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THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
“OVERSIGHT HEARING ON CLEMENCY AND THE PARDON ATTORNEY”
OFFICIAL TESTIMONY

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Good morning Chairwoman Jackson Lee, Ranking Member Biggs, and Members of the Committee on the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security. Thank you for convening today’s “Oversight Hearing on Clemency and the Pardon Attorney” and inviting me to testify on my legislation, H.R. 6234, the Fair and Independent Experts in Clemency Act, also known as the FIX Clemency Act.¹

In the United States, there are approximately 2 million people incarcerated in the criminal legal system, including more than two hundred thousand people in federal custody.² We have the highest incarceration rate of any country in the world.³ This statistic should ring alarm bells for every Member of Congress because it impacts each and every one of our districts.

Mass incarceration is a policy failure and a moral failure, exacting hurt and harm on our constituents and disproportionately targeting those who are most marginalized: our Black, Latinx, Indigenous, disabled, and LGBTQ+ neighbors.⁴ The disparities are well-documented and irrefutable, but more important than any statistic is the impact of incarceration on people’s lives.

To paraphrase the philosopher, Angela Y. Davis: prisons do not disappear problems, they disappear human beings. Locked in cages throughout this nation are real people, and their families, friends, and loved ones are serving their sentences with them.

I know this all too well. Growing up with an incarcerated parent, I can only imagine how different my own childhood would have been if my father was able to get the help he desperately needed. Instead, the system criminalized his addiction and robbed me of his physical presence during my most formative years. As a child, I was forced to carry the burden of incarceration.

¹ <https://pressley.house.gov/media/press-releases/pressley-bush-jeffries-advocates-unveil-historic-bill-transform-broken-clemency>.

² <https://www.prisonpolicy.org/reports/pie2022.html>.

³ <https://www.pewresearch.org/fact-tank/2021/08/16/americas-incarceration-rate-lowest-since-1995/>.

⁴ https://www.bop.gov/about/statistics/statistics_inmate_race.jsp; https://www.bop.gov/about/statistics/statistics_inmate_ethnicity.jsp; <https://www.lgbtmap.org/file/lgbt-criminal-justice-poc.pdf>; <https://cdn.americanprogress.org/wp-content/uploads/2016/07/15103130/CriminalJusticeDisability-report.pdf>.

My story is hardly an anomaly. According to the Bureau of Justice Statistics, nearly half of the people in federal prisons were the parent or guardian of a minor child.⁵ The cruelty of our carceral system produces harm, not healing.

So let me be clear: mass incarceration is not justice, far from it. It is born from policies rooted in slavery and white supremacy. And for far too long this crisis has destabilized our communities and our families..

As policymakers, we have an opportunity and an obligation to reject this unjust status quo and to take every measure available to end this cycle of responding to trauma and pain with more trauma and more pain.

We need to end the crisis of mass incarceration, and fixing our clemency process must be a part of the solution.

That is why I am proud to have introduced the FIX Clemency Act along with two Members of the Judiciary Committee: Representative Cori Bush and Representative Hakeem Jeffries.

My legislation would transform how clemency works by replacing the redundant and biased Department of Justice (DOJ) process with a new and independent United States Clemency Board. The Board would be composed of experts in fields like behavioral health, rehabilitation, and reentry and appointed by the President. There would also be a representative from the DOJ on the Board and a reserved seat for a person who is formerly incarcerated – because the people closest to the pain should be closest to the power, driving and informing the policymaking.

Currently, applications for clemency are under the full control of staff in the Department of Justice and must undergo repeated scrutiny with duplicative layers of bureaucratic review. This creates a prosecutorial bias against each and every applicant regardless of their type of conviction or evidence of rehabilitation. Furthermore, at any point in the current process, one staffer can unilaterally prevent an application from moving forward without providing the applicant any information.

The FIX Clemency Act makes clear that prosecutors and people who run prisons should not have outweighed influence when it comes to evaluating clemency applicants. With my legislation, the newly created board would be directly responsible for reviewing applications requesting a pardon, commutation, or relief from collateral consequences like access to occupational licensing and government resources. All recommendations by the Board would be transmitted directly to the President and included in an annual report to Congress. My bill makes the clemency process transparent and independent, and would streamline the process making it easier for the President to use their clemency authority.

With more than 17 thousand people trapped in the clemency backlog waiting years for a response from the Department of Justice⁶, we must pass the FIX Clemency Act. People's lives hang in the balance.

⁵ <https://bjs.ojp.gov/library/publications/federal-prisoner-statistics-collected-under-first-step-act-2020>.

⁶ <https://www.justice.gov/pardon>.

My legislation has been endorsed by lawyers, constitutional scholars, and criminal justice reform advocates from across the political spectrum. Presidential pardon power is specifically enumerated in the U.S. Constitution, and the President is entitled to a process that does not encumber their ability to exercise their clemency power. More than 150 years ago, Congress created the current process, and it now time for Congress to fix it.

I am proud to say that the FIX Clemency Act was drafted in close partnership with those who understand clemency best: people who are formerly incarcerated. Throughout every step of the drafting process, they provided keen insight and expert knowledge based on their lived experience. People like Danielle Metz, who serves as Director of Clemency for the National Council for Incarcerated and Formerly Incarcerated Women and Girls, and is a recipient of clemency herself. Danielle was sentenced to three consecutive life sentences and an additional twenty years in federal prison for non-violent drug offenses due to participation in her abusive husband's illegal activities.⁷ She served more than two decades in prison away from family and her children before her sentence was finally commuted. I am grateful for her advocacy and partnership on this legislation, and I know there are thousands of people like her waiting to be reunited with their loved ones.

Congress has the power to legislate a just and equitable clemency process by passing my legislation to create an independent board. I applaud President Biden for granting 78 commutations and pardons last month. It sets a historic precedent and will help set those individuals, their families, and their communities on a pathway to healing. However, in order to fully confront the massive backlog of more than 17 thousand applications and prevent it from ever occurring again, there must be structural change in the clemency process.

Thank you Chairwoman Jackson Lee and Members of the Committee on the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security for taking this issue seriously and inviting me to offer testimony on my legislation, HR 6234, the Fair and Independent Experts in Clemency Act. I stand ready to partner with you to fix clemency.

⁷ <https://www.essence.com/awards-events/2019-essence-festival/danielle-metz-clemency-obama-honor-roll/>.