



# Department of Justice

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**STATEMENT OF**

**ROGER C. ADAMS  
PARDON ATTORNEY  
DEPARTMENT OF JUSTICE**

**BEFORE THE**

**COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES**

**CONCERNING**

**THE USE AND MISUSE OF PRESIDENTIAL CLEMENCY POWER FOR  
EXECUTIVE BRANCH OFFICIALS**

**PRESENTED**

**July 11, 2007**

**Statement of Roger C. Adams  
Pardon Attorney  
Department of Justice  
Before the  
Committee on the Judiciary  
United States House of Representatives**

**July 11, 2007**

Good Morning Mr. Chairman and Members of the Committee:

I am here today at the Committee's request to describe the process the Office of the Pardon Attorney follows in carrying out the Department of Justice's responsibility to assist the President in the exercise of his clemency power. I might note initially that this is something the Department has done for over 100 years. Since at least the administration of William McKinley, the White House has usually relied on the Department, and specifically the Office of the Pardon Attorney, to receive, investigate, and make recommendations on clemency requests, and to prepare the documents the President signs when granting a pardon or a commutation of sentence. I say "usually," because the President is always free to grant clemency without the involvement of the Office of the Pardon Attorney or anyone else in the Department of Justice.

Executive clemency petitions usually request either a pardon after completion of sentence or a commutation – reduction of sentence – currently being served. The Department of Justice processes requests for executive clemency in accordance with regulations promulgated by the President and set forth at 28 C.F.R. §§ 1.1 to 1.11. These regulations provide internal guidance for Department of Justice personnel who advise and assist the President in carrying out the clemency function, but they create no enforceable rights in persons applying for executive clemency and they do not restrict in any way the clemency authority of the President. Under Article II, Section 2 of the Constitution, this power is plenary, and the President is free to

exercise it by means of procedures and methods of his own choosing. But the procedures and other matters I am going to describe today are those followed by my office in processing requests for clemency that are filed with the Department of Justice.

A presidential pardon serves as an official statement of forgiveness for the commission of a federal crime and restores basic civil rights. It does not connote innocence. Under the provisions of 28 C.F.R. § 1.2, a person does not become eligible to file a pardon request until the expiration of a five-year waiting period that commences upon the date of the individual's release from confinement (including home or community confinement) for his most recent conviction or, if no condition of confinement was imposed as part of that sentence, the date of conviction. Typically, the waiting period is triggered by the sentence imposed for the offense for which the pardon is sought, but any subsequent conviction begins the waiting period anew. Moreover, the same regulation stipulates that no petition for pardon should be filed by an individual who is then on probation, parole, or supervised release. In contrast to a pardon, a commutation is not an act of forgiveness, but rather simply remits some portion of the punishment being served. An inmate is eligible to apply for commutation so long as he has reported to prison to begin serving his sentence and is not challenging his conviction through an appeal or other court proceeding.

### **Pardon Requests**

A pardon request is typically processed in the following manner. The pardon applicant files his clemency petition, addressed to the President, with the Office of the Pardon Attorney. He is free to utilize the services of an attorney or to act on his own behalf in seeking pardon. I would note that the application form and instructions are on my office's web site, and we will send them to an applicant by mail if asked to do so. The standard form utilized for this process requests information about the offense, the petitioner's other criminal record, his employment

and residence history since the conviction and other biographical information, and his reasons for seeking pardon. The application must be signed and notarized, and the applicant must also submit three notarized affidavits from character references who are unrelated to him, know of his conviction, and support his pardon request. When my office receives a pardon petition, it is screened to ensure that the applicant is in fact eligible to seek a pardon (*i.e.*, that the crime for which pardon is sought is a federal offense and that the waiting period has been satisfied), to determine whether any necessary information has been omitted from the application or whether the applicant's responses to the questions require further elaboration, and to ascertain whether the petitioner has described his efforts at rehabilitation. If the petitioner is ineligible to apply for pardon under the regulations, he is so informed. If the application is incomplete, further information is sought from the petitioner.

As an initial investigative step in a pardon case, the Office of the Pardon Attorney contacts the United States Probation Office for the federal district in which the petitioner was prosecuted to obtain copies of the presentence report and the judgment of conviction, as well as information regarding the petitioner's compliance with court supervision, and to ascertain the Probation Office's views regarding the merits of the pardon request. If review of the pardon petition and the data obtained from the Probation Office reveals information that clearly indicates favorable action is not warranted, my office prepares a report to the President for the signature of the Deputy Attorney General recommending that pardon be denied.

Alternatively, if the initial review indicates that the case may have some merit, it is referred to the FBI so that a background investigation can be conducted. The FBI does not make a recommendation to support or deny a pardon request. Rather, the Bureau provides the Office

of the Pardon Attorney with factual information about the petitioner, including such matters as his criminal history, records concerning the offense for which pardon is sought, his employment and residence history, and his reputation in the community. The FBI report is reviewed by my staff to ascertain whether favorable consideration of the case may be warranted. If the investigation reveals derogatory information of a type that would render pardon inappropriate and warrant denial of the request, my office prepares a report to the President through the Deputy Attorney General recommending such a result.

