**Trump grants clemency to troops in three controversial war crimes cases**

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President Trump has restored the rank of a Navy SEAL acquitted of murder and pardoned two soldiers accused of murder, Military Times has learned.

President Donald Trump on Friday granted clemency to three controversial military figures embroiled in charges of war crimes, arguing the moves will give troops “the confidence to fight” without worrying about potential legal overreach.

[Army 1st Lt. Clint Lorance](https://www.armytimes.com/news/your-army/2019/07/01/army-officer-convicted-of-murder-in-afghanistan-to-get-another-look-by-civilian-court/), convicted of second degree murder in the death of two Afghans, was given a full pardon from president for the crimes. [Army Maj. Mathew Golsteyn](https://www.armytimes.com/news/your-army/2018/12/13/former-green-beret-major-faces-murder-charge-for-2010-afghanistan-incident/), who faced murder charges next year for a similar crime, was also given a full pardon for those alleged offenses.

[Special Warfare Operator Chief Edward Gallagher](https://www.navytimes.com/news/your-navy/2019/07/02/seal-war-crimes-suspect-not-guilty-on-murder-charge/), who earlier this fall was acquitted of a string of alleged war crimes, had his rank restored to Chief Petty Officer by the president.

All three cases had been championed by conservative lawmakers and media personalities as an overreaction to the chaos and confusion of wartime decisions. But critics have warned the moves could send the message that troops need not worry about following rules of engagement when fighting enemies abroad.

“The President, as Commander-in-Chief, is ultimately responsible for ensuring that the law is enforced and when appropriate, that mercy is granted,” the White House said in a statement. “For more than 200 years, presidents have used their authority to offer second chances to deserving individuals, including those in uniform who have served our country.

“These actions are in keeping with this long history.”

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Pentagon leaders privately had expressed reservations about the moves, but Defense Secretary Mark Esper has declined comment on the rumored actions in recent days.

Last week, he said that he had a “robust” conversation with Trump about the proposed pardons and clemency and that “I do have full confidence in the military justice system and we’ll let things play out as they play out.”

The Army announced it will implement Trump’s pardons.

“Under the Constitution, the president has the power to grant pardons for federal offenders; that authority extends to military court-martial proceedings,” the Army announced in a statement.

"The Army has full confidence in our system of justice. The Uniform Code of Military Justice ensures good order and discipline for uniformed service members while holding accountable those who violate its provisions. The foundation of military law is the Constitution, and the Constitution establishes the President’s power to grant pardons.

“The Army will review today’s executive actions in order to implement the presidential orders.”

In the wake of Trump’s decision, the official twitter account of Rear Adm. Charles Brown, the Chief of Naval Information, indicated that Navy leaders “acknowledge his order and are implementing it.”

While Gallagher was acquitted of murder and obstruction of justice charges in July, a panel of his peers recommended he be reduced in grade for posing with the body of a detainee, a crime he never denied.

Lorance’s case dates back to a 2012 deployment to Afghanistan, when he ordered his soldiers to fire on three unarmed men riding a motorcycle near their patrol. Members of his platoon testified against him at a court-martial trial, describing Lorance as over-zealous and the Afghans as posing no real threat.

He was sentenced to 19 years in prison at Fort Leavenworth, Kansas. In recent years, Lorance and his family had waged a long campaign against his sentence, and found a receptive ear in Trump.

Golsteyn’s case had not yet been decided. He was scheduled for a December trial on charges he murdered an alleged Taliban bomb maker, and burned his remains in a trash pit during a 2010 deployment with 3rd Special Forces Group. Trump’s action effectively puts an end to that legal case before any verdicts were rendered.

The president called Gallagher at around 4 p.m to personally deliver the news, according to the SEAL’s attorney Timothy Parlatore.

