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Biden Is Developing a Pardon Process With a Focus on Racial Justice

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WASHINGTON — Administration officials have quietly begun evaluating clemency requests and have signaled to activists that President Biden could begin issuing pardons or commutations by the midpoint of his term.

The effort, which is being overseen by the White House Counsel's Office and the Justice Department, is an implicit rebuke of President Donald J. Trump's approach to clemency, which mostly bypassed the Justice Department and relied on an ad hoc network of friends and allies, resulting in a wave of late pardons and commutations to people with wealth or connections.

Mr. Biden's team, by contrast, has signaled in discussions with outside groups that it is establishing a more deliberate, systemic process geared toward identifying entire classes of people who deserve mercy. The approach could allow the president to make good on his campaign promise to weave issues of racial equity and justice throughout his government.

Mr. Biden's approach to his pardon powers is part of a broader long-term shift in his criminal justice policies. During his 35 years in the Senate, he helped fashion a string of bills that enacted harsh sentences for drug crimes and laid the groundwork for the mass incarceration that disproportionately affected Black communities.

On the campaign trail, Mr. Biden apologized for portions of one of the more aggressive tough-on-crime measures he championed, the 1994 crime bill. And as president, he has surrounded himself with supporters of overhauling the system.

The White House has publicly offered few details about his plans for issuing pardons, which wipe out convictions, and commutations, which reduce prison sentences. But White House officials have indicated in private conversations with criminal justice activists, clemency seekers and their allies that Mr. Biden's team is working with the Justice Department's Office of the Pardon Attorney to process clemency requests with an eye toward having the president sign some before the 2022 midterm elections.

"We asked them not to wait to the end of a term to execute pardon and commutation power for photo ops, and they definitely assured us that is not this administration's plan," said DeAnna Hoskins, the president of the criminal justice group JustLeadershipUSA, who participated in a Zoom session for former prisoners with White House officials last month.

“This administration is looking at early on,” said Ms. Hoskins, who worked on prisoner re-entry issues for county, state and federal government agencies after serving a 45-day sentence for theft in 1999.

Participants in the Zoom session and other meetings with the White House have come away with the impression that Mr. Biden intends to use clemency grants — which are among the most unchecked and profound powers at a president’s disposal — to address systemic issues in the criminal justice system.

The Biden campaign hinted at such an approach in its criminal justice platform, which indicated that he intended to use clemency “broadly” to “secure the release of individuals facing unduly long sentences for certain nonviolent and drug crimes.”

Among those supporting the administration’s efforts is Susan E. Rice, who leads Mr. Biden’s Domestic Policy Council. She is focused on instilling racial equity in all of the administration’s initiatives and has recruited a team with deep roots in civil rights and justice.

As a member of the House and the chairman of the Congressional Black Caucus, Cedric Richmond championed efforts to decrease sentences and incarceration rates. Ms. Rice and Mr. Richmond, who leads the White House’s Office of Public Engagement, have participated in sessions with criminal justice activists, as has Chiraag Bains, a special assistant to Mr. Biden for criminal justice and gun policy who worked in the Justice Department’s civil rights division under the Obama administration.

The White House’s evaluation of clemency requests is being conducted by the counsel’s office, led by Danielle Conley, the deputy counsel. Others in the counsel’s office who are involved in the effort include Lauren Moore and Tona Boyd — both of whom were hired from Democratic Senate offices, where they worked on criminal justice and civil rights issues — as well as Dana Remus, the White House counsel.

But the White House has indicated that it will rely on the rigorous application vetting process overseen by the Justice Department’s Office of the Pardon Attorney. Mr. Trump’s clemency grants had almost completely bypassed the Justice Department’s process, instead empowering friends, associates and lobbyists to use their connections to the president, his family and his team to push favored requests to the front of the line, sometimes collecting large fees for their services from pardon seekers.

Mr. Biden’s White House has already signaled that even its allies will have to go through the process, as was made clear to Desmond Meade, who in 2018 led a successful push to restore voting rights to more than 1.4 million Floridians with felony convictions.

Mr. Meade, who has expressed interest in a federal pardon for a decades-old military conviction for stealing liquor and electronics on Navy bases while he was serving in the Army, was steered this year to the Justice Department’s pardon attorney by Mr. Bains.

