

Could Trump Make America Less Retributive?

The second Trump administration has eased some harsh criminal penalties.

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Perhaps no politician has been more frequently accused of using the criminal justice system for personal vindictiveness than President Donald Trump. His own chief of staff, Susie Wiles, has acknowledged Trump's appetite for revenge (Whipple 2025), and he has sought retribution against a long list of perceived political enemies, with James Comey, Letitia James, John Bolton, and six current senators and House members among his recent targets.

Yet, as hard as it is to do in this moment, if one sets aside cases involving Trump's political opponents and immigration, it is far from clear that he is making our justice system more retributive. His second-term actions, including frequent use of the clemency power, reclassification of marijuana, and a 10 percent reduction in drug prosecutions, could unexpectedly nudge America in a positive direction that is less fixated on punishment for punishment's sake. In fact, the federal prison population—numbering over 150,000—*declined* by 3,594 in 2025, as 4,441 additional prisoners were released compared to 2024. This is partly attributable to the administration's more fulsome implementation of the 2018 First Step Act's earned time credits for early release from federal custody and expanded use of home confinement.

These acts may contradict the standard view of Trump and criminal justice, and not just because of his penchant for personal retribution. Yet, moving in this direction brings the United States more in line with continental Europe, where the criminal justice system has long focused more on rehabilitation and where sentences beyond 15 years are exceedingly rare (Kleinfeld 2016).

To his credit, Trump seems willing to question where retribution is warranted and where the amount of time a person has already served behind bars easily satisfies this imperative. But if this forgiving impulse is to extend beyond specific cases—especially those where he has a personal interest—to a system that is consistently more proportional in its punishments, it will require a strategy that is more comprehensive and less politicized, including working with Congress to reform excessive sentencing laws.

MORE THAN SELF-INTEREST

Trump's approach to clemency is an instructive place to begin. Most observers insist his pardons and commutations are divorced from any philosophical commitment to grace and forgiveness and are instead attributable solely to personal loyalty, political donations, or media campaigns by supporters. There is no doubt that those factors influenced some cases, and the grants of clemency to January 6th defendants who attacked law enforcement officers remain deeply disturbing. But this explanation falls short of capturing the full picture, especially when we consider examples that political self-interest cannot explain.

Take his December preemptive pardon of Democrat Henry Cuellar, a sitting congressman from Texas, who was facing charges for bribery and money laundering. As Cuellar (as expected) promptly filed for reelection as a Democrat, this pardon made it marginally more likely Democrats will retake the House in 2027. Or go back further, to 2020, when Trump commuted the sentence of former Illinois governor Rod Blagojevich, another Democrat who had been prosecuted by President Barack Obama's Justice Department on extortion, bribery, and wire fraud charges. Those decisions cannot be chalked up to transactional politics (though, it should be noted, Trump has since criticized Cuellar for "a lack of loy-



alty” for not switching parties). So, what motivated them?

Some Trump critics have suggested he thinks “white collar” crimes should not be considered crimes at all and that the wealthy and powerful should be able to get away with anything. But his Department of Justice (DOJ) has robustly prosecuted False Claims Act cases (i.e., false or fraudulent claims to the US government for payment) over the past year, and in his first administration he forced out his health and human services secretary, Tom Price, for personal use of private jets.

While there may be multiple motivations, one takeaway from Trump’s clemency decisions is that he may harbor skepticism of lengthy incarceration for people convicted of nonviolent, financial, or process crimes. In other words, he appears unconvinced by the traditional retributive justification for severe punishment, at least in many white-collar cases and perhaps low-level drug cases. He may not articulate it in philosophical terms, but the pattern, along with his leadership in pushing Senate Republicans to pass the First Step Act in 2018, suggests a visceral belief that decades-long prison sentences for offenses involving no physical harm are excessive.

After all, incarceration is expensive, both in terms of its fiscal cost and its deprivation of human liberty. And there are other ways to hold people accountable. Trump’s approach provides an opportunity to refocus the system on incarcerating mostly when it’s necessary for incapacitating those who remain dangerous.