“We’re extremely grateful to the president for his decision to right the wrongs committed by the Navy’s criminal justice system against Chief Gallagher,” Parlatore told Navy Times Friday evening. “But this also was a case that should’ve been dismissed by the Navy at an earlier date. The misconduct by NCIS and military JAG prosecutors should’ve been handled a long time ago by the Navy. The commander in chief was right to assert his leadership to right this wrong.”

Trump overturned a decision by Chief of Naval Operations Adm. Mike Gilday announced on Oct. 29 that preserved Gallagher’s demotion to petty officer first class. Gallagher’s legal team had urged the four-star to show mercy for a highly decorated SEAL whose case was plagued by allegations of corruption inside the Judge Advocate General’s Corps and the Naval Criminal Investigative Service.

Gallagher’s court-martial trial for murder and other alleged war crimes collapsed and a panel of his peers convicted him on the sole charge of positing for a photo next to a dead Islamic State detainee, a charge he never denied.

Before the trial kicked off, a military judge booted Cmdr. Christopher Czaplak, the lead prosecutor, for his role in [a warrantless surveillance program](https://www.navytimes.com/news/2019/06/04/lead-navy-prosecutor-in-seal-war-crime-case-out-over-email-spying/) cooked up with NCIS [to track emails sent by defense attorneys and Navy Times.](https://www.navytimes.com/news/your-navy/2019/05/13/defense-attorneys-for-navy-seal-accused-of-war-crimes-say-prosecutors-spied-on-them/)

Prosecutors and agents also were accused of manipulating witness statements; using immunity grants and a bogus “target letter” in a crude attempt to keep pro-Gallagher witnesses from testifying; illegally leaking documents to the media to taint the military jury pool; and then trying to cover it all up when they got caught.

“The fight for Eddie Gallagher has been long and intense, but it never should’ve gotten to this point,” said Parlatore. “What the president’s action indicates is that there are service members who have been unjustly targeted by the military criminal justice system, and Eddie and I look forward to working to reform these problems on their behalf.”

Fox News and Navy Times[both reported on Nov. 4](https://www.navytimes.com/news/your-navy/2019/11/04/report-trump-makes-seal-gallagher-a-chief-again/) that the president had decided to restore Gallagher to chief.

Later Friday night, the social media sites helmed by Gallagher’s wife, Andrea, carried a statement attributed to her husband that thanked both the president for his intervention and the “American people for their unwavering support" over the past year.

He said that the United States is blessed to have a commander in chief who “stands up for our warfighters and cares about how they and their families are treated.”

In a prepared statement sent to Military Times by attorney Phil Stackhouse, Golsteyn’s family said they were “profoundly grateful” that the president ended the soldier’s prosecution.

Stackhouse said Golsteyhn spoke with the president by telephone “for several minutes” on Friday.

“We have lived in constant fear of this runaway prosecution," Golsteyn said in the statement. "Thanks to President Trump, we now have a chance to rebuild our family and lives. With time, I hope to regain my immense pride in having served in our military. In the meantime, we are so thankful for the support of family members, friends and supporters from around the nation, and our legal team.”

Stackhouse pointed to an Army Board of Inquiry that cleared the major for his alleged misconduct tied to the ambush of the Taliban bomb maker. He said Golsteyn’s legal team remained confident “we would have prevailed in trial, but this action by the president expedited justice in this case.”

"Maj. Golsteyn should have been medically retired years ago because of service-related injuries and allowed to move on with his life and family. Instead, the Army secretly pursued him for seven years. The origination and true motivation of this prosecution remains a mystery. We urge the Army to learn from this flawed, compromised prosecution and prevent similar abuses in the future.”

We laud the President’s decision – which he made as Commander-in-Chief and general courtmartial convening authority under the Uniform Code of Military Justice (UCMJ) as justice for Clint Lorance," said John Maher, one of his attorneys, in a statement. “We see the President’s decision as a broader victory for those who work to ensure our military justice system does not sacrifice our warriors to political and international whims.”

