

Three things Obama's new clemency initiative doesn't do



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Last week, the Department of Justice [outlined expanded criteria](#) that could allow prisoners convicted of non-violent crimes to win early release from prison. Under the new initiative, the Office of the Pardon Attorney will fast-track commutation applications from inmates who have served more than 10 years for non-violent offenses and who were well-behaved while imprisoned.

As part of the shift, the department is replacing Pardon Attorney Ronald Rodgers. Two years ago, we reported that Rodgers [had failed to provide critical information](#) to the White House in urging denial of a commutation for Clarence Aaron, a model prisoner who served nearly 20 years for a small role in a drug deal.

Aaron's release was championed by civil liberties groups, and late last year he was among eight prisoners whose cocaine-related sentences were commuted by President Obama. His case was among the [more than 35 stories](#) ProPublica has published over the past three years about [racial discrimination](#) in pardon outcomes and [questionable practices](#) in the process.

Obama's commutation reforms cheered prisoners' rights advocates, who say they are a necessary corrective to an unfair sentencing regime. But the new initiatives, which appear to be aimed at commutations, don't address other problems identified in our reporting on presidential clemency.

Here's three areas the new initiative doesn't address:

1. Whether Outgoing Pardon Attorney Ronald Rodgers Was Disciplined

Aaron was sentenced to three consecutive life sentences for abetting a drug conspiracy -- though he had not sold, bought, or supplied the cocaine, and he had no prior criminal convictions. Though he seemed like a model candidate for early release, President Bush denied his petition in December 2008.

Rodgers had [misrepresented some key facts](#) about Aaron's case in his report to the White House. As we reported, both the U.S. attorney for the South District of Alabama and Aaron's sentencing judge had supported Aaron's petition. Instead, Rodgers inaccurately informed the White House that the U.S. attorney thought the request was "about 10 years premature."

In December 2012, the Justice Department's [inspector general](#) said Rodgers' conduct "fell substantially short of the high standards expected of Department of Justice employees and the duty he owed the President." In a report, the IG said Justice should review "whether administrative action is appropriate."

Rodgers has remained in his position until today, when Deputy Attorney General James Cole announced that Rodgers would be replaced by Deborah Leff, the Acting Senior Counselor for Access to Justice. After a transition, Rodgers will take on "another role" in the agency, a Justice Department news release said.

"Over the past several years, Ron has performed admirably in what is a very tough job," Cole said. "He has demonstrated dedication and integrity in his work on pardons and commutations."

Asked by a reporter if Rodgers' departure was related to the inspector general report, Cole said it's typical for senior officials to change positions within the department. "Ron has expressed some desire for a while to move on, as the senior executive service usually does," he said.

A spokeswoman from the department was unable to confirm whether Rodgers had been disciplined for his role in the Aaron case. "We can't comment on personnel matters given Privacy Act concerns," she said..

2. Racial disparities in pardons

Clemency refers to two different presidential powers: commutations, or early release from prison, and pardons, or the forgiveness of a crime.

In a 2011 study of nearly 500 cases decided by President Bush, ProPublica found that white criminals [were four times as likely](#)



U.S. Pardon Attorney Ronald L. Rodgers was removed from office last week following criticism of his handling of a clemency petition from Clarence Aaron of Alabama. Aaron was a model prisoner who served nearly 20 years for a minor role in a drug deal.

as minorities to win a pardon. Even when controlling for other factors like type of crime and sentence, race remained one of the strongest predictors of a pardon. We found [multiple cases](#) in which whites won pardons while minorities convicted of similar crimes did not.

Part of the problem is that the Office of the Pardon Attorney [considers subjective factors](#) such as attitude, level of remorse, and financial stability. Experts say those considerations may provide an opening for inadvertent racial bias. President Obama, like President Bush before him, has relied heavily on the Office of the Pardon Attorney for advice on who to pardon.

In 2012, the Justice Department [commissioned a study](#) to replicate ProPublica's work and determine whether "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."

The study was supposed to be complete in September 2013. The Justice Department now estimates that the study will not be complete until September 2015.

3. How to cover every prisoner who may be serving an outdated sentence

The new criteria apply to inmates who are serving federal sentences that are longer than sentences that would likely be given today. To be fast-tracked for commutation consideration, inmates must have served 10 years of a sentence for a non-violent crime. They must also be low-level offenders without gang affiliations who have demonstrated good conduct.

The Justice Department has identified about [23,000 prisoners](#) serving sentences of 10 years or more, but it's unclear how many of these inmates meet the other criteria. If inmates do not meet all the criteria, they may still apply for early release, but their applications will not be given priority.

Some prisoners convicted under older, harsher sentencing rules who haven't yet served 10 years won't be eligible. Vanita Gupta, deputy legal director at the ACLU, said that's why Congress should pass the [Smarter Sentencing Act](#), which would let courts reduce sentences for prisoners convicted under out-of-date laws.

Gupta said that while the new criteria are sensible, they should not be a substitute for congressional action. "Clemency has been grossly underutilized, but it's not going to bring relief to everyone who should see relief," Gupta said. "And it's not going to change some of the laws."