

A First-Hand Update on the Success of the DOJ's New Clemency Program

by Jordan D. Maglich



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Last year, I wrote about a clemency initiative announced by President Barack Obama that sought to commute or reduce the sentences of nonviolent drug offenders. Unveiled in 2014 by former Attorney General Eric Holder, the clemency initiative featured a collaborative effort between the White House and the Department of Justice that introduced new and expanded criteria in determining whether to commute an inmate's sentence. Arguably, the most important factor was whether an inmate's sentence was disproportionate to what he or she would receive if the sentence was handed down today. The initiative was widely viewed as an effort to rectify some of the sentencing disparities that emerged from strict sentencing laws in the 1980s and 1990s that included mandatory minimums and enhanced penalties. The Federal Bureau of Prisons estimates that nearly half of all federal prisoners are currently serving a drug-related prison sentence. At the time I addressed this topic in June 2015, the clemency initiative was still in its infancy, but had been emboldened by President Obama's commutation of approximately three dozen inmates.

One topic not covered in my June 2015 Sidebar was that I was one of the many volunteers participating in the Clemency Project 2014, an initiative with backing from organizations such as the ACLU and American Bar Association that recruited and trained attorneys to volunteer their time to screen for eligible prisoners and provide assistance in seeking clemency. After receiving the required training, I was assigned the case of a potential candidate for clemency. My client was assigned to me in late 2014, and I was soon busy gathering the information necessary to prepare a petition for commutation that would ultimately be submitted to the Department of Justice's Office of the Pardon Attorney (OPA). My client, who I will refer to as "John," was in the 25th year of a life sentence without the possibility of parole after being convicted at trial of a single drug offense. While the typical sentence for that offense was normally 10 to 20 years, the combination of several prior low-level drug offenses as well as the prosecution's pre-trial filing of two "851 enhancements" meant that the sentencing judge had

no choice but to hand down a mandatory life sentence. Ironically, all but one of the remaining 14 individuals charged in the indictment with my client—many of whom were charged with having significantly higher culpability in the alleged scheme—received much lower sentences and had long been out of prison by 2014.

After receiving approval from the Clemency Project, I submitted a petition for clemency to the OPA on Aug. 5, 2015. In my petition, I made the case why John was the perfect candidate for clemency: John was a nonviolent, low-level offender with an isolated criminal history who had served well over 10 years of a life sentence that would be markedly different were he re-sentenced today. In fact, I argued that current sentencing guidelines and trends would have resulted in a 141-month sentence for John—a sentence that would have been long ago satisfied when factoring in time served. Given John's age and the finality of a life sentence, this was literally a "Hail Mary" pass to rectify this disparity. And then I waited.

Over the next year, it became evident that the OPA was rapidly devoting more resources to reviewing the thousands of clemency petitions and submitting worthy cases to President Obama. While President Obama granted 171 commutations from Dec. 17, 2014, to Dec. 18, 2015, over 1,000 commutations were granted in 2016 alone, including 213 commutations on Aug. 3, 2016—the most commutations ever granted by a U.S. president on a single day. However, this increased attention also resulted in a significant number of denied commutation requests. While not a single commutation request was denied in 2015, President Obama denied over 7,000 commutations in 2016.¹ Indeed, you'd need nearly 100 pieces of letter-sized paper to print out the list of 2016 denials from the OPA's website. Despite this flurry of activity, I had yet to receive any word on John's case.

That all changed on a Thursday afternoon in late October 2016 when I received a call from an assistant U.S. attorney working on detail for the OPA who congratulated me and explained that President Obama had just signed a warrant commuting John's sentence and ordering his release in February 2017. The caller

explained that John had been pulled aside from the general population at his correctional institution and that I was to call the warden's office at a specified time to break the news. I felt truly fortunate to deliver the words that I had rehearsed over the past two years.

There are not many people outside the judiciary who will ever have the chance to tell an inmate that their sentence has been commuted and that they will soon be released. It is a powerful feeling to tell someone that their liberty, taken away from them over a quarter-century ago, will soon be restored. It is certainly something that an attorney primarily focused on securities and financial services litigation doesn't ever anticipate doing.

As White House Counsel Neil Eggleston recognized, "what President Obama has done for commutations is unprecedented in the modern era." The statistics bear this out—President Obama commuted the sentences of more people than the past 13 presidents combined.² By the end of his term, President Obama commuted 1,715 sentences and granted 212 pardons.

It goes without saying that President Obama should be lauded for his efforts to rectify the disparities that were created by the strict sentencing laws of the 1980s and 1990s. His vision gives hundreds of Americans a second chance that might not have recently appeared to be possible. The Department of Justice also deserves recognition for both their efforts and their commitment to commuting sentences that are at odds with traditional notions of justice. Finally, the Clemency Project 2014 should be commended for its exhaustive efforts these past few years in ensuring that the benefits of the program were available to all qualifying inmates.

Attorneys interested in volunteering for the Clemency Project can contact volunteer@clemencyproject2014.org for more information. ©

Endnotes

¹Presidential Clemency Action During the Obama Administration, Office of the Pardon Attorney, U.S. DEPARTMENT OF JUSTICE, www.justice.gov/pardon.

²Neil Eggleston, *President Obama Grants Another 98 Commutations in the Month of October*, THE WHITE HOUSE (Oct. 27, 2016) <https://obamawhitehouse.archives.gov/blog/2017/01/19/reinvigoration-clemency-authority>.

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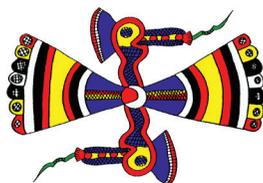
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