Trump has exercised his pardoning powers often during his administration, including in the case of another soldier earlier this year.

Former 1st Lt. Michael Behenna had been paroled from Leavenworth in 2014, after receiving a 15-year sentence for murdering an alleged al-Qaida operative in Iraq in 2009.

And in 2018, he pardoned former Machinist’s Mate 1st Class Kristian Saucier, who spent a year in jail after pleading guilty in 2016 to taking cell phone photos of his work space on board the attack submarine Alexandria ― prohibited, as the entirety of a submarine is considered a classified area.

Hina Shamsi, director of the ACLU’s National Security Project, in a statement blasted the moves by the president.

“With this utterly shameful use of presidential powers, Trump has sent a clear message of disrespect for law, morality, the military justice system, and those in the military who abide by the laws of war,” she said.

*Army Times reporter Kyle Rempfer contributed to this story.*

**Trump's intervention on military justice system was lawful and proper**

**BY JOHN B. WELLS, OPINION CONTRIBUTOR — 12/11/19 01:30 PM EST (The Hill)**

**https://thehill.com/opinion/national-security/474095-trumps-intervention-on-military-justice-system-was-lawful-and**

Recently, Present Donald Trump drew criticism for intervening in three military courts-martial. [Trump pardoned Army Lt. Clint Lorance and Army Major Matthew Golsteyn](https://www.usatoday.com/story/news/politics/2019/11/15/donald-trump-pardons-clint-lorance-mathew-golsteyn-war-crime-cases/1229083001/) and commuted the sentence of Navy Chief Eddie Gallagher.

The authority for presidential pardons in the armed forces comes from the Constitution. The president has plenary power to pardon individuals who commit federal crimes, including military offenses.

The president's power to pardon members of the armed forces is reinforced by his authority as commander in chief. No one can seriously question the presidential power to pardon members of the military. Since Trump was authorized to pardon, the more germane question is whether he should have done so.

President [Barack Obama](https://thehill.com/people/barack-obama) used this power to [commute the death sentence of convicted murderer Dwight](https://militaryjusticeforall.com/1988/12/12/dwight-loving-us-army-sentenced-to-death-by-military-courts-for-the-robbery-murder-of-army-pvt-christopher-fay-retired-army-master-sgt-bobby-sharbino-1988/)Loving and the prison sentence of [Chelsea Manning](https://thehill.com/people/chelsea-manning). Manning, formerly known as [Bradley Manning](https://thehill.com/people/chelsea-manning), was convicted of violating the Espionage Act and sentenced to 35 years in prison; the sentence was commuted to seven years. While some may disagree with those presidential actions, no one should question President Obama's authority to grant the pardons.

Calling Eddie Gallagher a war criminal is inaccurate. Chief Gallagher was cleared of charges that would rise to the level of a war crime. The sole conviction — [posing with the corpse of a teenage ISIS fighter](https://www.npr.org/2019/07/03/738463353/jury-reduces-navy-seals-rank-for-taking-photo-with-corpse-of-isis-fighter) — should have been addressed administratively.

Lorance's case is not another Mai Lai massacre, in which Lt. William Calley was convicted of killing 22 defenseless villagers during the Vietnam War. In this instance, Calley was sentenced to life imprisonment but President Richard Nixon quickly released him to house arrest. His sentence was later reduced to 10 years and he was quickly paroled.

Lorance was overcharged. He was probably guilty of certain crimes, including reckless endangerment and obstruction of justice, but not murder. Unlike Calley, he was not a combat veteran: He was a scared kid on his third day of combat. His crime was overreaction, not premeditation. What is most troubling about Lorance was the harsh sentence. He served much more time than Calley — six years in a tough federal prison. He was severely punished and, in the eyes of the president, that was sufficient. 