If the FBI report suggests that favorable treatment may be warranted, or in cases which are of particular importance or in which significant factual questions exist, the Office of the Pardon Attorney requests input from the prosecuting authority (*e.g.*, a United States Attorney or a Division of the Department of Justice such as the Criminal Division or Tax Division) and the sentencing judge concerning the merits of the pardon request. If the individual case warrants, other government agencies, such as the Internal Revenue Service, may be contacted as well. In appropriate cases in which the offense involved a victim, the prosecuting authority is asked to notify the victim of the pendency of the clemency petition and advise him that he may submit comments concerning the pardon request. Upon receipt of the responses to these inquiries, my office prepares a report containing a recommendation as to whether a pardon should be granted or denied. The report is drafted for the signature of the Deputy Attorney General and is submitted for his review. If the Deputy Attorney General concurs with my office's assessment, he signs the recommendation and returns the report to my office for transmittal to the Counsel to the President. If the Deputy Attorney General disagrees with the disposition proposed by the Office of the Pardon Attorney, he may direct the Pardon Attorney to modify the Department's

recommendation. After the recommendation is signed by the Deputy Attorney General, the report is transmitted to the Counsel to the President for the President's action on the pardon request whenever he deems it appropriate.

Let me briefly discuss the standards that are typically considered by the Department of Justice in formulating our recommendations to the White House in pardon cases. They are set out in the United States Attorneys' Manual, which is a public record document, and the portions of the Manual that pertain to clemency can be found through my office's web site. Five factors are discussed in the Manual: the seriousness and relative recency of the offense; the applicant's post-conviction conduct, character, and reputation; the applicant's acceptance of responsibility for the crime and his or her remorse and atonement; the need for relief, in other words, why the person has applied for a pardon; and recommendations and reports we have solicited from the prosecuting office – usually a United States Attorney's Office – and the sentencing judge. I would also note another factor that is not explicitly listed in the U.S. Attorneys' Manual, but which is very important nevertheless. That is a lack of candor and honesty on the part of the applicant on the application form, during the interview with the FBI, or at some other stage. It is quite difficult to recommend that the President grant a pardon to someone who has lied to us during the process, even about a relatively minor matter that may have occurred many years ago, such as drug experimentation or the attempt to conceal an early marriage. Consequently, dishonesty in the course of applying for a pardon makes it less likely that the Department will recommend one.

### **Commutation Requests**

Let me turn now to commutation requests. As is the case with pardons, a federal inmate seeking a presidential commutation of his sentence files a petition for such relief with the Office of the Pardon Attorney. The petitioner is free to append to the commutation application - or to submit separately at a later date - any additional documentation he believes will provide support for his request. In completing the petition, the inmate - or his attorney, if he is represented by counsel - explains the circumstances underlying his conviction; provides information regarding his sentence, his criminal record, and any appeals or other court challenges he has filed regarding the conviction for which he seeks commutation; and states the grounds upon which he bases his request for relief.

When my office receives a commutation petition, we review it to ensure that the applicant is eligible to apply for clemency, and we commence an investigation of the merits of the request. The initial investigative step usually involves contacting the warden of the petitioner's correctional institution to obtain copies of the presentence report and judgment of conviction for the petitioner's offense, as well as the most recent prison progress report that has been prepared detailing his adjustment to incarceration, including his participation in work, educational, vocational, counseling, and financial responsibility programs; his medical status; and his disciplinary history. We also check automated legal databases for any court opinions relating to the petitioner's conviction. In most cases, the totality of this information establishes that a commutation would not be appropriate, and my office prepares a report to the President through the Deputy Attorney General recommending that commutation be denied.

In a minority of cases, however, if our review of this information raises questions of material fact or suggests that the commutation application may have some merit, or because the

case presents significant issues, my office contacts the United States Attorney for the federal district of conviction or the prosecuting section of the Department of Justice for comments and recommendations regarding the commutation request. We also contact the sentencing judge, either through the United States Attorney or directly, to solicit the judge's views and recommendation on the clemency application. As with pardon requests, if the individual case warrants, other government agencies may be contacted as well. In appropriate cases in which the offense involved a victim, the prosecuting authority is asked to notify the victim of the pendency of the commutation petition and advise him that he may submit comments concerning the clemency request.

Following an evaluation of all of the material gathered in the course of the investigation, the Pardon Attorney's Office drafts a report and recommendation for or against commuting the sentence, which is transmitted to the Deputy Attorney General. After his review, the Deputy Attorney General may either sign the report and recommendation or return it to my office for revision. Once the Deputy Attorney General determines that the report and recommendation satisfactorily reflects his views on the merits of the clemency request, he signs the document, which is then forwarded to the Counsel to the President for consideration by the President. Thereafter, when he deems it appropriate, the President acts on the commutation petition and grants or denies clemency, as he sees fit.

