



5 Hanover Square, 24th Floor
New York, NY 10004
Tel + 1 917 637-3800
Fax +1 917 637-3900

Policy Brief: Pardons

Carolyn Patty Blum
International Center for Transitional Justice

November 2008

Policy Brief: Pardons

Carolyn Patty Blum
International Center for Transitional Justice¹

Recent speculation indicates that U.S. President George W. Bush² may grant pardons³ to administration officials and members of the military who might face prosecution for authorizing, ordering, endorsing, justifying or committing acts pursuant to the “war on terror.”⁴ Whether President Bush intends to include himself and Vice President Dick Cheney in a possible pardon is unknown. Concerns about the possibility of the pardons prompted U.S. Rep. Jerrold Nadler (D-N.Y.), chairman of the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, to introduce a resolution that the president should not issue preemptive pardons to senior members of his administration.⁵ While a pardon application process exists within the Department of Justice, the president is free to issue pardons without regard to the process and for any reason, including a desire to shield members of his administration and the military from investigations.⁶ Even if a pardon, in some sense, is an admission of guilt, President Bush may gauge that it is worthwhile to protect officials and members of the military.⁷

¹ Senior consultant, U.S. Accountability Project, International Center for Transitional Justice (ICTJ). The author wishes to thank Laura Olson, ICTJ consultant, for her work on an earlier draft, and Margaret Love, former director of the U.S. Department of Justice’s Office of Pardon Attorney, for her wise counsel. This version of the policy brief was revised slightly in December 2008.

² Thus far, President Bush has been cautious in granting pardons; he has done so only 171 times in eight years compared to Reagan’s 409 and Clinton’s 459 during the same number of years. Hundreds of pardon petitions are pending. Michael Isikoff and Mark Hosenball, “Pardon me? Don’t Bet On It,” *Newsweek*, November 24, 2008; Charlie Savage, “Felons Seeking Bush Pardon Near a Record,” *New York Times*, July 19, 2008.

³ “A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed.” *U.S. v. Wilson*, 32 U.S., 150, 160 (1833).

⁴ See, e.g., Eric Lichtblau, “Bush Issues 14 Pardons, But None To Notables,” *New York Times*, November 25, 2008, pg. A22 (“There has been growing speculation in Washington that Mr. Bush might issue blanket pardons to government officials and intelligence officers who took part in counterterrorism programs like Qaeda interrogations, to protect them from the threat of criminal prosecution.”) But see Evan Perez, “Sweeping Pardons ‘Unnecessary,’ White House is Disinclined to Grant Clemency to Officials Involved in Terror Policies,” *Wall Street Journal*, November 25, 2008. See also James Ross, “Beware Bush’s preemptive strike on torture,” *Salon.com*, July 10, 2008 (www.salon.com/opinion/feature/2008/07/10/bush_pardon/print.html).

⁵ H.R. 1531 (introduced November 21, 2008); full text available at www.house.gov/apps/list/press/ny08_nadler/PreEmptPardons_112108.html.

⁶ The regulations for the pardons process are 28 C.F.R. §§ 1.1 et seq. See generally Mark Benjamin, “Obama’s plans for probing Bush torture,” *Salon.com*, November 13, 2008, www.salon.com/news/feature/2008/11/13/torture_commission As a former Justice counter-terrorism expert put it, in Charlie Savage, *supra* note 2, “If we don’t protect these people who [were] proceeding in good faith, no one will ever take chances.”

⁷ If President Bush fails to identify the pardons’ beneficiaries, especially given that most will never have been indicted for any crime, or to enumerate the specific offenses for which he is exempting their

Legal and Historical Considerations:

Constitution: The U.S. Constitution states that the “President shall have the Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of impeachment.”⁸ The founders’ original intent was to create an authority lodged solely in the president, thus avoiding protracted negotiations with the legislative branch to gain its approval, and enabling the president to respond swiftly to exigent circumstances. The pardon power was to be used to rectify patently unjust criminal processes or to respond to extraordinary situations, such as “restor[ing] the “tranquility of the Commonwealth” after “insurrection or rebellion.”⁹ As Justice Oliver Wendell Holmes Jr. stated, “When granted [pardon] is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed.”¹⁰

