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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-4209**

January 7, 2014

COMMITTEE ON THE JUDICIARY

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(U.S. HELSINKI COMMISSION)

The Honorable Barack Obama  
President of the United States of America  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear President Obama:

I was pleased to see that on December 19, 2013 you commuted the sentences of 8 people who were victims of this nation's misguided sentencing laws. However, the justice you delivered to these 8 individuals only highlighted the injustice resulting from the continued incarceration of thousands of other people serving similarly unjust sentences. I urge you to make much broader use of your commutation power and release all those whose confinement does not serve the cause of justice.

As we discussed in the East Room of the White House not long ago, our hearts are in the same place when it comes to this issue but only you have the power to take direct action to free those who are unjustly incarcerated. Under your leadership, this nation has recently seen critical reforms to the criminal justice system for which you and your Administration should be applauded. In particular, Attorney General Holder's "Smart on Crime" initiative, released in August of 2013, contained vital changes to prosecution and sentencing policy that will dramatically improve our justice system. I was also pleased with Deputy Attorney General Cole's August 29, 2013 memo announcing that your Administration will respect the determination of those states that have legalized marijuana for medical or personal use. These actions demonstrate your commitment to reform and pursuing a more compassionate and effective strategy with respect to law enforcement and prosecution.

However, I am concerned that you have been mis-served by some in your Administration, who have not carried out the policies and priorities that you set forth. I am especially disappointed by your Pardon Attorney, who has recommended pardons and commutations at a historically low rate and has even been found by the Department of Justice Inspector General to have engaged in

“conduct that fell substantially short of the high standards expected of Department of Justice employees and the duty he owed the President of the United States.” Rather than seeking worthy candidates for clemency, he appears to seek avenues to deny clemency as broadly as possible. It is time to take a sharp break from this approach.

As I have previously written to you, your Pardon Attorney should be removed from his position immediately and replaced by a highly respected member of the legal community with a mission to release all those serving unjust sentences. He or she should appoint a panel of distinguished lawyers to systematically review the sentences of all current federal prisoners and recommend candidates whose incarceration serves no public purpose. Rather than freeing a few symbolic individuals, this office should be charged with recommending the release of thousands of people whose sentences no longer align with national policies and values. This would truly advance the cause of justice.

For example, the 8 people whose sentences you commuted on December 19<sup>th</sup> were sentenced for crack cocaine offenses prior to passage of the Fair Sentencing Act of 2010, which reduced the unfair and racially discriminatory sentencing disparity between crack and powder cocaine. Although I have no way of knowing, I suspect you believe as I do that the Fair Sentencing Act should have eliminated the disparity entirely rather than merely reducing it to 18 to 1. However, it was vitally important legislation and you should be proud to have signed it into law. As you recognized, many of the individuals whose sentences you commuted would have already completed their terms had they been sentenced under the new law. But because the law was not made retroactive, they were still serving sentences that Congress has now declared void against public policy. Rarely, if ever, in American history has Congress spoken so clearly to repudiate its own policy by significantly lowering sentences. Although the law failed to provide for the release of those who paid the price for the misguided policies of the past, it is your duty as Executive to use the power granted to you under the Constitution to rectify this injustice. You should act immediately to commute the sentences of the thousands of people who would be free today had the Fair Sentencing Act been in effect when they were sentenced.

It is inconceivable that in the entire federal prison system there were only 8 individuals deserving of commutation. Without a committed effort to reviewing each individual sentence and the circumstances surrounding their convictions, thousands of people will continue to sit in prison, away from their families and unable to serve as productive members of their communities. Continuing to confine these individuals wastes resources our nation cannot afford and that could be much better spent investing in economic growth and the health of our citizens.

As you, yourself, noted in your December 19<sup>th</sup> statement, “Commuting the sentences of these eight Americans is an important step toward restoring fundamental ideals of justice and fairness. But it must not be the last.” You were elected to bring change to this country but your use of the



pardon power has been business as usual, if not a step back from that of your predecessors. I know that you share my concern for all those who are unjustly deprived of their liberty. I urge you to make executive clemency a priority for your Administration and deliver justice to all those who need it. As Dr. Martin Luther King, Jr. reminded us, we are confronted by the "fierce urgency of now" and for those individuals serving unjust sentences there is no time to waste. Justice delayed is justice denied.

As always, I remain,

Most sincerely,

Steve Cohen

Member of Congress

Happy New Year - Aloha from Memphis