Admittedly, this is a rosy interpretation, and we should make some significant caveats. Most obviously, this view of a merciful Trump conflicts with his administration’s treat-

ment of allegedly illegal immigrants, dozens of whom were deported to a notorious foreign prison and to hostile countries (Nowrasteh 2026). Besides, will Trump’s mercy regularly extend to people who lack political connections or public visibility? If he genuinely believes the current system is too focused on retribution, the logical next step is to apply that skepticism to low-level drug offenders and geriatric offenders, particularly those serving long prison sentences that far outstrip any public-safety rationale. Many such individuals pose minimal risk of future harm; they remain incarcerated not because they are dangerous, but because the system historically demanded harsh punishment to send a message. If Trump wants to redefine the purpose of punishment in the United States, this is the population most deserving of his attention.

There are signs that this is materializing. Not only did Trump appoint Alice Marie Johnson, whose sentence on drug trafficking charges he commuted in his first term, to the new position of “pardon czar,” but her work and meetings with him are beginning to bear fruit for other low-risk prisoners. The high-profile pardon of former Puerto Rico governor Wanda Vázquez Garced for campaign finance charges has garnered considerable attention, but Trump’s flurry of commutations in January included relief for low-level drug offenders who otherwise faced decades in federal prison.

Grandmother Angela Reynolds is one of them. She was released after serving 11 years of a 23-year sentence for drug distribution. Similarly, Angela Wannette Cupit, Johnson’s prayer partner in prison, was freed after serving 10 years of a

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30-year drug sentence. If Trump continues to extend mercy in these types of cases, not even his most strident critics will be able to deny that he is doing more than settling scores and rewarding donors.

Second, while it is encouraging if Trump questions the system's imperative to seek retribution against nonviolent offenders like Reynolds and Cupit, even in nonviolent cases we must often grapple with the need for recompense and deterrence, particularly in the white-collar context. Financial crimes are estimated to cost Americans \$300 billion annually (Spann 2022). Pardons issued by both Trump and his predecessors in white-collar cases have erased millions in restitution obligations, harming the victims of these crimes (Auston-Babcock and Shannon 2026).

Even if we assume the period of incarceration was excessive in these cases, the right way to approach restitution orders that are just and proportionate is through workable payment plans, not absolution. Also, in the federal system and in most states, once offenders have completed their sentence, criminal restitution orders can be converted to civil restitution judgments, compensating victims while ensuring that we don't keep someone in the criminal justice system solely for purposes of collections.

Then there are those white-collar cases involving bribery of current and former government officials. Political corruption not only corrodes public trust in our institutions, it also significantly depresses economic growth as companies divert resources from generating value to buying politicians (Gründler and Potrafke 2019). If prison terms are shortened or replaced entirely, how do we ensure that potential offenders will think twice before committing fraud, bribery, or insider trading?

One answer lies in research finding that the ordeal of a federal prosecution already operates as a powerful deterrent, especially for people who enjoy comfortable livelihoods and reputations they value (Levin 1990). Public embarrassment, legal expenses, the loss of status, and years of uncertainty take a toll that cannot be dismissed. But for deterrence to remain credible, the consequences for wrongdoing must be meaningful, predictable, and proportionate.

MORE APPROPRIATE PENALTIES, BETTER ENFORCEMENT

This is where Trump and policymakers across the political spectrum should broaden their focus. If incarceration becomes less central in responding to white-collar crime, then civil and administrative sanctions for intentional misconduct must become more robust. Strengthening these tools could create meaningful deterrence without the moral and financial costs of decades-long imprisonment.

These sanctions need not be limited to fines and additional taxes, though they should be meaningful enough to outweigh the benefits of potential wrongdoing (Bagaric et al. 2023). They can also include loss of professional licenses, suspension from regulated industries, bars on serving on corporate boards, and mandatory restitution mechanisms that prioritize victims over state coffers. In some cases, the prospect of losing one's livelihood may deter misconduct more effectively than a distant threat of prison time.

The January DOJ announcement that federal officials will no longer prosecute truckers for intentionally altering their diesel systems in a way that violates federal emissions laws provides a window into the administration's approach. This

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policy change was foreshadowed by the November 2025 pardon of a mechanic sentenced to prison for this offense. The change does not mean people are now free to tamper with their emissions controls, however; instead, DOJ vows it will partner with the Environmental Protection Agency on "civil enforcement ... when appropriate." The new policy will test whether this approach is effective in deterring this conduct.