Historical examples: Over the years, presidents have exerted this power to grant pardons to groups.¹¹ Historical examples include President George Washington’s pardons of leaders of the Whiskey Rebellion of 1794¹² and pardons by Presidents Abraham Lincoln and Andrew Johnson during and after the Civil War.¹³ These pardons best represent the situation that Hamilton presaged. Lincoln intended the pardons to help the process of reconciliation and reconstruction after the Civil War. Even so, these presidents did not pardon individuals who committed what are today called war crimes.¹⁴ Further, the pardons were contingent on swearing an oath of allegiance to the Union.¹⁵

The Vietnam War, one of the most divisive conflicts in U.S. history, generated more recent examples of group presidential pardons. In 1974 President Gerald R. Ford established a limited clemency program of partial relief from prosecution for some draft resisters who agreed to perform alternative service.¹⁶ On his first day in office, President

prosecution, then his successor’s administration may not be bound by them. Further, an intended beneficiary still would have to reveal publicly his or her desire to receive the pardon’s protection in any future investigation or proceeding. Conversation between Margaret Love and author on November 20, 2008.

⁸ Article II, § 2., cl. 1.

⁹ Alexander Hamilton, *The Federalist*, No. 74.. See also Phillip Kurland, “Pardoning Power,” *Encyclopedia of the American Constitution* (Leonard W. Levy, Kenneth L. Karst and Adam Winkler, eds. 2nd ed., 2000).

¹⁰ *Biddle v. Perovich*, 274 U.S. 480, 485 (1927).

¹¹ Group pardons, particularly those granted prior to conviction, are sometimes called “amnesties.” While “the Constitution does not use the word ‘amnesty,’ ... the term is generally employed where pardon is extended to whole classes or communities....” *Knote v. U.S.*, 95 U.S. 149, 152-53 (1877).

¹² Kathleen Dean Moore, *Pardons: Justice, Mercy and the Public Interest*, Oxford University Press (1989), at 51.

¹³ Jonathan T. Dorris, *Pardon and Amnesty Under Lincoln and Johnson, 1861-1898*, Chapel Hill 1953, at 29, 32-35.

¹⁴ Henry Wirtz, the commander of the horrific Andersonville prisoner of war camp, was not pardoned and was executed. Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863-1877*, Harpers & Row, 1988, at 191.

¹⁵ Dorris, *supra* note 13, 34-35; Foner, *supra* note 14, 183. Records reflect that more than 22,000 people took the oath of loyalty before the end of the Civil War. Dorris, *supra* note 13, at 71.

¹⁶ Barry Werth, *31 Days: Gerald Ford, The Nixon Pardon, and A Government in Crisis*, Anchor Books 2007, at 128, 194-96, 251.

Jimmy Carter fulfilled a campaign promise and granted an unconditional pardon to hundreds of thousands of men who had evaded the draft by fleeing the United States or not registering for it. Those previously convicted were eligible for certificates of pardon. Pending investigations and prosecutions were dropped. For the men who did not face prosecution, the pardon functioned as a pledge not to engage in future prosecutions.¹⁷ For that reason, persons in the protected class described by the pardon, for the most part, did not need to come forward to receive the benefits of the president's promise.

Few modern examples exist of pardons for government officials, and those that do are not group, preemptive pardons. The most well known is President Ford's pardon of former president Richard Nixon, who resigned before impeachment proceedings against him concluded for his involvement in the Watergate scandal.¹⁸ Since Nixon's pardon was never contested, he did not have to accept formally the benefits of the pardon. President George H.W. Bush used the pardon power to immunize key members of the Reagan administration in which he had served as vice president. He pardoned six officials who had been indicted or convicted of crimes in connection with the Iran-Contra scandal, including former Defense Secretary Caspar Weinberger, whom President Bush called "a true American patriot."¹⁹ President George W. Bush commuted the sentence of I. Lewis "Scooter" Libby, Vice President Cheney's chief of staff, for lying during the investigation of the leak of the name of a CIA operative, just as Libby was facing imprisonment.²⁰

Scope of power: The Supreme Court has upheld the president's authority to attach conditions to pardons, but such conditions may not be contrary to the Constitution.²¹ In general, pardons require acceptance by the recipient.²² Yet the president's power remains

¹⁷ "January 21, 1977: Carter pardons draft dodgers," This Day in History, www.history.com/this-day-in-history.do?action=Article&id=123.

