnam.³ Other Presidents including Washington, Adams, Jefferson, Madison, Lincoln, Truman and Ford all issued broad categorical pardons.⁴
- The pardon power protects DACA recipients from the deportation forces in Congress because the Supreme Court has held that Congress cannot limit or abridge the pardon power in any way.⁵
- President Obama could also use his pardon power to pardon legal permanent residents with minor criminal convictions and other individuals with immigration related inadmissibility and/or deportability charges.

¹ Peter L. Markowitz, *Can Obama Pardon Millions of Immigrants?*, The New York Times (July 6, 2016) available at: <http://www.nytimes.com/2016/07/06/opinion/can-obama-pardon-millions-of-immigrants.html>

² *Ex Parte Grossman*, 267 U.S. 87, 117-18 (1925) (“the term ‘offense’ as used in the pardon clause is “more comprehensive... than are the terms ‘crimes’ and ‘criminal prosecutions.’”)

³ Executive Order 11967, *Relating to violations of the Selective Service Act*, August 4, 1964 to March 28, 1973, available at: <https://www.archives.gov/federal-register/codification/executive-order/11967.html>

⁴ W.H. Humbert, The Pardoning Power of the President, 39-40 (1941); Saikrishna Bangalore Prakash, *The Executive's Duty to Disregard Unconstitutional Laws*, 96 GEO. L.J. 1613, 1664-65 (2008).

⁵ *Schick v. Reed*, 419 U.S. 256, 266 (1974).