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Time to pardon people as well as turkeys, Mr. President

By Margaret Colgate Love
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Dear Mr. President,

Media reports suggest that you will soon be engaging again in the ritual pardoning of a turkey. This year's feathered candidates for presidential grace are reportedly already en route for a Rose Garden ceremony ahead of Thanksgiving, after which they will be flown to Disneyland to serve as honorary grand marshals in the Thanksgiving Day parade. If past is prologue, a substantial chunk of the news cycle, and your staff's time, will be devoted to this event.

Presidential turkey-pardoning is of relatively recent provenance. Until 1989, presidents were more inclined to make a meal of the annual gift from the National Turkey Federation and the Poultry and Egg National Board. President George H.W. Bush inaugurated the practice of "pardoning" the turkey, and the tradition has been institutionalized along with the Annual Easter Egg Roll.

It is not clear what message the public is supposed to take away from this bit of holiday theater: It could have a spiritual dimension, recalling the sacrifice of grateful, hungry pilgrims; or it could suggest the imperial "thumbs up" that spared a vanquished gladiator. Perhaps the whole production is intended as a joke. What seems clear is that jet-age turkey-pardoning is preferred over the more venerable practice of pardoning human beings.

Mr. President, you have been in office almost two years now, and you have yet to pardon anyone. It may be that your advisers have cautioned that extending clemency to humans is politically risky, and discouraged you from acting favorably on any of the hundreds of pending applications that await your consideration. But this advice is at best shortsighted. Presidents Bill Clinton and George W. Bush both waited too long to use their pardon power. In his new memoir, Bush describes the "frustration" and "disgust" he felt in his final days in office as well-connected insiders seeking pardons beat a path directly to his door. Bush seems oblivious to the fact that it was precisely his hands-off approach to pardoning throughout his tenure that led to the "last-minute frenzy" and "massive injustice" he decries, just as Clinton's neglect of his power had led to similar chaos and unfairness eight years before.

Pardoning people should not be that hard. In fact, it should be one of the happiest of your official duties. It requires no permission or negotiation with the other branches of government. It allows you to put your personal stamp on the justice system and to speak directly to the American

people about it. Judicious pardoning has been an important legacy of some of our greatest presidents.

Successful pardoning requires good staffing. The attorney general has been the steward of the pardon power for more than a century, helping your predecessors to engage boldly and purposefully in their duties. Justice Department regulations invite ordinary people to apply for presidential forgiveness and instruct them how to do so. In recent years, however, that invitation has bordered on the fraudulent. A lawyer who spent more than a decade working in the office that processes pardon applications wrote recently in the Los Angeles Times that "the bureaucratic managers of the Justice Department's clemency program continue to churn out a steady stream of almost uniformly negative advice, in a politically calculated attempt to restrain (rather than inform) the president's exercise of discretion." Supreme Court Justice Anthony Kennedy has described the pardon process as "drained of its moral force." Some thought was reportedly given early in your administration to repairing or replacing this broken advisory system, but reform measures were shelved with the departure of your first White House counsel.

It is a shame that the system for administering the pardon power no longer serves and protects the president, for there has never been a greater need for a robust and respectable pardon program. The federal prison population of roughly 200,000 includes many who have served decades for nonviolent drug offenses and others who deserve a second look to determine whether midcourse correction would be appropriate. Thousands of ordinary people living productive and law-abiding lives in this country are disqualified from opportunities and benefits because of a conviction record that may be decades old. These are people who have earned the second chance that a pardon represents. Your own attorney general has criticized these proliferating collateral consequences as a "recipe for high recidivism."

Mr. President, to date your only pardon was to a 45-pound tom named Courage. We were told that the name was chosen to honor the men and women in our military. It had a broader symbolism for those of us who wondered where along the way presidents had lost the resolve to use this most beneficent and personal of their constitutional powers. Come to think of it, it seems to have been lost about the same time they started pardoning turkeys.

It would indeed be welcome if this year you used the Thanksgiving ceremony to reconnect us with the tradition of pardoning that the Founders considered essential to a just system.

The writer, a Washington lawyer, was U.S. pardon attorney from 1990 to 1997 and represents applicants for pardon.