¹⁸ One month into Ford's presidency, he pardoned Nixon for all federal crimes committed during his presidency. See "The Fallout from Ford's Rush to Pardon," Time, September 23, 1974, p. 11. In the announcement Ford gave 31 days after he took office, Ford said, "... the tranquility to which this nation has been restored by the events of recent weeks could be irreparably lost by the prospects of bringing to trial a former President of the United States." President Gerald R. Ford's Proclamation 4311, Granting a Pardon to Richard Nixon, (September 8, 1974), www.ford.utexas.edu/LIBRARY/speeches/740061.htm.

¹⁹ The other people were CIA officials, Clair E. George, Duane R. Clarridge and Alan D. Fiers Jr.; the former national security advisor, Robert McFarlane; and Elliot Abrams, the former assistant Secretary of State for Central America. David Johnston, "Bush Pardons 6 in Iran Affair, Aborting a Weinberger Trial; Prosecutor Assails 'Cover-up,'" New York Times, December 25, 1992. The special prosecutor, appointed in 1986 to investigate the scandal, was swift in his condemnation and charged that President Bush's goal was to complete the cover-up of the misdeeds of the Reagan administration. He pledged to continue his investigation, but he was not able to do so.

²⁰ *Bush commutes Libby's sentence*, CNN.COM, July 2007, <http://www.cnn.com/2007/POLITICS/07/02/libby.sentence/index.html>.

²¹ United States v. Klein, 80 U.S. 128, 142 (1872) (holding that the president was competent "to annex to his offer of pardon any conditions or qualifications he should see fit ..."); Schick v. Reed, 419 U.S. 256, 266-68 (1974) (as long as the conditions on the pardon are constitutionally permissible, the pardon is allowable).

²² See Burdick v. United States, 236 U.S. 79, 93-94 (1915) (Burdick could legitimately reject a pardon that violated his constitutional rights). For the lesser benefits of commutation of a sentence, the Supreme Court has held that the president may do so *without* recipient consent. Ex Parte Wells, 59 U.S. 307, 315 (1855). President Clinton's grant of a posthumous pardon to Lt. Henry O. Flipper does not necessarily raise doubt

nearly absolute and subject to limited judicial review, and thus raises concerns about potential abuse.²³ A president only has the capacity to pardon acts committed by the time the pardon is granted, not for prospective wrongdoing.²⁴ Thus avenues of accountability as to beneficiaries of a pardon perhaps remain for crimes of a continuing nature as well as subsequent, related crimes.

Effect of pardon: The extent of a pardon’s effect could have significant implications, particularly for individual accountability for wrongdoing in the U.S. “war on terror.” While pardons restore basic civil rights, such as the right to vote, run for public office, and testify in court,²⁵ other effects are not definitive. Today lower courts disagree as to whether a pardon removes all guilt for a crime or simply removes the punishment while keeping the conviction and guilt on record after a pardon.²⁶ The weight of the case law indicates that a pardon does not expunge a crime for discipline under attorney licensing procedures.²⁷ Nor does a pardon affect civil liability.²⁸

Self-pardon: President Bush may be considering pardoning himself. The Constitution does not specifically bar the president from a self-pardon. However, some point to a self-pardon as nullifying the provision of the Constitution²⁹ that says a president can only be subject to impeachment and removal from office while president; once out, he can be indicted, prosecuted, tried, convicted and punished. At least two prior presidents are known to have contemplated self-pardons. President Ford acknowledged that Nixon – with support from his legal team – believed he could pardon himself.³⁰ George H.W. Bush’s legal counselors may have come to a similar conclusion, although it is speculated that he did not pardon himself because of concerns about his historical legacy.³¹

that the acceptance of a pardon is still required. “Remarks on the posthumous pardon of Lieutenant Henry O. Flipper,” Weekly Compilation of Presidential Documents, March 1, 1999. In the current scenario, those who might be covered by President Bush’s pardon might hesitate to take advantage of the pardon publicly (*i.e.*, accept the pardon to obtain its benefits), lest they be seen as conceding responsibility for wrongdoing.

²³ The electorate is the only real check on abuse of the presidential pardon power; yet, that power is nonexistent if the president issues a pardon at the end of his second term, as is the case with President Bush. However, it is common for presidents to issue pardons near the end of their terms in office. See Savage *supra* note 2.

²⁴ Ex Parte Garland, 71 U. S. 333, 380-81(1866).