In an interview, Mr. Meade said that the department's clemency process was "way too bureaucratic," adding that "the pardon application in itself is daunting, and it screams that you need to hire an attorney to make that happen."

He said he was among the activists who urged White House officials to consider moving the process out of the Justice Department, noting the paradox of entrusting an agency that led prosecutions with determining whether the targets of those prosecutions deserve mercy.

But the Biden administration is not inclined to circumvent the department, according to a person familiar with the White House's thinking.

Instead, Mr. Biden's team has pointed to the approach adopted by President Barack Obama, who issued more than 1,900 clemency grants. Most went to people recommended by the Justice Department, many of whom had been serving sentences under tough antidrug laws, including those convicted of low-level, nonviolent crimes like possession of cocaine.

In outreach sessions to criminal justice activists, White House officials have collected recommendations on categories of clemencies that should be prioritized. The sessions have included groups with strong connections in the Black community and those that aggressively opposed Mr. Trump, including the American Civil Liberties Union, as well as the libertarian Cato Institute and the Prison Fellowship, which counts evangelical conservatives among its staff and supporters.

Kate Trammell, an official with the Prison Fellowship, said in a statement that during a call with White House officials in March, she recommended that the administration prioritize clemency reviews for people "serving disproportional sentences as a result of the continued disparity in sentencing for federal crack and powder cocaine crimes."

The A.C.L.U. highlighted those prisoners and others in an online and newspaper advertising campaign during Mr. Biden's inauguration week. It urged him to grant clemency to 25,000 people in federal prison, including "the elderly, the sick, those swept up in the war on drugs and people locked up because of racist policies of the past that have since been changed."

Udi Ofer, the director of the A.C.L.U.'s justice division, said that Mr. Biden "has a special obligation given his history to use the power of clemency to fix these issues, because he was the architect of so many of the mass incarceration policies that we are now trying to repeal."

The A.C.L.U. and other criminal justice groups see an early test for Mr. Biden in the thousands of nonviolent federal prisoners who were released to home confinement in an effort to reduce the spread of the coronavirus in prisons.

In the final days of Mr. Trump's presidency, the Justice Department issued a memo indicating that many of them would have to return to prison once the pandemic emergency ends. Mr. Biden's Justice Department is considering whether to revoke that guidance, while activists are pushing the president to either extend the home confinement or commute the sentences entirely.

Other suggestions for clemency priorities have included people convicted of crimes — including murder — seen as related to their civil rights activism, such as people who were active in the Black Panther Party.

Mr. Richmond has indicated that the White House counsel would review the suggestions, according to the person familiar with the White House's efforts.

Dorsey Nunn, the executive director of Legal Services for Prisoners with Children, said the conversation with White House officials had left him hopeful. But he expressed skepticism that the administration would be willing to grant clemency to Black Panther activists.

Another activist on the call, Brittany White of the group Live Free, argued that any political blowback from granting clemency could be offset by mobilizing voters hurt by mass incarceration.

“Black voters especially feel a sense of loyalty and affection, I believe, for those who uphold our values,” said Ms. White, whose group worked to drive up turnout among formerly incarcerated people in the Georgia Senate runoff elections in January.

But the White House has kept its distance from some of the criminal justice groups and experts who worked most closely with the Trump administration. They include the criminal justice activist Alice Marie Johnson and the lawyer Alan M. Dershowitz.

“No one from the Biden administration has contacted me,” said Ms. Johnson, who was credited by the Trump White House with supporting more than a dozen clemency grants after receiving her own full pardon from Mr. Trump, whose re-election campaign she supported.

Mr. Dershowitz, who played a role in at least 12 clemency grants bestowed by Mr. Trump, according to a New York Times investigation, said “it would be, I think, better for the Biden administration to broaden its reach,” adding that he had voted for Mr. Biden and would like to help his administration.

He conceded, though, that the new president's team might be keeping its distance because he represented Mr. Trump in his first impeachment trial and is now advising the legal team defending Mr. Trump's former personal lawyer, Rudolph W. Giuliani, in a federal investigation.