

# The Hill

## Commutations help restore justice

By Rep. Steve Cohen (D-Tenn.) - 11/25/14

As Americans gather at their Thanksgiving table this month and join in the annual Black Friday sales, there are thousands of people who will be left out of this holiday cheer. They are far away from their families, serving lengthy sentences for non-violent, and often minor, offenses. Even though they pose no danger to the public, and taxpayers spend as much as \$30,000 a year to incarcerate them, they remain in prison because of an antiquated sentencing system, with little hope of release anytime soon. That is, unless the President commutes their sentences. When President Obama faces the wrenching decision of which turkey to pardon this year, I hope he will also consider the thousands of people who deserve his mercy as well.

Unfortunately, compared to his predecessors the president has issued pardons and commutations at a historically low rate. Although the Justice Department announced a new clemency initiative, it has yet to yield any results. And while the Obama Administration has taken some bold steps to reform the criminal justice system he has been far too timid when it comes to using his commutation power to free those individuals whose continued confinement serves no public purpose.

Pause to consider one group of people serving particularly unjust sentences. Prior to passage of the Fair Sentencing Act of 2010, there existed a 100 to 1 sentencing disparity between crack, which is used predominantly by African-Americans, vs. powder cocaine, which is used predominantly by whites. Recognizing this manifest injustice and the racial disparities that biased enforcement has perpetuated, Congress changed the law to significantly reduce the unfairness. But because the law was not made retroactive, thousands of people remain incarcerated, serving sentences that Congress has now determined to be void against public policy. By using the power of commutation, the President can and should bring these sentences in line with the policy Congress and the President have now set forth.

There are countless other people who also deserve the President's mercy but whose cases have not been brought to his attention. Today prisoners, many of whom have little education, are expected to apply for commutation, often without legal assistance. Their applications are then evaluated by the same Justice Department that put them in prison in the first place. I commend President Obama for naming a new Pardon Attorney who seems genuinely committed to justice,

but we need a better system. The President ought to appoint a respected member of the legal field to lead an independent panel that would systematically review the sentences of all people in federal prison to recommend worthy candidates for pardon or commutation.

At times, the Obama administration has justifiably boasted of its strong enforcement efforts. For example, the Department of Justice Antitrust Division successfully prosecuted several white-collar criminals for serious market manipulation that hurt a wide swath of consumers and caused vast economic damage. As punishment, these criminals were sentenced to an average of 2 years each. Had those same defendants been caught possessing a small amount of methamphetamine, with 2 prior convictions for selling personal amounts of marijuana, they might have been sentenced to life without parole. This is just one example of a system that's unfair and unjust.

A bipartisan consensus has developed that our criminal justice system must be fixed. Congress has before it a number of important proposals to reform harsh and racially biased sentencing laws and I hope we will act on those bills quickly. But we need a broad program of presidential commutations to assist the people currently in prison paying the price for the mistaken policies of the past. That's why Obama should use the power granted to him by the Constitution and commute the sentences of those people who are unjustly incarcerated. As Dr. Martin Luther King, Jr. reminded us, we are confronted with the "fierce urgency of now" and for those individuals serving unjust sentences there is no time to waste.

The annual presidential pardon of a Thanksgiving turkey makes for a fun tradition we can all enjoy. But it's no laughing matter for the thousands of prisoners and their families who suffer as a result of unnecessary and unfair sentencing policies. They are calling out for similar relief from their President. As we begin the holiday season, the President can chart a better course. By using his commutation power to free all those who are serving unjust sentences he can act with mercy and compassion on behalf of those who need it most. I can think of no better representation of the holiday spirit.

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