²⁵ Ashley M. Steiner, *Remission of Guilt or Removal of Punishment? The Effects Of A Presidential Pardon*, 46 Emory L.J. 1997, 959- 960.

²⁶ Id. 972-74.

²⁷ In re Abrams, 689 A. 2d 6 (D.C. Cir. 1997), 12-13; Grossgold v. Supreme Court of Illinois, 557 F.2d 122 (7th Cir., 1977), 125-26.

²⁸ Angle v. Chicago, St. Paul, Minneapolis & Omaha Railway Co., 151 U.S. 1, 19 (1894).

²⁹ U.S. Const. art. I, § 3, cl. 7: “[J]udgements in Case of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of Honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgement and Punishment, according to Law.”

³⁰ Robert Nida and Rebecca L. Spiro, *The President As His Own Judge and Jury: A Legal Analysis of the Presidential Self-Pardon Power*, 52 Oklahoma Law Review, 1999, 197, 213 and accompanying footnotes, and Steiner, *supra* note 25, 1002.

³¹ Nida and Spiro, *supra* note 30, 216.

International law: International law obligates states to prosecute and punish certain criminal conduct. In doing so, it reduces or eliminates the state’s legal options, including passing amnesty laws to immunize perpetrators for those violations.³² Given U.S. treaty and customary law obligations, a preemptive, broad pardon for those charged with war crimes or gross human rights violations, including torture, likely would violate the United States’ international legal obligation to prosecute certain crimes. Moreover, a pardon in such cases would fall within international proscriptions against amnesties. U.S. duties under the Convention against Torture are central to this obligation.³³ Not only does the convention require the United States to criminalize acts of torture, as defined by the treaty,³⁴ but also it requires the government either to prosecute offenders or extradite them to the country that will prosecute them.³⁵ The Inter-American Commission and Court consider amnesties for serious violations of human rights to violate multiple provisions of the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights; the United Nations Human Rights Committee holds a similar view of the provisions in the International Covenant on Civil and Political Rights.³⁶ If the president explicitly granted amnesty-like pardons for serious international humanitarian and human rights violations, he likely would be flouting international law.³⁷ Those given amnesty for such crimes in any case would not be immune from prosecution outside the United States.³⁸

³² See generally Diane Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 Yale L.J., 1991, 2537; and *Settling Accounts Revisited*, 1 Int’l J. Transitional Just., 2007, 10.

³³ The United States ratified the Torture Convention in October 1994, and it entered into force on November 20 of that year. It was codified at 18 U.S.C. § 2340 et seq. See Initial Report the United States submitted to the Committee against Torture in 1999, CAT/C/28/Add.5 (Feb. 9, 2000).

³⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) arts. 1 & 4, June 26, 1987, 1465 U.N.T.S. 85.

³⁵ *Id.* at art 7.

³⁶ See, e.g. *Almonacid-Arellano et al. v. Chile*, Inter-Am. Ct H.R., Series C No. 154, 110, 114 (September 26, 2006). As an OAS member, the United States still is bound by the American Declaration even though it has signed, but not ratified the American Convention on Human Rights. The U.N. Human Rights Committee is the monitoring body for the International Covenant on Civil and Political Rights. General Comment 20(44), Art. 7, ¶ 15, “Report of the Human Rights Committee,” U.N. GAOR, 47th Sess., Supp. No. 40, Annex VI, 193, 195, U.N. Doc. A/47/49 (March 3, 1992). The United States ratified the International Covenant on Civil and Political Rights on June 8, 1992.

³⁷ See also Diane Orentlicher, “Report of the Independent Expert to Update the Set of Principles to Combat Impunity, Principle 24: Restrictions and other Measures Relating to Amnesty,” at 14, E/CN.4/2005/102/Add.1 (February 8, 2005).

³⁸ Some argue that the fact that people pardoned in the United States still could be subject to prosecution abroad obviates the need to oppose a pardon at home. These critics argue that the lifestyle of U.S. perpetrators would be crippled by their inability to travel and their fear of being subject to criminal arrest warrants outside of the United States. The possibility of accountability under universal jurisdiction statutes is speculative at best and therefore is not a sufficient or appropriate form of accountability. See Scott Lyon, “German Criminal Complaint Against Donald Rumsfeld and Others,” 10 *Asil Insight* 33, 2006, available at www.asil.org/insights/061214.cfm. The United States has a range of laws under which officials could be held accountable for their actions, although some current law contains barriers that requires legislative changes. See generally Physicians for Human Rights & Human Rights First, “Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality,” 2007.