The Golsteyn case is certainly curious. He was cleared by two investigations for killing a Taliban bombmaker. Then Golsteyn alleged that [he was criminally charged after a discussion on Fox News.](https://www.nbcnews.com/news/military/green-beret-says-he-was-charged-murder-because-fox-n948976) [He was found by a board of inquiry to have engaged in conduct unbecoming an officer](https://apnews.com/2593c49415172c6a8b2ac8ef66a98f25) and received a discharge under honorable conditions and a[General Officer Memorandum of Reprimand.](https://www.nytimes.com/2018/12/14/us/politics/mathew-golsteyn-special-forces-murder-charges.html)

One could argue that it would have been better to let the military justice system take its course before considering clemency. But the matter had been investigated and appropriate action taken. The fact that he was discharged certainly calls into question whether or not the military even had jurisdiction to reopen the case.

Commentators seem to ignore the unlawful command influence in these cases. Spawned by political correctness, senior officers tend to interfere with the justice system. Although such action is barred by the Code of Military Justice, it permeates the system. As a special court martial-convening authority and an attorney who defended service-members before courts-martial, I can attest to the fact that commanders routinely deny access to witnesses and suppress exculpatory evidence. That happened in this case.

Interference in the Gallagher case is well documented. The government conducted electronic surveillance of the defense team, and that is unconscionable. If I had engaged in that type of conduct, I would be writing this from a prison cell.

The Lorance case also was [seemingly plagued by evidence-suppression.](https://taskandpurpose.com/clint-lorance-appeal-murder-conviction)The fact that two of the three Afghan nationals were linked to hostile action was hidden. While this may not have changed the verdict, it certainly would have affected the sentence. The Uniform Code requires the defense to have equal access to witnesses and evidence, but that did not happen.

In the Golsteyn case, the matter did not proceed to trial. Here the underlying reason for the president's action seems to be fundamental fairness. The president obviously believed it was not fair to investigate, punish a soldier, and then later prosecute him again. While technically not double jeopardy, it was certainly unfair.

The presidential actions will not undermine good order and discipline. One may disagree with the pardons, but presidential intrusion into military justice is not new.

Like Presidents Nixon and Obama before him, [President Trump](https://thehill.com/people/donald-trump) acted to balance what he felt was unfair action by the military bureaucracy. The president must be the final arbiter of the military justice system and be allowed to issue clemency — without question — when he feels it is the right thing to do.

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**No, Our Boys Are Not “Killing Machines”**

**Trump’s war crimes pardons show how little the commander in chief understands the American military.**

**By Fred Kaplan NOV 18, 2019 (Slate)**

**https://slate.com/news-and-politics/2019/11/trump-war-crimes-pardons-iraq-afghanistan.html**

President Donald Trump’s pardoning of three service members convicted or accused of war crimes has been decried for eroding military discipline and tainting the country’s image. But the action also indicates that the commander in chief knows little about the U.S. armed forces or the wars they’ve been fighting.

The three pardoned are Army 1st Lt. Clint Lorance, Army Maj. Mathew Golsteyn, and Navy SEAL Chief Petty Officer Edward Gallagher. Lorance was freed after serving six years of his 19-year sentence for shooting a group of civilians in Afghanistan, then covering it up. Golsteyn was awaiting trial for allegedly murdering an unarmed Afghan civilian.

Gallagher stabbed an ISIS fighter who was undergoing surgery for a battle wound, shot two civilians from a sniper’s nest in Iraq, and threatened to kill his subordinates if they informed on him. (He was ultimately acquitted on six other charges but convicted of posing for an “unofficial photo” with a corpse.)

This is the first time a president has pardoned a service member for war crimes. Richard Nixon transferred former Army 2nd Lt. William Calley, the commander at the My Lai Massacre during the Vietnam War, from an Army brig to house arrest, but even Nixon didn’t pardon the defendant.

In October, when he announced that these cases would be reviewed, Trump tweeted, “We train our boys to be killing machines, then prosecute them when they kill!” This notion of trained “killing machines” comes from war movies—and bad ones, at that. In reality, American troops are trained as much in when not to shoot their weapons as they are in how to shoot them.

