

Frequently Asked Questions (FAQs) About President Joe Biden's Proclamation to Pardon Simple Marijuana Offenses

On October 6, 2022, under the authority vested in [Article II, Section 2, of the Constitution of the United States](#), President Joe Biden issued [A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana](#). The Proclamation set in motion a pathway to pardon all individuals with simple possession of marijuana offenses in violation of the Controlled Substances Act (U.S.C.844) or in violation of D.C. Code 48–904.01(d)(1). The Proclamation only pardons offenses for simple possession of marijuana that are in violation of Federal law and will “restore to them full political, civil, and other rights.”

What is the difference between a pardon, commutation of sentence, and executive clemency?

According to the [Department of Justice](#) (DOJ), a **pardon** is “an expression of the President’s forgiveness. It does not signify innocence or expunge the conviction. It does, however, remove civil disabilities—such as restrictions on the right to vote, to hold office, or to sit on a jury—that are imposed because of the pardoned conviction. It may also be helpful in obtaining licenses, bonding, or employment.”

“A **commutation of sentence** reduces a sentence, either totally or partially, that is then being served, but it does not change the fact of conviction, imply innocence, or remove civil disabilities that apply to the convicted person as a result of the criminal conviction.”

According to the [DOJ](#), **clemency** “includes pardon after completion of sentence, commutation of sentence, remission of fine or restitution and reprieve.”

What is a “simple possession of marijuana” under Federal law?

According to [“Who’s Really in Prison for Marijuana?”](#) by the White House Office of National Drug Control Policy (ONDCP), “‘Simple possession’ is the term typically used in cases when someone has on his or her person, or available for his or her use, a small amount of an illegal substance for the purpose of consuming or using it but without the intent to sell or give it to anyone else... In federal court, simple possession of marijuana is punishable by up to a year in prison and a

\$1,000 fine for a first offense. For offenders possessing an ounce or less of marijuana, federal prosecutors have discretion to charge under the 'personal use' statute. Here, possession is treated not as a crime but as a civil offense, much like a traffic ticket, but with a fine of up to \$10,000."

Does President Biden's Proclamation pardoning simple marijuana offenses expunge or erase the conviction for which the pardon was granted?

No. According to the [DOJ](#), "Please also be aware that if you were to be granted a presidential pardon, the pardoned offense would not be removed from your criminal record. Instead, both the federal conviction as well as the pardon would both appear on your record. However, a pardon will facilitate removal of legal disabilities imposed because of the conviction, and should lessen to some extent the stigma arising from the conviction."

How many people in the U.S. have a simple possession of marijuana charge?

According to the [U.S. Sentencing Commission \(USSC\)](#), between fiscal year 1992 and 2021:

- **6,577** U.S. citizens received a conviction "whose only count or counts of conviction is 21 U.S.C. § 844, and where the only controlled substance involved in the offense was marijuana."
- 415 U.S. citizens received a conviction "whose only count or counts of conviction is 21 U.S.C. § 844 and where the offense involved multiple controlled substances, at least one of which is marijuana."
- 555 U.S. citizens received a conviction of "at least one count of 21 U.S.C. § 844, and other non-simple possession counts, but where the only controlled substance involved in the offense was marijuana."

Does this pardon apply to State or local marijuana possession charges?

No. According to [A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana](#), only individuals who are convicted of violating 21 U.S.C. 844 and as previously codified elsewhere in the United States Code, or in violation of D.C. Code 48-904.01(d)(1) are eligible.

Can individuals who are not U.S. citizens receive a pardon under the Proclamation?

No. According to [A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana](#), “this pardon does not apply to individuals who were non-citizens not lawfully present in the United States at the time of their offense.”

When can individuals who are convicted of simple possession expect to receive their certificate of pardon?

To be announced. According to [A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana](#), President Biden has “directed the Attorney General to develop an administrative process for the issuance of certificates of pardon to eligible individuals.”

According to the [DOJ](#), “in the near future, the Office of the Pardon Attorney will make available a short application form for individuals seeking a certificate of pardon, along with instructions for completing the application.”

Does the Proclamation apply to pending charges?

Yes. According to the [DOJ](#), “President Biden’s proclamation applies if the qualifying offense occurred on or before October 6, 2022, even if a conviction has not been obtained by that date.”

Does the Proclamation apply to future charges?

No. According to the [DOJ](#), “The proclamation pardons only those offenses occurring on or before October 6, 2022. It does not have any effect on marijuana possession offenses occurring after October 6, 2022.”

What personal information will be released to the public about individuals who are granted a pardon?

According to the [DOJ](#), “Presidential grants are a matter of public record, so immediately after Presidential action, **the name of each person** granted a pardon or commutation, along with the **district they were convicted, year of sentencing, offense, and the date the President granted their request** is publicly listed on the Office of the Pardon Attorney website. This information may also be posted on The White House website and included in press releases issued by the Department or The White House.

Moreover, in accordance with the ruling by the federal court of the District of Columbia in *Lardner v. Department of Justice*, 638 F.Supp.2d 14 (D.D.C. 2009), affirmed, *Lardner v. United States Department of Justice*, No. 09-5337, 2010 WL 4366062 (D.C. Cir. Oct. 28, 2010) (unpublished), the Office of the Pardon Attorney is obliged to release existing lists of the names of persons who have been denied executive clemency by the President to anyone who requests such records pursuant to the Freedom of Information Act. Given the frequency of such requests, the Office of the Pardon Attorney has started to proactively disclose the names of persons who have been denied executive clemency by the President on our website, in accordance with our Freedom of Information Act obligations.”

Will the federal government remove marijuana as a Schedule I substance under the Controlled Substances Act as a result of the Proclamation?

Undetermined. According to [A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana](#), President Biden has asked “the Secretary of Health and Human Services and the Attorney General to initiate the administrative process to review expeditiously how marijuana is scheduled under federal law consistent with 21 U.S.C. 811.”

According to the [Congressional Research Service \(CRS\)](#), both Congress and the Administration have the ability to alter marijuana’s status as a Schedule I substance. Congress can amend the Controlled Substances Act (P.L. 91-513) that was passed in 1970 by either moving marijuana to a less restrictive classification, creating an entirely new schedule or other category, or removing marijuana from the Controlled Substances Act entirely. The Administration can also make changes, but within the confines of the Controlled Substances Act (21 U.S.C. 811).