Just as with traditional street crime, we can best deter not by making long sentences longer, but by increasing the actual and perceived chances of apprehension. A meta-analysis of 83 studies found that increasing the likelihood of being caught was highly effective in deterring corporate crime, while the severity of the potential sanction had a comparatively small and inconsistent effect (Simpson et al. 2014).

In the street crime context, this can require bolstering the ranks of police detectives, clearing forensic lab backlogs, and building public trust in police so more victims and witnesses provide information. In addressing white-collar crime, Trump must balance the conservative deregulatory instinct with a recognition that even a properly limited federal government must address incidents where one person or corporation violates the rights of another across state lines, which can involve intentional conduct that defrauds investors or pollutes the water supply. Moreover, just as artificial intelligence tools can aid white-collar criminals, those tools can also better equip law enforcement to detect a greater share of certain offenses like insider trading and cybercrime, producing more deterrence without the threat of prison terms that span several decades (Garcia-Segura 2024).

Finally, another promising avenue is reexamining our sentencing laws, not just for white-collar crimes, but for other nonviolent offenses as well. Part of Trump's motivation for pardoning Cuellar may have been that the congressman and his wife faced up to 82 years in prison if convicted on all counts. Research suggests that jurors are less likely to convict offenders if they know the resulting penalty will be harsh, a phenomenon that is likely to be especially pronounced in nonviolent cases, including white-collar ones (Fleisher 2018).

Yet maximum prison terms of 20 years or more, implicated in this case and littered throughout federal law, give prosecutors too much leverage. This leverage often allows them to secure guilty pleas, even from the innocent, by threatening to seek the maximum sentence at trial in what is known as the "trial penalty" (Jones et al. 2018). The Cuellar case raised another issue that suggests a need for sentencing reform: The presumption in federal law for concurrent rather than stacked sentences may be insufficient given that the limited data available suggest courts are nonetheless imposing consecutive sentences in some 30 percent of cases (Ulmer and Galvin 2023).

None of this means lengthy incarceration is never justified as the "just desert" for evil acts. Certain cases force us to acknowledge that retribution has value. For example, while most Americans probably understood that a penalty short of incarceration would have prevented Bernie Madoff, the notorious Ponzi scheme operator, from reoffending, they rightly believed that locking him up was appropriate both to deter others and to punish his egregious conduct.

But most crimes are not nearly as morally repugnant as Madoff's, and many involve factors that mitigate the blameworthiness of the perpetrator, such as mental illness or addiction. Particularly in the white-collar context, some who offend are also unaware that their conduct was illegal, a concern that the US House of Representatives sought to address with last December's unanimous passage of the Count the Crimes Act. That bill, which is now before the Senate Judiciary Committee, would force all federal agencies to publish the thousands of regulatory crimes under their purview.

This followed a May 2025 Trump executive order that included a similar provision. That order also addressed long-standing bipartisan overcriminalization concerns by declaring that both strict criminal liability, which eschews the traditional requirement of some level of intent to establish a crime, and criminal enforcement of agency regulations are disfavored.

If Trump wishes to redefine American punishment, he should articulate what appears to be his instinct: that incarceration principally serves an important incapacitation function, and it is not the only—or even the most effective—tool for enforcing accountability. He also should apply this principle consistently, rather than selectively, across the justice system, while ensuring that other forms of accountability for financial

crimes and political corruption fill the void left by de-emphasizing long prison sentences.

Executive clemency, particularly in the form of commutations, can be a powerful corrective, especially for populations traditionally left behind. Yet, there's also a danger of generating an enduring public backlash against the more robust use of the clemency process to the extent the use of this power is colored by political favoritism and perceived as only helping the well-connected.

If Trump's actions lead to a broader national reconsideration of why—and how—we punish, that could produce a justice system that is more rational, more proportional, and ultimately more effective. Yes, he has further politicized a pardon process that President Joe Biden's last-minute pardons of family members and political allies already stained. But there is reason to hope that this administration's mercy will increasingly be dispensed more systematically and without regard to political stripe or collar color, ushering in a more redemptive brand of American justice. R

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