Political and moral considerations

Abuse of executive authority: If President George W. Bush’s pardon is as sweeping as some predict,³⁹ then it risks solidifying his administration’s unprecedented expansion of executive authority by precluding the possibility of anyone being held accountable for offenses committed.⁴⁰ A blanket pardon could protect the president from being exposed as a witness in trials and prevent disclosure of information related to any misconduct on his part.⁴¹ Thus, such a pardon amounts to an act of self-protection by the president, a *de facto* self-pardon, even if he does not formally issue a self-pardon. President Bush’s exercise of such unfettered authority in this way would reinforce the most radical aspects of the ideology of executive authority that has characterized his administration and would undermine the values of the U.S. constitutional system. A broad pardon would leave this period of U.S. history not only as one in which unprecedented abuses occurred, but also one with a legacy of impunity.

Truth-seeking: Some critics have argued that Bush should grant a pardon in order for the truth to come out.⁴² On the contrary, a blanket, preemptive pardon eliminates almost all incentive to reveal what occurred in the past. The South African Truth and Reconciliation Commission model is inapposite.⁴³ In that situation, amnesty came *after* full, public disclosure of the truth in which victims and the Amnesty Committee had the chance to cross-examine the amnesty applicant and present evidence corroborating or contradicting his testimony. Further, any model for a commission of inquiry must be predicated on a serious commitment to follow the evidence wherever it might lead. President Bush’s possible blanket pardon would create a *fait accompli* for any future commission of inquiry that might be established after he leaves office. Further, some congressional investigations are looking into various aspects of U.S. policy in the “war on terror.” Congress could continue such investigations even if a pardon has occurred. However, the disincentive for doing so would be great; thus, a presidential pardon could be consequential for ongoing congressional investigations as well.

U.S. moral standing: Pardons of this nature would be another signal of the United States’ disregard for international law and would jeopardize the ability of a new administration to break with the past, refurbish the image of the nation abroad, and re-

³⁹ Lara Jakes Jordan, “Obama Advisers: Torture Prosecutions Not Likely,” Huffington Post, November 18, 2008, www.huffingtonpost.com/2008/11/18/obama-advisers-torture-per_n_14450.html (“Bush could take the issue of criminal charges off the table with one stroke of his pardons pen. ...Whether Bush will protect his top aides and interrogators with a pre-emptive pardon – before they were ever charged – has become a hot topic for discussion.”)

⁴⁰ See Joseph Margulies, *Guantánamo and the Abuse of Presidential Power*, Simon & Schuster, 2006.

⁴¹ Scott P. Johnson & Christopher E. Smith, “White House Scandals and the Presidential Pardon Power: Persistent Risks and Prospects of Reform,” 33 *NEW ENG. L. REV.*, 1999, 907, 911-12.

⁴² See especially Stuart Taylor Jr., “The Truth About Torture,” *Newsweek*, July 21, 2008.

⁴³ See Nicholas D. Kristof, “The Truth Commission,” *New York Times*, July 6, 2008 (in which he calls for the establishment of a truth commission—like that of post-apartheid South Africa—with subpoena power to investigate the abuses in the aftermath of September 11). Kristoff states such a commission would “lead a process of soul searching and national cleansing.”

establish the centrality of the rule of the law.⁴⁴ This overt disrespect for international law sets an extremely negative example and could have deleterious effects on respect for international law globally. Regimes that abuse human rights once again would see a green light, much as they have during the past seven years as the United States has engaged in abusive practices. A U.S. preemptive pardon would inhibit efforts to stanch these abuses and shore up the enforcement of human rights laws. Such a pardon would put the United States in the company of countries that have allowed for wide-scale impunity in the aftermath of systematic violations.⁴⁵

Victims: Granting a blanket pardon disregards the rights of the victims of abuses in the “war of terror” to an effective remedy, to know the full truth, and to receive redress. There has been no regard for their interests, much less any consultation process.⁴⁶ More significantly, such a pardon reinforces the message of the past eight years in the United States that victims of crimes such as mental and physical torture have no form of redress.⁴⁷ Further, a presidential pardon could have a devastating impact on the more than 500,000 torture survivors who live in the country. These victims came here to escape governments that routinely practice torture and cruelty with impunity. To witness the U.S. government engage in similar actions and then offer immunity to the perpetrators and their commanders sends a chilling message to these victims.⁴⁸