This was particularly true of the wars in Iraq and Afghanistan, where the crimes in question were committed. They were counterinsurgency wars, in which winning the “hearts and minds” of civilians was as important as killing bad guys. Killing bad guys at all was to be avoided, if possible. The U.S. Army’s counterinsurgency field manual, supervised by Gen. David Petraeus, who later commanded forces in both wars, stated: “A defection is better than a surrender, a surrender better than a capture, and a capture better than a kill.” And: “An operation that kills five insurgents is counterproductive if the collateral damage or the creation of blood feuds leads to the recruitment of 50 more.”

This principle of relative restraint created dilemmas for commanders—for instance, whether to bomb a building that housed insurgents, even if innocent civilians might be killed as well. Debates were held, sometimes in meetings involving the president, over where the line should be drawn: How many civilian deaths were permissible, given the value of killing the insurgents in question?

But these debates concerned the possibility of “collateral damage”—i.e., the accidental death of civilians. No one in these debates defended deliberate murder.

The impermissibility of deliberately or carelessly killing civilians long predates Petraeus’ field manual. It’s enshrined in the Law of Armed Conflict, an international code of warfare drafted in 1949, which was also adopted into U.S. law and the Uniform Code of Military Justice. In a phone interview, Geoffrey Corn of the South Texas College of Law describes the idea behind the law:

The international legal authority to kill and destroy is contingent on individuals operating under responsible command. The function of a commander is to prepare soldiers to navigate the moral abyss of mortal conflict, to use violence in a regulated manner in the interests of the state.

Corn said that this principle, known as “responsible command,” is “baked in everything about the Law of Armed Conflict.” It applies not only to soldiers who violate its tenets but also to those soldiers’ commanders, whether or not they were directly complicit in the crime.

Eugene Fidell, a lawyer specializing in military law and a lecturer at Yale Law School, told me that, by this standard, Trump as the commander in chief could be seen as violating the Law of Armed Conflict. “The tenet of command responsibility holds that a commander can be punished if he fails to take steps to prevent war crimes committed by his troops—or to punish them afterward,” Fidell said. By pardoning these three, Trump in a sense violated that tenet.

Certainly he sent a message that service members who commit similar acts in the future might receive the same leniency.

American service members are trained as much in when not to shoot their weapons as they are in how to shoot them.

When asked about this, Corn pointed out that under U.S. law, the president’s right to issue pardons and acts of clemency overrides his obligations as a commander under international law. However, Corn added, “In the eyes of someone in a foreign country, Trump acted inconsistently with international law and the Geneva Conventions.”

Some officers are particularly disappointed by the Golsteyn pardon because Trump took his action before the military justice system had a chance to operate. Corn, who also advised Golsteyn’s attorneys, said that trial could have answered some knotty questions about the meaning of “civilian” and whether it is illegal for a soldier to kill a member of an enemy organization away from the battlefield. It was certainly a “breach of discipline,” Corn said, but it’s not clear whether it constituted a war crime.

Trump issued the pardons against the advice of Secretary of Defense Mark Esper and several military commanders.

Andrew Exum, a former Army Ranger platoon commander and Pentagon official, tweeted after news of Trump’s pardons, “This is a sad day for the tens of thousands of us who led troops in combat in Iraq and Afghanistan who were proud of the way in which we maintained our good order and discipline in the face of many challenges. These men, now pardoned, remain a disgrace to our ranks.”

To which Petraeus, who has since retired, commented on his LinkedIn page: “I share Andrew’s sentiments and thinking.”

Retired Navy Adm. Mike Mullen, former chairman of the Joint Chiefs of Staff, told me that Trump’s action “has the potential of undermining the rule of law in the military justice system completely. We can’t take the law into our own hands in war. The idea that war has changed so much that the laws are constraining is a fallacy. War has always been a mess.”