Let me mention briefly the matters the Department of Justice considers in formulating our recommendations in commutation cases. Those standards are also set out in the U.S. Attorneys' Manual, whose relevant portions may be accessed through my office's web site. As the Manual states, and as we inform commutation applicants and their relatives, while we



consider all requests carefully, a commutation of sentence is an extraordinary form of clemency that is rarely granted. Factors that weigh in favor of a commutation include disparity of the sentence as compared to those imposed on codefendants or others involved in the same crime; extraordinary medical issues – such as paralysis or blindness that make living in a prison setting unduly difficult – especially if the disability was not known at the time of sentencing; and unrewarded cooperation with the government.

The last factor, unrewarded cooperation with law enforcement, is less likely to result in a commutation today than in the past. That is because Rule 35 of the Federal Rules of Criminal Procedure has been amended in recent years to expand the time frame and circumstances under which the government may request the sentencing court to reduce a person's sentence to reward his cooperation after sentencing. Consequently, applicants who claim that their cooperation with the government should merit a sentence commutation have often received some reduction from the court, or at least the prosecutor has considered whether to request such a reduction. The Department's position is that the court is better situated to consider the extent, if any, to which an inmate's cooperation merits a sentence reduction. It is generally not the policy of the Department to ask the President to step in and grant a further reduction in this situation.

### **Grants of Clemency**

When the President decides to grant clemency, whether in the form of pardon or commutation of sentence, the Counsel to the President informs the Office of the Pardon Attorney to prepare the appropriate clemency warrant. Typically, if the President intends to pardon a number of applicants, a master warrant of pardon will be prepared for his signature. The signed warrant lists the names of all of the individuals to whom the President grants pardon, and directs

the Pardon Attorney to prepare and sign individual warrants of pardon reflecting the President's action to be delivered to each pardon recipient. Like the master warrant, the individual warrant bears the seal of the Department of Justice and reflects that it has been prepared at the direction of the President. When the individual pardon warrant has been prepared, it is sent to the applicant or to his attorney if he is represented by counsel.

If the President decides to commute a prisoner's sentence, the Pardon Attorney's Office likewise prepares the warrant of commutation for the President's signature. Depending upon how many sentences are to be commuted, either a master warrant detailing all of the commuted sentences or individual commutation warrants may be prepared. After the President has signed the commutation warrant, which bears the seal of the Department of Justice, the Pardon Attorney's Office transmits a certified copy of the document to the Bureau of Prisons to effect the inmate's release. A copy of the warrant is also sent to the petitioner's attorney if he is represented by counsel. Whenever the President grants a pardon or a commutation, the Pardon Attorney's Office notifies the prosecuting authority (United States Attorney or Division of the Justice Department), the sentencing judge, the relevant United States Probation Office, the FBI, and any other government agencies whose views were solicited, of the final decision in the matter. Finally, whenever the President grants either a pardon or a commutation, the Office of the Pardon Attorney prepares a press notice listing the names of the persons who received clemency, their cities and states of residence, the offense, the district and date of conviction, and the sentence imposed. The press notice does not, however, include details about the person's offense or the reason the President granted him clemency. The press notice is made available to the news media shortly after the President has acted.

### **Denials of Clemency**

When the President denies clemency, the Counsel to the President typically notifies the Deputy Attorney General and the Pardon Attorney's Office by memorandum that the affected cases have been decided adversely. The Pardon Attorney's Office then notifies the pardon or commutation applicant, or his attorney, in writing, of the decision. In the case of a commutation applicant, the notification is made by a memorandum to the warden at the appropriate federal prison, who is requested to inform the applicant. In addition, the Pardon Attorney's Office notifies the prosecuting authority, the sentencing judge, and other government agencies whose views were solicited. No reasons for the President's action are given in the notice of denial.

### **Statistics and Record Keeping**

Traditionally, the Office of the Pardon Attorney has served as a repository for records of clemency grants by prior Presidents. We maintain on compact discs copies of documents signed by Presidents George Washington through William J. Clinton granting pardons or other forms of clemency. We believe these records to be very complete, and we make these compact discs available to the public upon request. Using these CDs and other indices, we have the ability to research whether an individual has received a pardon during a particular time period. These records also have enabled the Office to assemble statistics showing the numbers of clemency petitions received and granted for each fiscal year as well as for entire presidential administrations from 1901 through January 20, 2001. All of these statistics are available on my office's web site. Not on the web site, but made available as a public record document by my office to anyone who asks, are statistics showing the numbers of applications and grants of clemency for each fiscal year of the current administration.

Mr. Chairman, that concludes my prepared testimony. I would be glad to try to answer any questions you and the members of the Committee may have.