Conclusion: The pardon that some speculate President Bush plans to grant – for top-level civilians to legal advisors to members of the military or the CIA for wrongdoing in connection with the “war on terror” – would be unprecedented and therefore would manifest a disturbing new abuse of the pardon power. Such a pardon would differ fundamentally from any previous examples in U.S. history. The size of the group to be pardoned potentially is large. With pardons of this nature, not even guilt could be implied or attributed because individuals might not be named. Without any conditions on the pardon, there might not be a process in which the beneficiary actually has to accept the pardon.⁴⁹ The scope of the pardon – possibly inclusive of abusive detention and

⁴⁴ The international community could view a pardon as yet another example of U.S. exceptionalism. Harold Hongju Koh, “On America’s Double Standard, The Good and Bad Faces of Exceptionalism,” *The American Prospect*, September 20, 2004, available at www.prospect.org/cs/articles?sessionid=aN4obvgyoHT4Y5tY13?article=on_americas_double_standard.

⁴⁵ *Serrano-Cruz Sisters v. El Salvador*, Inter-Am. Ct. H.R., Series C No. 120 (March 1, 2005) (El Salvador); *Chumbipuma Aguirre et. al. v. Peru* (Barrios Altos Case), Inter-Am.Ct.H.R., Series C No. 75 (March 14, 2001) (Peru); *Almonacid-Arellano*, supra note 36 (Chile).

⁴⁶ See Human Rights Center & International Human Rights Law Clinic, UC Berkeley, in partnership with Center for Constitutional Rights, “Guantánamo and Its Aftermath: U.S. detention and interrogation practice and their impact on former detainees,” November 2008).

⁴⁷ For examples, see “Set of Principles for the Protection and Promotion of Human Rights Intended to Strengthen Action to Combat Impunity,” U.N. Subcommission for Prevention of Discrimination and Protection of Minorities,” 48th Sess., Annex II, Agenda Item 10, at 12, U.N.Doc. E/CN.4/Sub.2/1996/18, June 29, 1996 (Special Rapporteur Louis Joinet).

⁴⁸ Catherine Arrowood, director of Center for Victims of Torture’s Washington office, e-mail correspondence with author, November 21, 2008.

⁴⁹ In order to take advantage of the pardon in some material way, an individual would have to identify himself and demonstrate his qualification for pardon relief. This “acceptance” process did not arise as to President Nixon’s pardon or the pardons of war resisters who had not been prosecuted who were pardoned by President Carter. Conversation between Margaret Love and author (Nov. 20, 2008).

interrogation practices, all forms of rendition, illegal surveillance, mistreatment of immigrants, and/or illegal actions in the wars in Iraq and Afghanistan – could be far-reaching, even if offenses are not specified. Such a broad pardon would act as a direct manifestation of impunity and a disincentive to future accountability.

For the first time in U.S. history, some of the potentially pardonable acts would include violations of international law. No previous president has enacted a broad, prospective pardon for members of his own administration or for military forces. This form of pardon must be regarded with great suspicion as it could deny a new government the right to choose its own path toward accountability and could adversely impact new foreign policy initiatives.

In looking back over two centuries of presidential pardons, one finds examples that range from noble attempts to heal a divided and anguished nation to selfish and venal favors for one's friends. If President Bush grants a preemptive, sweeping pardon, he would be in the company of only a few other presidents who have abused this executive power for unmistakably political ends.

For more information on this issue or the ICTJ's U.S. Accountability Project, go to www.ictj.org, or contact:

Lisa Magarrell
Senior Associate for US Programs
917-637-3813
lmagarrell@ictj.org

or

Carolyn Patty Blum
Senior Project Consultant
212-989-0012
cpblum@law.berkeley.edu

International Center for Transitional Justice (ICTJ)
5 Hanover Square, 24th Floor
New York, NY 10004
Main: 917-637-3800
Fax: 917-637-3901

The International Center for Transitional Justice assists countries pursuing accountability for past mass atrocity or human rights abuse. ICTJ works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved. To learn more, visit [**www.ictj.org**](http://www.ictj.org).